

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.840/2012.

Babusingh Fakira Rathod,
Aged about 55 yrs.,
Occ-Nil,
R/o Vidarbha Housing Colony, Bajoriya Nagar,
Yavatmal.

Applicant

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Co-operation and Textiles,
Mantralaya, Mumbai-440 032.
- 2) The Commissioner / Registrar,
Co-operative Societies (Audit), (M.S.),
Pune.
- 3) The Divisional Joint Registrar,
Co-operative Societies (Audit),
Amravati Division, Amravati.

Respondents

**Shri A.M. Haque, Advocate holding for Shri A.I. Sheikh,
the learned counsel for the applicant
Shri M.I. Khan, the learned P.O. for the respondents**

**Coram:- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 10th day of August 2017.)

Heard Shri A.M. Haque, Advocate holding for Shri A.I. Sheikh, the learned counsel for the applicant and Shri M.I. Khan, the learned P.O. for the respondents.

2. The application has challenged the communication dated 20.9.2012 issued by respondent No.3 i.e. Divisional Joint Registrar, Co-operative Societies (Audit), Amravati Division, Amravati, whereby his claim for compassionate pension has been rejected. The applicant claims that the said communication be quashed and set aside and the respondents be directed to grant him the compassionate pension.

3. The applicant was appointed as Junior Clerk on 24.1.1975 and in the year 1993 he was promoted as Sub Auditor. Vide order dated 5.9.1995, the applicant was removed from service as per the provisions of Rule 5 (1) (viii) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (in short ~~%~~Discipline and Appeal Rules).

4. Being aggrieved by the order of removal from service, the applicant filed O.A. No. 786/1995. The said O.A. was disposed of vide order dated 14.8.1996 with following directions:-

~~%~~As the result, the application partly succeeds. The applicant insofar as it relates to the impugned order dated 5.9.1995 removing the applicant from service stands rejected. However, the respondents are directed to fix the pay of the applicant in the revised pay scale as per the recommendation of the 4th Pay Commission and to pay him the arrears thereof till the date of his removal within a period of four months

from the date of this order. The rule is accordingly made absolute with no order as to costs.+

5. On 14.11.2003, the applicant filed an application for getting the compassionate pension as per Rule 101 & 102 of the MCS (Pension) Rules, 1982 (Annexure A-2) (Pages 23 & 23 of the O.A.). The said application / representation was rejected by respondent No.3 i.e. Divisional Joint Registrar, Co-operative Societies (Audit), Amravati Division, Amravati vide communication dated 19.8.2005 as per Annexure A-3. The applicant filed an appeal against the rejection of his claim as per Annexure A-4. The said appeal also came to be rejected by the respondent No.3 vide communication dated 20.9.2012 (Annexure A-5) (P.31). The applicant being aggrieved by his communication dated 20.9.2012 has filed this O.A.

6. The respondents justified the action taken by them. It is stated that the applicant was removed from service, since he remained absent from duty. Even he did not appear in the departmental enquiry and, therefore, finally it was decided to remove him from service. The applicant is not entitled to any compassionate pension, as he has been removed from service.

7. Perusal of the order passed in O.A. No. 786/1995 makes it crystal clear that in the said O.A., the applicant had

challenged the order of his removal and also claimed the pay scales as per 4th Pay Commission. It is material to note that, this Tribunal was pleased to reject the applicant's claim against his removal from service and, therefore, the order of removal has been maintained. The only relief granted by this Tribunal was that the respondents were directed to pay him as per 4th Pay Commission the arrears thereof till the date of applicant's removal from service. Whether the arrears have been paid or not is not in dispute in this O.A. and, therefore, facts remains that the applicant has been removed from service due to his continuous absence.

8. The learned P.O. has invited my attention to Rule 101 of the MCS (Pension) Rules, 1982. The said rule reads as under:-

101. Grant of compassionate pension in deserving cases by Government.---

(1) A Government servant who is removed from service shall forfeit his pension and gratuity :

Provided that, if the case is deserving of special consideration, the Govt. may sanction compassionate pension not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compassionate pension.

(2) A compassionate pension sanctioned under the proviso to sub-rule (1) shall not be less than the minimum pension as fixed by the Government.

(3) A dismissed Govt. Servant is not eligible for compassionate pension.

9. The opening sentence of the aforesaid rule shows that the Government servant who is removed from service shall forfeit the pension and gratuity. Proviso, however, shows that in case is deserving of special consideration, the Govt. may sanction compassionate pension. In the present case, no special case has been made out by the applicant. In fact, the applicant has already challenged the order of his removal and this Tribunal has confirmed his removal and in another words has held that the removal was justified. Vide impugned communication firstly on 19.8.2005 (A.3) and thereafter vide communication dated 20.9.2012 (A.4), the competent authorities have informed the applicant that his case cannot be considered for compassionate pension. I do not find any illegality in the said communication. As already stated, applicant's claim on the similar relief has already been rejected in O.A. No. 786/1995 and, therefore, this application, in fact, is not tenable at all. In view thereof, no

directions can be issued to the respondent authorities as claimed by the applicant. Hence, the following order:-

ORDER

The O.A. is dismissed with no order as to costs.

(J.D.Kulkarni)
Vice-Chairman (J)