

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.964 OF 2022

**DISTRICT: MUMBAI
SUB : COMMUTATION OF PENSION**

Smt. Deepali Dinkar Shirsat, Age 54 years,)
Widow of Retired Police Hawaldar, Buckle No.21925,)
R/at 702, Swapnapurti CHS, Sagar Nagar, Parksite,)
Vikhroli, Mumbai 400079.)... **Applicant**

Versus

- 1) The Commissioner of Police, D.N. Road, opp.)
Crawford Market, Mumbai -1.)
- 2) Additional Commissioner of Police, Eastern)
Region Department, Chembur, Mumbai 71.)
- 3) Additional Chief Secretary, Finance Department,)
Mantralaya, Mumbai.)....**Respondents**

Shri M. B. Kadam, learned Advocate for the Applicant.

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : A.P. Kurhekar, Member (J)

DATE : 22.12.2022

ORDER

1. The Applicant has challenged communication dated 20.4.2022 whereby her claim for difference of revise commutation pension has been rejected on the ground that such application is required to be made by the pensioner only and he being not alive, the claim is not maintainable.

2. The facts giving rise to O.A. lies in narrow compass :-

The Applicant is widow of deceased Government servant Dinkar Shirsat. The deceased Government servant was Head Constable on the establishment of Resp. 1- C.P. Mumbai. He stands retired on 31.5.2016 on attaining the age of superannuation. Thereafter, he passed away on

20.09.2016 leaving behind his widow (present Applicant). At the time of retirement, he was paid pension and other retiral benefits in terms of 6th Pay Commission Pay. That time he also availed benefit of commutation of pension of 40%. Later, in view of implementation of 7th Pay Commission, the Government framed rules namely Maharashtra civil Services (Revised Pay) Rules, 2019 which came into force w.e.f. 01.01.2016 extending the benefit of 7th Pay Commission to Government Servant. In view of revised pay scale, all the benefits except commutation of pension in terms of 7th Pay Commission was given to widow. The issue remains about arrears of commutation of pension.

3. The widow after death of deceased Government servant made an application claiming difference of commutation amount. However, it came to be rejected by communication dated 20.04.2022 stating that for the benefit of commutation of pension application is required to be made by pensioner personally and the Government servant being dead, the Applicant is not entitled to difference of commuted pension which is under challenge in the present O.A.

4. Heard Shri M. B. Kadam, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

5. The facts narrated above is not in dispute. The Applicant's husband retired on 31.5.2016 and at the time of retirement, he was given retiral benefits in terms of 6th Pay Commission. Unfortunately, he died on 20.09.2016. Later MCS (Revised Pay) Rules, 2019 came into effect from 01.01.2016. As such, had the deceased alive, he was entitled to difference of amount towards retirement benefits which were revised in term of 7th Pay Commission.

6. At this juncture, it would be apposite to see Rule 7 and 10 of Maharashtra Civil Services (Commutation of Pension) Rules 1984 are material which are 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.

10. Retrospective revision of final pension

An applicant who has commuted a fraction of his final pension and after commutation his pension has been revised and enhanced retrospectively, as a result of Government's decision, the applicant shall be paid the difference between the commuted value determined with reference to enhanced pension and the commuted value already authorized. For the payment of difference, the applicant shall not be required to apply afresh.

Provided that, if a pensioner has specifically mentioned the amount of commutation of his final pension in his application of commutation of pension and as a result of Government decision his final pension has been revised and enhanced retrospectively, if the pensioner expresses his willingness, he is entitled to revised and enhanced amount of commutation of his final pension up (forty per cent) of revised final pension:

Provided further that, as per revised Pay Commission Order, the Government has changed the pay scale and pension has been revised and enhanced retrospectively, the pensioner may opt for difference of commutation, and he may submit the application to the concerned authority for the same within six months from the date of order issued by the Government. If the pensioner does not apply or opt for the difference it is presumed that he is not interested for revised commutation.

Provided also that in the case of an applicant who has commuted a fraction of his original pension not exceeding (ten per cent of basic pension) after being declared fit by a Civil Surgeon or a District Medical Officer and as a result of retrospective enhancement of pension, he becomes eligible to commuted an amount exceeding (ten per cent of basic pension) per mensem, he shall be allowed the difference between the commuted value of (ten per cent of basic pension) per mensem and the commuted value of the fraction of the original pension without further medical examination. The commutation of any further amount beyond (ten per cent of basic pension) per mensem shall be treated as fresh commutation and allowed subject to examination by a Medical Board.”

7. Thus, it is explicit from Rule 7 that if an applicant dies without receiving the commuted value on or after the date on which commutation becomes absolute, the commuted value shall be paid to his heir. Whereas, as per Rule 10, if the Government servant who has commuted a fraction of his final pension and after commutation, his pension has been revised and enhanced retrospectively, as a result of Government decision, a Government servant shall be paid difference between the commuted value determined with reference to enhanced pension and the commuted value already authorized. It specifically provides that for the payment of difference the Government servant shall not be required to apply afresh.

8. In present case, admittedly, the Applicant has commuted 40% pension at the time of retirement and later the pension has been revised and enhanced in view of Maharashtra Civil Services (Revised Pay) Rules, 2019 w.e.f. 01.01.2016. Thus, the right to receive difference has been accrued and crystalized w.e.f. 01.01.2016. Had the Applicant alive, he would have got the difference of commutation even without making any application afresh in terms of Rule 10 of MCS (Commutation of Pension) Rules, 1984. However, the Applicant's husband died on 20.09.2016 leaving behind the Applicant as his heir. Thus, once the right to receive difference of commutation is accrued on 01.01.2016, it cannot be taken away or affected because of his death on 20.09.2016. In view of death, all such benefits would pass to his heir i.e. the Applicant being widow.

9. The submission advanced by learned P.O. that for such benefit, the Applicant's husband should have been alive and he personally was only entitled is totally fallacious. He referred to Circular dated 12.07.2021 issued by Finance Department in which it is stated that it is for pensioner to avail such benefit of revised commutation and he needs to apply personally with the head of office. Indeed, it is in contravention of Rule 7 of MCS (Commutation of Pension) Rules, 1984 which specifically provides that where the Applicant dies without receiving

commutation value on or after death without receiving the commuted value on or after the date on which commutation becomes absolute, the commutation value shall be paid to his heir. Since the deceased Government servant died after right to receive benefits in terms of Revised Pay Scales accrued to him, the question of making an application by him personally is absurd. The right to receive difference of commutation pension has been crystallized on 01.01.2016 when new rules came into effect and therefore, those benefits necessarily pass to his heir after his death.

10. Thus, harmonious construction of rule 7 and 10 in the light of MCS (Revised Pay) Rules 2019 leave no doubt and makes it quite clear that whatever benefits were accrued to deceased Government servant, it will pass on to his widow (Applicant). The impugned communication rejecting the claim of widow is therefore clearly unsustainable in law and liable to be quashed. Hence, the following order :-

ORDER

- (A) Impugned communication dated 20.04.2022 is quashed and set aside.
- (B) The Respondents are directed to release difference of commutation of pension and it be paid to Applicant within six weeks from today.
- (C) No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai

Date: 22.12.2022

Dictation taken by: Vaishali S. Mane

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