

(2009) 09 SC CK 0082

In the Supreme Court Of India

Case No : Civil Appeal No. 6186 of 2009 (Arising out of SLP (C) No. 3514 of 2008)

Padubidri Damodar Shenoy

APPELLANT

Vs

Indian Airlines Limited and Another

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Airlines Employees (Aircraft Engineering Department) Service Regulations, 1959 — Regulation 12, 16
Bombay Civil Services Rules, 1959 — Rule 161(1), 161(2)
Punjab Civil Services Rules — Rule 16, 2.2, 5.32(B), 5.32(B)(1)

Citation : (2010) 3 AWC 2347 Supp : (2010) 3 BomCR 324 : (2009) 123 FLR 679 : (2009) 12 JT 108 : (2009) 12 SCALE 456 : (2009) 10 SCC 514 : (2010) 1 SCC(L&S) 54 : (2009) 14 SCR 356 : (2009) 6 SLR 19

Hon'ble Judges : Tarun Chatterjee, J;R. M. Lodha, J

Bench : Division Bench

Advocate : S.F. Deshmukh, N.M. Ganguli and P.K. Manohar, for the Appellant; P.S. Narasimha Lalit Bhasin, Nina Gupta and Bina Gupta, for the Respondent

Final Decision : Disposed Of

Judgement

R.M. Lodha, J.—Leave granted.

2. In this appeal by special leave, interpretation and construction of Regulation 12 of Service Regulations for Employees (other than those in the Flying Crew and those in the Aircraft Engineering Departments) - for short 'Service Regulations' - framed by respondent No. 1, is involved.

3. Padubidri Damodar Shenoy - appellant - joined the services of the Indian Airlines Limited - respondent No. 1 as Traffic Assistant on January 13, 1977. The appellant was promoted from time to time and, lastly, he was promoted to the post of Manager in the commercial department. In or about September, 2002, the appellant was posted to work at Muscat as Airport Manager but was recalled from posting soon thereafter and posted as Manager, Mumbai Airport. The

appellant challenged the pre-mature recall by filing writ petition which was later on withdrawn. It is not necessary to refer to the details of that writ petition as the subject matter of the present appeal does not concern that. What is relevant to be noticed here is that a charge-sheet dated January 16/21, 2003 was served upon the appellant; enquiry was conducted and the appellant was found guilty of misconduct alleged in the charge- sheet and vide order dated March 31, 2006/ April 10, 2006, the appellant's time scale by two incremental stages with cumulative effect was reduced by way of punishment.

4. In the year 2003, the respondent No. 1 came out with a scheme of Voluntary Retirement for its employees entitled Voluntary Retirement Scheme, 2003 (for short, 'VRS, 2003'). The appellant applied for voluntary retirement under the said scheme on September 17, 2003.

5. On September 30, 2005 the appellant gave a notice of his intention to voluntarily retire from service on completion of three months from the date of the notice as the appellant had completed 29 years of service. This was done under Regulation 12 of the Service Regulations.

6. The appellant's case is that he sent a reminder to the authorities on December 16, 2005 and when he did not receive any reply, he sent another letter dated June 8, 2006 informing the respondents that he would cease to be an employee of the respondent No. 1 after close of the working hours on June 30, 2006. Again on July 1, 2006, the appellant is said to have informed the respondent No. 1 and the concerned authority that in terms of notice dated September 30, 2005 he has ceased to be an employee of the respondent No. 1 in terms of Regulation 12(b) of the Service Regulations and requested the respondents to release and pay all his legal dues including the provident fund and gratuity within two weeks from July 1, 2006. Another letter is said to have been sent by the appellant on July 20, 2006 asking the respondents to release his legal dues failing which he informed them that he would be left with no alternative but to approach the court.

7. It appears that by a letter dated July 31, 2006, the appellant was informed that his application for voluntary retirement has been forwarded to the Headquarters for decision in the matter. The appellant was advised to report for duty immediately, failing which he was informed that a disciplinary action would be taken against him.

8. The appellant sent reply to the said letter on August 8, 2006 reiterating his stand and further informing the respondents that he has ceased to be the employee of the respondents from July 1, 2006 and, therefore, there was no question of his reporting for duty.

9. The appellant then filed a writ petition (Writ Petition No. 2522 of 2006) before the High court of Judicature at Bombay. During the pendency of writ petition, the appellant received a communication dated September 15, 2006 from the respondents that his request for voluntary retirement from service has not been

acceded to by the competent authority.

10. Writ Petition No. 2522 of 2006 was contested by the respondents. The Division Bench of the High Court heard the parties and by its order dated April 23, 2007, dismissed that writ petition.

11. The appellant filed a fresh writ petition being Writ Petition No. 1463 of 2007 before the High Court of Judicature at Bombay praying therein that the communication dated September 15, 2006 rejecting the appellant's application for voluntary retirement be quashed and set aside and a direction be issued to the respondents to approve the voluntary retirement of the appellant under Regulation 12(b) of Service Regulations pursuant to the notice dated September 30, 2005. The appellant also prayed that the respondents be further directed to release and pay all legal dues of the appellant along with interest thereon at 18% per annum from July 1, 2006 till payment and extend all post-retirement benefits.

12. The respondents contested that writ petition on diverse grounds, inter alia, namely: (i) that the appellant had raised the same issue in earlier writ petition (Writ Petition No. 2522 of 2006) and by a detailed order, his writ petition was dismissed and, therefore, it was not open to the appellant to re-agitate the same issue; (ii) that the application for voluntary retirement is an offer made by an employee and unless it is accepted by the employer, it does not become effective. The employee is not relieved from service till the offer is accepted because the relationship of the employer and employee does not come to an end. The offer of the appellant was not accepted by the first respondent and (iii) that the delayed communication does not create any right in the appellant and that the Service Regulations do not contemplate reasons to be communicated for rejection of the application for voluntary retirement.

13. The Division Bench of the High Court, after hearing the parties, dismissed the writ petition on October 17, 2007. Hence, the present appeal by special leave.

14. Before we turn to Regulation 12 of the Service Regulations, we may observe that the appellant had raised the same controversy by filing Writ Petition No. 2522 of 2006. It is true that the communication dated September 15, 2006 was received by him during the pendency of writ petition but the Division Bench was conscious of this fact while passing the order dated April 23, 2007. The Division Bench held that right to accept or reject the offer for voluntary retirement is that of the employer and although this has to be exercised within a reasonable time but that, however, does not give any right to the employee, if not accepted within reasonable time, to hold that the employment has come to an end. This is what the Division Bench said in its order dated April 23, 2007 while dismissing earlier writ petition:

The case of the petitioner is that once application is moved for retirement, under the provisions of Regulation 16(b), it would be the bounden duty of the Respondents to have decided the same recently. As the Respondents for a long period of time did not accept the letter to offer retirement, the petitioner stopped

attending the work as in his opinion, he ceases to be in the employment and demanded the compensation/retirement benefits from Respondent No. 1.

After having heard the learned Counsel for the petitioner and the learned Counsel for Respondent No. 1 and the relevant Regulation, we are clearly of the opinion that right to accept or reject is that of the employer. It is true that this has to be exercised within a reasonable time, that however does not give right in employee if not accepted within reasonable time to hold that the employment has to come to an end. The requirement of the regulation is approval of the competent authority. The Competent Authority has by a communication on 15.9.2006 refused the request for voluntary retirement. Considering the above, we are of the opinion that no case is made out for interference by this Court.

It is made clear that we are not going to the merits as to whether Respondent No. 1 was within its jurisdiction to accept or refuse. If the petitioner is aggrieved, it is for the petitioner to take whatever action which he desires.

15. While dismissing the subsequent writ petition, in the impugned order, the Division Bench has observed that it was improper for the appellant to have another round of litigation on the same point. The Division Bench expressed its unhappiness about the conduct of the appellant thus:

In its order dated 23/4/07, the Division Bench quoted Regulation 12(b). The Division Bench heard arguments on this point. It is reflected in the order that this point was canvassed. The Division Bench then observed that because the employer does not exercise the right to accept or reject the application within a reasonable time that does not give right in employee to contend that employment has come to an end. It is distressing to note that though this contention is rejected it is again raised in the present petition. It is improper for the petitioner to have a round of litigation in this manner on the same point. We are unhappy about this conduct of the petitioner.

16. Now, we come to the core issue. Regulation 12 of the Service Regulations, which is the area of controversy, reads thus:

12. An employee shall retire from the service of the Company on attaining the age of 58 years provided that the competent authority may ask an employee to retire after he attains the age of 55 years on giving three months' notice without assigning any reason. An employee:

(a) On attaining the age of 55 years;

OR

(b) On the completion of 20 years of continuous service may by giving three months notice voluntarily retire from the service;

Provided that the voluntary retirement under Clause (b) shall be subject to approval of the competent authority.

Provided further, notwithstanding anything contained in Regulation - 12 the services of an employee may at the option of the Managing Director and the employee being found medically fit, be extended by one year at a time beyond the age of retirement of 58 years for an aggregate period not exceeding two years.

17. Mr. S.J. Deshmukh, learned counsel for the appellant contended that Regulation 12 vests the employees covered thereby with a right to voluntarily retire after giving three months notice, namely, those who have attained age of 55 years and also those who have completed 20 years of continuous service and both these categories form one class. According to him, proviso appended to Regulation 12 only empowers the competent authority to withhold approval before the notice period is over. In other words, he would submit, that the employer can stop the voluntary retirement by not granting the approval within the period of notice and communicating the same to the concerned employee that the employer was not giving his approval. Learned Counsel submitted that a 'proviso' to particular provision of a statute only embraces the field which is covered by main provision to which it has been enacted and to no other. He relied upon a decision of this Court in *Ayyasami Vs. State of Tamil Nadu*, and submitted that where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.

18. Insofar as norms relating to voluntary retirement are concerned, Mr. S.J. Deshmukh, learned Counsel for the appellant submitted that the law in this regard is laid down by this Court in *State of Haryana and Others Vs. S.K. Singhal*, . He, particularly, referred to paragraphs 13 and 14 of the report and submitted that any decision to withhold approval has to be taken and communicated during the period of notice.

19. On the other hand, Mr. P.S. Narasimha, learned senior counsel for the respondents submitted that cases of voluntary retirement fall in three categories namely: (i) where voluntary retirement is automatic and comes into force on the expiry of notice period; (ii) where voluntary retirement comes into force on the expiry of notice period unless an order is passed within the notice period withholding permission to retire; and (iii) where voluntary retirement does not come into force unless permission to this effect is specifically granted by the controlling authority. The learned senior counsel would submit that proviso appended to Regulation 12 relates to category (iii). He also relied upon decision of this Court in *S.K. Singhal and Anr.* decision of this Court in the case of *Tek Chand Vs. Dile Ram*, .

20. Learned senior counsel for the respondents submitted that notice dated September 30, 2005 given by the appellant to the employer under Regulation 12(b) expiring on December 31, 2005 did not become effective and rather remained inoperative since the appellant continued to attend his duties not only

until the expiry of notice period but thereafter as well upto June 30, 2006. In this regard, he referred to a decision of this Court in the case of K.L.E. Society Vs. Dr. R.R. Patil and Another, . He also submitted that the word "approval" occurring in proviso to Regulation 12 in its context would mean "to accept". In this regard, he referred to a decision of this Court in the case of Ashok Kumar Sahu Vs. Union of India (UOI) and Others, . Relying upon a decision of this Court in the case of Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. Vs. Suman Behari Sharma, Mr. P.S.Narasimha submitted that 'proviso' to Regulation 12 expressly mandates the approval of the competent authority or, in other words, approval of the competent authority is a condition precedent to the event of voluntary retirement.

21. Regulation 12 of the Service Regulations, inter alia, enables an employee to seek voluntary retirement on attaining the age of 55 years or on completion of 20 years of continuous service by giving three months notice. An employee who has attained the age of 55 years and has applied for voluntary retirement under Regulation 12, his voluntary retirement is automatic on expiry of notice period i.e. three months. Is it equally applicable to an employee who has not attained the age of 55 years but completed 20 years of continuous service and applied for voluntary retirement. In our judgment, it is not so because for a category covered by Clause (b), namely, an employee having completed 20 years of continuous service who has given three months notice for voluntary retirement from the service, a proviso appended thereto provides that voluntary retirement under Clause (b) shall be subject to approval of the competent authority.

22. It is appropriate at this stage to consider the decision of this Court in S.K. Singhal. In S.K. Singhal, the relevant Rule 5.32(B) of the Punjab Civil Services Rules under consideration was as follows:

5.32(B)(1) At any time a government employee has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority retire from service. However, a government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under Sub-rule (1) shall require acceptance by the appointing authority subject to Rule 2.2 of the Punjab Civil Services Rules Vol. II:

Provided that where the appointing authority does not refuse to grant the

permission for retirement before the expiry of the period specified in Sub-rule (1) supra, the retirement shall become effective from the date of expiry of the said period:

Provided further that before a government employee gives notice of voluntary retirement with reference to Sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years' service qualifying for pension.

23. In paragraph 9 of the report, this Court considered the general scheme of voluntary retirement in service rules and also noted earlier decisions of this Court in the case of *Dinesh Chandra Sangma Vs. State of Assam and Others*, ; *B.J. Shelat Vs. State of Gujarat and Others*, ; *Union of India and others Vs. Sayed Muzaffar Mir*, and *H.P.Horticultural Produce Marketing & Processing Corpn. Ltd.* This Court observed:

9. The employment of government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Government to compulsorily retire an employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it is found that his service has not been found to be satisfactory. The rules also provide that an employee who has completed the said number of years in his age or who has completed the prescribed number of years of qualifying service could give notice of, say, three months that he would voluntarily retire on the expiry of the said period of three months. Some rules are couched in language which results in an automatic retirement of the employee upon the expiry of the period specified in the employee's notice. On the other hand, certain rules in some other departments are couched in language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated; refusal of permission could also be communicated after 3 months and the employee continues to be in service. Cases like *Dinesh Chandra Sangma Vs. State of Assam and Others*, ; *B.J. Shelat Vs. State of Gujarat and Others*, and *Union of India and others Vs. Sayed Muzaffar Mir*, belong to the former category where it is held that upon the expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period. On the other hand *Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. Vs. Suman Behari Sharma*, belongs to the second category where the bye-laws were interpreted as not giving an option "to retire" but only provided a limited right to "seek" retirement thereby implying the need for a consent of the employer even if the period of the notice has elapsed. We shall refer to these two categories in some detail.

24. In *S.K. Singhal*, this Court considered previous decisions at quite some

length and held:

13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.

14. Before referring to the second category of cases where the rules require a positive acceptance of the notice of voluntary retirement and communication thereof, it is necessary to refer to the decision of this Court in Dr. Baljit Singh Vs. State of Haryana, strongly relied upon by the learned Counsel for the appellants and to Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia, . The former case arose under Rule 5.32(B) of the Punjab Civil Services Rules. That rule extracted earlier contains an express provision in the proviso to Sub-rule (2) that the retirement takes effect automatically if refusal is not communicated within 3 months. In that case, when the employee gave notice for voluntary retirement on 20-9-1993, criminal cases were pending against him. After expiry of 3 months, on 25-2-1994, the competent authority declined to accept the notice. A two-Judge Bench of this Court, however, held that the voluntary retirement did not come about automatically on the expiry of the notice period but that it could take effect only upon acceptance of the notice by the Government and that the acceptance must also be communicated and till then the jural relationship of master and servant continues. This Court referred only to the decision of the two-Judge Bench in Sayed Muzaffar Mir case and stated that that case was to be confined to its own facts. The two-Judge Bench of this Court in Baljit Singh case did not notice that there were two three- Judge Bench cases in Dinesh Chandra Sangma and Shelat taking the view under similar rules that a positive order was to be passed within the notice period withholding permission to retire and that the said order was also to be communicated to the employee during the said period. By stating that an order of acceptance of the notice was necessary and that the said acceptance must be communicated to the employee and till that was done the jural relationship continued and there was no automatic snapping

thereof on the expiry of 3 months' period, the two-Judge Bench, in our view, has gone contrary to the two three-Judge Bench cases which were not brought to its notice. In the above circumstances, we follow the two three-Judge Bench cases for deciding the case before us.

15. Learned Counsel for the appellant also relied on a two-Judge Bench decision in *Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia*. That was a case where the letter of voluntary retirement was conditionally accepted subject to payment of dues and the employee wrote a further letter seeking adjustment thereof but before that was done, the scheme itself was withdrawn. There are again some observations made to the effect that there must be acceptance of request to retire and that it must be communicated. Neither *Dinesh Chandra Sangma* nor *Shelat* was referred to. In our opinion, the express provision in the proviso to Sub-rule (2) of Rule 5.32(B) in the case before us does not permit such a view to be taken. The said observations again run contrary to the decision in the two three-Judge Bench cases referred to above. Our comments on *Baljit Singh* apply equally to this case, so far as the observations are concerned.

16. We then come to the second category of cases where the rules require that an order of acceptance of notice be passed to make the voluntary retirement effective. In *HPMC v. Suman Behari Sharma* it will be noticed, the principle in *Dinesh Chandra Sangma* case was accepted but the case was distinguished on the ground that Bye-law 3.8(2) in HPMC case provided differently and that under that bye-law an employee could be permitted at his request to retire on completion of 25 years' service or 50 years of age. Para (5) of Bye-law 3.8 stated as follows: (SCC p.588, para 7)

(5) Notwithstanding the provision under para (2) above, the corporation employees who have a satisfactory service record of 20 years may also seek retirement from the service of the Corporation after giving three months' notice in writing to the appropriate authority. Persons under suspension would not be retired under this clause unless proceedings of the case against them are finalised....

(emphasis supplied)

While Clause (2) speaks of 25 years' service, Clause (5) speaks of 20 years' service.

17. The employee applied on 26-11-1990 for voluntary retirement effective from 30-11-1990 and also requested for waiver of notice of 3 months. He did not report to duty right from 1-12-1990. Earlier on 12-12-1989, a charge-sheet was issued against him for certain acts of misconduct. On 26-12-1990 he filed a reply to the charge-sheet. On 22-8-1992 another charge-sheet was served for unauthorised absence and one more on 18-9-1992. On 30-9-1992 he approached the Tribunal contending that he stood retired on expiry of 3 months from notice, w.e.f. 26-2-1990. The Tribunal accepted the said plea. Reversing the order of the Tribunal, this Court held while distinguishing *Dinesh Chandra*

Sangma case¹ and other similar High Court judgments, that Clause (2) of the bye-law merely gave a right to make a request and the request would become effective only if permitted. Under Clause (2) of the bye-law, it was a "right to a request" and not "a right to retire". If the request was not accepted and permission was not granted, the employee could not claim that there was an automatic retirement on the expiry of the period. Even under Clause (5) while it was true that there was a non obstante clause, it was only an exception to Clause (2) to a limited extent, i.e., completion of 20 years' satisfactory service [rather than 25 under Clause (2)] but the grant of "permission" to the request seeking retirement was necessary even under Clause (5) and was not dispensed with. If under Clause (2) a person who had put in 25 years had to "seek to retire" and had to be "permitted to retire", a person with only 20 years' service under Clause (5) could not have been placed on a better footing, it was held. The Court emphasised: (SCC pp.588-89, para 8)

The words 'seek retirement' in para 5 indicate that the right which is conferred by it is not the right to retire but a right to ask for retirement. The word 'seek' implies a request by the employee and corresponding acceptance or permission by HPMC. Therefore, there cannot be automatic retirement or snapping of service relationship on expiry of three months' period.

On that basis, it was held that though the rejection of the request was not communicated within the notice period, there was no automatic retirement. There are no such provisions in the case before us.

18. In the case before us Sub-rule (1) of Rule 5.32(B) contemplates a "notice to retire" and not a request seeking permission to retire. The further "request" contemplated by the sub-rule is only for seeking exemption from the 3 months' period. The proviso to Sub-rule (2) makes a positive provision that "where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in Sub-rule (1), the retirement shall become effective from the date of expiry of the said period. The case before us stands on a stronger footing than Dinesh Chandra Sangma case so far as the employee is concerned. As already stated Rule 2.2 of the Punjab Civil Services Rules Vol. II only deals with a situation of withholding or withdrawing pension to a person who has already retired.

(emphasis supplied)

25. In Tek Chand Vs. Dile Ram, a three Judge Bench of this Court considered S.K. Singhal in paragraph 34 of the report and then went on to hold as follows:

35. In our view, this judgment fully supports the contention urged on behalf of the appellant in this regard. In this judgment, it is observed that there are three categories of rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the

third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntarily retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision.

36. This Court in *B.J. Shelat v. State of Gujarat* while dealing with a case of voluntary retirement, referring to the Bombay Civil Service Rules, Rule 161(2)(ii) proviso and Rule 56(k) of the Fundamental Rules, in a similar situation, held that a positive action by the appointing authority was required and it was open to the appointing authority to withhold permission indicating the same and communicating its intention to the government servant withholding permission for voluntary retirement and that no action can be taken once the government servant has effectively retired. Paras 9 and 10 of the said judgment read thus: (SCC pp. 207-08)

9. Mr. Patel next referred us to the meaning of the word 'withhold' in Webster's Third New International Dictionary which is given as 'hold back' and submitted that the permission should be deemed to have been withheld if it is not communicated. We are not able to read the meaning of the word 'withhold' as indicating that in the absence of a communication it must be understood as the permission having been withheld.

10. It will be useful to refer to the analogous provision in the Fundamental Rules issued by the Government of India applicable to the Central Government servants. Fundamental Rule 56(a) provides that except as otherwise provided in this Rule, every government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. Fundamental Rule 56(j) is similar to Rule 161(aa)(1) of the Bombay Civil Services Rules conferring an absolute right on the appropriate authority to retire a government servant by giving not less than three months' notice. Under Fundamental Rule 56(k) the government servant is entitled to retire from service after he has attained the age of fifty-five years by giving notice of not less than three months in writing to the appropriate authority on attaining the age specified. But proviso (b) to sub-rule 56(k) states that it is open to the appropriate authority to withhold permission to a government servant under suspension who seeks to retire under this clause. Thus under the Fundamental Rules issued by the Government of India also the right of the government servant to retire is not an absolute right but is subject to the proviso whereunder

the appropriate authority may withhold permission to a government servant under suspension. On a consideration of Rule 161(2)(ii) and the proviso, we are satisfied that it is incumbent on the Government to communicate to the government servant its decision to withhold permission to retire on one of the grounds specified in the proviso.

In this decision effect of Rule 56(k) of the Fundamental Rules is also considered which answers the argument of the learned Counsel for the respondent on this aspect. It may also be noticed that under Rule 48-A in the Government of India's decision giving instructions to regulate voluntary retirement it is stated:

Even where the notice of voluntary retirement given by a government servant requires acceptance by the appointing authority, the government servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice.

26. In the case of Jaipal Singh Vs. Smt. Sumitra Mahajan and Another, in an appeal from election petition, this Court had an occasion to consider the difference between "voluntary retirement" and "resignation". This Court held thus:

10. ...In the case of Reserve Bank of India and Another Vs. Cecil Dennis Solomon and Another, this Court has laid down that in service jurisprudence there is a difference between "voluntary retirement" and "resignation" as they convey different connotations. It has been held that voluntary retirement and resignation involve voluntary acts on the part of the employee to leave service and though both involve voluntary acts, they operate differently. One of the basic distinctions between the two is that in the case of resignation, it can be tendered at any time but in the case of voluntary retirement, it can only be sought for after rendering prescribed period of qualifying service. In the case of resignation, a prior permission is not mandatory while in the case of voluntary retirement, permission of the employer concerned is a requisite condition. Under Rule 16 of the 1958 Rules, an employee who seeks voluntary retirement has to give three months' notice to enable the employer to complete the designated mode of acceptance. (See Halsbury's Laws of England, 4th Edn., Vol. 9, p. 133.) Lastly, in a given case, the appointing authority may refuse to waive the said notice period which shows that resignation may be unilateral whereas voluntary retirement is bilateral. A similar question came up before this Court in the case of UCO Bank and Others Vs. Sanwar Mal, in which this Court has inter alia held that in the case of "resignation", the relationship of employer and employee terminates on acceptance of resignation whereas in the case of "retirement", voluntary or on superannuation, the relationship continues for the purposes of payment of retiral benefits. In the case of retirement, there is a nexus between such retirement and retiral benefits....

27. The aforesaid decisions of this Court do provide some guidance but the

controversy in hand has to be decided in the light of the words used in proviso appended to Regulation 12. The key words therein are that voluntary retirement under Clause (b) 'shall be subject to approval' of the competent authority. In 'Principles of Statutory Interpretation' (Seventh Edition, 1999), Justice G.P. Singh has quoted words of *S. M. Railway Co., Ltd. v. Bezwada Municipality* which read thus:

The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case.

28. In the aforesaid book, author has also quoted the opinion of Lord Macnaghten in *Local Govt. Board v. South Stoneham Union* (1909) AC 57 as follows:

The proviso may be a qualification of the preceding enactment which is expressed in terms too general to be quite accurate.

29. In the case of *Shah Bhojraj Kuverji Oil Mills and Ginning Factory Vs. Subbash Chandra Yograj Sinha*, this Court held,

...as a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment....

30. In the case of *The Commissioner of Income Tax, Mysore, Travancore-cochin and Coorg, Bangalore Vs. The Indo Mercantile Bank Limited*, this Court observed:

The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment.

31. In *Ayyasami Vs. State of Tamil Nadu*, upon which reliance has been placed by the learned Counsel for the appellant, this Court stated as follows:

14. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms.

15. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main

enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect.

32. The use of the word 'shall' in the proviso, prima facie leads to an inference that provision is imperative. There is nothing in the context to suggest that it is merely directory. It is followed by the words, 'subject to approval'. The effect of the use of words 'subject to' is to introduce a condition. The expression, "shall be subject to approval" is indicative of its intendment that the voluntary retirement applied by the employees covered by Clause (b) is effective only upon approval by the competent authority. The effect of these words is to introduce a condition and thereby make voluntary retirement applied by employees covered by category (b) conditional upon its approval by the competent authority. There is nothing to indicate in Regulation 12 that if employer decides to withhold approval of voluntary retirement, such refusal of approval must be communicated to the petitioner during the period of notice. True it is that notice of three months for voluntary retirement given by an employee covered by Clause (b) remains valid even if no communication is received within notice period but it becomes effective only on its approval by the competent authority. As a matter of fact, this seems to have been understood by both the parties. The appellant issued a notice of voluntary retirement under Regulation 12 (b) on September 30, 2005. The notice period was to expire on December 31, 2005. It is an admitted position that the competent authority neither gave approval nor indicated disapproval to the appellant within the notice period of three months. The employee never treated that there has been cessation of employment on expiry of three months notice period inasmuch as he continued to attend his duties after December 31, 2005 until June 30, 2006. It is only by his letter dated June 8, 2006 that the appellant requested the respondent to relieve him in terms of his notice dated September 30, 2005 by June 30, 2006 and he stopped attending work from July 1, 2006. The letter dated June 8, 2006 does not make any material difference as the fact of the matter is that after expiry of notice period, the appellant continued to attend his duties for many months thereafter. By the letter dated September 15, 2006 the respondent communicated to the appellant that his application for voluntary retirement under Service Regulation 12(b) has not been acceded to by the competent authority. Since the notice for voluntary retirement by an employee who has not attained 55 years but has completed 20 years of continuous service, under proviso appended to Regulation 12(b), is subject to approval by the competent authority and that approval was not granted, the voluntary retirement of the respondent never came into effect.

33. It may be that voluntary retirement under a particular scheme framed by an employer is different from voluntary retirement provided in the Service Regulations and some of the observations by the Division Bench with reference to voluntary retirement under a special scheme may not be relevant but the ultimate decision of the Division Bench does not suffer from any legal infirmity.

34. By way of foot-note, we may record that before we proceeded with the hearing of the matter, we granted an opportunity to the parties to resolve the dispute amicably and an offer was made by the respondents to the appellant in this regard but the appellant showed his disinclination to accept the offer made by the respondents.

35. Be that as it may, the appeal must fail and is dismissed with no order as to costs.