

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

Tribunal's orders

06.10.2016

M.A 304/2016 in O.A No 238/2015

Miss Varsha D. Bhataria ... Applicant
Vs.
The State of Maharashtra & Ors... Respondents

Heard Ms Swati Manchekar, learned advocate for the Applicant, Shri K.B. Bhise learned Presenting Officer for the Respondents 1 & 2 and Shri Sachin Pawar, learned advocate for Respondent no. 3.

The point is as to whether the proposed amendment survives the test of law of amendment. Our finding is in the affirmative for the following reasons.

We may mention at the outset that the learned P.O wants some time to be given to him to file his affidavit in reply. However, in our opinion sufficient time was already there at his disposal and such M.A s cannot be kept pending almost unnecessarily for long time.

A very detailed delve into the factual aspect of the O.A as well as M.A is really not necessary and it would suffice to mention that by way of amendment additions are sought to be made in para 7 of the O.A, such as it stands. We do not think it is anything more than amplification of plea already raised. Granting all latitudes to the contesting Respondents even if it adds new grounds we disagree that it will alter the nature of the O.A. If that be so, all the Respondents will have opportunity to meet the cause sought to be introduced hereby, by filing additional affidavit in reply.

Therefore, this M.A is allowed. Amendment as per Schedule hereto, to be carried out within a period of two working days from today. Consolidated copy be filed and copy furnished to the learned P.O and advocate for private Respondent for them to file additional affidavit, if need be. No order as to costs.

O.A to be placed on 15.10.2016.

DATE: 6/10/16

CORAM:

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

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

APPEARANCE:

Shri/Smt. Ms S.P. Manchekar

Advocate for the Applicant

Shri/Smt. R. B. Bhise

Presenting Officer for the Respondents No 1, 2 & 3.

Shri Sachin Pawar

Advocate for Respondent No. 3.

Adj. P.O.

M.A. is Allowed.

O.A. to be placed on

15/10/16.

PH

Sd/-

(R.B. Malik)
Member (J)

Sd/-

(Rajiv Agarwal)
Vice-Chairman

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

Original Application No. _____ of 20 _____ DISTRICT _____
..... Applicant/s

(Advocate)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
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06.10.2016

O.A No 945/2016

Shri G.M Madake ... Applicant
Vs.
The State of Maharashtra & Ors... Respondents

Heard Shri M.D Lonkar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

Learned Presenting Officer sought two weeks' time to file short affidavit in reply. In fact, in this case, no affidavit of any kind is required when the facts are absolutely clear. On the date when the Applicant retired, he was not facing any Departmental Enquiry. In the short affidavit in reply this issue it could have been contended that information furnished by the Applicant is wrong and a D.E was pending against him. In the absence of any affidavit, it is presumed that the assertion of the Applicant that he was not facing any D.E nor any enquiry has been instituted till today is correct. The Respondents have no legal authority to withhold any of his pensionary dues.

In the circumstances, the interim relief sought by the Applicant that the Respondents be directed to release forthwith his gratuity in full is granted. Respondents will ensure that gratuity of the Applicant is released within a period of one month from the date of this order. Respondents are also directed to file affidavit in reply before the next date.

S.O to 10.11.2016. Hamdast.

DATE: 6/10/16

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. K.S. Gaikwad

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

Adj. To. 10/11/16

Sd/-
(Rajiv Agarwal)
Vice-Chairman

(Advocate

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date : 06.10.2016.</p> <p>C.A.No.77 of 2016 in O.A.No.763 of 2014</p> <p>Shri U.D. Kharat & Ors. ...Applicants</p> <p>Vs.</p> <p>The State of Mah. & Ors. ...Respondents</p> <p>1. Heard Ms. S.P. Manchekar, the learned Advocate for the Applicants and Shri A.J. Chougule, the learned Presenting Officer for the Respondents.</p> <p>2. The order dated 8.6.2016 of which the breach is alleged itself was based on the judgement of the Hon'ble Division Bench of Hon'ble Chief Justice in <u>Meena Kuwalekar's</u> case referred to therein and there is no reason why so much of time should have been taken in the matter of compliance.</p> <p>3. Learned Presenting Officer for the Respondents furnishes for our perusal the communication dated 4.10.2016 which was just the other day apparently seeking guidance from the Principal Secretary, Revenue and Forest Department.</p> <p>4. Learned Presenting Officer for the Respondents submits that it involved policy decision and therefore time is being consumed. We found ^{find} that there is no question of any policy decision.</p>

[P.T.O.]

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
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The only issue is compliance with the order of this Tribunal which was based on the judgment of the Hon'ble High Court. We therefore, direct ^{show cause} notice to issue to the Respondents hereof returnable on 20.10.2016.

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

6. 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.. Respondents are put to notice that the case would be taken up for final disposal at the stage of admission hearing.

7. 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.

8. 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.

9. S.O. to 20.10.2016.

DATE: 6/10/16

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

APPEARANCE:
Shri/Ms. S. P. Manchekar

Advocate for the Applicant
Shri/Smt. A. J. Chougale
C.P.O./P.O. for the Respondents

Adj. To: S.O. to 20/10/16

As per Hon'ble Court order dated 6.10.2016
advocate / Parties has collected notice/s for
service on Respondents on 7.10.2016

[Signature]
7.10.2016

Sd/- (R.B. Malik) Member (J)	Sd/- (Rajiv Agarwal) Vice-Chairman
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sba

.....)
versus

The State of Maharashtra and others

..... Respondent/s

Presenting Officer.....)

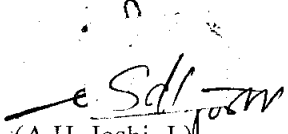
Notes, Office Memoranda of Coram,
Appearance, Tribunal's orders or
actions and Registrar's orders

Tribunal's orders
C.A. No.58 of 2016 in O.A. No.422 of 2014

Shri S.B. Pawaskar ..Applicant
Vs.
The State of Maharashtra & Ors. ..Respondents

Heard Shri B.A. Bandiwadkar, learned Advocate
for the Applicant and Miss Neelima Gohad, learned
Presenting Officer for the Respondents.

2. List before Division Bench on 24.10.2016
presided over by me.


(A.H. Joshi, J.)
Chairman
6.10.2016

(sgj)

6/10/16

Justice Shri A. H. Joshi (Chairman)

Shri M. Rameshkumar (Member)

CE:

B.A. Bandiwadkar

for the Applicant

A.G. Gohad

P.O. for the Respondent/s

24/10/16



[P.T.O.]

The State of Maharashtra and others

..... Respondent/s

Presenting Officer.....)

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

Tribunal's orders
C.A. No.64 of 2016 in O.A. No.179 of 2013

Miss. L.T. Khopkar ..Applicant
Vs.
The State of Maharashtra & Ors. ..Respondents

Heard Shri B.A. Bandiwadekar, learned Advocate
for the Applicant and Smt. Archana B.K., learned
Presenting Officer for the Respondents.

2. Ld. PO states as follows:

- (a) That the affidavits of contemnors are received.
- (b) However, on second thought she is of the view that affidavits are not properly drafted It is her fault and she undertakes to redraft fresh affidavits, and prays for one week's time.

3. S.O. to 26.10.2016.

Sd/
(A.H. Joshi, J.)
Chairman
6.10.2016

(sgj)

TE: 21/10/16
Shri R.B. Malik (M/J)
~~Shri A.H. Joshi (Chairman)~~
~~Shri Ramoshkar (Member) A~~
B.A. Bandiwadekar
Applicant
Archana B.K.
for the Respondent/s

26/10/16.
[Signature]

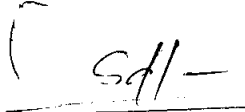
(Advocate

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
<p>DATE: <u>6/10/16</u></p> <p>CORAM: <u>Shri R.B. Malik (M)</u> Hon'ble Justice <u>Shri A. M. Joshi (Chairman)</u> Hon'ble Shri M. Ramesh Kumar (Member) A</p> <p>APPEARANCE: Shri/Smt. : <u>Punam Mahajan</u> Advocate for the Applicant Shri/Smt. : <u>K.S. Gaikwad</u> C.P.O / P.O. for the Respondent/s</p> <p>Adj. To <u>22/10/16</u></p> <p style="text-align: right;"><i>BYE</i></p>	<p>Date : 06.10.2016.</p> <p style="text-align: center;">O.A.No.916 of 2016</p> <p>Shri M.B. Patil & Ors.Applicants</p> <p style="text-align: center;">Vs.</p> <p>The State of Mah. & Ors.Respondents</p> <p>1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.</p> <p>2. The application for adjournment made by the learned P.O. for the Respondents is strongly opposed by the learned Advocate for the applicant Smt. Punam Mahajan. Leave is reserved to seek interim relief as mentioned in my order dated 16.9.2016.</p> <p>3. S.O. to 27.10.2016.</p> <div style="text-align: right;">  <u>(R.B. Malik) 06.10.16</u> Member (J) </div> <p style="text-align: center;">sba</p> <p style="text-align: right;">[P.T.O.]</p>

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

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

Tribunal's orders

Date : 06.10.2016.

O.A.No.253 of 2016

Shri B.D. Koli ...Applicant

Vs.

The State of Mah. & Ors. ...Respondents

1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Smt. S. Suryawanshi, the learned Presenting Officer for the Respondents.

2. At the request of learned P.O. for the Respondents Smt. S. Suryawanshi, adjourned to 13.10.2016.

DATE: 06/10/2016

CORAM:

Hon'ble Justice Shri A. H. Joshi (Chairman)

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

APPEARANCE:

Shri/Smt. Punam Mahajan

Advocate for the Applicant

Shri/Smt. S. Suryawanshi

C.P.O./P.O. for the Respondent/s

Adj. To 13/10/2016

(B)

sba

Sd/- 06.10.16
(R.B. Malik)
Member (J)

(P.T.O)

versus

The State of Maharashtra and others

..... Respondent/s

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
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Date : 06.10.2016.

O.A.No.384 of 2016

Shri K.P. Chaudhari

...Applicant

Vs.

The State of Mah. & Ors.

...Respondents

1. Heard Smt. Punam Mahajan, the learned Advocate for the Applicant and Smt. Archana B.K., the learned Presenting Officer for the Respondents.

2. Learned Advocate for the Applicant Smt. Punam Mahajan submits that the Applicant does not want to file affidavit-in-rejoinder. O.A. is admitted and appointed for final hearing on 17.10.2016.

3. S.O. to 17.10.2016.

Sd/- R.B. Malik
6-10-16
(R.B. Malik)
Member (J)

sba

DATE: 06/10/2016

CORAM:

Hon'ble Justice Shri A. H. Joshi (Chairman)

Hon'ble Shri M. Rameshkumar (Member) AJ

APPEARANCE:

Shri/Smt.: Punam Mahajan

Advocate for the Applicant

Shri/Smt.: Archana B.K.

C.P.O./P.O. for the Respondent/s

Adj. To

17/10/2016

(R)

PTO

Date : 06.10.2016.

O.A.No.976 of 2016 with M.A.No.400 of 2016

Shri U.J. Marathe

...Applicant

Vs.

The State of Mah. & Ors.

...Respondents

1. Heard Shri Irfan Shaik, the learned Advocate holding for Shri A.H. Fataugare, the learned Advocate for the Applicant and Smt. Archana B.K., the learned Presenting Officer for the Respondents.

2. Issue notice returnable on 20.10.2016.

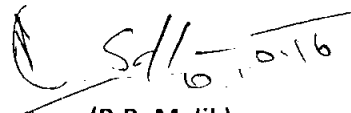
3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.

4. 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.

5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988.

6. 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.

7. S.O. to 20.10.2016.



(R.B. Malik)
Member (J)

sba

DATE: 06/10/2016

CORAM:

Hon'ble Justice Shri A. H. Joshi (Chairman)

Hon'ble Shri M. Rameshkumar (Member) 

APPEARANCE:

Shri/Smt.: Irfan Shaik holding
for Shri A.H. Fataugare
Advocate for the Applicant

Shri/Smt.: Archana B.K.
CPO/P.O. for the Respondent/s

Adj. To: 20/10/2016 

Date : 06.10.2016.

O.A.No.970 of 2016

Shri B.L. Kandekar

...Applicant

Vs.

The State of Mah. & Ors.

...Respondents

1. Heard Shri K.R. Jagdale, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondents.
2. Issue notice returnable on 27.10.2016.
3. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall not be issued.
4. 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.
5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988.
6. 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.
7. S.O. to 27.10.2016.

DATE: 06/10/2016

CORAM:

Hon'ble Justice Shri A. H. Joshi (Chairman)

Hon'ble Shri M. Rameshkumar (Member)

APPEARANCE:

Shri/Smt. : K. R. Jagdale

Advocate for the Applicant

Shri/Smt. : K. S. Gaikwad.

Presenting Officer for the Respondent/s

Adj. To 27/10/2016

(8)

Sd/-
6.10.16
(R.B. Malik)
Member (J)

Date : 06.10.2016.

O.A.No.964 of 2016

Shri S.J. Patil

...Applicant

Vs.

The State of Mah. & Ors.

...Respondents

1. Heard Shri M.D. Lonkar, the learned Advocate for the Applicant and Smt. S. Suryawanshi, the learned Presenting Officer for the Respondents.

2. Issue notice returnable on 27.10.2016.

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

4. 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.

5. This intimation/notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988.

6. 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.

7. S.O. to 27.10.2016.

DATE: 06/10/2016

CORAM:

Hon'ble Justice Shri A. H. Joshi (Chairman)

Hon'ble Shri M. Kameshkumar (Member) A
R.B. Malik

APPEARANCE:

Shri/Smt. : M.D. Lonkar

Advocate for the Applicant

Shri/Smt. : S. Suryawanshi

P.O./P.O. for the Respondent/s

*Adj. To. 27/10/2016

(R)

(R.B. Malik)
Member (J)

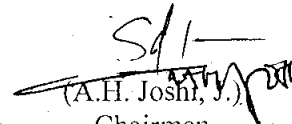
(Presenting Officer.....)

Office Notes, Office Memoranda of Coram,
Appearance, Tribunal's orders or
directions and Registrar's ordersTribunal's orders
C.A. No.101 of 2015 in O.A. No.1086 of 2012Shri L.G. Sawant & Ors. ..Applicants
Vs.
The State of Maharashtra & Ors. ..Respondents

Heard Miss S.P. Manchekar, learned Advocate for the Applicant and Shri M.V. Thorat, learned Special Counsel for the Respondents.

2. Shri Thorat, Ld. Special Counsel states that the writ petition by the State is dismissed and the order would be tendered on the next date.

3. S.O. to 26.10.2016.


(A.H. Joshi, J.)
Chairman
6.10.2016

(sgj)

DATE: 6/10/16

CORAM:

Hon'ble Justice Shri A. H. Joshi (Chairman)

Hon'ble Shri M. Rameshkumar (Member) A

APPEARANCE:

Shri/Smt.: S.P. Manchekar

Advocate for the Applicant

Shri/Smt.: M.V. Thorat
C.P.O./P.O. for the Respondent/sAdj. To: 26/10/16

[P.T.O.]

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
ORIGINAL APPLICATION NO.813 OF 2015**

Shri V.M. Pharande & Ors.

..Applicants

Versus

The State of Maharashtra & Ors.

..Respondents

Shri M.D. Lonkar – Advocate for the Applicants

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman

DATE : 6th October, 2016

ORDER

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicants and Smt. Archana B.K., learned Presenting Officer for the Respondents.
2. Affidavit in reply filed by Shri Dattatraya N. Joshi, Assistant Director in the office of Social Forestry, Sangli is filed by him for and on behalf of all the respondents.
3. Perused the affidavit in reply. For all purposes the entitlement of the applicants for the benefit of Govt. decision dated 15.6.1995 is admitted by the respondents.
4. It is the duty of respondent no.4 being of head of the Social Forestry Division, Kolhapur to ensure compliance of the order. It transpires that decision to extend the benefit is to be taken and implemented by respondent no.4.



Therefore, it is necessary to call the respondent no.4 and explain the background, leading to make commitment however failing to implement.

5. Ld. PO was directed to furnish the name of respondent no.4. The name furnished by Ld. PO is Shri T.P. Patil, Chief Conservator of Forest & Joint Director, Social Forestry Division, Kolhapur Circle, M.S., Pune.

6. Shri T.P. Patil, Joint Director, Social Forestry Division, Kolhapur is directed to file affidavit on following point:

As to what are the legal impediments in granting to the applicants the benefit as has accrued to them for grant of notional increment for the period for unemployment and paying actual benefits towards the period during which they have actually rendered service.

7. In case the respondent no.4 i.e. Shri T.P. Patil finds that there is no legal impediment, he should ensure that all steps are taken and affidavit of compliance is filed.

8. Ld. PO prays for reasonable time for communication of the order and further four weeks time for compliance.

9. Considering the request of the Ld. PO six weeks time is granted.

10. S.O. to 24.11.2016 for hearing.

11. Steno copy and hamdast is allowed.

12. Ld. PO is directed to communicate this order to the respondents.

Sd/-

(A.H. Joshi, J.)
Chairman
6.10.2016

Dictation taken by: S.G. Jawalkar.

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI
CONTEMPT APPLICATION NO.101 OF 2014
IN
ORIGINAL APPLICATION NO.476 OF 2012

Dr. V.V. Rane ..Applicant

Versus

The State of Maharashtra & Ors. ..Respondents

Dr. V.V. Rane – Applicant in person

Shri K.B. Bhise – Presenting Officer for the Respondents

CORAM : Shri Justice A.H. Joshi, Chairman

DATE : 6th October, 2016

ORDER

1. Heard Dr. V.V. Rane, Applicant in person and Shri K.B. Bhise, learned Presenting Officer for the Respondents.
2. Ld. PO has tendered affidavit which is sworn by Shri Sitaram Kunte, Principal Secretary, Higher & Technical Education, Mantralaya. It is taken on record.
3. An attempt is made by the respondent to urge that the applicant cannot be given a right to exercise option to chose the date of increment, because of the fact that he has been granted promotion on temporary basis, in view of the clarificatory circular dated 5.12.1985 issued by the Finance Department, copy whereof is placed on record (as annexure to Shri Sitaram Kunte's affidavit), which is at page 689.



4. Dr. A.S. Khemnar, Director, Institute of Science, Mumbai who is present today was asked certain questions and reply given by him are narrated below:

(a) Question:

If the applicant's promotion was temporary, in the background of respondent's reply what is the reason due to which the applicant has been granted increments?

Answer: The promotion is not given by Government voluntarily. It is given under compulsion of the order passed by this Tribunal in OA No.422 of 2014.

(b) Question:

In view that the Govt. has obeyed the order passed in OA and applicant is promoted and now the promotion cannot be revoked, can the Government deny to the applicant right of choosing the date of increment by exercising option.

Answer: Refusal to permit the applicant to exercise the option is done on the basis of and due to the circular issued by the Govt. which is placed on record at page 689.

5. The answer given by Shri Khemnar is unsatisfactory.

6. Therefore, it has become necessary to call Shri Sitaram Kunte, Principal Secretary, Higher & Technical Education, Mantralaya who has filed affidavit to answer further questions, inter alia, the questions namely:-

(a) Is the promotion given to the applicant, titled as temporary, actually permanent for all purposes, since it cannot be revoked or withdrawn unless the judgment rendered in OA No.476 of 2012 is set aside by Hon'ble High Court?

(b) Which is the provision of law / rule or Govt. Circular, that prohibits the Govt. from giving right to chose a date of effect of increment by treating the promotion as temporary, as if it can be revoked etc?



(c) Other questions as may be deemed necessary.

7. Therefore, Shri Sitaram Kunte, Principal Secretary, Higher and Technical Education is directed to remain present for answering the questions, before this Tribunal on 25.10.2016 at 11.00 a.m. and continue to remain present till case is taken up.

8. In the meantime, Shri Sitaram Kunte shall be free to examine the case once again and afresh/denovo. Thereupon he shall take proper view of the case if he chooses he may seek fresh guidance from Finance Department by personally looking into the case.

9. In case decision to give option to chose the date of increment is given to the applicant, Shri Sitaram Kunte need not attend in terms of the directions contained in foregoing para no.5 and 6.

10. S.O. to 25.10.2016.

11. Steno copy and hamdast is allowed to the learned PO and he is directed to communicate this order to the respondents and in particular to Shri Sitaram Kunte.

9

Sd/-

(A.H. Joshi J.)
Chairman
6.10.2016

Dictation taken by: S.G. Jawalkar.

Advocate

versus

The State of Maharashtra and others

..... Respondent/s

Presenting Officer.....

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

Tribunal's orders
C.A. No.11 of 2016 in O.A. No.1053 of 2013

Shri A.R. Jadhavar ..Applicant
Vs.
The State of Maharashtra & Ors. ..Respondents

Heard Miss Lata Patne, learned Advocate for the Applicant and Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.

2. At the request of Ld. CPO adjourned to 7.10.2016.

Sd/-
(A.H. Joshi, J.)
Chairman
6.10.2016

(sgl)

DATE: 6/10/16

CORAM:

Hon'ble Justice Shri A. H. Joshi (Chairman)
Hon'ble Shri M. Ramakumar (Member) A

APPEARANCE:

Shri/Ms: Lata Patne

Advocate for the Applicant

Shri/Smt: N.K. Rajpurohit
C.P.O / P.O. for the Respondent/s

Adj. To: 2/10/16

(Presenting Officer.....)

Office Notes, Office Memoranda of Coram,
Appearance, Tribunal's orders or
directions and Registrar's ordersTribunal's orders
O.A. No.901 of 2015Shri N.G. Kondhalkar ..Applicant
Vs.
The State of Maharashtra & Ors. ..Respondents

Heard Shri D.B. Khaire, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

2. Shri Khaire, Ld. Advocate states that as stated on previous date i.e. 22.8.2016 the appeal was nearu however, order is not delivered.

3. Ld. PO prays for time till tomorrow to make a statement.

4. S.O. to 7.10.2016.

Sd/-

(A.H. Joshi, JP)
Chairman
6.10.2016

DATE: 6/10/16

CORAM:

Hon'ble Justice Shri A. H. Joshi (Chairman)

Hon'ble Shri M. Ramesh Kumar (Member) A

APPEARANCE:

Shri/Smt. : D.B. Khaire

Advocate for the Applicant

Shri/Smt. : Archana B.K.

C.P.O / P.O. for the Respondent/s

(sgl)

Date: 2/10/16

P.H.

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION 944 OF 2016

DISTRICT : PUNE

Shri Sanjiv Narayan Deshmukh,)
Sub Divisional Officer, Haveli, Pune,)
R/o: D-605, Magnolia, Baner Pasan Link)
Road, Pasan, Pune.)...**Applicant**

Versus

1. The Govt. of Maharashtra)
Through Principal Secretary,)
Revenue & Forest Dept, Mantralaya)
Mumbai 400 032.)
2. Divisional Commissioner,)
Pune Division, Vidhan Bhavan,)
Pune 411 001.)
3. Smt Jyoti A. Late (Kadam),)
District Supply Officer, Pune.)
And under transfer to the post of)
Deputy Collector, Election Officer,)
Kolhapur.)...**Respondents**

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

Smt K.S Gaikwad, learned Presenting Officer for the Respondents no 1 & 2.

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Shri A.V Bandiwadekar, learned advocate for Respondent no. 3.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 06.10.2016

ORDER

1. Heard Shri M.D Lonkar, learned advocate for the Applicant, Smt K.S Gaikwad, learned Presenting Officer for the Respondents no 1 & 2 and Shri A.V Bandiwadekar, learned advocate for Respondent no. 3.

2. This Original Application was heard on 27.9.2016 when learned Advocate Shri Bandiwadekar has sought time to file a short reply regarding interim relief sought by the Applicant. The matter was fixed for further hearing on 29.9.2016, when Shri Bandiwadekar sought more time to file short affidavit. The matter was kept for hearing for considering the grant of interim relief on 3.9.2016. Learned Presenting Officer stated that the Respondents no 1 & 2 did not wish to file any reply and relied on the file notings, copy of which was placed on record.

3. Learned Advocate Shri Lonkar, argued on behalf of the Applicant that this is a case, where the

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Applicant has been transferred within a few days of his posting as Sub-Divisional Officer, Haveli, Dist-Pune. The Respondent no. 1 issued order of transfer of the Applicant on 14.9.2016 posting him as S.D.O, Haveli vice Smt Snehal Barge. In pursuance of order of the Respondent no. 1 dated 14.9.2016, the Respondent no. 2 issued orders on 15.9.2016 posting the Applicant as S.D.O, Havelis. The Applicant was relieved from his earlier post of Resident Deputy Collector, Satara by Collector, Satara by order dated 15.9.2016. The Applicant assumed charge of the post of S.D.O, Haveli on 16.9.2016 in the absence of Smt Barge and informed Collector, Pune accordingly on the same date. Late in the evening, Collector, Pune informed the Applicant orally, not to perform duties as S.D.O, Haveli. Learned Counsel for the Applicant stated that the Respondent no. 1 issued another order dated 14.9.2016, posting the Respondent no. 3 as S.D.O, Haveli. Learned Advocate Shri Lonkar stated that subsequent events raise suspicion that there was manipulation of dates of different orders issued by the Respondent nos 1 & 2. In case of the Applicant, the Respondent no. 2 had issued order of his posting on 15.9.2016. However, in respect of the Respondent no. 3, the order was issued by the Respondent no. 2 on 22.9.2016. It raises doubt that the second order dated 14.9.2016 issued by the Respondent no. 1, cancelling the posting of the Applicant as S.D.O, Haveli, and posting the Respondent no. 3 there was actually issued after that

date, i.e. after 14.9.2016.. Learned Counsel for the Applicant argued that the Applicant has joined as S.D.O, Haveli, on 16.9.2016. The Respondent no. 3 was posted there by order of the Respondent no. 2 on 22.9.2016. The second order of the Respondent no. 1 dated 14.9.2016 does not give any posting to the Applicant, which means that he is without a posting now. Learned Counsel for the Applicant argued that the second order of the Respondent no. 1 dated 14.9.2016 and order of the Respondent no. 2 dated 22.9.2016 cancelling the Applicant's posting as S.D.O, Haveli are issued in violation of Section 4(4)(ii) and 4(5) of the Maharashtra Government Servants Regulation of Transfer and Prevention of Delay in Discharge of Official Duties Act, 2005 (the Transfer Act). These provisions have not been complied with and the aforesaid orders are liable to be quashed. Learned Counsel for the Applicant prayed for interim relief of staying second order dated 14.9.2016 issued by the Respondent no. 1 and the order dated 22.9.2016 posting the Respondent no. 3 in his place, and leaving him without a posting.

4. Learned Presenting Officer stated that the Respondent nos 1 & 2 do not wish to file any affidavit in reply and rely on the file notings, copy of which is placed on record. The first order of posting the Applicant as S.D.O, Haveli dated 14.9.2016 was immediately cancelled by the second order dated 14.9.2016, issued by the

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Respondent no. 1.

~~Applicant.~~ Both the orders have been issued in full compliance with the provisions of the Transfer Act.

5. Learned Counsel for the Respondent no. 3 argued that the request for interim relief may not be granted as the Respondent no. 3 has already assumed charge of the post of S.D.O, Haveli. Learned Counsel for the Respondent no. 3 contended that the Applicant has acquired no vested right to hold the post of S.D.O, Haveli, as his order of posting as S.D.O, Haveli dated 14.9.2016 were cancelled by the Respondent no. 1 on the same date. The Applicant could not have taken charge from Smt Barge, who was working as S.D.O, Haveli, as she was advised to handover charge to Shri Kavitate, Deputy Collector, Land Acquisition no. 17, Pune, by the Collector, Pune. She handed over charge to Shri Kavitate on 16.9.2016. The Respondent no. 3 took over charge of the post of S.D.O, Haveli from Shri Kavitate on 23.9.2013. Learned Counsel for the Respondent no. 3 argued that the Applicant's effort to assume charge of the post of S.D.O, Haveli on 16.9.2016 was unauthorized as he did not seek permission from Collector, Pune, before doing so. In fact, a notice has been issued to the Applicant on 17.9.2016 by Collector, Pune, as his attempt to take on-sided charge of the post of S.D.O, Haveli has been treated as misconduct by Collector, Pune. Learned Advocate Shri Bandiwadekar, relied on the judgment of this Tribunal dated 2.9.1998 in O.A no

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134/1998, wherein it was held that a cancelled order does not give any vested right to continue in the same post. He also cited interim order of this Tribunal dated 27.7.2016 in O.A no 683/2016 to show that permission of superior officer is required, before an officer can assume charge of a post on transfer. He also cited Rule 31 of the Maharashtra Civil Services (General Conditions of Services) Rules 1981, in support of his contention, that an officer cannot assume charge of a post without order of his immediate superior.

6. It is seen that the following issues are raised which are to be answered in this Original Application, viz:

- (i) Whether the Applicant acquired vested right, to continue as S.D.O, Haveli, having joined the post by virtue of orders of the Respondents no 1 & 2 dated 14.9.2016 and 15.9.2016 respectively or whether the cancellation of first order dated 14.9.2016 by second order dated 14.9.2016 by the Respondent no. 1 will not create any such right?
- (ii) Whether the Applicant required permission of the Collector, Pune, before he could join the post of S.D.O, Haveli on 16.9.2016? and
- (iii) Whether Section 4(4)(ii) and 4(5) of the Transfer Act have been violated?

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7. The Applicant was transferred by order of the Respondent no. 1 dated 14.9.2016 as S.D.O, Haveli. This order of the Respondent no. 1, has following paras 2 & 3, viz:

“२. सदर आदेश तात्काळ अंमलात येत असून, वरील अधिका-यांना संबंधित विभागीय आयुक्त/ संबंधित कार्यालय प्रमुखांनी पदस्थापनेच्या पदावर हजर होण्यासाठी तात्काळ कार्यमुक्त करावे.

३. वरील अधिका-यांनी आपल्या पदाचा कार्यभार संबंधित विभागीय आयुक्त/ कार्यालय प्रमुख यांच्या सल्ल्याने अन्य अधिका-यांकडे सुपूर्द करून बदलीच्या पदावर तात्काळ रुजू व्हावे.”

Accordingly, the Respondent no. 2 issued order dated 15.9.2016. It is significant to note that the Respondent no. 2, viz. Divisional Commissioner, Pune issued posting orders and Collectors of the Districts only issued relieving orders. Relieving order of the Applicant was issued by Collector, Satara, on 15.9.2016, while the Respondent no. 3 was relieved by the order of Collector, Pune also by order dated 15.9.2016 to enable her to join as Deputy District Election Officer, Kolhapur. Smt Barge, S.D.O, Haveli, was ordered to get herself relieved by handing over of charge to Shri Kavitate. Learned Counsel for the Respondent no. 3 has stated in para 4 of the affidavit in reply that the Applicant “illegally, surreptitiously and hurriedly reported for duties on 16.9.2016 without taking

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the charge from Shri Kavitate, through the District Collector, Pune.” Para 3 of the order of the Respondent no 1 asked the officers to get relieved from earlier post in consultation with the Divisional Commissioner and Head of office, which in the present case would be Collector. However, for joining in the new post, there was no such stipulation. In fact, transferred officers were required to assume charge forthwith. It is difficult to accept the contention of the learned Counsel for Respondent no. 3, that the Applicant illegally, surreptitiously or hurriedly assumed charge of the post of S.D.O, Haveli. He was asked to take charge hurriedly by the Respondent no. 1. There was open assuming the charge. Order does not require prior approval of Collector. There is no illegality in assuming charge of the post of S.D.O, Haveli by the Applicant. In para 5, of the affidavit in reply of the Respondent no. 3, it is stated that District Collector, Pune, issued show cause notice to the Applicant on 17.9.2016. A copy of notice is at page 42 of the Paper Book. Relevant extracts from this show cause notice dated 17.9.2016 are reproduced below:-

“ त्यानुसार तुम्ही उपविभागीय अधिकारी हवेली, उपविभाग हवेली या पदावर रुजू होणेपूर्वी जिल्हाधिकारी किंवा निवासी उपजिल्हाधिकारी यांचे कार्यालयात येवून रुजू होणे अपेक्षित होते. तथापि तुम्ही दि. १६/०९/२०१६ रोजी परस्पर सदर कार्यालयात रुजू झाले असल्याची माहिती मिळाली असून, तुम्ही प्रस्तुत पदावर रुजू होता एकतर्फी सी.टी.सी. केलेली आहे, ही बाब गंभीर स्वरूपाची आहे.”


From this notice, it is clear that the Applicant joined the post of S.D.O, Haveli on 16.9.2016 and he executed one sided C.T.C. From C.T.C dated 16.9.2016 of the Applicant assuming charge unilaterally, it is clear that he assumed charge of the post of S.D.O, Haveli on 16.9.2016 and informed Collector, Pune accordingly on the same date. Once, he joined as S.D.O, Haveli in terms of Section 3 of the Transfer Act, he is protected from transfer before completion of his tenure of 3 years and also, if he was to be transferred in a month other than April or May, exceptional circumstances or special reasons should have been mentioned as per Section 4(5) and 4(4)(ii) of the Transfer Act. From the copy of file notings placed on record, it is seen that the Civil Services Bord has recommended that the Applicant be posted as S.D.O, Khed, Dist-Pune. However, Minister (Revenue), did not accept this recommendation and the Applicant was proposed for posting as S.D.O, Haveli. This was approved by the Hon. Chief Minister, apparently on 14.9.2016. The issue regarding non acceptance of Civil Services Board recommendations by Minister (and also by Hon. Chief Minister) has not been raised by either the Applicant or by the Respondent no. 3 as in this respect both are sailing in the same boat. After approval of Hon. Chief Minister, which may be taken as approval under Section 4(4)(ii) and 4(5) of the Transfer Act, the first order dated 14.9.2016 was issued by the Respondent no. 1 and consequent order dated 15.9.2016 was issued by the


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Respondent no.2, posting the Applicant as S.D.O, Haveli. Collector, Satara, relived the Applicant from the post of Resident Deputy Collector, Satara by order dated 15.9.2016 and the Applicant joined the post of S.D.O, Haveli on 16.9.2016. Once, he joined as S.D.O, Haveli, he could not be transferred without following the procedure under Section 4(4)(ii) and 4(5) of the Transfer Act. The fact that on the same day, i.e. on 14.9.2016, his order of posting as S.D.O, Haveli was cancelled by the Respondent no. 1 with the approval of Hon. Chief Minister is of no consequence. The Respondent no. 3 has relied on the judgment of this Tribunal dated 2.9.1998 in O.A no 134/1998. Facts in O.A no 134/1998 were entirely different. In any case, after promulgation of the Transfer Act, a Government servant acquires vested right of not being transferred before completion of his tenure and in a month other than April-May, except in accordance with the procedure prescribed in Section 4(4)(ii) & 4(5) of the Transfer Act. The second order dated 14.9.2016 was apparently received by the Respondent no. 2 after a few days, if it was indeed issued on 14.9.2016 itself. This is clear from the fact that consequent order was passed by the Respondent no. 2 only on 22.9.2016.

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8. Reliance of the Respondent no. 3 on interim order dated 27.7.2016 in O.A no 683/2016 is futile. In that case, the Applicant was transferred and some other
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officer was posted and had taken charge of that post. By interim order the Applicant was posted back to that post. The other officer was required to be given some other post. However, the Applicant went to the office and occupied the office and sealed it which was conduct not expected of a Senior Officer. In the present case, the facts are quite different. The Applicant had legal order pursuant to which he assumed charge of the post of S.D.O, Haveli. There was no question of displacing any other officer.

 9. Coming to the issue no (ii), the Respondents have not produced any instruments like Government Resolution/Circular or referred to any rule, which requires that a Deputy Collector is first required to obtain permission of the Collector/Resident Deputy Collector, before he can join the post, where he is posted. When the orders were issued by the Respondent nos 1 & 2, the attempt of the Collector, Pune to assume powers, not given to him, to insist that the Applicant should have reported to him before assuming charge of the post of S.D.O, Haveli, appears to be without any legal basis. In fact, the so called show cause notice dated 17.9.2016 issued by the Collector, Pune to the Applicant is without any legal basis as the Applicant did not commit any misconduct by proceeding to assume charge of the post of S.D.O, Haveli, when the orders of the Respondents no 1 had directed him to join the post forthwith and neither



the order of the Respondent no. 1 nor of the Respondent no 2 have any such stipulation. Even the Respondent no. 3 has not produced any order of Collector, Pune, permitting her to join as S.D.O, Haveli. Role of the Collector was limited to relieving the officers, who were transferred. Rule 39 of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981, does not provide that an officer has to obtain permission from his immediate superior officer before he could assume charge of a post.

10. As discussed in the preceding paragraphs, the cancellation of posting of the Applicant as S.D.O, Haveli amounted to his transfer, without following the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act.

11. It is clear from the above discussion, that the Applicant joined as S.D.O, Haveli on 16.9.2016 as shown by the notice issued to him by Collector, Pune. This was pursuant to the first order dated 14.9.2016 of the Respondent no. 1 and order dated 15.9.2016 of the Respondent no. 2. Cancellation of that order by second order dated 14.9.2016 of the Respondent no. 1 and order dated 22.9.2016 of the Respondent no. 2 required compliance with the provisions of Section 4(4)(ii) and 4(5) of the Transfer Act. However, no exceptional circumstances/special reasons/case was made out while

doing so. The Applicant is prima facie entitled for interim relief.

12. Accordingly, the impugned order dated 14.9.2016 and 22.9.2016 issued by the Respondents no 1 & 2 respectively transferring the Respondent no. 3 in the post held by the Applicant is stayed. The Applicant will be allowed to work as S.D.O, Haveli by the Respondents till the disposal of this Original Application. This should be done within a period of one week from the date of this order.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 06.10.2016

Dictation taken by : A.K. Nair.