

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.697 OF 2019
(Subject:- Pensionary Benefits/Interest on Delayed Payment)**

DISTRICT: - Aurangabad.

Shobha w/o Bajirao Khade,)
Age :50 years, Occu. Houshold,)
R/o: Plot no.20, Udyog Aangan Society,)
Gut No.116, Beed by-pass,)
Satara Parisar, Aurangabad.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra,**)
Through: The Secretary,)
Agriculture, Animal Husbandry,)
Dairy Development & Fishery Depart.,)
Mantralaya, Mumbai-32.)
- 2. The Commissioner of Agriculture,**)
Central Building, Maharashtra State,)
Pune-411 001.)
- 3. The Joint Director of Agriculture,**)
Aurangabad, Adalat Road,)
Aurangabad.)
- 4. The Accountant General-II,**)
Nagpur, Civil Lines, Nagpur.)
- 5. The Taluka Agriculture Officer,**)
Gangapur, Tq. Gangapur,)
Dist. Aurangabad.)...**RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, learned Advocate for
the applicant.
: Shri I.S. Thorat, learned Presenting
Officer for the respondents.

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

DATE : **22.06.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned communication/order dated 10.05.2019 (Annex. 'A-16') issued by the respondent No.4 i.e. the Accountant General-II, Nagpur thereby rejecting the proposal dated 21.01.2019 submitted by the respondent No.5 i.e. the Taluka Agriculture Officer, Gangapur, Tq. Gangapur, Dist. Aurangabad for payment of amount of commuted value of pension of Rs.5,78,202/- to the applicant, who is the widow of the deceased Government Servant and also seeking interest on the said amount of commuted value of pension and other delayed retiral benefits of gratuity and G.P.F. etc.

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

- (i) The applicant is the widow of the deceased Bajirao Vitthal Khade, who was serving with the respondents on the post of Circle Agriculture Officer. He retired from the said post on attaining the age of

superannuation on 31.05.2016 from the office of the respondent No.5. He died on 06.09.2017 in the road accident. His death certificate is at page no.39 (part of Annex. 'A-6' collectively). No departmental enquiry was pending against him at the time of his retirement.

- (ii) It is submitted that while the deceased husband of the applicant was in service, the departmental enquiry was initiated against him and two others for the charges of irregularity in the work of Soil/Water Conservation under the E.G.S. while working on the post of Circle Agriculture Officer at Nandi, Tq. Ambad, Dist. Jalna. The enquiry officer namely, B.N. Pawar submitted the enquiry report exonerating the applicant and two others from all of the six charges leveled against them. The Divisional Commissioner, Aurangabad by issuing notice dated 29.10.2009 on the deceased husband of the applicant communicated that his office and disciplinary authority is not agreeing with the findings in the enquiry report and called upon him to submit his reply.
- (iii) The deceased husband of the applicant submitted his reply dated 13.11.2009 and denied all the charges in totality. The Divisional Commissioner, Aurangabad

without considering the reply submitted by the applicant's deceased husband, issued order dated 12.01.2010 thereby directing to recovery the amount of Rs.62,906/- and withholding his future increments of pay for two years with cumulative effect. Being aggrieved by the said punishment order dated 12.01.2010 issued by the Divisional Commissioner, Aurangabad, the deceased husband of the applicant submitted departmental appeal dated 17.2.2010 (Annex. 'A-1' under covering letter). The said authority did not decide the said appeal for years together even when the applicant's husband retired on superannuation on 30.05.2016.

- (iv) Before retirement of the applicant's deceased husband, the respondent No.5 issued no dues and no enquiry certificate to the deceased husband of the applicant on 06.05.2016 (Annex. 'A-2' collectively). The deceased husband of the applicant filed Original Application No.353/2017 seeking directions to decide the administrative appeal and payment of retiral benefits to him. The said Original Application was disposed of by order dated 26.07.2017 (Annex. 'A-3') with directions to the respondents to decide the appeal within two months. The respondent No.4 i.e. the

Accountant General -II, Nagpur sanctioned the pension case of the deceased husband of the applicant by Pension Pay Order (P.P.O.) dated 21.06.2016 (Annex. 'A-5'), but he was not paid pension and pensionary benefits. Hence he submitted application dated 22.08.2016 (Annex. 'A-4'), seeking release of pension and pensionary benefits. The respondent authorities have however, unauthorizedly withheld the amount of Rs.1,00,000/- from the amount of G.P.F. and also the amount of commuted value of pension of Rs.5,78,202/- though was sanctioned by the office of A.G.

- (v) Though the administrative appeal was directed to be decided within two months from the date of order dated 26.07.2017 passed in the Original Application No.353/2017, it was not decided. Thereafter all of sudden, the husband of the applicant died on 06.09.2017. The applicant preferred Contempt Petition. Meanwhile, the administrative appeal was also allowed by order dated 18.12.2017 (Annex. 'A-7') and thereby punishment order dated 12.01.2010 was quashed and set aside.

- (vi) After the decision in the departmental appeal and death of the husband of the applicant, the applicant submitted application dated 25.01.2018 (Annex. 'A-8') to the respondent No.5 and requested to pay her family pension and other pensionary benefits. Regular pension and pensionary benefits were not paid to the applicant's deceased husband during his life time. By order dated 27.09.2018 (Annex. 'A-9'), the respondent No.4 i.e. the Accountant General -II, Nagpur sanctioned family pension to the applicant. However, the amount of commuted value of pension of Rs.5,78,202/- and part of G.P.F. amount of Rs.1,00,000/- were still withheld which were payable to the deceased husband of the applicant as on the date of retirement of deceased husband of the applicant, when no departmental enquiry was pending against him.
- (vii) During pendency of this Original Application, the respondent No.5 submitted the proposal dated 21.01.2019 to the respondent No.4 i.e. the Accountant General-II, Nagpur for payment of commuted value of pension to the applicant. However, the respondent No.4 by impugned communication/order dated 10.05.2019 (Annex. 'A-16') rejected the said proposal

allegedly as per Rule 12(v) of the M.C.S. (Commuted of Pension) Rules, 1984 observing that the husband of the applicant died before conclusion of the departmental enquiry and therefore, the applicant is not entitled for amount of commuted value of pension. It is however, submitted that the said impugned order is passed in contravention of the provisions of Section 7 of the M.C.S. (Commuted of Pension) Rules, 1984, which states that if the Government Servant 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. In view of same, the impugned communication/order dated 10.05.2019 (Annex. 'A-16') issued by the respondent No.4 is liable to be quashed and set aside and the applicant is entitled for the said commuted value of pension of Rs.5,78,202/- and remaining G.P.F. amount of Rs.1,00,000/- together with admissible interest thereon. Hence, this Original Application.

3. The affidavit-in-reply is jointly filed on behalf of the respondent Nos.1 to 3 and 5 by one Dnyaneshwar Shivajirao Targe working as the Taluka Agriculture Officer, Gangapur, District

Aurangabad. Thereby he denied all the adverse contentions raised in the Original Application.

- (i) It is denied that at the time of the retirement of the deceased husband of the applicant, no departmental enquiry was pending against him. In fact the deceased husband of the applicant filed Original Application No.353/2017 against the order in the departmental enquiry passed by the respondent No.1 in which charges imposed against him were proved as per order dated 12.01.2010 (Annex. 'R-1'). The respondent No.5 was not aware of the said order and therefore inadvertently he forwarded certificate of no dues and no enquiry to the higher authority. As regards withholding of part G.P.F. amount of Rs.1,00,000/-, it is submitted that the same is withheld in view of application dated 24.09.2016 (Annex. 'R-2') filed by the deceased husband of the applicant as a security during pendency of the departmental appeal. All other retiral benefits were paid to the deceased husband of the applicant except commuted value of pension on the ground that no objection and no enquiry certificate were not received to the concerned. As also Original Application filed by the deceased husband of the applicant was also pending. It is

admitted that the proposal dated 21.01.2019 forwarded by the respondent No.5 to the respondent No.4 (Annex. 'R-3') is being rejected by the respondent No.4 as per Rule 12(v) of M.C.S. (Commutation of Pension) Rules, 1984. In the circumstances, there is not merit in the Original Application and the same is liable to be dismissed.

4. I have heard at length the arguments advanced by Shri K.B. Jadhav, learned Advocate for the applicant on one hand and Shri I.S. Thorat, learned Presenting Officer for the respondent on other hand.

5. Considering the facts involved in the matter, the provision of Section 7 of M.C.S. (Commutation of Pension) Rules, 1984 would be relevant. The said provision is 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.”

6. In the case in hand, the deceased husband of the applicant retired on superannuation from the office of the respondent No.4 on 31.05.2016. The required documents namely no dues and no enquiry certificate necessary for consideration of pension were

issued by the respondent No.5 which are dated 06.05.2016 (both at Annex. 'A-2' collectively).

7. So far as the departmental enquiry against the deceased husband of the applicant is concerned, it was conducted way back before 2010 and enquiry officer exonerated the applicant of all the charges as per Enquiry Report dated 18.07.2009. The Division Commissioner, Aurangabad, however, disagreed with the said enquiry report and issued notice dated 29.10.2009 to the deceased husband of the applicant. The deceased husband of the applicant submitted his reply dated 13.11.2009 and denied all the charges. The Divisional Commissioner, Aurangabad Division by order dated 12.01.2010 (Annex. 'R-1') imposed punishment of recovery of Rs.62,906/- and stoppage of two future increments with cumulative effect. The deceased husband of the applicant preferred departmental appeal against the said punishment order as per appeal memo dated 17.02.2010 (Annex. 'A-1'). The said appeal however, was pending as on the date of retirement of the applicant on 31.05.2016. Therefore, the deceased husband of the applicant filed Original Application No.353/2017 seeking direction to decide the said appeal and payment of retirement benefits. The said Original Application came to be disposed of by order dated 26.07.2017 (Annex. 'A-3') directing to decide the appeal within two months. The said administrative appeal however, came

to be decided only by Government order dated 18.12.2017 (Annex. 'A-7') whereby the said administrative appeal was allowed and the order of punishment issued by Divisional Commissioner was set aside.

8. In view of above, it is crystal clear that on the date of retirement of the deceased husband of the applicant on 31.05.2016 what was pending against the applicant was the administrative appeal against the punishment order issued by the Divisional Commissioner, Aurangabad disagreeing with the enquiry officer order exonerating the applicant of all the charges. It is pertinent to note that the administrative appeal preferred by the applicant in the year 2010 was pending at the time of retirement of the deceased husband of the applicant on superannuation on 31.05.2016. There is nothing on record to attribute pendency of administrative appeal at the instant of the applicant. It was for the respondents to consider and decide the said appeal.

9. That apart the Pension Payment Order (P.P.O.) including the payment of commuted value was issued on 21.06.2016 (Annex. 'A-5') which was during the lifetime of the deceased husband of the applicant, who died in road accident on 06.09.2017. There is no dispute that all other retiral benefits are received by the deceased husband of the applicant except the commuted value of pension of Rs.5,78,202/- and part G.F.P. amount of Rs.1,00,000/-. Perusal

of the application dated 24.09.2016 (Annex. 'R-2') produced by the respondents would show that the same was sent by the deceased husband of the applicant giving his no objection for withholding part G.P.F. amount of Rs.1,00,000/- as a security for pending administrative appeal. Now, the said administrative appeal is decided and the order of punishment issued by the Divisional Commissioner, Aurangabad is cancelled and set aside as per Government order dated 18.12.2017 (Annex. 'A-7'). In view of same, there is no reason to withhold said part G.P.F. amount of Rs.1,00,000/- which is payable to heirs and legal representatives of the deceased who are also entitled for family pension.

10. So far as the commuted value of pension amount of Rs.5,78,202/- is concerned, the order regarding that has become absolute in terms of provision of Section 7 of the M.C.S. (Commutation of pension), 1984. The respondent No.4 however, by quoting Rule 12 (v) of M.C.S. (Commutation of Pension) Rules, 1984 rejected the proposal dated 21.01.2019 submitted by the respondent No.5 for releasing the same. The said Rule 12(v) of M.C.S. (Commutation of Pension) Rules, 1984 is as follows:-

“12. Eligibility.-An applicant who is authorised-

- (i) -----
- (ii) -----
- (iii) -----
- (iv) -----
- (v) a pension in whole in part on the finalization of the departmental or judicial proceedings and issue of final orders thereon shall, subject to the

limit in Rule 5, be eligible to commute a fraction of his pension without medical examination:

Provided that he applies for commutation of pension in Form A or Form B in accordance with the provisions of Rule 13.

Note.- Pension referred to in Clause (i), Clause (ii) and Clause (iv) shall include the provisional pension sanctioned under Rule 126 of Maharashtra Civil Services (Pension) Rules, 1982.”

11. In that regard, I have already observed that as on the date of retirement of the deceased husband of the applicant, what was pending was the administrative appeal preferred by the applicant's deceased husband against the imposition of punishment of recovery and withholding of two future increments with cumulative effect disagreeing with the enquiry officer report exonerating the applicant of all the charges. Infact in terms of Rule 7 of M.C.S. (Commutation of Pension) Rules, 1984 it had already become absolute and therefore, the applicant who is heir and legal representative of deceased Government Servant is entitled to receive. However, the same is wrongly withheld in contravention of provision of Section 7 of the M.C.S. (Commutation of Pension) Rules, 1984. In view of same, the impugned order dated 10.05.2019 (Annex. 'A-16') issued by the respondent No.5 is liable to be quashed and set aside being not in accordance with law. The applicant is also entitled to receive the part G.P.F. amount of Rs.1,00,000/- . Withholding of commuted value of pension of Rs.5,78,202/- payable to the applicant is attributable to the

administrative lapse and it cannot be attributed to the deceased husband of the applicant.

12. In such circumstances, it would be just and proper to impose interest on the delayed payment on the footing of Rule 129 (B) of M.C.S. (Pension) Rules, 1982 applicable to delayed payment of pension. Therefore I proceed to pass the following order:-

ORDER

The Original Application is allowed in following terms:-

- (A) The impugned order/communication dated 10.05.2019 (Annex. 'A-16') issued by the respondent No.4 is quashed and set aside.
- (B) Consequently the respondents are directed to pay pensionary benefits namely commuted value of pension of Rs.5,78,202/- together with the admissible interest on the footing on Rule 129 (B) of M.C.S. (Pension) Rules, 1982 as well as the part G.P.F. amount to the applicant being heir and legal representative of deceased husband of the applicant within a period of two months from the date of this order.
- (C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place :- Aurangabad
Date :- 22.06.2022
SAS O.A.697/2019