

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.825 OF 2017

DISTRICT : THANE

Smt. Suchitra S. Sawant.)
R/o. 1, Shivkrupa Chawl, Bhawani Chowk,)
Suryanagar, Vitava, Thane – 400 601.)...Applicant

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)
2. The Director General of Police (M.S.),)
Shahid Bhagatsing Marg, Fort, Mumbai.)
3. The Commissioner of Police.)
Thane City, Thane.)...Respondents

Mr. R.M. Kolge, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 18.07.2019

JUDGMENT

1. The Applicant has challenged the order dated 31.07.2017 rejecting her claim for grant of compassionate pension under Rule 101 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred to as 'Pension Rules 1982')

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for brevity) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Factual matrix is as follows :-

The Applicant is widow of deceased Government servant Suryaji Sawant. The Applicant's husband was appointed as Police Constable in 1977 and later he was promoted to the post of Head Constable in 1993. On 06.05.1998 while he was on duty to escort the prisoners to Hospital, there was firing on one of the prisoner brought to the Hospital which resulted into escape of one of the gangster. It was alleged that the Applicant and other Police Officials on escort duty were in conspiracy for the said incident. In view of that incidence, FIR No.78 of 1998 was registered under Sections 302, 225-A, 224, 221, 120 (b) read with 34 of Indian Penal Code and under Sections 325 and 327 of Armed Act. The husband of the Applicant came to be arrested. On 07.05.1998, he was placed under suspension. On 07.08.1998, the Respondent No.3 – Commissioner of Police, Thane summarily dismissed the Applicant's husband under Article 311(2)(b) of Constitution of India. The Applicant's husband challenged summary dismissal by filing O.A.No.242/1999 before this Tribunal which was decided by final order dated 30.07.1999 and the order of summary dismissal under Article 311(2)(b) of Constitution of India was confirmed. The husband of the Applicant challenged the order of Tribunal by filing appeal before the Government which was also dismissed on 08.04.2004. In the meantime, the Applicant's husband along with co-accused were convicted by Sessions Court and sentenced to suffer imprisonment for life by Judgment dated 28th August, 1999. It was challenged by the Applicant's husband and other accused by filing Criminal Appeal No.495/1999 and 570/1999. Applicant's husband passed away on 14.01.2002. The Hon'ble High Court allowed the appeal on 27th October, 2004 and acquitted all accused.

3. After acquittal in Criminal Case, the Applicant had filed representation before Commissioner of Police, Thane on 13.06.2005 for grant of family pension. Again, she made an application on 07.08.2005. However, the Respondent No.3 rejected the representation by order dated 05.09.2015 stating that the Applicant's husband was summarily dismissed from service under Article 311(2)(b) of Constitution of India, and therefore, not entitled to pension having forfeited the claim of pension in view of Rule 45 of 'Pension Rules 1982'. The Applicant, therefore, filed O.A.973/2015 before this Tribunal. The said O.A. was allowed to be withdrawn with liberty to the Applicant to file fresh representation with Respondent No.3. The Applicant accordingly made representations afresh on 18.05.2017 and 20.06.2017. On 31.07.2017, the Respondent No.3 rejected the said representations for the reasons as indicated in earlier order dated 05.09.2015 stating that the Applicant is not entitled to family pension in view of forfeiture of service consequent to summary dismissal under Article 311(2)(b) of Constitution of India. The Applicant has again approached this Tribunal challenging the order dated 31.07.2017 and prayed for direction for grant of family pension.

4. The Respondent No.3 resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant to the relief of family pension. The Respondent contends that, in view of summary dismissal from service under Article 311(2)(b) of Constitution of India, the Applicant's husband has forfeited the services, and therefore, not entitled to pension. The order of summary dismissal from service has been maintained in appeal and the same was also confirmed by this Tribunal. It is not in dispute that the Applicant's husband was acquitted in Criminal Appeal by Hon'ble High Court. In this behalf, the Respondent contends that the acquittal in Criminal Case has no relevance with the disciplinary action adopted by the Department invoking Article 311(2)(b) of Constitution of India. As the Applicant's husband was found conspired with other Police Officials and helped one of the underworld

Verdict

gangster Firoz Kokani to escape from the Police Custody, the Competent Authority was satisfied that it was not reasonably practicable to hold enquiry and dismissed the Applicant's husband. The dismissal from service entails in forfeiture of his service and was not entitled to pension as provided in Rule 45 of 'Pension Rules 1982'. The Respondent, therefore, contends that the O.A. is devoid of merit and liable to be dismissed.

5. Shri R.M. Kolge, learned Advocate for the Applicant sought to contend that though the order of summary dismissal under Article 311(2)(b) of Constitution of India has attained finality, the husband of the Applicant being acquitted from all these charges in Criminal Case, pensionary benefits cannot be refused. According to him, now the Tribunal is required to consider the effect on the acquittal of husband of the Applicant for grant of family pension to the Applicant. He sought to place reliance on the Judgment of Hon'ble Bombay High Court in **(1998) 3 Mh.L.J. 435 (Anna D. Londhe Vs. State of Maharashtra)**.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that the order of summary dismissal of the Applicant's husband had attained finality, and therefore, subsequent event of acquittal in Criminal Case have no relevance with the consequences of summary dismissal order. He has further pointed out that in case of dismissal from service, the Government employee forfeits the benefit of his service and not entitled to pension.

7. There is no denying that the order of summary dismissal of the Applicant under Article 311(2)(b) of Constitution of India has attained finality. True that, later the Applicant's husband was acquitted in appeal. However, it is hardly of any consequence in so far as the summary dismissal from service of the Applicant's husband is concerned.

8. Article 311(2)(b) is as follows :-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.-

1) No person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

[Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed;

Provided further that this clause shall not apply –

(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the Security of the State, it is not expedient to hold such inquiry.

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final.]"

9. The legality of order of summary dismissal was challenged by filing O.A. in this Tribunal as well as by filing appeal before the Government, but the order of summary dismissal was maintained. Needless to mention that as per

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Article 311(3), the decision of authority that it is not reasonably practicable to hold such enquiry while dismissing the Government servant shall be final. As such, in the facts and circumstances of the case, if it is found that it is not reasonably practicable to hold such enquiry from the point of secrecy, confidentiality of the matter, etc., the Competent Authority is empowered to dismiss the Government servant exercising powers under Article 311(2)(b) of Constitution of India.

10. At this juncture, it would be apposite to see the provisions of 'Pension Rules 1982' particularly Rule Nos.45 and 101 of 'Pension Rules 1982' which are as follows :

"45. Forfeiture of service on dismissal or removal :

Dismissal or removal of a Government servant from a service or post entails forfeiture of his past service."

101. Grant of Compassionate Pension in deserving cases by Government :

- (1) A Government servant who is removed from service shall forfeit his pension and gratuity :

Provided that if the case is deserving of special consideration, Government may sanction a Compassionate Pension not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on compensation pension.

- (2) A compassionate pension sanctioned under the proviso to sub-rule (1) shall not be less than the minimum pension as fixed by Government.
- (3) A dismissed Government servant is not eligible for compassionate pension."

11. Thus, it is quite clear that on dismissal, the Government servant forfeits his past service and not entitled to pension. The perusal of Rule 101 also make it clear that it is only in case of removal from service in deserving and special circumstances, the Government may sanction compassionate pension as stated in proviso to Section 101(1) of 'Pension Rules 1982'. Whereas Rule 101(3) specifically debar dismissed Government servant from getting compassionate pension which is material in the present case. The Applicant's husband was dismissed from service under Article 311(2)(b) of Constitution and it is not a case of removal from service to attract proviso of Section 101(1) of the Rules for grant of compassionate pension.

12. The reliance placed by the learned Advocate for the Applicant on **Anna Londhe's** case is misplaced and it is clearly distinguishable. In that case, the Petitioner was working as Assistant Teacher and removed from service on his conviction under Sections 302, 323, 147 and 149 of Indian Penal Code which was altered by the Hon'ble High Court in appeal and converted into conviction under Section 325 of I.P.C. However, on account of conviction, the appellant was removed from service w.e.f.18.01.1975. The Petitioner challenged the order of removal and matter went upto Hon'ble Supreme Court. While dismissing Special Leave Petition, the Hon'ble Supreme Court granted liberty to the Petitioner to make representation to the Government for grant of compassionate pension under Rule 100 read with 101 of 'Pension Rules 1982'. The representation made by the Petitioner was rejected and it was challenged before the Hon'ble High Court. It is in this context, the Hon'ble High Court considering the direction given by the Hon'ble Supreme Court held that the Government in terms of proviso to Rule 101 ought to have considered the representation as a special case for grant of compassionate pension. Ultimately, the Hon'ble High Court directed for grant of family pension to the widow, who was 74 years old.

13. As such, in that matter, the Petitioner was removed from service and liberty was granted to him to make representation for grant of compassionate pension as per proviso to Rule 101(1) of 'Pension Rules 1982'. Whereas, in the present case, the Applicant's husband was dismissed from service and not removed. This is the material difference, and therefore, Rule 101(1) is not at all attracted to the present case. Indeed, the situation is squarely covered by Rule 101(3) of 'Pension Rules 1982' which puts embargo for grant of compassionate pension in case of dismissal of Government servant. Suffice to say, the decision in **Anna Londhe's** case is not at all applicable to the present situation.

13. In view of above, I have no hesitation to sum-up that subsequent acquittal of the Applicant's husband in Criminal Case have no effect much less for grant of compassionate pension, otherwise it would be amounting to reversal of summary dismissal order or modification therein for grant of compassionate pension which is not permissible in law.

14. The necessary corollary of aforesaid discussion is that the O.A. is devoid of merit and deserves to be dismissed. Hence, the following order.

ORDER

The Original Application stands dismissed with no order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 18.07.2019

Dictation taken by :

S.K. Wamanse.