

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

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

I N

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: 24.05.2023</p> <p align="center">O.A. No.586 of 2023</p> <p>N.P. PatilApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <ol style="list-style-type: none"> 1. Applicant in person is present. Smt Punam Mahajan, learned Advocate for the Applicant is absent. 2. Heard Shri A.J. Chougule, learned Presenting Officer for the Respondents. 3. Learned P.O. submits that file is still with the Hon'ble Chief Minister and unable to produce the same. 4. The Applicant in person sought adjournment on the ground of absence of his Advocate. 5. S.O. to 30.05.2023. <p align="right">Sd/- (A.P. Kurhekar) Member (J)</p> <p>NMN</p>

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Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 24.05.2023</p> <p align="center">M.A. No.350 of 2023 with O.A. No.576 of 2023 (Division Bench matter placed before Single Bench in Vacation)</p> <p>S.V. Shinde & Ors.Applicants Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri P. Avhad, learned Advocate for the Applicants and Shri A.J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. The Applicants have filed this O.A in respect of recruitment process conducted by Respondent No.2 – Commissioner of Police, Mumbai to fill-in the post of Police Constable among others. The Applicants participated in the physical test conducted by Respondents but their names were not included in the list of successful candidates published by the Department. The list was published on 02.05.2023. Thereafter, written examination was conducted on 07.05.2023. Result of written examination was declared on 17.05.2023 and objection was invited from the candidates. The Applicants in O.A. stated that they have secured marks more than cut-off in physical test and their names ought to have been figured in the list of successful candidates.</p> <p>3. Notably, in O.A. except averments in pleading, there is no authenticate record to establish that Applicants have secured marks more than cut-off marks. All that, learned Advocate for the Applicants submits that his clients have applied to secure information under R.T.I. Act, but it is not yet supplied.</p>

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	<p data-bbox="777 370 1507 620">4. Whereas, learned P.O. submits that the Applicants have not secured cut-off marks in physical test to be eligible for written examination. He has also shown the mark-sheet which shows that the Applicants have not secured cut-off marks to be eligible to appear in written examination.</p> <p data-bbox="777 685 1507 896">5. Learned Advocate for the Applicants has gone through the mark-sheet of the Applicants and having found that the Applicants have not secured cut-off marks, he sought permission to withdraw the O.A realizing that he has no case.</p> <p data-bbox="777 955 1507 1166">6. In fact, the O.A. should not have been filed without confirmation of record to establish that the Applicants have obtained cut-off marks. Filing of such O.A. is thus nothing but abuse of law. Indeed, such O.A. ought to be dismissed with costs.</p> <p data-bbox="777 1226 1507 1347">7. However, considering the submission of learned Advocate for the Applicants instead of imposing costs, I am inclined to permit him to withdraw the O.A.</p> <p data-bbox="777 1406 1507 1478">8. In view of above, O.A. as well as M.A. is disposed of with no order as to costs.</p> <p data-bbox="1166 1561 1365 1689" style="text-align: right;">Sd/- (A.P. Kurhekar) Member (J)</p> <p data-bbox="777 1736 829 1756">NMN</p>

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Office Notes, Office Memoranda of Coram, Appearance, Tribunal's orders or directions and Registrar's orders	Tribunal's orders
	<p>Date: 24.05.2023</p> <p align="center">O.A. No.605 of 2023 (Division Bench matter placed before Single Bench in Vacation)</p> <p>A.A. KoskeApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. The Applicant has challenged order dated 28.04.2023 issued by Respondent No.1 – The Director General and Inspector General of Police, Mumbai whereby his promotion to the post of PSI has been cancelled and he is reverted to the post of Police Head Constable.</p> <p>3. The perusal of record reveals that while the Applicant was serving as Police Head Constable, Respondent No.1 by order dated 08.12.2021 promoted him to the post of PSI as Ad-hoc promotion. However, later Respondent No.1 by communication dated 04.05.2022 made it clear that promotion granted to the Applicant among other it was not Ad-hoc but it was regular promotion. The Applicant accordingly has worked on the post of PSI. However, suddenly Respondent No.1 by communication dated 28.04.2023 cancelled the Applicants promotion stating that in fact the Applicant was kept on supernumerary post in terms of G.R. dated 10.07.2020 and therefore he was not eligible for the promotion. It is further stated that because of incorrect information submitted by the concerned unit the Applicant was wrongly promoted to the post of PSI.</p> <p>4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought interim relief <i>inter-alia</i> contending that the order of reversion and cancellation of promotion is arbitrary and it was passed without giving Show Cause Notice to the Applicant. He therefore submits that impugned order dated 18.04.2023 is liable to be stayed. He made reference to the decision (2008) 2 SCC 750 (Union of India & Anr. v/s. Narendra Singh) in which it is observed that before taking action of reversion Show Cause needs to be given.</p>

[P.T.O.]

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	<p>5. Learned P.O. opposed grant of interim relief stating that he has to be instruction about the procedure followed by the Department and further submits that since the Applicant is already reverted the question of interim relief does not survives.</p> <p>6. Even assuming for a moment that notice was not given before passing impugned order, the fact remains that he is already reverted to the earlier post of Police Head Constable on the ground that he was given erroneous promotion because he was kept on supernumerary post rendering him ineligible for promotion. In such situation grant of interim relief would amount to grant final relief which is not permissible. Hence, I am not inclined to grant interim relief.</p> <p>7. The office objections, if any, are to be removed and court fees to be paid, if not already paid.</p> <p>8. Issue notice before admission returnable on 06.06.2023.</p> <p>9. 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. Private service is allowed. Respondents are put to notice that the case may be taken up for final disposal at the stage of admission hearing.</p> <p>10. 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>11. By Hand delivery, speed post, courier notice to be served 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.</p> <p>12. In case notice is not collected within <u>seven</u> days or service report on affidavit is not filed <u>three</u> days before returnable date, the Original / Miscellaneous Applications shall be placed on board before the concerned Benches under the caption "<u>for Dismissal</u>" and thereafter on the subsequent date the Original / Miscellaneous Applications shall stand dismissed.</p> <p>13. S.O. to 06.06.2023.</p> <p style="text-align: right;">12/6</p> <p style="text-align: right;">Sd/- (A.P. Kurhekar) Member (J)</p> <p>NMN</p>

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	<p>Date: 24.05.2023</p> <p align="center">O.A. No.606 of 2023</p> <p>S.R. AmbadApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard finally at the state of Admission. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. The Applicant has challenged office order dated 04.05.2023 issued by Respondent No.1 – The Commissioner of State Excise, Mumbai whereby his desk has been changed from desk No.5 to desk No.9 in the same office and also challenged another order dated 04.05.2023 whereby Respondent No.1 posted Respondent No.2 - Mr. Mahindra Rewale in his place at desk no.5. The Applicant also sought interim relief to stay the implementation of order dated 04.05.2023.</p> <p>3. Learned Advocate for the Applicant sought to contend that the impugned order of shifting the desk of the Applicant amount to transfer and arbitrary. He further submits that it is only to accommodate Respondent No.2 the Applicant is displaced from his desk to another desk.</p> <p>4. On this line of submission, learned Advocate for the Applicant submits that impugned order are liable to be stayed being in contravention of the provision of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (hereinafter referred to as 'Transfer Act 2005' for brevity).</p> <p>5. Learned P.O. opposed the interim relief as well as maintainability of O.A. itself, stating that impugned order does not amount to transfer in the eye of law and</p>

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	<p>it is simply change of assignment / table in the same office.</p> <p>6. The Perusal of communication dated 04.05.2023 reveals that Respondent No.1 – The Commissioner of State Excise, Mumbai in reshuffling of the assignment of the work changed the desk/ Tables of staff and in reshuffling the Applicant who was working as noting assistant at desk no.5 was shifted to desk no.1 in the same office and building. As such, apparently it is administrative reshuffling of the work assigned to the staff and for administrative reasons the tables / desk are changed. This being so the submission advanced by learned Advocate for the Applicant that it amount to transfer from one post to another post is totally misconceived and erroneous. It is prerogative of the Respondent No.1 – The Commissioner of State Excise, Mumbai to distribute administrative / office work to the staff working under him and he can change the desk of the employee working under him if found necessitated for the smooth administration of the Department. This being the position impugned communication dated 04.05.20213 cannot be termed as transfer from one post to another post as contemplated in the provision of Transfer Act, 2005. There is absolutely no change in service condition, pay and allowances etc. All that his work is shifted from one table to another table which is located in the same building.</p> <p>7. Needless to mention employee have no legal^y enforceable right to claim particular post or table. Even in the matter of Transfer also it being incidence of Government services unless it is shown arbitrary, malafide or in contravention of the law, The interference by the Tribunal is not warranted. Whereas, in present case all that the Applicant is shifted from one table to another table. Thus it is innocuous office order and challenge to the same is devoid of law.</p> <p>8. In view of above, I have no hesitation to hold that the O.A. itself is not maintainable and liable to be dismissed.</p> <p>9. O.A. is dismissed with no order as to costs.</p> <p style="text-align: right;">Sd/- (A.P. Kurhekar) Member (J)</p>


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	<p>Date: 24.05.2023</p> <p align="center">O.A. No.571 of 2023</p> <p>V.V. DhumalApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri U.V. Bhosale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. The Applicant has challenged transfer order dated 11.05.2023 whereby he is transferred from the post of Conservation Assistant, Department of Archaeology, Nashik to Conservation Assistant, Department of Archaeology, Ratnagiri. This O.A. was taken up for admission yesterday, that time learned P.O. made the statement that Department has realized the mistake in transferring the Applicant and remedial measure will be taken, therefore O.A. was kept today.</p> <p>3. Today, learned P.O. tendered order dated 24.05.2023 issued by Respondent No.2 stating that transfer order dated 11.05.2023 is cancelled. The order dated 24.05.2023 is taken on record and marked by letter 'X' for identification.</p> <p>4. Thus the grievance of the Applicant against the Transfer order is redressed.</p> <p>5. In view of above, O.A. is disposed of with no order as to costs.</p> <p align="right">Sd/-  (A.P. Kurhekar) Member (J)</p> <p align="center">NMN</p> <p align="right">[P.T.O.]</p>

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	<p>Date: 24.05.2023</p> <p style="text-align: center;">O.A. No.604 of 2023</p> <p>R.M. PardeshiApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <ol style="list-style-type: none"> 1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents. 2. The Applicant has challenged communication dated 13.06.2022 issued by Respondents whereby his representation for transfer as per the options given by him is rejected. 3. O.A. is filed on 23.05.2023 quite belatedly from the date of impugned order, therefore question of considering granting interim relief to keep the post of Civil Officer, Mohadi, Tal. Dindori, Dist. Nashik now does not survives. 4. The office objections, if any, are to be removed and court fees to be paid, if not already paid. 5. Issue notice before admission returnable on 15.06.2023. 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. Private service is allowed. Respondents are put to notice that the case may 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.

[P.T.O.]

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	<p>8. By Hand delivery, speed post, courier notice to be served 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.</p> <p>9. In case notice is not collected within <u>seven</u> days or service report on affidavit is not filed <u>three</u> days before returnable date, the Original / Miscellaneous Applications shall be placed on board before the concerned Benches under the caption "<u>for Dismissal</u>" and thereafter on the subsequent date the Original / Miscellaneous Applications shall stand dismissed.</p> <p>10. S.O. to 15.06.2023.</p> <p style="text-align: right;">\</p> <p style="text-align: right;">Sd/- (A.P. Kurhekar) Member (J)</p> <p>NMN</p>

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	<p>Date: 24.05.2023</p> <p align="center">M.A. No.356 of 2023 in O.A. No.237 of 2023</p> <p>S.S. JadhavApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. This M.A. is filed in pending O.A. for direction to the Respondents to keep post of Range Forest Officer, Shirala vacant till the decision of O.A. or to fill-in post, ^{which} would be to the subject of outcome of present O.A.</p> <p>3. In O.A. Applicant has challenged suspension order dated 27.02.2023 mainly on the ground of competency of Respondent – Deputy Conservator of Forest. Now, the M.A. is filed in view of the notification issued by the Respondent dated 18.05.2023 to fill-in the post of Range Forest Officer, Shirala among other in general transfer of 2023.</p> <p>4. Learned Advocate for the Applicant submits that if in meantime the post of Range Forest Officer, Shirala is fill-in, in that event the Applicant would ^{lose} lose his right to reposting as Range Forest Officer, Shirala if he succeeds in O.A. According to him, he has ^{good} got case on merit on the point of competency of Deputy Conservator of Forest.</p> <p>5. ^{kept} O.A. is already ripe for Final Hearing and adjourned on 05.06.2023.</p> <p>6. Learned P.O. submits that Tribunal may direct that if post of Range Forest Officer, Shirala is filled-in, it would be subject to outcome of decision in O.A.</p> <p align="right">[P.T.O.]</p>

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	<p>7. Since, O.A. is going to be decided in the first week of June, it would be appropriate to make it clear that if the post of Range Forest Officer, Shirala which was held by the Applicant at the time of suspension is filled-in, it would be subject to outcome of O.A. Respondents to take note of it while filling the post of Range Forest Officer, Shirala if they intent to fill it in general transfer. Respondents should mention it in transfer order, if any.</p> <p>8. In view of above, M.A. is disposed of with no order as to costs.</p> <p>9. O.A. will be heard on 05.06.2023 as already fixed.</p> <p style="text-align: right;">Sd/- (A.P. Kurhekar) Member (J)</p> <p>NMN</p>

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	<p>Date: 24.05.2023</p> <p align="center">M.A. No.357 of 2023 in O.A. No.595 of 2023</p> <p>R.S. GawaliApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. By this M.A., the Applicants are seeking leave to sue jointly. The Applicants are similarly situated and for the reasons stated in the M.A., leave to sue jointly as prayed for is granted, subject to the Applicants paying requisite court fees, if not already paid. MA disposed off accordingly.</p> <p align="right">Sd/- (A.P. Kurhekar) Member (J)</p> <p align="center">NMN</p>

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	<p>Date: 24.05.2023</p> <p style="text-align: center;">O.A. No.595 of 2023</p> <p>R.S. GawaliApplicant Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. The Applicant is seeking Inter District Transfer from the establishment of the Commissioner of Police Mumbai to the establishment of the Commissioner of Police, Aurangabad. By communication dated 03.05.2023 gave NOC to accommodate the Applicant provided they are relieved and join his establishment on or before 12.05.2023. In the communication it is further stated that if they fail to join on or before 12.05.2023, NOC deemed to be cancelled and thereafter they will not be accommodated on his establishment</p> <p>3. O.A. is filed in vacation on 22.05.2023 i.e. after the cut of date of 12.05.2023 mentioned in communication dated 03.05.2023.</p> <p>4. In view of above, it is necessary to know whether the Respondent No.2 - The Commissioner of Police, Aurangabad has passed any further order about the cancellation of NOC. Learned P.O. is therefore directed to take instruction and to appraise the Tribunal at 02.30 p.m.</p> <p>5. In afternoon session, learned P.O. submits that he has not received any instruction about any such order of cancellation of NOC by the Commissioner of Police, Aurangabad.</p>

[P.T.O.]

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	<p>6. In view of above, by way of interim direction the Commissioner of Police, Aurangabad is directed not to cancel NOC dated 03.05.2023, if not cancelled by him and three post of Police Constable category wise for the Applicants be kept vacant by keeping NOC dated 03.05.2023 alive till the filing of Affidavit-in-Reply.</p> <p>7. The office objections, if any, are to be removed and court fees to be paid, if not already paid.</p> <p>8. Issue notice before admission returnable on 20.06.2023.</p> <p>9. 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. Private service is allowed. Respondents are put to notice that the case may be taken up for final disposal at the stage of admission hearing.</p> <p>10. 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>11. By Hand delivery, speed post, courier notice to be served 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.</p> <p>12. In case notice is not collected within <u>seven</u> days or service report on affidavit is not filed <u>three</u> days before returnable date, the Original / Miscellaneous Applications shall be placed on board before the concerned Benches under the caption "<u>for Dismissal</u>" and thereafter on the subsequent date the Original / Miscellaneous Applications shall stand dismissed.</p> <p>13. S.O. to 20.06.2023.</p> <p style="text-align: right;">Sd/- (A.P. Kurhekar) Member (J)</p> <p>NMN</p>

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	<p>Date: 23.05.2023</p> <p align="center">M.A. No.349 of 2023 in O.A. No.575 of 2023</p> <p>K.R. Dighe & Ors.Applicant Versus The State of Maharashtra & Ors.Respondents.</p> <p>1. Heard Ms. Pooja Mankoji, learned Advocate holding for Shri S.S. Dere & Asso., learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.</p> <p>2. By this M.A., the Applicants are seeking leave to sue jointly. The Applicants are similarly situated and for the reasons stated in the M.A., leave to sue jointly as prayed for is granted, subject to the Applicants paying requisite court fees, if not already paid. MA disposed off accordingly.</p> <p align="right">Sd/- (A.P. Kurhekar) Member (J)</p> <p>NMN</p>