

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.36 OF 2016
(Subject:-Interest on Delayed Payments)**

DISTRICT: - Osmanabad.

Laxmi Wd/o Sarjerao Shinde)
Age-55 Years, Occ- Household,)
R/o- At Post Wadgaon (J),)
Tq. Kallamb, Dist. Osmanabad.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
Through Secretary,)
Forest Department,)
Mantralaya, Mumbai-32.)
 - 2. The Divisional Forest Officer,**)
Central Administrative Building,)
Osmanabad, Dist. Osmanabad.)
 - 3. The Divisional Forest Officer,**)
Beed.)
 - 4. The Deputy Forest Conservator**)
(Wild Lives), Aurangabad.)
 - 5. The District Treasury Officer,**)
Osmanabad, Dist. Osmanabad.)
 - 6. The District Treasury Officer,**)
Beed, Dist. Beed.)
 - 7. The Accountant General**)
Nagpur (M.S.).)....**RESPONDENTS**
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APPEARANCE : Shri S.D. Munde, learned Advocate holding for Shri S.S. Gangakhedkar, learned Advocate for the applicant.
: Shri S.K. Shirse, learned Presenting Officer for the respondents.

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

DATE : **13.10.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, this Original Application is filed seeking direction against the respondents to release Commutation of Pension amount in favour of the applicant.

2. The facts in brief giving rise to this Original Application can be stated as follows:-

(i) The applicant is the widow of the deceased Government servant namely Sarjerao Prabhu Shinde, who died on 18.01.2014. The deceased Sarjerao Shinde was initially appointed on the post of Forest Guard (Vanpal) on 01.03.1981. He retired on superannuation w.e.f. 29.02.2012

(Annex. 'A') as reflected in notice of superannuation on the post of Forester.

(ii) Upon retirement on superannuation, the applicant's husband was entitled for retiral benefits such as pension, gratuity, commutation of pension etc. The proposal for such benefits was forwarded by the office of Range Forest Officer, Beed to the office of respondent No.7 i.e. the Accountant General, Nagpur (M.S.) and the said respondent No.7 sanctioned the proposal on 09.04.2014. In the said proposal, the commutation of pension amount was calculated to the tune of Rs.3,43,281/- . Meanwhile, the applicant's husband died on 18.01.2014.

(iii) It is submitted that during lifetime, the applicant's husband noticed that there were certain deficiencies in his service book record and therefore, he filed application dated 29.10.2004 (Annex. 'B') to the respondent No.4 i.e. the Deputy Forest Conservator, Aurangabad for correction.

(iv) The applicant is old aged widow and helpless lady. Though the office of Accountant General, Nagpur sanctioned commutation of pension amount in favour of the applicant's husband by order dated 09.04.2014, after the death of the

applicant's husband, the said amount is not paid. Therefore, the brother of the deceased husband of the applicant vide communication dated 20.10.2015 (wrongly mentioned as 27.10.2015) sought information under Right to Information Act and in that regard, information was received as per communication dated 03.11.2015 (Annex. 'C') from the office of the respondent No.3 i.e. the Divisional Forest Officer, Beed from which the applicant learnt that the commutation of pension amount of Rs. 3,43,281/- amongst other was granted by the office of the respondent No.7 i.e. the Accountant General, Nagpur vide order dated 09.04.2014.

(v) It is further submitted that after receipt of the said information, the applicant through her Advocate issued notice dated 28.11.2015 (part of Annex. 'D' collectively) to the respondent No.3 demanding the amount of commutation of pension of Rs.3,43,281/- to which she received reply dated 09.12.2015 (part of Annex. 'D' collectively), thereby contending that the applicant is not entitled for commutation of pension amount as her husband died before undergoing requisite medical examination as requisite format was submitted by the applicant's husband beyond one year of the date of retirement. Before that the respondent No.3 had

issued letter dated 12.12.2014 (Annex. 'E') to the respondent Nos.5 and 6 stating clearly that though present applicant has received temporarily pension amount, there is no any dues towards the deceased employee and that commutation of pension amount was also not paid to the applicant.

(vi) It is further submitted that the respondent No.5 i.e. the District Treasury Officer, Osmanabad called the applicant on 19.05.2014 for verification of documents and other formalities to release the pensionary benefits. The applicant on that date remained present in the office of the respondent No.5 and completed all the formalities on 19.05.2014 (Annex. 'F').

(vii) In the circumstances as above, it is contention of the applicant that the amount towards commutation of pension is wrongly and illegally withholds by the respondents for which she is entitled. Hence, this application.

3. The affidavit-in-reply is filed on behalf of the respondent No.3 by one Sheshrao Pandurang Kale working as Range Forest Officer, Beed, thereby he denied adverse contentions raised in the Original Application.

(i) It is stated that initially the applicant's husband was appointed as Forest Guard on 15.12.1978. He was promoted

as Forester and Joined as Forester (EGS) Patoda on 18.10.2007. He retired on superannuation w.e.f. 29.02.2012 as reflected from the copy of service book (Annex. 'A'). It is further submitted that the deceased husband of the applicant after his retirement was entitled for all the pensionary benefits namely gratuity, commutation of pension etc. After his retirement, this office by various communications (Annex. 'B' collectively) informed him to complete formalities of submitting of documents. He completed the said requisition only on 30.12.2013 and accordingly the respondent No.3 forwarded the pension proposal (Annex. 'C') to the office of the respondent No.7 i.e. the Accountant General, Nagpur on 31.12.2013. There was no administrative delay on the part of the respondent No.3 to send pension proposal. The delay was attributable to the deceased husband of the applicant for completing formalities of the documents. The respondent No.7 granted pension proposal of the applicant vide communication dated 09.04.2014 (Annex. 'D') but except commutation of pension. The payment of commutation of pension amount cannot be made without medical examination of the employee as per Rule 20 of M.C.S. (Commutation of Pension) Rules, 1984. As per Rule 13 (2) of

the Rules 1984, the application for commutation of pension is to be submitted within one year after the date of retirement. That is not complied with. Hence, the applicant is not entitled for commutation of pension and hence the application is liable to be dismissed.

4. Affidavit-in-reply is also filed on behalf of the respondent No.4 separately by one Asha Gautam Bhong working as Assistant Conservator of Forest (Wildlife), Aurangabad, thereby she denied the adverse contentions raised in the Original Application. It is submitted that the applicant's husband had made application to this office on 29.10.2004 pointing out some deficiencies in service record regarding the appointment date and seniority date etc. He never made any other grievance to this office. This office is not concerned with the payments of retiral benefits as sought for.

5. I have heard at length the arguments advanced by Shri S.D. Munde, learned Advocate holding for Shri S.S. Gangakhedkar, learned Advocate for the applicant on one hand and Shri S.K. Shirse, learned Presenting Officer representing the respondents on other hand.

6. The short issue involved in the matter is whether the applicant being the widow of the deceased Government servant is entitled to receive commutation of pension amount of Rs.3,43, 281/- in accordance with the requisite provisions of Rule 7 of M.C.S. (Commutation of Pension) Rules, 1984. Rule 7 of the said Rules of 1984 is as follows:-

“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.”

7. In view of above said Rule, the applicant being widow of the deceased Government servant would be entitled to receive commutation of pension amount in case the applicant dies without receiving the commuted value on or after the date on which commutation become absolute. Considering the facts of this case, Rule 5 and Rule 13 of M.C.S. (Commutation of Pension) Rules, 1984 would also be relevant. Rule 5 of the said Rules of 1984 is as follows:-

“5. Limit on commutation of pension.-

(1) A Government servant shall be entitled to commute for a lump sum payment a fraction not exceeding one-third of his pension.

(2) *In an application for commutation in Form-A or Form-B or Form-C, as the case may be, an applicant shall indicate the fraction of pension, which he desires to commute, and may either indicate the maximum limit of one-third of pension or such lower limit as he may desire to continue.*

(3) *If fraction of pension to be commuted results in fraction of rupee, such fraction of a rupee shall be ignored for the purpose of commutation.*

Rule 13 of the Rules of 1984 is as follows:-

“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:

(a) apply to the Head of Office in Form-A after the date of his retirement:

(b) ensure that the application in Form-A, duly completed, is delivered to the Head of Office as early as possible but not later than one year of the date of his 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 referred to in this sub-rule shall reckon from the date of the issue of the orders consequent on the finalisation of the departmental or judicial proceedings.*

(2) An applicant who applies for commutation of pension within one year of the date of his retirement but his application in Form-A is received by the Head of Office after one year of the date of his retirement, shall not be eligible to get his pension commuted without medical examination, Such an applicant, if he desires to commute a fraction of his pension, shall apply afresh in Form-C in accordance with the procedure laid down in Chapter-IV.

3) A Government servant who is due to retire on superannuation and desires payment of the commuted value of pension being authorized at the time of issue of the Pension Payment Order, shall be eligible to apply for commutation of a fraction of pension alongwith pension papers prior to the date of retirement:

Provided that-

- (a) the Government servant retires on Superannuation Pension only;*
- (b) the application is submitted to the Head of Office in Form-B so as to reach the Head of Office not later than three months before the date of superannuation;*

- (c) *no such application referred to in clause (b) shall be entertained if the period is less than three months from the date of superannuation of the Government servant under intimation to him; and*
- (d) *the Government shall have no liability for the payment or the commuted value of pension if the Government servant dies before the date of superannuation or forfeits claim to pension before retirement.”*

8. In terms of Rule 13 (1) (a) of Rules 1984 as above, the Government servant before expiry of one year of the date of retirement has to apply to his Head of the Office in Form-A. In terms of Rule 13 (3) of Rules 1984, the Government servant is also entitled to apply in Form –B for commutation of pension. In terms of Rule 13 (2) of Rules, 1984 as above, the Government servant can apply in Form-C beyond the period of one year of retirement but that is couple with medical examination mandatorily as specified in Chapter IV of Rules 1984.

9. In the background of the legal position as above, if the documents produced by both the parties are scrutinized, it is seen that though the applicant retired on superannuation w.e.f. 29.02.2012, pension papers were completed only by 30.12.2013 and the pension proposal was submitted by the

respondent No.3 i.e. the Divisional Forest Officer, Beed to the respondent No.7 i.e. the Accountant General, Nagpur by forwarding letter dated 31.12.2013. In the bunch of papers, it appears that the applicant has signed Form A,B and C simultaneously. In view of the same, all the said three forms were submitted beyond the period of one year from the date of retirement of the applicant. In view of the same, the pension proposal is sanctioned by the respondent No.7 by order dated 09.04.2014 (except Commutation of Pension). Unfortunately the applicant died on 18.01.2014 i.e. hardly within eighteen days of forwarding of pension papers by the respondent No.3 to respondent No.7. In view of the same, the medical examination of the applicant which was mandatory for considering the commutation of pension in terms of Form-C was not done. The said lacuna cannot be attributed to the respondents.

10. From the facts on record, it appears that delay in completing pension papers was attributable to the deceased husband of the applicant. Commutation of pension sought for by making application in Form -C beyond the period of one year of retirement can be considered and accepted only after mandatory requirement of undergoing medical

examination. The said mandatory requirement is not done in case of the deceased husband of the applicant. In view of the same, commutation of pension cannot be said to have become absolute as contemplated in Rule 7 of Rules 1984. In view of the same, the applicant would not be entitled for relief as sought for as per Rule 7 of M.C.S. (Commutation of Pension) Rules, 1984. The Original Application, therefore, fails. Hence, I proceed to pass the following order.

ORDER

- (A) The Original Application stands dismissed.
- (B) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date : 13.10.2022
SAS O.A.36/2016