

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**  
**NAGPUR BENCH, NAGPUR.**

**ORIGINAL APPLICATION NO. 552/2010**

Vijay Rajabhau Chincholkar  
Aged about 59 years  
R/o : 17, Vidya Vihar,  
Pratap Nagar,  
Nagpur.

**Applicant**

- **Versus** -

- (1) The State of Maharashtra  
Through its Secretary,  
Water Resources Department,  
Mantralaya, Mumbai - 32.
- (2) Chief Engineer,  
Water Resources Department,  
Sinchan Seva Bhavan,  
Camp Amravati.
- (3) Accountant General (A&E)-II  
Maharashtra, Civil Lines,  
Nagpur.

**Respondents**

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Shri Bharat Kulkarni, Advocate for the applicant

Shri S. C. Deshmukh, P. O. for the respondents

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**Coram : - The Hon'ble Shri B. Majumdar,  
Member(A)**

**Dated :- 4.1.2013**

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## ORDER

The applicant, a retired Executive Engineer of the Water Resources Department, is aggrieved with the quantum of commutation<sup>ed</sup> part of his pension and hence has filed the present O.A.

2. The applicant's date of birth is 25-8-1950. A charge-sheet was served on him and<sup>a</sup> Departmental Enquiry (D.E.) was initiated on 28-2-2005. He was compulsorily retired on 28-4-2005 when he was 54 years of age. The order exonerating him from the charges in the D.E. came to be issued on 8-1-2010. Thereafter on 17-2-2010, he submitted the prescribed Form-A for commutation of pension. On 25-6-2010, the Accountant General (R-3) issued the order sanctioning commutation of pension amounting to Rs. 4,17,438/-. According to the applicant, the said amount is not properly calculated and hence has challenged the order by filing the present O.A. According to the applicant, he had submitted the application for commutation of pension within one year of completion of the D.E. He was granted gratuity on compulsory retirement when his age was 54 years. Hence this age calculated for gratuity, should also be used for calculating the value of commuted part of the pension. It is also the submission of the applicant that as per Rule 13 sub-rule (1) and sub-rule (2), if an employee applies

for commutation of pension within one year of retirement but his application in Form-A is received after one year of the date of retirement, he cannot get his pension commuted without medical examination. In his case, since no medical examination was required to be done, in terms of the provisions of the above Rule, his date of applying for commutation should be considered as within one year of his compulsory retirement.

3. The respondents in their reply submit that under Rule 6 of the Commutation of Pension Rules, the date for calculation of commutation became absolute on the day he submitted his Form-A, that is, <sup>17.2.10</sup>~~10-3-2010~~. Under Rule 4, the applicant could not have applied for commutation as long as the D.E. was pending against him. When the D.E. was finally concluded and he became eligible for commutation, he was 59 years of age and the quantum of commutation was calculated based on his age at his next birthday, that is, 60 years. Thus, the calculation of commutation of applicant's pension, according to the respondents, was as per provisions of the Commutation of Pension Rules.

4. Shri. Bharat Kulkarni, learned counsel for the applicant reiterated the grounds raised by the applicant in the O.A. in support of the applicant's claim that respondents should have calculated the value of his commutation based on

the date on which he was compulsorily retired and not from the date on which he submitted his Form-A.

5. Shri. S. C. Deshmukh, learned P.O. reiterated the provisions of the Commutation of Pension Rules which have been relied on by the respondents in their reply. He submitted that the calculation of the applicant's commuted value of pension is properly done in terms of the provisions of the Rules.

6. I have carefully considered the submissions made by the counsels of the respective parties. I have also gone through the records placed before me as also the relevant provisions of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984. The applicant was granted commutation of pension vide the impugned order dated 25-6-2010 based on submission of Form-A on 17-2-2010. The applicant was compulsory retired on 28-4-2005 when he was aged 54 years but he could not apply for commutation, at that time as a D.E. was pending against him. He was exonerated in the D.E. on 8-1-2010. He thus applied before the lapse of one year from the finalization of the D.E. The relevant provisions governing the applicant's case are covered under Rules 4, 6(1)(i), 8(1), 12(v) and 13(1)(ii). The provisions of these Rules are reproduced as follows.

**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.

**6. Commutation of pension to become absolute.** – (1) The commutation of pension shall become absolute in the case of an applicant referred to –

- (i) In sub-rule (1) of Rule 13, on the date on which the application in Form A is received by the Head of Office.
- (ii) .....
- (iii) .....

**8. Calculation of commuted value of pension and its non-restoration.** - (1) The lump sum payable to an applicant shall be calculated in accordance with the Table of the values prescribed from time to time and applicable to the applicant on the date on which the commutation becomes absolute.

(2) .....

**12. Eligibility.** – An applicant who is authorized –

- (i) .....
- (ii) .....
- (iii) .....
- (iv) .....
- (v) a pension in whole in part on the finalization of the departmental or judicial proceedings and issue of final orders thereon shall, subject to the limit in Rule 5, be

eligible to commute a fraction of his pension without examination :

Provided that he applies for commutation of pension in Form A or Form B in accordance with the provisions of Rule 13.

**13. Application for commutation of pension.** – (1) An applicant, 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 :

Provided that in the case of an applicant –

- (i) referred to in Clause (iii) of Rule 12, where order retiring him from Government service had been issued from a retrospective date, the period of *one year* referred to in this sub-rule shall reckon from the date of issue of the retirement orders.
- (ii) referred to in Clause (v) of Rule 12, the period of *one year* referred to in this sub-rule shall reckon from the date of issue of the orders consequent on the finalization of the departmental or judicial proceedings.
- (2) .....
- (3) .....

Thus, in terms of these Rules, the applicant was eligible for applying for commutation of pension by submitting Form-A only after final outcome of the D.E. conducted against him. The date of submission of the form became absolute for calculation of the value of commutation as per table under Rule 8(1) by

taking into consideration his age at the next birthday, that is, 60 years. He was past 59 years of age on 17-2-2010 when he submitted Form A, his date of birth being 25-8-1950. There is, thus no merit in the present O.A. and the same stands rejected with no orders as to cost.

sd/-

(B. Majumdar)  
Member(A)

ayw/-