

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 396 OF 2017

DISTRICT : SINDHUDURG

Shri Rajaram Subrao Patil)...**Applicant**

Versus

The State of Maharashtra & Ors)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Shri N.K Rajpurohit, learned Chief Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 05.05.2017

ORDER


1. Heard Shri M.D Lonkar, learned advocate for the Applicant and Shri N.K Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. The main contentions of the learned advocate for the Applicant are as follows:-

- (i) That the present D.E in which the punishment of removal from service has been imposed on the Applicant by order dated 29.4.2017 was actually started in the year 2004. That

Rh

charge sheet was not acted upon and a fresh charge sheet was issued in the year 2009.

- (ii) The charge sheet was issued by the Chief Conservator of Forest, Territorial, Kolhapur and the Applicant is a Class-II officer in the rank of R.F.O. So the Disciplinary Authority for imposition of major penalty is the State Government.
 - (iii) The Enquiry Officer has held that the Applicant was guilty of charge no. 1 only and he was absolved from remaining charges. This report was not accepted by the Chief Conservator of Forest, who disagreed with the findings of the Enquiry Officer and gave a show cause notice to the Applicant giving his tentative finding that some other charges were also proved against him. However, no such notice was given by the Disciplinary Authority viz. the State Government.
 - (iv) Ultimately, on 27.10.2016, the Chief Conservator of Forest transferred all the files to the Government probably realizing that he was competent only to impose minor penalty and for imposition of major penalty the competent authority is the Government for R.F.O.
3. On instructions from Shri A.M Ludbe, Section Officer, Revenue & Forest Department, Mantralaya, Mumbai, learned C.P.O stated that the file was transferred by Chief Conservator of Forest to the Government on 29.4.2016 and the Government directed the Chief Conservator of Forest to issue a final show cause notice to the Applicant on 22.9.2016, to which reply was received from the Applicant on 19.10.2016. This fact is mentioned in the affidavit in reply dated 29.11.2016 filed on behalf of the State
- 

Government and the Chief Conservator of Forest in O.A 999/2016, which is also filed by the same Applicant and which is pending in this Tribunal.

4. Learned Advocate Shri Lonkar stated that this is a serious violation of the rules that the Disciplinary Authority has to tentatively come to the conclusion if it disagrees with the findings of the Enquiry Officer and the delinquent Government servant is given an opportunity to reply to that. However, in the present case, the Disciplinary Authority did not make any such conclusion and the findings was of the Chief Conservator of Forest. This shows total non-application of mind by the Disciplinary Authority and it has seriously jeopardized the case of the Applicant.

5. Respondent no. 1 has sought concurrence of MPSC, who is Respondent no. 3 about the proposed punishment. The same were received on 29.4.2017. Learned Advocate Shri Lonkar stated that after MPSC's concurrence was received by the Government to impose penalty of removal from service upon the Applicant the approval from Respondent no. 1 was not obtained. Learned C.P.O countered that the approval of the Minister, Forest was obtained on the file in February, 2017 and it was not necessary to obtain his approval again after receipt of concurrence from MPSC. Learned Advocate Shri Lonkar stated that obviously Respondent no. 1 has not considered the advice of MPSC and before the advice was tendered the decision was already taken by Respondent no. 1 at the level of Minister, Forest. This is against the established procedure and violates the rights of the Applicant.

6. Learned Advocate Shri Lonkar stated that the Applicant has already retired from service on 29.4.2017 after office hours which are 5.45 pm on the working day. 30.4.2017 was

RL


Sunday and there was no question of Applicant attending office on that day. Any order passed after 5.45 pm on 29.4.2017 according to Mr Lonkar will be invalid because the Applicant has already retired from service after office hours on 29.4.2017.

Learned C.P.O stated that as per order issued by the Deputy Conservator of Forest, Sawantwadi, the Applicant was to retire in the afternoon of 30.4.2017 and the order of the Government removing him from service was passed on 29.4.2017. The order of the Government has become effective from the date of its issuance.

7. Learned Advocate Shri Lonkar stated that in para 7 (a) & (b) of the Original Application the sequence of events in this regard have been explained which will clearly establish that till the working hours on 29.4.2017 the order was neither issued nor served on the Applicant. Only an email was sent at 5.54 pm on 29.4.2017 communicating the decision of the Government.

A copy of email sent by the Government is also placed on record by learned Advocate Shri Lonkar, which shows that it was issued at 5.54 pm on 29.4.2017. Learned Chief Presenting Officer stated that the order of the Government becomes effective on the date on which it is issued as the Applicant was to retire on 30.4.2017, he was effectively removed from service on 29.4.2017 itself.

8. Learned C.P.O opposed grant of interim relief at this stage, stating that all the issues raised by the Applicant can be considered while taking a final view in this Original Application. Learned C.P.O made available the concerned Mantralaya file for my perusal. However, learned Advocate Shri Lonkar stated that the



Applicant has already challenged the D.E against him which has been kept pending for more than a decade. No decision was taken for years together and on the last day of his retirement, the order has been passed to deprive the Applicant from getting provisional pension. Otherwise there was no reason for the Government to wait till the date of retirement of the Applicant to pass the impugned order and it could have been passed well in advance before the Applicant stood retired.

9. The following facts emerge from the above discussion:-

- (i) the D.E against the Applicant has been prolonged for years together and the Applicant claims that he is not responsible for the delay in conclusion of D.E;
- (ii) the Disciplinary Authority has not given any finding why it disagreed with the report of the Enquiry Officer, which appears to be in violation of the ratio laid down by the Hon. Supreme Court in **YOGINATH D. BAGDE Vs. STATE OF MAHARASHTRA & ORS (1999) 7 SCC 739**. Obviously the satisfaction of a junior officer cannot substitute the satisfaction of the competent authority in such cases;
- (iii) there are judgments of Hon'ble Supreme Court that an order will become effective when it is served and not when it is issued, though learned C.P.O states that there are judgments to the contrary also. However, till the working hours on 29.4.2017, order was neither issued nor served on the Applicant.
- (iv) the orders of the Minister (Forests) were not obtained after receipt of concurrence from M.P.S.C for imposing punishment of removal from service.

Rh

10. I am inclined to grant interim relief in this matter, considering the facts mentioned above. Interim relief in terms of prayer clause 15(e), i.e. pending hearing and final disposal of the present O.A, the impugned order dated 29.4.2017 issued by Respondent no. 1, removing the Applicant from service, is granted and the impugned order is hereby stayed. The Applicant will be entitled to get provisional pension till the disposal of this O.A and the decision in any other D.E which may be pending against the Applicant.
11. Learned C.P.O states that the Applicant has not filed an appeal against the order of dismissal and so this O.A is premature. Considering the facts mentioned above, this fact will not come in the way of grant of interim relief.
12. Issue notice before admission made returnable on 7.6.2017.
13. Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.
14. Applicant is authorized and directed to serve on Respondent intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is put to notice that the case would be taken up for final disposal at the stage of admission hearing.
15. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

16. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file affidavit of compliance and notice.

17. S.O 7.6.2017. Hamdast.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 05.05.2017
Dictation taken by : A.K. Nair.

H:\Anil Nair\Judgments\2017\May 2017\O.A 396.17 Dismissal order challenged DB. Int order
5.5.17.doc

IN

Original Application No.

of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p><i>RA</i> / Learned Advocate for the applicants,</p> <p><u>DATE:</u> 5/5/17</p> <p><u>CORAM:</u> Hon'ble Shri. RAJIV AGARWAL (Vice - Chairman) Hon'ble Shri R. B. MALIK (Member)</p> <p><u>APPEARANCE:</u> Leave note of Shri/Smt. Smt. Punam Mahajan Advocate for the Applicant Shri/Smt. N.K. Rajpurohit C.P.O./P.O. for the Respondents no. 1 to 3. A.V. Bandiwadekar for R. no. 4 to 6. Adj. To..... S.O. to 7/6/17.</p> <p><i>Qud</i></p>	<p><u>05.05.2017</u></p> <p><u>O.A No 916/2016</u></p> <p>Shri M.B Patil & Ors ... Applicants Vs. The State of Maharashtra & Ors... Respondents</p> <p>Affidavit in reply filed by Shri Anand Arjun Mali, Section Officer, in Revenue & Forest Department, Mantralaya, Mumbai is taken on record.</p> <p>S.O to 7.6.2017.</p> <p>Sd/- (Rajiv Agarwal) Vice-Chairman</p> <p>Akn</p>

IN

Original Application No.

of 20

FARAD CONTINUATION SHEET NO.Office Notes, Office Memoranda of Coram,
Appearance, Tribunal's orders or
directions and Registrar's orders

Tribunal's orders

05.05.2017**O.A No 292/2017**

Shri I.A Shaikh ... Applicant
Vs.
The State of Maharashtra & Ors... Respondents

Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Shri N.K Rajpurohit learned Chief Presenting Officer for the Respondents.

Learned Advocate Shri Bandiwadekar stated that Respondents were asked to file affidavit in reply by order dated 13.4.2017 by this Tribunal. However, no affidavit in reply is filed.

Learned Advocate Shri Bandiwadekar stated that the Applicants apprehend that before the affidavit in reply is filed after reopening of this Tribunal the Respondent no. 1 may issue promotion orders which may adversely affect the interest of the Applicants.

Learned C.P.O on instructions from Smt Anjali Varadkar, Desk Officer, in the office of D.G.P, M.S, Mumbai, stated that the Respondents will file affidavit in reply before the vacation Judge within one week. Learned C.P O stated that till then promotion orders will not be issued.

S.O to 11.5.2017. Hamdast.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Akn

DATE: 5/5/17

CORAM:

Hon'ble Shri. RAJIV AGARWAL
(Vice - Chairman)~~Hon'ble Shri R. B. MALIK (Member)~~

APPEARANCE:

Shri/Smt. A.V. Bandiwadekar

Advocate for the Applicant

Shri/Smt. N.K. Rajpurohit

C.P.O./P.O. for the Respondents

Adj. To: S.O to 11/5/17

Hamdast.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
---	-------------------

O.A. No.381 of 2017

Shri A.S. Mahaldar ... Applicant

V/s.

The State of Mah. & ors. ... Respondents

Heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Ms S. Suryawanshi, the learned P.O. for the Respondents.

Issue notice returnable on 16.06.2017.

Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.

Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 and the questions such as limitation and alternate remedy are kept open.

The service may be done by hand delivery / speed post / courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within four weeks. Applicant is directed to file Affidavit of compliance and notice.

S.O. to 16.06.2017. Learned P.O. do waive service.

Sd/-

(R.B. Malik) 5/5/17
Member (J)
05.05.2017

DATE: 5/5/17

CORAM:
~~Hon'ble Shri. RAJIV AGARWAL~~
(Vice-Chairman)
Hon'ble Shri R. B. MALIK (Member) ✓

APPEARANCE:
Shri/Smt. K.R. Jagdale

Advocate for the Appellant
Shri/Smt. S. Suryawanshi
C.P.O / P.O. for the Respondents

Adj. To: S.O. to 16/6/17

Office Notes, Office Memoranda of Coram,
Appearance, Tribunal's orders or
directions and Registrar's orders

Tribunal's orders

O.A. No.374 of 2017

Shri S.S. Kiwade & Ors. ... Applicants

V/s.

The State of Mah. & ors. ... Respondents

Heard Shri J.N. Kamble, the learned Advocate for the Applicants and Shri A.J. Chougule, the learned P.O. for the Respondents.

Issue notice returnable on 16.06.2017.

Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.

Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 and the questions such as limitation and alternate remedy are kept open.

The service may be done by hand delivery / speed post / courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within four weeks. Applicant is directed to file Affidavit of compliance and notice.

S.O. to 16.06.2017. Learned P.O. do waive service.

Sd/-

(R.B. Malik)
Member (J)
05.05.2017

DATE: 5/5/17

CORAM:

Hon'ble Shri. RAJIV AGARWAL
(Vice Chairman)

Hon'ble Shri R. B. MALIK (Member) ✓

APPEARANCE:

Shri/Smt. J.N. Kamble

Advocate for the Applicant

Shri/Smt. A.J. Chougule
C.P.O./P.O. for the Respondents

Adj. To S.O. to 16/6/17

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
---	-------------------

O.A. No.393 of 2017

Smt A.V. Kolapate ... Applicant

V/s.

The State of Mah. & ors. ... Respondents

Heard Shri M.D. Lonkar, the learned Advocate for the Applicant and Ms N.G. Gohad, the learned P.O. for the Respondents.

Issue notice returnable on 16.06.2017.

Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.

Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 and the questions such as limitation and alternate remedy are kept open.

The service may be done by hand delivery / speed post / courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within four weeks. Applicant is directed to file Affidavit of compliance and notice.

S.O. to 16.06.2017. Learned P.O. do waive service.

Sd/-

(R.B. Malik) 05-05-17
Member (J)
05.05.2017

DATE: 5/5/17

CORAM:

Hon'ble Shri. RAJIV AGARWAL
(Vice Chairman)

Hon'ble Shri R. B. MALIK (Member)

APPEARANCE:

Shri/Smt. M.D. Lonkar

Advocate for the Applicant

Shri/Smt. Ms. N.G. Gohad

C.P.O / P.O. for the Respondents

Adj. To:

S.O. to 16/6/17

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. of 20

IN

Original Application No. of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p><u>DATE:</u> 5/5/17</p> <p><u>CORAM:</u> Hon'ble Shri RAJIV AGARWAL <small>(ex-Chairman)</small> Hon'ble Shri R. B. MALIK (Member) J</p> <p><u>APPEARANCE:</u> Shri/Smt. G.A. Bandiwadkar Advocate for the Applicant Shri/Smt. Archana B.K. P.O./P.O. for the Respondents Rejoinder filed by Applicant. Adj. To: Applicant.</p> <p>S.O. to 13/6/17. FH OA is admitted. <i>[Signature]</i></p>	<p><u>O.A. No.291 of 2017</u></p> <p>Smt Dr. P.D. Dalvi ... Applicant</p> <p>V/s.</p> <p>The State of Mah. & ors. ... Respondents</p> <p>Heard Shri G.A. Bandiwadkar, the learned Advocate for the Applicant and Smt Archana B.K., the learned P.O. for the Respondents.</p> <p>Affidavit-in-Rejoinder is taken on record. The Original Application is admitted and appointed for final hearing on 13.06.2017.</p> <p>Sur-Rejoinder, if any, must be filed on that day and not thereafter.</p> <p>S.O. to 13.06.2017.</p> <p>Sd/- (R.B. Malik) 05-05-17 Member (J) 05.05.2017</p> <p>(vsm)</p>

2

Office Notes, Office Memoranda of Coram,
Appearance, Tribunal's orders or
directions and Registrar's orders

Tribunal's orders

O.A. No.130 of 2017

Shri S.P. Kumavat ... Applicant
V/s.
The State of Mah. & ors. ... Respondents

Heard Shri S.S. Dere, the learned Advocate for the Applicant and Ms S. Suryawanshi, the learned P.O. for the Respondents.

There is a clear element of disapproval to be recorded as far conduct of the Respondents are concerned. Yesterday I was told that Un-affirmed copy of the Affidavit-in-Reply would be given to Shri S.S. Dere, the learned Advocate for the Applicant but that word was not kept and the copy has been furnished to him just now. Option of taking action including imposition of cost is left open even as the matter may be adjourned today.

However, the issue remains surviving is being recorded Applicant's placement during the period of suspension. A communication from the Deputy Director, Shri Tanaji Mane, dated 02.05.2017 tends to suggest that the Applicant would be on deputation at Pune during suspension. As of today, I merely recorded this aspect of the matter and for this novel concept, I express no final opinion. However, as of today, in my opinion the place of headquarter during the suspension should be the same which he was stationed at when he was suspended. The said place will be "उपसंचालक आरोग्य सेवा मुंबई मंडळ, ठाणे यांना दिनांक २५/१०/२०१७ पासून शासकीय सेवेतून निलंबित करित आहोत."

With this, the interim order and with the directions to the Respondents that the Affidavit-in-Reply must be filed during the course of the day. The matter shall then stands adjourned for final hearing because the Applicant does not want to file Rejoinder.

S.O. to 08.06.2017.

Sd/-

(R.B. Malik)
Member (J)
05.05.2017

vsm

DATE: 5/5/17

CORAM:

Hon'ble Shri. RAJIV AGARWAL
(Vice-Chairman)

Hon'ble Shri R. B. MALIK (Member) J

APPEARANCE:

Shri/Smt. S.S. Dere

Advocate for the Applicant

Shri/Smt. Ms. S. Suryawanshi

P.O. for the Respondents

Reply filed by R.No.122

Adj. To S.O. to 8/6/17 FH

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
---	-------------------

O.A. No.383 of 2017**Shri J.K. Bhosale****... Applicant****V/s.****The State of Mah. & ors.****... Respondents**

Heard Shri M.D. Lonkar, the learned Advocate for the Applicant and Ms N.G. Gohad, the learned P.O. for the Respondents.

Issue notice returnable on 16.06.2017.

Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.

Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 and the questions such as limitation and alternate remedy are kept open.

The service may be done by hand delivery / speed post / courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within four weeks. Applicant is directed to file Affidavit of compliance and notice.

S.O. to 16.06.2017. Learned P.O. do waive service.

Sd/-

(R.B. Malik)
Member (J)
05.05.2017

DATE: 5/5/17

CORAM:

~~Hon'ble Shri. RAVI AGARWAL~~
(Vice-Chairman)

Hon'ble Shri R. B. MALIK (Member) ✓

APPEARANCE:

Shri/Smt. M.D. Lonkar

Advocate for the Applicant

Shri/Smt. Ms. N.G. Gohad

C.P.O / P.O. for the Respondents

Adj. To S.O. to 16/6/17

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No.

of 20

IN

Original Application No.

of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p align="center"><u>O.A. No.391 of 2017</u></p> <p>Shri B.N. Wakchawre ... Applicant</p> <p align="center">V/s.</p> <p>The State of Mah. & ors. ... Respondents</p> <p>Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms S. Suryawanshi, the learned P.O. for the Respondents.</p> <p>The Applicant seeks urgent relief for stay of the order herein impugned, whereby the refund is sought to the extent of Rs.1,73,648/-. There is a sad history hereto. The Applicant serving as a Police Constable while in service met with an accident resulting into 87% of physical disability. Relying upon Section 47 of the Persons with the Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. He has brought O.A. 176/2017 (Shri Balasaheb Nana Wakchawre V/s Commissioner of Police, Mumbai & 2 Ors.). I have perused a copy of that OA and handed it back to the learned Advocate for the Applicant. It seems that after receipt of the process in that OA, the order herein impugned was made. Although Ms S. Suryawanshi, the learned P.O. urges for time to file Affidavit-in-Reply in my opinion, the facts are such that I cannot keep the Applicant unprotected. The learned P.O. wanted the matter to be listed before the Vacation bench. Even then I cannot leave the Applicant unprotected.</p> <p>I shall grant interim relief and then, if so advised and after following the procedure, the Respondents are free to do what they feel like doing.</p> <p>Order herein impugned is hereby stayed till the date next to the filing of the Affidavit-in-Reply.</p> <p align="right">P.T.O.</p>

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p>DATE: <u>5/5/17</u></p> <p>CORAM:</p> <p>Hon'ble Shri. RAJIV AGARWAL (Vice-Chairman)</p> <p>Hon'ble Shri R. B. MALIK (Member) J</p> <p>APPEARANCE:</p> <p>Shri/Smt. <u>A.V. Bendixadaka</u> Advocate for the Appellant</p> <p>Shri/Smt. <u>U.S. Suryawansi</u> C.P.O./P.O. for the Respondents</p> <p>Adj. To <u>S.O. to 19/6/17.</u> <u>@17</u></p>	<p style="text-align: center;">-2-</p> <p>Issue notice returnable on 19.06.2017.</p> <p>Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.</p> <p>Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.</p> <p>This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 and the questions such as limitation and alternate remedy are kept open.</p> <p>The service may be done by hand delivery / speed post / courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within four weeks. Applicant is directed to file Affidavit of compliance and notice.</p> <p>S.O. to 19.06.2017. Learned P.O. do waive service. Hamdast.</p> <p style="text-align: right;">Sd/- (R.B. Malik) Member (J) 05.05.2017</p> <p>(vsm)</p>

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.376 OF 2017

DISTRICT : THANE

Shri Sudarshan D. Todankar.)...**Applicant**

Versus

1. The State of Maharashtra & Anr.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mr. N.K. Rajpurohit, Chief Presenting Officer for Respondent No.1.

Mr. Adsule, Advocate for Respondent No.2.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 05.05.2017

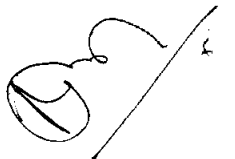
ORDER

1. The learned CPO Mr. N.K. Rajpurohit is being instructed by Mr. E.K. Sahane, Desk Officer, Urban

2


Development Department.

2. The matter is placed for consideration of interim relief. As of today, no interim relief is being granted, and therefore, I shall be as economical as possible in the matter of expression. The Applicant is on deputation with the Respondent No.2 and now, he has been transferred by the State at Shrirampur, District Ahmednagar. The issues involved herein will be the right and if so, the extent thereof of a depute, the power of the principal employer in the matter of deputation. All those aspects of the matter will have to be taken into consideration. The file considered relevant by the Respondent No.1 has been brought and the inspection was furnished to Mr. Bandiwadekar. Looking to all those aspects of the matter as of today, it will not be possible for me to go through the various Judgments that the parties rely on, on a short point of the interim relief, I am of the opinion that, unless I am convinced that the right of the Applicant as depute was such as to give rise to his continued holding of the position with the 2nd Respondent which I am in no position to hold today, no such order can be passed. However, even as the matter is being adjourned, it is made clear that, all concerned have to note that just like any other judicial forum, this forum is also clothed with the power to grant



mandatory relief even at interlocutory stage and secondly, if the Applicant was so advised, by following proper procedure, he may get the matter listed before the Vacation Bench. But this is not a direction.

3. Issue notice returnable on 6th June, 2017.
4. Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.
5. Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.
6. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988 and the questions such as limitation and alternate remedy are kept open.
7. The service may be done by hand delivery / speed post / courier and acknowledgement be obtained



and produced along with affidavit of compliance in the Registry within four weeks. Applicant is directed to file Affidavit of compliance and notice.

8. S.O. to 6th June, 2017. Hamdast.

Sd/-

(R.B. Malik)
Member-J
05.05.2017

05.05.17

Mumbai

Date : 05.05.2017

Dictation taken by :

S.K. Wamanse.

E:\SANJAY WAMANSE\JUDGMENTS\2017\5 May, 2017\O.A.376.17.w.5.2017.Transer.doc

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. of 20

IN

Original Application No. of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p>DATE: 5/5/17</p> <p>CORAM: Hon'ble Shri. RAJIV AGARWAL (Vice-Chairman) Hon'ble Shri R. B. MALIK (Member)</p> <p>APPEARANCE: Shri/Smt. M.D. Lonkar Applicant Present. Advocate for the Applicant Shri/Smt. N.K. Rajpurohit C.P.O./P.O. for the Respondents holding for R.S. Gaikwad. P.O. 6/6/17 Adj. To</p>	<p><u>Suo-motu C.A.3/2017 in O.A.73/2017</u></p> <p>Mr. B.J. Patil ... Applicant Vs. The State of Mah. & ors. ... Respondents</p> <p>Applicant with Mr. M.D. Lonkar, the learned Advocate for the Applicant and Mr. N.K. Rajpurohit, the learned CPO holding for Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.</p> <p>The Deputy Secretary Mr. S.D. Kharat in the Department of Skill Development instructed the learned CPO.</p> <p>The learned CPO on instructions makes a statement that without prejudice to the rights of carrying the matter further before the higher forum, the order in question shall be complied with within four weeks from today.</p> <p>Adjourned to 6th June, 2017. Hamdast.</p> <p style="text-align: right;">Sd/- (R.B. Malik) Member (J) 5/5/17 05.05.2017</p> <p style="text-align: center;">(skw)</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. _____ of 20 _____

IN

Original Application No. _____ of 20 _____

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p>DATE : <u>5/5/17</u></p> <p>CORAM : Hon'ble Justice Shri A. H. Joshi (Chairman) Hon'ble Shri M. Rameshkumar (Member) <i>Rajiv Ambekar</i></p> <p>APPEARANCE : Shri/Smt. : <u>A.G. Ambekar</u> Advocate for the Applicant Shri/Smt. : <u>S. Suryawanshi</u> C.P.O / P.O. for the Respondent/s</p> <p>Adj. To <u>12/6/17. Hamdast</u> <i>HTE</i></p>	<p><u>05.05.2017</u></p> <p align="center"><u>O.A No 309/2017</u></p> <p>Shri P.B Wankhede ... Applicant Vs. The State of Maharashtra & Ors... Respondents</p> <p>Heard Shri A.G Ambekar, learned advocate for the Applicant and Ms Savita Suryavanshi, learned Presenting Officer for the Respondents.</p> <p>Learned Advocate Shri Ambekar stated that by order dated 26.4.2017 the issue of interim relief was kept open. He, therefore, prayed for grant of interim relief.</p> <p>Learned Presenting Officer argued that all the issues now being raised by the Applicant that Hon'ble Aurangabad Bench of the Bombay High Court has granted interim relief to similarly situated persons, was already considered by this Tribunal while passing order dated 26.4.2017.</p> <p>Nothing has changed after that order was passed and there is no ground that necessitate grant of interim relief.</p> <p>I tend to agree with the learned Presenting Officer.</p> <p>S.O to 12.6.2017. Hamdast.</p> <p align="right">Sd/- (Rajiv Aggarwal) Vice-Chairman</p> <p>Akn</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No.

of 20

IN

Original Application No.

of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p><u>DATE:</u> 5/5/17</p> <p><u>CORAM:</u> Hon'ble Justice Shri A. H. Joshi (Chairman) Hon'ble Shri M. Kantosh Kumar (Member)</p> <p><u>APPEARANCE:</u> Shri/Smt. Appl. in person Advocate for the Applicant Shri/Smt. H.S. Gohad C.P.O./P.O. for the Respondent/s</p> <p>Adj. To. 12/6/17.</p> <p style="text-align: right;"><i>[Signature]</i></p>	<p><u>05.05.2017</u></p> <p><u>O.A No 369/2017</u></p> <p>Shri S.S Gaikwad ... Applicant Vs. The State of Maharashtra & Ors... Respondents</p> <p>Heard Applicant in person and Ms Neelima Gohad, learned Presenting Officer for the Respondents.</p> <p>This matter was heard on 2.5.2017 and it was mentioned in para 3 of the order that, order passed in O.A no 309/2017 on 26.4.2017 will govern the present Original Application also.</p> <p>Today's order in O.A no 309/2017 will govern the present Original Application also.</p> <p>S.O to 12.6.2017.</p> <p style="text-align: right;">Sd/- (Rajiv Agarwal) Vice-Chairman</p> <p style="text-align: left;">Akn</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No. of 20

IN

Original Application No. of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p>DATE: <u>5/5/17</u></p> <p>CORAM: Hon'ble Justice Shri A. H. Joshi (Chairman) Hon'ble Shri M. Ranjeshkumar (Member) A</p> <p>APPEARANCE: Shri/Smt. <u>None for the app.</u> Advocate for the Applicant Shri/Smt. <u>Archana B.K.</u> C.P.O./P.O. for the Respondent/s</p> <p>Adj. To <u>6/6/2017.</u></p> <p style="text-align: right;"><i>AKN</i></p>	<p><u>05.05.2017</u></p> <p><u>O.A No 276/2017</u></p> <p>Shri S.D Manjare ... Applicant Vs. The State of Maharashtra & Ors... Respondents</p> <p>None for the Applicant. Heard Ms Archana B.K, learned Presenting Officer for the Respondents.</p> <p>Learned Presenting Officer is instructed by Shri S.R Sonawane, Dy S.P, SRPF Group-2.</p> <p>Learned Presenting Officer has placed on record copy of order dated 4.5.2017 addressed by Commandant to the Joint Director, Health Services, Mumbai requesting to examine the Applicant with a view to ascertain whether he is medically fit for appointment to the post of Police Constable.</p> <p>The matter may be placed for further hearing on 6.6.2017.</p> <p style="text-align: right;">Sd/- (Rajiv Agajwal) Vice-Chairman</p> <p style="text-align: center;">Akn</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

M.A./R.A./C.A. No.

of 20

IN

Original Application No.

of 20

FARAD CONTINUATION SHEET NO.

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p>DATE: <u>5/5/17</u></p> <p>CORAM: Hon'ble Justice <u>Shri A. H. Joshi (Chairman)</u> Hon'ble <u>Shri M. Rameshkumar (Member) A</u></p> <p>APPEARANCE: <u>Shri/Smt. K.R. Jagdale</u> Advocate for the Applicant <u>Shri/Smt. Archana B.K.</u> C.P.O./ P.O. for the Respondent/s</p> <p>Adj. To <u>13/6/17: Hamdast</u></p>	<p><u>05.05.2017</u></p> <p align="center"><u>C.A 1/207 in O.A No 591/2015</u></p> <p>Shri B.R Sangle ... Applicant Vs. The State of Maharashtra & Ors... Respondents</p> <p>Heard Shri K.R Jagdale, learned advocate for the applicant and Ms Archana B.K, learned Presenting Officer for the Respondents.</p> <p>Learned Advocate Shri Jagdale stated that all the pensionary dues of the Applicant has been paid to him, subject to verification of correctness of the calculation, the Applicant may not have any grievance in that respect.</p> <p>However, this Tribunal has also directed in the judgment dated 28.7.2016 in O.A 591/2015 to pay the back wages for the period when the Applicant was out of service. That amount has not yet been paid to the Applicant.</p> <p>Learned Presenting Officer stated that she has no instructions in this regard.</p> <p>Respondents may file an affidavit on the next date clarifying whether the back wages for the period when the Applicant was out of service have been paid to him or not and if not why not.</p> <p>S.O to 13.6.2017. Hamdast.</p> <p align="right">Sd/- (<u>Rajiv Agarwal</u>) Vice-Chairman</p> <p>Akn</p>

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 382 OF 2017**

DISTRICT : NASIK

Shri Ashok Namdevrao Gaikwad

)...Applicant

Versus

The State of Maharashtra & Ors

)...Respondents

Shri K.R Jagdale, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 05.05.2017

ORDER


1. Heard Shri K.R Jagdale, learned advocate for the Applicant and Ms Archana B.K, learned Presenting Officer for the Respondents.
2. A Department Enquiry has been ordered against the Applicant by order dated 17.4.2017 issued by Respondent no. 2. The charge against the Applicant in the D.E is that he allowed a private person to work on his behalf in his office in violation of circulars issued by Respondent no. 2 on 9.12.1992 and 6.5.2003 prohibiting any officer from employing any private person to work on his behalf in Government offices.
3. It appears that one Shri Shashikant Kalekar, had asked for illegal gratification of Rs. 1000/- for giving copy of some documents which was available in the office of the Applicant. The



claim of the Applicant is that he does not have any connection with the said Shri Kalekar and has never asked him to work on his behalf in his office. According to the Applicant the whole proceedings have been instituted without any evidence against him. If a third person has accepted money from a member of public, the Applicant cannot be held responsible for that act. The Applicant, is therefore, praying that the D.E proceedings may be stayed till the reply of the Respondents disclosing the prima facie material against the Applicant is filed before this Tribunal.

4. Learned Advocate for the Applicant further stated that a criminal case has also been filed against the Applicant bearing C.R no 3110/2015 in Sinnar Police Station, under the Prevention of Corruption Act, 1988. The Applicant has challenged the same in Criminal Writ Petition no 742/2016 before the Hon. Bombay High Court and by order dated 28.4.2016 the Hon'ble High Court has allowed the investigation to continue, but have restrained the Police from filing final report qua the Applicant, till the Writ Petition is decided by the Hon'ble High Court.

5. Learned Counsel for the Applicant also relied on the judgment of the Hon'ble Bombay High Court in Criminal Writ Petition no 1377/2015, wherein by order dated 22.2.2016, the Hon'ble High Court has quashed the FIR filed against a similarly situated person who was alleged to have taken bribe through a private person who was allowed to work in the office of the Petitioner in that case. Learned Advocate for the Applicant stated that the facts are almost identical and there is very good chance that the FIR against the Applicant will also be quashed by the Hon. High Court. Learned Advocate for the Applicant, therefore, prayed that till affidavit in reply is filed by the Respondents, the D.E should not be proceeded further.



6. Learned Presenting Officer has relied on the following judgments of the Hon. Supreme Court.

- (i) In **DELHI CLOTH & GENERAL MILLS Ltd Vs. KUSHAL BHAN, AIR 1960 SC 806 (V 47 C 135)**, Hon. Supreme Court has held that if D.E and criminal trial are going on same facts, refusal of employer to stay till decision of the Court will not be violative of principles of natural justice.
- (ii) In **STATE OF RAJASTHAN Vs. B.K MEENA & ORS : AIR 1988 SC 2118**, Hon'ble Supreme Court has held that criminal case and departmental enquiry can go on simultaneously.
- (iii) In **DEPOT MANAGER, A.P STATE ROAD TRANSPORT CORPORATION Vs. MOHD. YOUSUF JMIYA & ORS (1997) 2 SCC 699**, Hon'ble Supreme Court has held that no inflexible guidelines can be laid down about permissibility of continuing D.E when a criminal trial is also pending.

All the cases cited by the learned Presenting Officer has only one ratio in common, that D.E and criminal case can go together.

7. The Applicant is seeking interim relief on the ground that there is absolutely no evidence against him. Considering the arguments of the learned advocate for the Applicant, there appears to be prima facie grounds for grant of interim relief.

8. Respondent no. 2 will not proceed with the Departmental Enquiry proceedings against the Applicant till the next date.

9. Issue notice before admission made returnable on 15.6.2017.

10. Tribunal may take the case for final disposal at this stage and separate notice for final disposal need not be issued.

24

11. Applicant is authorized and directed to serve on Respondent intimation/notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is put to notice that the case would be taken up for final disposal at the stage of admission hearing.

12. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

13. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file affidavit of compliance and notice.

14. S.O 15.6.2017. Hamdast.

Sd/-
(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai
Date : 05.05.2017
Dictation taken by : A.K. Nair.