

M.C.A.41/22inC.P.04/22inO.A.No.330/21(D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman

Dated : 23/12/2022.

Heard Shri G.N.Khazode, ld. Counsel for the applicant and Shri A.M.Ghogre, ld. P.O. for the respondents.

2. Ld. P.O. has placed letter dated 22.12.2022. It is taken on record. Copy is served to the other side. It is further marked Exh. 'X' for the purpose of identification.

3. Following Judgments are related to this issue:-

i) Hon'ble Apex Court Judgment, Union of India & Ors. Vs. Anil Kumar Sarkar (2013) 4 SCC 161 delivered on 15.03.2013.

ii) Hon'ble Apex Court Judgment, Union of India etc. Vs. K.V.Jankiraman etc. delivered on 27.08.1991.

iii) Hon'ble High Court of Orissa, Bench at Cuttak in W.P. (C) No. 21795/2021 delivered on 03.08.2021.

iv) Order of M.A.T., Principal Bench in O.A. No. 470/2020 delivered on 17.12.2020.

v) Hon'ble High Court of Jammu & Kashmir And Ladakh, Bench at Srinagar in S.W.P. No. 1065/2017 delivered on 17.08.2022.

vi) Hon'ble Allahabad High Court in Neeraj Kumar Pandey Vs. State of U.P. & 5 Ors. delivered on 06.08.2022 in Writ Application No. 8151/2022 delivered on 26.05.2022.

All these above cited judgments have consistently maintained that any departmental inquiry or Court Cases/ D.E./ Vigilance Inquiry should not come in the way of promotion to any employee. Particularly in the case of Union of India and Ors. Vs. Anil Kumar Sarkar (supra) in para nos. 16 & 17 have clearly explained this point which are reproduced below:-

"16) Learned ASG, by drawing our attention to the decision of this Court in Union of India and Another vs. R.S. Sharma, (2000) 4 SCC 394 submitted that in spite of decision of this Court in Jankiraman's case (supra) in view of para 7 of the office memorandum and in the light of the fact that proceedings were

initiated both criminal and departmentally, the High Court committed an error by overlooking para 7 of sealed cover process and contended that the direction issued by it cannot be sustained. We have carefully gone through the factual position and the ultimate ratio laid down by this Court in R.S. Sharma's case (surpa). Even though in the said decision, this Court has distinguished the decision in Jankiraman's case (supra) and held that the same is not applicable to its case, in the light of the conditions mentioned in para 2 as well as para 7 of the office memorandum dated 14.09.1992 and of the categorical finding that none of the conditions mentioned therein has been fulfilled, we are of the view that the decision in R.S. Sharma's case (supra) is not helpful to the case of the appellant.

17) In the light of the above discussion and in view of factual position as highlighted in the earlier paras, we hold that the ratio laid down in Jankiraman's case (supra) are fully applicable to the case on hand, hence we are in agreement with the ultimate decision of the High Court. Consequently, the appeal filed by the Union of India fails and the same is dismissed. However, there will be no order as to costs.

4. Apart from this above cited Judgments Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training has issued guidelines dated 14.09.1992 for said kind of employees who are facing Court Cases or departmental inquiry, how to proceed with the promotion of such employees. So legal position has been settled by various above cited judgments that promotion of any employees should not become hindrance to the promotion of employees if any departmental inquiry or vigilance inquiry or Court Cases is pending.

5. After the judgment in Union of India etc. Vs. K.V.Jankiraman (supra), Government of Maharashtra has issued G.R. dated 15.12.2017 in which Circular dated 02.04.1976 and G.R. dated 22.04.1996 have been cancelled. However, in this G.R. paras 1 to 11, procedures have been prescribed that how to proceed with such cases.

6. **S.O. 09.01.2023 for final hearing.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.No.903/2020 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

Heard Ms. A.Uikey holding for Shri N.B.Rathod, ld. Counsel for the applicant and Shri V.A.Kulkarni, ld. P.O. for the respondents.

2. At the request of ld. P.O., **S.O. four weeks to file reply.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.No.743/2021 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

Heard Shri A.Motlog holding for Shri R.V.Shiralkar, ld. Counsel for the applicant and Shri V.A.Kulkarni, ld. P.O. for the respondents.

2. At the request of ld. P.O., **S.O. after winter vacation to file reply.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.No.918/2021 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

Heard Dr.N.G.Raut, the applicant in person,
Shri V.A.Kulkarni, ld. P.O. for the respondents, M.Deo,
ld. Counsel for the respondent nos. 8 & 9 and Shri
R.Deo, ld. Counsel for the R-7.

2. At the request of ld. P.O. as well ld. Counsel
for the respondent nos. 7 to 9, **S.O. 20.01.2023 to
file reply.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.No.165/2022 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

Heard Shri A.Motlog holding for Shri S.J.Kadu, ld. Counsel for the applicant and Shri V.A.Kulkarni, ld. P.O. for the respondents.

2. At the request of ld. P.O., **S.O. four weeks to file reply.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.Nos.439&449/2022 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

None for the applicant. Shri V.A.Kulkarni, ld.
P.O. for the respondents.

2. At the request of ld. P.O., **S.O. four weeks to file reply.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.No.650/2022 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

None for the applicant. Shri V.A.Kulkarni, Id.
P.O. for the respondents. Await service of R-2 to 5.

2. **S.O. six weeks to file service affidavit.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.No.1032/2022 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

Heard Shri P.P.Khaparde, Id. Counsel for the applicant and Shri V.A.Kulkarni, Id. P.O. for the respondents.

2. At the request of Id. P.O., **S.O. three weeks to file reply.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.No.1067/2022 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

Heard Shri J.R.Kidilay, ld. Counsel for the applicant and Shri A.M.Ghogre, ld. P.O. for the respondents.

2. At the request of ld. P.O., **S.O. 16.01.2023 to file reply.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.No.1072/2022 (D.B.)

**Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.**

C.A.No.468/2022:-

Heard Shri P.S.Wathore, ld. Counsel for the applicant and Shri A.M.Ghogre, ld. P.O. for the respondents.

2. C.A.No.468/2022 for Jt. O.A. is allowed and disposed of.

3. At the request of ld. P.O., S.O. four weeks to file reply.

Vice Chairman

**Date:-23/12/2022.
aps.**

O.A.No.1154/2022 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

Heard Shri S.N.Gaikwad, ld. Counsel for the applicant and Shri A.M.Ghogre, ld. P.O. for the respondents. Await service of R-2 to 5.

2. At the request of ld. Counsel for the applicant, **S.O. one week to file service affidavit.**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.St.No.1905/2022 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

C.A.No.363/2022:-

Heard Smt. S.D.Gupta, Id. Counsel for the applicant and Shri A.M.Khadatkar, Id. P.O. for the respondents.

2. At the request of Id. P.O., **S.O. four weeks to file reply on C.A..**

Date:-23/12/2022.
aps.

Vice Chairman

O.A.No.1251/2022 (D.B.)

**Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.**

C.A.No.529/2022:-

Heard Shri S.M.Bhagde, ld. Counsel for the applicant and Shri A.M.Ghogre, ld. P.O. for the State.

2. C.A.No.529/2022 for Jt. O.A. is allowed and disposed of.

3. Issue notice to Respondents, returnable on 09.01.2023. Learned P.O. waives notice for R-1. Hamdast allowed.

4. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall 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. Respondent is 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 one week.

Applicant is directed to file Affidavit of compliance and notice.

8. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

9. **S.O. 09.01.2023.**

10. Ld. Counsel for the applicant is pressing for interim relief. However, in the interest of justice it is better that this matter should be heard before regular Division Bench. Hence, issue of interim relief is kept open.

Vice Chairman

Date:-23/12/2022.
aps.

O.A.No.1255/2022 (D.B.)

Coram : Shri Shree Bhagwan, Vice Chairman
Dated : 23/12/2022.

C.A.No.531/2022:-

Heard Smt. S.Saware, ld. Counsel for the applicant and Shri A.M.Ghogre, ld. P.O. for the State.

2. C.A.No.531/2022 for Jt. O.A. is allowed and disposed of.

3. Issue notice to Respondents, returnable on 05.01.2023. Learned P.O. waives notice for R-1. Hamdast allowed.

4. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall 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. Respondent is 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 one week.

Applicant is directed to file Affidavit of compliance and notice.

8. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

9. **S.O. 05.01.2023.**

10. **Issue of interim relief is kept open**

Vice Chairman

Date:-23/12/2022.
aps.

O.A.Nos.1257 & 1258/2022 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :23/12/2022.

C.A.Nos.532&533/2022:-

Heard Shri S.N.Gaikwad, ld. counsel for the applicants and Shri A.M.Khadatkar, ld. P.O. for the State.

2. **C.A. Nos. 532 & 533/2022 for Jt. O.As. are allowed and disposed of.**

3. Ld. Counsel for the applicant has relied on judgment of this Tribunal in O.A. No. 1059/2022 delivered on 21.10.2022. The said judgment is taken on record. Copy of the same is supplied to the other side.

4. Ld. Counsel for the applicant submits that these employees are working in Naxal & Tribal Area and getting benefits of one step above promotional pay scale as per G.R. dated 06.08.2022. Respondents are recovering that pay. Ld. Counsel for the applicant has further submits that applicants are still working in Naxal and Tribal Area. In the interest of justice, **respondents are directed not to recover any amount till filing of the reply. Hence, interim relief (i) is allowed till filing of the reply.**

5. Issue notice to Respondents, returnable on 16.01.2023. Learned P.O. waives notice for R-1. Hamdast allowed.

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

7. 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. Respondent is put to notice that the case would be taken up for final disposal at the stage of admission hearing.

8. 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.

9. 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.

10. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

11. **S.O. 16.01.2023.**

Vice Chairman

Date:-23/12/2022.

aps.

O.A.No.1256/2022 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :23/12/2022.

Heard Shri S.Y.Deopujari, ld. counsel for the applicants and Shri A.M.Khadatkar, ld. P.O. for the State.

2. Ld. Counsel for the applicant has submits that Shri Sandip Pandurang Tatewar has been transferred from Amravati to Ratnagiri by order dated 14.12.2022 (A-1, PP. 27). He has placed reliance on Judgment of this Tribunal in O.A. Nos. 1237&1238/2022 dated 20.12.2022. Ld. Counsel for the applicant submits that applicant has suffering from Cancer since 2013 and he has to go for treatment to Hyderabad frequently for that he has placed document at PP. 38. In the interest of justice, **the order dated 14.12.2022 (A-1, PP. 27) is stayed to the extent of applicant only if he is not relieved till filing of the reply.**

3. Issue notice to Respondents, returnable on 05.01.2023. Learned P.O. waives notice for R-1. Hamdast allowed.

4. Tribunal may take the case for final disposal at this stage and separate notice for final disposal shall 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. Respondent is 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 one week. Applicant is directed to file Affidavit of compliance and notice.

8. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed without reference to Tribunal and papers be consigned to record.

9. **S.O. 05.01.2023.**

10. **If reply is not filed on 05.01.2023 the respective Single Bench will decide about the extension of stay.**

11. **Steno copy is granted.**

Vice Chairman

Date:-23/12/2022.

aps.