

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

MISC. APPLICATION NO. 338/2018

WITH

ORIGINAL APPLICATION ST. NO. 1542 OF 2018

DISTRICT-
AURANGABAD

1. **Kisan Dasu Pawar,**
Age: - 53 years, Occ.: - Nil,
R/o House No. 2/5, Bunglow, Chavni,
Aurangabad.
2. **Dayanand Fakiraba Gange,**
Age: - 46 years, Occ.: - Nil,
R/o Plot no. 49/32/2,
New Nandanvan Colony,
Bhujbal Nagar, Padegaon,
Aurangabad.
3. **Sudhakar Shamrao Jadhav,**
Age: - 57 years, Occ.: - Nil,
R/o N-12, Chatrapati Nagar, Hudco,
Aurangabad. ..

APPLICANT

V E R S U S

- 1] **The State of Maharashtra,**
Through its Principal Secretary,
Home Department,
Mantralaya, Mumbai 32.

(copy to be served through
CPO, MAT, Aurangabad)
- 2] **The Director,**
Directorate of Forensic Science
Laboratories, Home Department,
Maharashtra State,

Office at Vidyanagri Hans Bhugra Marg,
Santacruz (East), Mumbai – 400 098.

- 3] The Joint Director,**
Regional Forensic Laboratory,
Home Department,
Maharashtra State,
Office at Nizam Bungla Campus,
Cantonment, Aurangabad. .. RESPONDENTS

APPEARANCE : Shri Abhishek Deshpande, learned
Advocate for the applicant.

: Shri M.P. Gude, learned Presenting
Officer for the respondents.

CORAM : **JUSTICE M.T. JOSHI, VICE CHAIRMAN
AND
ATUL RAJ CHADHA, MEMBER (A)**

DATE : **23.10.2018**

JUDGMENT

(Per : Atul Raj Chadha, Member (A))

1. Heard the Miscellaneous Application no 338 of 2018 along with the Original Application stamp no 1542 of 2018.
 2. In the Miscellaneous Application, it is prayed that the applicants may be allowed to sue / prosecute jointly.
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3. For the reasons stated in the Misc. Application, it is allowed and disposed of and the applicants are permitted to sue jointly.

4. In the Original Application following prayers have been made

“b) To quash and set aside the departmental inquiry dated 18.4.2018 initiated by the Respondents against applicants

c) To quash and set aside the show cause issued by the Respondents dated 24.08.2018.

d) To direct the respondents to pay 75% of the subsistence allowance”

5. The learned Advocate also filed written notes of arguments.

6. According to applicants, the brief facts of the case are:

a) Applicant Nos. 1 & 2 are working as Watchmen and applicant no 3 as Laboratory Attendant with the Respondent no 3 ie Joint Director, Regional Forensic Laboratory, Aurangabad.

b) In connection with a crime No. 117/2013 under section 302, of IPC, some seized material ie a T-Shirt, blade etc with blood stains, were received in the office

of Respondent No. 3 on 17.7.2013 for chemical analysis.

- c) In the said Criminal Case , Hon'ble Session Court Osmanabd found that the seized material might have been changed. Therefore, a crime No. 215/2015 was registered against the applicants under section 201, 120 (B) r/w Section 34 of I.P.C . A Charge-sheet was filed on 29.2.2016 and the matter is pending for evidence (Annexure 'A-1', page-12).
- d) Applicant No. 3 was arrested and applicant Nos. 1 &2 were taken in Police custody. On the basis of FIR, the Applicant no 1& 2 were suspended vide order dated 17.02.2016 with effect from 05.10.2015 and Applicant no 3 from 4.11.2015. (Annexure 'A-2', page-102).
- e) Departmental Enquiry under MCSR (Discipline and Conduct) Rules was ordered on 18.04.2018.
- f) Enquiry Officer submitted his report on 02.08.2018 and found applicants guilty. A show cause notice was issued on 24.08.2018 as to why not the Applicants should be dismissed from the service (Annexure 'A-5').

7. The applicants have challenged the above show cause notice on various factual grounds as well on the count that

since the criminal case is pending, the Departmental Enquiry cannot proceed.

8. It is to be noted that the D.E. is already concluded and the disciplinary authority has to take a decision by taking into consideration the explanation that may be submitted by the present applicants. The D.E. as well as the criminal trial can be go simultaneously. Since the D.E. is already concluded, there is no issue of disclosure of any defence before the Enquiry Officer. Therefore, so far as the show cause notice is concerned, it cannot be quashed and set aside. However, it appears that the decision regarding grant of subsistence allowance in the quantum as prayed by the present applicants is not taken by the disciplinary authority.

9. In the circumstances, we pass the following order :-

- (i) The present O.A. is disposed of without any order as to costs and the prayer for quashing and setting aside the D.E. and the show cause notice is hereby rejected.
- (ii) The disciplinary authority is hereby directed to take a decision on the quantum of subsistence allowance as prayed by the applicants in the

present O.A. within a period of 4 months from
the date of this order.

10. Steno copy and hamdast allowed to both the parties.

MEMBER (A)

VICE CHAIRMAN

ARJ M.A. 338-2018 WITH O.A. ST. 1542-2018 (D.B.) (D.E.)
