

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 578 OF 2015

DISTRICT : PUNE

Shri Kantilal Damodar Shaha,)
Retd Regional Diary Development Officer,)
Dairy Development Department,)
Residing at Flat no. 1, Fountainhead)
Apartment, Opp. Sangam Press, Kothrud)
Dist-Pune 411 038.)...**Applicant**

Versus

The Government of Maharashtra,)
Through Secretary,)
Agriculture, Animal Husbandry, Dairy)
Development & Fisheries Department,)
Mantralaya, Mumbai 400 032.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 29.03.2016

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant seeking commutation of pension and he is also seeking interest on the commutation amount.

3. Learned Counsel for the Applicant argued that the Applicant retired from service in June, 2003. At the time of his retirement, the Applicant was facing two Departmental Enquiries and therefore he was not granted regular pension. Now in one D.E, penalty of 5% deduction from pension for one year has been imposed. The Appeal was dismissed. The Applicant has filed an Original Application in this matter challenging imposition of the aforesaid penalty. In the other D.E, by order dated 8.1.2015, penalty of deduction of 10% of pension for 2 years and recovery of Rs. 3,06,778/- is imposed. This is adjusted from Gratuity amount of Rs. 2,23,988/- and balance is to be recovered in 17 installments. Learned Counsel for the Applicant stated that in the second D.E,

the Applicant has preferred appeal before Hon. Governor. However, now that orders have been issued in both the D.Es, there is no obstacle in commuting provisional pension of the Applicant. Learned Counsel for the Applicant argued that as Rule 9(1) and (2) of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984, the Applicant can commute his provisional pension. Learned Counsel for the Applicant argued that even after recovery from his pension as per penalties imposed on him, he could commute one third of his provisional pension.

4. Learned Presenting Officer (P.O) argued that Rule 4 of the Maharashtra Civil Services (Commutation of Pension) Rules, 1984 provides that a Government servant against whom Departmental Proceedings have been instituted before the date of his retirement will not be eligible to commute fraction of his provisional pension authorized during the pendency of such proceedings. The Applicant is, therefore, not entitled to commute his pension. The Applicant is getting provisional pension as D.Es were pending against him. Rule 9 of the M.C.S (Commutation of Pension) Rules, 1984 pertains to provisional pension which is sanctioned pending assessment of final pension by the Accountant General. The Applicant is, therefore, not eligible for commutation of pension.

5. It is true that under Rule 4 of the M.C.S (Commutation of Pension) Rules, 1984, a person facing D.E cannot be allowed to commute a fraction of his provisional pension. However, in the present case, both the D.Es against the Applicant have been finalized and penalties have been imposed. This is stated in para 6.3 of the Original Application. In para 6 of the affidavit in reply dated 20.10.2015, this is admitted by the Respondent. Now, in one case, the Applicant has filed an Original Application before this Tribunal challenging penalty imposed on him. In the other D.E, he had filed appeal against the order of penalty. It appears that in so far as the Respondent is concerned, the D.E against the Applicant have been concluded. It is only the Applicant who is trying to overturn decisions in the D.E against him. It cannot be held that the departmental proceedings are pending against the Applicant which will bar commutation of his provisional pension under Rule 4 *ibid*. The Respondent has cited Rule 9(4) of the Commutation Rules which states that pending assessment of final pension, if provisional pension is sanctioned, only then a fraction of pension can be commuted. If provisional pension is granted due to pendency of departmental or judicial proceedings, a person is not eligible to commute fraction of that pension. In the present case, now that the Respondent has concluded both D.Es against the Applicant, there should not be any hitch in grant him final pension and

the provisional pension, he is now getting is pending assessment of final pension. The Applicant is definitely entitled to commute fraction of his provisional pension now.

6. The Applicant is now claiming that he is entitled to get interest on amount of commuted pension. This is not acceptable. Amount of commuted pension is Net Present Value of the fraction of pension which a person forgoes for next 15 years. Till that person gets this amount, he will continue to get his full pension. It is not possible to commutation of pension done retrospectively. It can be done only prospectively and commutation factor will depend on the present age of the person. By its very nature, there is no question of granting any interest on commuted value of the pension. The Applicant will be entitled to get full pension, (except deduction by way of penalty) till his pension is commuted.

7. The present Original Application is filed only for commutation of pension. The Applicant is held eligible for commutation of pension as per rules, as both Departmental Proceedings against him have been concluded by the Respondent. The Respondent may, therefore, grant commutation of pension, as per rules, as desired by the Applicant, within 3 months from the date of the application received from the Applicant within one

month from this order. This Original Application is disposed of accordingly with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 29.03.2016

Dictation taken by : A.K. Nair.

H:\Anil Nair\Judgments\2016\1. March 2016\O.A 578.15 Commutation of Pension along with int. SB.0316.doc