

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD  
ORIGINAL APPLICATION NO.598 OF 2015  
(Subject:- Family Pension)**

**DISTRICT: - PARBHANI.**

**Noorunnisa Begum W/o Abudl Rehman** )  
Age :Major, Occupation: Household, )  
R/o. C/o Bharat Automobiles, Aundha Road,) )  
Hingoli. )..**APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
(Copy to be served through P.O., )  
Maharashtra Administrative Tribunal, )  
Bench at Aurangabad)
2. **The Superintendent of Police,** )  
**Parbhani.** )
3. **The Accountant General (A & E) II,** )  
Maharashtra State, Nagpur. )..**RESPONDENTS**

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**APPEARANCE** : Smt. Kalpalata Patil-Bharaswadkar,  
learned Advocate for the applicant.  
: Smt. Sanjivani K. Deshmukh-Ghate,  
learned Presenting Officer for the  
respondents.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J)**

**DATE** : **06.06.2022**  
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## **ORDER**

By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this application is filed seeking direction to the respondent No.1 i.e. the State of Maharashtra to grant the benefit of family pension to the applicant with arrears and 18% interest on it till the realization of the amount.

2. The facts in brief giving rise to this application can be summarized as follows:-

- (i) The applicant's husband named Abdul Rehman was a constable in a Police Department at Parbhani. He retired on 07.06.1968 and got compassionate pension. He died on 22.06.2006. The applicant is his second wife. The first wife had already died on 20.01.2003. The applicant married with the said Abdul Rehman on 30.06.1968 i.e. after retirement of Abdul Rehman on 07.06.1968.
- (ii) It is contended that the applicant is entitled to get family pension. The applicant made several representations to the respondent No.2 i.e. the Superintendent of Police, Parbhani for getting family pension. The respondent No.2, however, did not

forward pension papers to the respondent No.3 i.e. the Accountant General (A & E) II, Maharashtra State, Nagpur. The applicant submitted heirship certificate issued by the Court, still her claim was not considered.

(iii) It is further submitted that the applicant is poor old aged widow, who is having no sources of livelihood. She is suffering of grave hardship. The applicant approached the office of the Lokayukta, where she was informed that as her husband received compassionate pension, she is not entitled to get family pension. However, there is Government Resolution, which entitles the applicant for family pension.

(iv) It is well settled that the pension is not a bounty or a gift depending upon the sweet will and pleasure of the Government. On the other hand, the right to receive pension is valuable right vesting in Government servant. Pension is not a matter of grace. It is a payment of past services rendered. Hence, this application.

3. Affidavit-in-reply is filed on behalf of the respondent No.2 by one Amogh J. Gaonkar working as Superintendent of Police, Parbhani. Thereby he denied the adverse contentions raised in the

application. It is, however, admitted that the deceased husband of the applicant named Abdul Rehman was getting compassionate pension from 07.06.1968 and that the applicant is second wife of the said deceased Abul Rehman and his first wife named Magbul Begum died on 20.01.2003. It is specifically stated that in the case of compassionate pension, family pension is not allowed more particularly, under Rule 116 (16) (B) of M.C.S.R. (Pension) Rules, 1981. There is no evidence to show that the applicant married with Abdul Rehman before his retirement/removal. The service record of Abdul Rehman discloses the name of Magbul begum and Atef as his family members. The name of the applicant as his wife was not found anywhere in the service record of Abdul Rehman. Hence application is liable to be dismissed.

4. Further additional affidavit-in-reply is filed on behalf of the respondent No.2 by one Dilip Krushnarao Zalke the then Superintendent of Police, Parbhani. In this additional affidavit, it is admitted that as per G.R. dated 15.07.1995 compassionate pension is made applicable to the family members of the employee. But the applicant is not family member of Abdul Rehman as per service record and therefore, the said G.R. is not applicable to the applicant.

5. Affidavit-in-reply is also filed on behalf of the respondent No.3 by one Kamal Motilal Mirani working as Assistant Accounts

officer with the office of the respondent No.3. Thereby it is stated that the role of this respondent in respect of pension cases is limited to scrutiny of proposals received from the Head of the office of Government of Maharashtra in respect of persons, who retired from various State Government offices situated in Vidarbha and Marathwada regions, with reference to M.C.S. (Pension) Rules, 1982 and other relevant Government Resolutions and Circulars. This respondent will not be in a position to authorize pensionary benefits, if the proposal is not received from the concerned officers. It is further submitted that till date this respondent has not received any proposal for release of family pension from the office of the respondent No.2 i.e. the superintendent of Police, Parbhani. As per G.R. dated 27.06.1969 issued by the Government of Maharashtra, compassionate pension is not applicable to the family members. Hence, this application is liable to be dismissed.

6. I have heard the arguments advanced by Smt. Kalpalata Patil-Bharaswadkar, learned Advocate for the applicant on one hand and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents on other hand.

7. Admittedly, the deceased Abdul Rehman was working in Police Department as a Constable at Parbhani. As per contentions raised by the respondent No.2, while in service the said Abdul Rehman was found negligent in performing his duties. He was

found absent from duty willfully. The departmental enquiry was conducted against him in the year 1968. In the said enquiry, his length of service of 26 years was considered and punishment of removal was given instead of dismissal. Thus the benefit of compassionate pension was given to the said Abdul Rehman. However, undisputedly, the said Abdul Rehman was getting compassionate pension from 07.06.1968. First wife of said Abdul Rehman was Magbul Begam, who died on 20.01.2003. The said Abdul Rehman performed second marriage with the applicant on 30.06.1968 i.e. admittedly after he started getting compassionate pension. The said Abdul Rehman died on 22.06.2006. His first wife as stated earlier Magbul Begam being already died on 20.01.2003. The applicant being second wife of deceased employee, claimed family pension being widow by making various representations. However, her representations were not considered. Therefore, she filed the present Original Application seeking requisite directions for payment of family pension.

8. Expression "Family Pension" is governed by Rule 116 of M.C.S. (Pension) Rules, 1982. The deceased Abdul Rehman was getting compassionate pension as contemplated under Rule 101 of M.C. S. (Pension) Rues, 1982. The claim of family pension of the applicant was resisted by the respondents contending that this scheme of family pension is not applicable in view of G.R. dated

27.06.1969 based on Rule 274 and 301 of Bombay Civil Service Rule. However, in this regard the applicant has placed reliance on circular dated 15.07.1995 issued by the Finance Department of Government of Maharashtra (page No.63 of P.B.). Perusal of the said circular would show that family pension is made applicable even in cases of compassionate pension. This position is admitted by the respondent No.2 in his additional reply, which is at page no.65 of P.B. However, he submitted that the applicant who is second wife of the said Abdul Rehman is not a family member admissible under the said Circular dated 15.07.1995 and therefore, she is not entitled.

9. In this regard, learned Advocate for the applicant invited my attention to Rule 116 (6) (a) (i) and (ii) and Rule 116 (16) (b) (i) and (ii). Rule 116 (6) (a) (i) and (ii) is reproduced as follows:-

“(6) (a) (i) Where the Family Pension is payable to more widows than one, the Family Pension shall be paid to the widows in equal shares;

(ii) On the death of a widow, her share of the Family Pension shall become payable to her eligible child:

[Provided that if the widow is not survived by any child, her share of the family pension shall not lapse but shall be payable to the other widows in equal shares, or if there is only one such other widow, in full, to her].

Rule 116 (16) (b) (i) and (ii) is reproduced as follows:-

“16. ... ..  
 (a) ... ..

- (b) “family”, in relation to a Government servant means-
- (i) Wife in the case of a male government servant, or husband in the case of female Government servant,
  - (ii) a judicially separated wife or husband, such separation not being granted on the ground of adultery, servant [---] and the person surviving was not held guilty of committing adultery:

10. Perusal of the abovesaid provisions would show that Sub Rule 6 recognizes more than one widow for family pension and Sub Rule 16 recognizes wife in case of male Government Servant as family. In this regard, learned Advocate for the applicant has placed reliance on Full Bench judgment of Hon’ble High Court of Judicature at Bombay Bench At Aurangabad reported in (2019) 3 AIR BomR 642 in the matter of **Kamalbai Vs. State of Maharashtra**. In the said case point for reference was made “in cases to which, Maharashtra Civil Services (Pension) Rules, 1982, apply whether the second wife is entitled to claim family Pension?” After having adverted the relevant provisions of Rule 116 it is held as follows:-

“In cases to which Maharashtra Civil Services (Pension)Rules, 1982 apply, the family pension can be claimed by a widow.”

11. Admittedly, the applicant is belonging to the family who observes Islamic faith. It is an admitted fact that the deceased Abdul Rehman performed second marriage with the applicant on



30.06.1968 when his first wife named Magbul begum was alive. Such second marriage is permissible in the family, who observes Islamic Faith is a fact. In view of the same, it is established position that the applicant is legally wedded second wife of the deceased Abdul Rehman. Therefore, she will be covered under the expression "Family" described in Rule 116 (16) (b) of M.C.S. (Pension) Rules, 1982. It is true that the marriage between the applicant and deceased Abdul Rehman took place on 30.06.1968 i.e. after deceased Abdul Rehman started getting compassionate pension from 07.06.1968. On that point also the claim of the applicant was opposed.

12. However, in this regard the learned Advocate for the applicant has placed reliance on the citation of the Hon'ble Supreme Court reported in 1994 AIR SCW 3891 in the matter of **Kanta Devi Vs. Union of India.** In the said citation case the claim made by the widow of ex-serviceman whose marriage was performed after retirement of ex-serviceman from active service was under consideration. Army Instructions No.51 of 1980 which has defined "Family", though includes wife, says in Note (2) that marriage after retirement will not be recognized. The said provision of note (2) was struck down observing that it is unreasonable, harsh and heartless and the family pension was granted to the widow. In view of the same, objection raised on behalf of the

respondents in this regard does not hold water and it is liable to be rejected.

13. In view of above, I hold that the applicant is legally wedded second wife of deceased Abdul Rehman and therefore, she is entitled to get family pension as per Rule 116 of M.C.S. (Pension) Rules, 1982. The applicant therefore succeeds. In the result I proceed to pass the following order:-

**ORDER**

The Original Application is allowed in following terms:-

- (A) It is declared that the applicant is entitled to get family pension being legally wedded second wife of deceased Abdul Rehman and therefore, the respondent No.1 is directed to consider the claim of the applicant for family pension in accordance with law and to grant benefit of family pension with arrears together with admissible interest within the period of three months from the date of this order.
- (B) No order as to costs.

**(V.D. DONGRE)**  
**MEMBER (J)**

**Place:-Aurangabad**  
**Date :- 06.06.2022**  
SAS O.A.598/2015