

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 66 of 2017

Gopal S/o Balaji Zade,
Aged about : 77 Yrs., Occ. – Retired,
R/o Plot No. 8, Purohit Layout,
Ambazari, Nagpur-440 033.

Applicant.

Versus

- 1) The State of Maharashtra
Department of Animal Husbandry,
Dairy Development and Fisheries,
Mantralaya, Mumbai-32.
Through its Secretary.
- 2) Dairy Development Commissioner,
Government of Maharashtra,
Administrative Building,
Khan Abdul Gaffar Khan Road,
Worli Sea-face, Mumbai-32.
- 3) Secretary, Finance Department,
Government of Maharashtra,
Mantralaya, Mumbai – 32.
- 4) Accountant General Maharashtra-I,
Pratishtha Bahavan, New Marine Lines,
Mumbai-400 020.

Respondents

Shri S.M.Khan, Id. Advocate for the applicant.

Shri A.M.Ghogre, Id. P.O. for the respondent no. 1 to 3.

None for R-4.

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

JUDGMENT

(Delivered on 24th July, 2017)

Heard Shri S.M.Khan, Id. counsel for the applicant and Shri A.M.Ghogre, Id. P.O. for the respondent no. 1 to 3. None for R-4.

2. The applicant was appointed as Milk Procurement Supervisor in 1961 and was promoted to various posts. Finally he was posted as a General Manager at Government Milk scheme, Nagpur. During his service period, the applicant was suspended and a Departmental Enquiry was initiated against him along with 33 employees. Against, the initiation of said enquiry, the applicant filed O.A.452/1994 for reinstatement and for quashing the Departmental Enquiry. The applicant was exonerated on 23/07/2010 and his suspension period was treated as duty period. Vide order dated 30/11/2012 in Writ Petition number 263/2002, the Petition was disposed of, as the applicant was exonerated and his dues were paid except commutation of pension.

3. The applicant had filed an application for getting difference of commutation of pension. The applicant's claim for commutation was recommended to Respondent No. 1 by Deputy Director (Administration), Dairy Development Department. However, no

decision has been taken on the said recommendation and therefore, the applicant was constrained to file this O.A.

4. In this O.A., the applicant has claimed that the communication dated 16/08/2016 issued by Respondent No. 1 rejecting applicant's claim without considering the recommendation dated 04/12/2014, be quashed and set aside and Respondent No. 1 be directed to take a decision on the said proposal by relaxing Rule 33 of The Maharashtra Civil Services (Commutation of Pension) Rule, 1984 and to grant full amount of pension of commutation of Rs.1,915/- amounting to Rs.2,40,371/- to the applicant and to grant difference of commutation of Rs.95,597/-.

5. The Respondent No. 1 and 2 submitted that it is not a fit case to relax Rule 30 of The Maharashtra Civil Services (Commutation of Pension) Rules, 1984. The Respondent No. 4, Accountant General has filed an affidavit in reply and submitted that the commutation has been properly calculated.

6. It is stated by Respondent no. 1 & 2 that the Accountant General of Maharashtra has rightly calculated the commutation. The Repondents also placed reliance on the Judgment delivered by the

Principal Bench of this Tribunal in O.A.578/2015 on 29/03/2016 wherein it has been held that the commutation of pension cannot be done with retrospective effect and that it can be done only prospectively.

7. The learned counsel for the applicant Shri S.M.Khan submits that the applicant's representation was recommended by Respondent No. 2 to the Government and the said communication dated 04/12/2014 which is at paper book page no. 43 and 44 (both inclusive)(Annexure-A-12). However, no decision has been taken on the said representation.

8. Perusal of the communication (Annexure-A-12) shows that the Deputy Director (Administration), Dairy Development Department has submitted to the Government i.e. Respondent No. 1, that the power to relax Rule 33 of the Commutation Rules is with the Government and therefore, the matter was referred to the Government for taking proper decision. In the impugned communication dated 16/08/2016 (Annexure-A-1), though there is no reference to this letter dated 04/12/2014, there is a specific reference to all the representations filed by the applicant from time to time and also

reference to Rule 33. The said communication is self explanatory and it reads as under:-

mi jkDr fo"A; kckcr vki .A oGkoGh l knj dsyY; k fuonukl vuq : u vki .AkI dGfo.; kr ; rs dh egkys[Aki kykP; k dk; kY; kP; k fn-17-11-2011 P; k i=kUo; s i kf/Adr dsyYh vA Ajk' Ahdj .Akph jDde] e-uk-l s %fuofRrorukps vA Ajk' Ahdj .A½ fu; e] 1984 e/Ahy fu; e 6¼1¼, d½] fu; e 8¼1½] fu; e 12¼i kP½ o fu; e 13¼1¼ch½anku½ P; k rjrnhud kj i fjxf.Ar dj.; kr vkyh vkgs R; keGs vk; Dr dk; kY; kus i fjx.Auk dsyYh jDde pphph vl u egkys[kki ky dk; kY; kus i kf/Adr dsyYh jDde fu; ekud kj ; kX; vkgs l cc] mDr fu; ekrhy fu; e 33 ud kj fu; e f'Affky d: u vk; Dr dk; kY; kus i Lrkfor dsyYh o egkys[kki ky dk; kY; kus i kf/Adr dsyYh vA Ajk' Ahdj .kph jDde ; ke/Ahy Qj d kph jDde vnk dj .Ackcr vki yh fourh eku; djrk ; sAkj ukgh-

9. Perusal of the impugned communication, therefore, clearly shows that the competent authority i.e. Government has taken a conscious decision not to relax Rule 33 of the Rules of 1984 and there is a reference to other Rules of Commutation of Pension Rules, 1984 in the said communication. The Respondent No. 4 is the expert competent authority dealing with the calculation as regards commutation and in the reply affidavit the Respondent No. 4, has justified the calculation made by it. Admittedly, the enquiry was initiated against the applicant, though the applicant might have been exonerated from such enquiry subsequently.

10. The learned P.O. has placed reliance on the Judgment reported in O.A.578/2015 by the Principal Bench of this Tribunal in case of **Kantilal Damodar Shaha Vs. Governement of Maharashtra** delivered on 29/03/2016. In para no. 6 of the said Judgment, there is a clear finding given by this Tribunal that it is not possible to commutation of pension done retrospectively and that it can be done only prospectively and further that the commutation factor depends on the present age of the person.

11. In view of the discussion of foregoing paras, in my opinion, though, there is no reference of recommendation dated 04/12/2014 in the impugned communication dated 16/08/2016 by Respondent No. 1, the Respondent No. 1 has considered the issue of relaxation of Rule 33 of Rules of 1984 and has taken a proper decision. I don't find any reasons to interfere in the said decision taken by the Respondent No. 1, which is based on the calculation done by the expert institution i.e. Respondent No. 4, Accountant General of Maharashtra. I therefore, don't find any merit in the O.A., hence the following orders:-

ORDER

- 1) The O.A. stands dismissed.
- 2) No order as to costs.

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

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