

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,  
BENCH AT AURANGABAD.

**ORIGINAL APPLICATION NO. 304 OF 2016**

DISTRICT : AURANGABAD.

Smt. Chandrashila W/o Late Ramchandra  
Shirsat, Age:-59 years, Occu. Household,  
(died on 10.1.2007), R/o. Plot No. 7,  
New Nandanwan Colony,  
Padegaon Road, Aurangabad. --- APPLICANT.

**VERSUS**

- 1] The State of Maharashtra  
Through the Secretary,  
Revenue Department,  
Mantralaya, Mumbai.
- 2] The Collector, Aurangabad.
- 3] The Sr. Accounts Officer/PR-III  
Office of Accountant General  
Maharashtra  
(Accountants & Entitlement)-II  
Nagpur-440 001. --RESPONDENTS.

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APPEARANCE :- Shri J.M. Murkute, learned Advocate  
for the Applicant.

: Smt. Resha S. Deshmukh, learned  
Presenting Officer for the  
Respondents.

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**CORAM : HON'BLE SHRI J.D. KULKARNI,  
MEMBER (J)**  
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**J U D G E M E N T****[Delivered on 11<sup>TH</sup> NOVEMBER, 2016]**

The applicant viz. Smt. Chandrashila W/o Late Ramchandra Shirsat, who is widow of Ramchandra Shirsat, who was working as Tahsildar with the respondents. Shri Ramchandra Shirsat retired from service on 30.1.2006 and his pension papers were sent to the Accountant General, Nagpur and pension was sanctioned w.e.f. 1.2.2006. Shri Ramchandra died on 10.1.2007.

2. According to the applicant, at the time of sanction of pension to the applicant's husband commuted value of pension worth Rs. 2,54,932/- was not paid to him, as one departmental enquiry was pending against him and it was stated that the pensionary benefits will be released on receipt of no enquiry and no dues certificate.

3. Because of the death of the applicant's husband the enquiry did not proceed further. The applicant, therefore, applied to the Collector, for issuance of no enquiry

certificate, as well as, no dues certificate and the Divisional Commissioner, Aurangabad, vide letter dated 22.2.2007 issued “no enquiry certificate” and it was intimated to the Accountant General that enquiry against deceased Ramchandra Shirsat was closed due to his death.

4. The applicant thereafter requested the respondent NO. 3 to send proposal for grant of commutation pension and such proposal was sent by Collector vide letter dated 27.4.2004 to the respondent No. 3. Respondent No. 3 vide letter dated 13.6.2007 intimated to the applicant that commutation cannot be paid as No Enquiry Certificate issued by the Collector vide letter dated 27.4.2007. The said letter is assailed in this Original Application.

5. The Applicant claims direction to the respondents to pay commutation of pension and other benefits of deceased Ramchandra Shirsat with interest 12% p.a. from 31.1.2006 and that the communication issued by respondent No. 3 i.e. the Senior Accounts Officer, Accountant General, Nagpur, be quashed and set aside.

6. Respondent No. 2 admitted that the commutation value of Ramchandra was calculated to Rs. 2,54,932/- and the respondent No. 3 vide letter dated 5.1.2006 sanctioned family pension of Rs. 6094/- per month up to 29.1.2013 or up to further 7 years whichever earlier and thereafter Rs. 3657/- as admissible to Smt. Chandrashila Ramchandra Sirsath being employee's widow. During the process Ramchandra Sirsath had expired on 10.1.2007 and no due and no enquiry certificate was also issued. However, commutation is not admissible as per the impugned letter dated 24.9.2007.

7. Respondent No. 3, the Sr. Accounts Officer/PR-III, Office of Accountant General, Maharashtra, (Accountants & Entitlement)-II, Nagpur-440 001, also submitted that as per Rule 4 of Maharashtra Civil Services (Commutation of Pension) Rules, 1984, no Government servant against whom Departmental Enquiry is pending or has been initiated either before his retirement or after his retirement shall be eligible to commute part of his pension. Husband

of the applicant did not apply for commutation and, therefore, the claim of the applicant cannot be granted.

8. Heard Shri J.M. Murkute – learned Advocate for the Applicant and Smt. Resha D. Deshmukh – learned Presenting Officer for the respondents. I have also perused the application, affidavit, affidavit in replies filed by the respondents and also perused rejoinder filed by the applicant and various documents placed on record by the respective parties.

9. The only material point is to be considered whether the impugned letter dated 24.9.2007 issued by Sr. Accounts Officer/PR-III, Office of Accountant General, Maharashtra, (Accountants & Entitlement)-II, Nagpur (Respondent No. 3) is legal and proper?

10. The impugned communication whereby the claim of the applicant has been rejected is placed on record at paper book page No. 11. It is material to note that the said communication is hopelessly drafted and the language used in it is incorrect. It is unfortunate that the

said language is of Accounts Officer in the office of A.G.

The said communication in verbatim is as under: -

*“Madam,*

*In this connection it is intimated that, the pensioner was died on 10/1/2007 during the process of inquiry and inquiry certificate forwarded by Collector Aurangabad on 26/4/2007 i.e. after death in case if the pensioner applied after the inquiry and died later on her entitle for commutation. As the application for commutation was not applied. Hence your claim is not consideration, as per Rule-4 of MCS (COMUTATION) RULE-1984.”*

11. The learned Presenting Officer submits that in order to be eligible for commutation of pension, it is necessary that the application for commutation of pension shall be filed within one year from the date of retirement. In the present case, the employee, who was applicant's husband got retired from the Government service on 30.1.2006 from the post of Tahsildar and he died on 10.1.2007.

12. The learned Presenting Officer has invited my attention to Rule 4 of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 (for short hereinafter referred to as "Commutation of Pension Rules". The said rule puts some restrictions on commutation of pension. The said rule reads as under: -

***"4. Restriction on commutation of pension.-***

*No Government servant, against whom departmental or judicial proceedings have been instituted before the date of his retirement, or the pension against whom such proceedings are instituted after the date of his retirement, shall be eligible to commute a fraction of his provisional pension authorized or the pension, as the case may be, during the pendency of such proceedings."*

13. Since, admittedly the applicant's husband was facing departmental enquiry, he was not entitled to claim commutation of pension in view of rule 4 as aforesaid during pendency of departmental proceedings.

14. Learned Presenting Officer also invited my attention to Rule 13 of the Commutation of Pension Rules, which

prescribes procedure for application for commutation of pension. As per Rule 13 an employee, who is in receipt of any pension referred to in Rule 12 and desires to commute a fraction of that pension any time after the date following the date of his retirement from service but before the expiry of one year of the date of retirement has to apply for commutation. Sub-clause (2) of Rule 13 says that, an employee who applies for commutation of pension within one year of the date of his retirement but his application in Form A is received by the Head of Office after one year of the date of his retirement, shall not be eligible to get his pension commutated without medical examination. Such an employee, if he desires to commute a fraction of his pension, shall apply afresh in Form C in accordance with the procedure laid down in Chapter IV of the Commutation of Pension Rules.

15. The aforesaid provision thus makes it crystal clear that such an application has to file within one year from the date of his retirement. An application has to file by the employee and not by anybody else.



16. It is stated that the applicant's husband did not file application for commutation of pension. In order to confirm this fact, the record was called. It seems from the original record that the applicant's husband's pension case was submitted to the Accountant General for sanction of pension. From the said papers, it is clear that the applicant's husband applied for commutation of pension and his case was forwarded to the Accountant General. From the said papers, it seems that the commutation pension, "2031 x 12 x 10.46 = 2,54,931/-" was calculated as commutation amount eligible to the applicant. However, it is clear that the said amount was not released on the ground that the departmental enquiry was pending against the applicant's husband. It is not that no application for commutation of pension was made by the applicant's husband. It is true that during the pendency of the departmental enquiry the employee is not eligible for getting commutation amount. However, if the enquiry is completed and the employee is exonerated, then he cannot be prevented from sanction of such communication of pension. In the present case, the

applicant's husband applied for the commutation amount within limitation and his case was also send for sanction to the competent authority i.e. Accountant General. However, before getting the commutation amount unfortunately the applicant's husband died. Since because of the death of the applicant's husband, admittedly no enquiry is now pending. In such circumstances, the case of the applicant can be considered as per rule 7 of the Commutation of Pension Rules, 1984 in the interest of justice and equity. The said rule reads as under : -

***“7. Death of an applicant before receiving the commuted value. - If an applicant dies without receiving the commuted value on or after the date on which commutation became absolute, the commuted value shall be paid to his heirs.***

17. As already stated, the impugned communication dated 24.9.2007 of Senior Accounts Officer of Accountant General, Maharashtra (Accounts & Entitlement)-II, Nagpur, is vague. The language used, as already, stated in the said letter is really very poor. Rule 4 of Commutation

of Pension Rules, 1984, prevents employee from getting commutation during pendency of the enquiry. Since the employee has died before getting commutation amount though his case was already forwarded to the Accountant General, the applicant will be entitled to claim the said commutation amount in view of Rule 7 of Commutation of Pension Rules, 1984. Hence, the following order: -

### **ORDER**

- (i) The present Original Application is allowed.
- (ii) The respondents are directed to pay commutation of pension and other benefits of deceased Ramchandra Shirsat, to the applicant.
- (iii) Letter /order dated 24.9.2007 issued by respondent No. 3, the Senior Accounts Officer/PRIII office of the Accountant General of Maharashtra State, Nagpur, is hereby quashed and set aside.
- (iv) The amount of pension shall be paid within three months' from the date of this order.
- (v) If the amount is not paid within three months' from the date of order, the applicant is at liberty to

claim interest at the admissible rate from the date of death of her husband till she actually receives the amount of commutation of pension.

There shall be no order as to costs.

**MEMBER (J)**

O.A.NO. 304-2016(hdd)-2016