

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO.982 OF 2018**

**DISTRICT : THANE**

Shri Hiralal Rama Jadhav, )  
Occ : Service, as Superintendent of Prison, )  
Central Jail [Presently under suspension], )  
Residing at B-1, 303, Ganga Orchard Society, )  
Pinglewasti, Mundhwa Road, Pune 36. ) **...Applicant**

**Versus**

1. The State of Maharashtra )  
Home Department [Prison], )  
Main Building 2<sup>nd</sup> floor, Madam Cama )  
Road, Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai 400 032. )  
[Through Additional Chief Secretary, )  
Prison]. )

2. The Suspension Review committee for )  
Home Department, [Prison], )  
Through its President, The Additional )  
Chief Secretary, [Prison], )  
Home Department (Prison), )  
Main Building, 2<sup>nd</sup> floor, Madam Cama )  
Road, Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai 400 032. ) **...Respondents**

Shri P.S Bhavake, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Shri Justice A.H Joshi (Chairman)**

**RESERVED ON : 11.04.2019**

**PRONOUNCED ON : 14.05.2019**

## J U D G M E N T

1. By this Original Application, the applicant has approached this Tribunal with following relief:-

*“a) By a suitable order/direction, this Hon’ble Tribunal may be pleased to quash and set aside the impugned order dated 29.10.2018 (Exhibit-T) passed by the Respondent No. 1, by which the suspension of the Applicant is continued and accordingly, be pleased to further direct the Respondents to forthwith revoke the suspension of the Applicant and permit the Applicant to resume his duties in the post of Superintendent of Jail.”*

(Quoted from page No. 19 of the paper book of O.A.)

2. In support of his prayer, the applicant has narrated pleadings in detail which runs at length spread in all 17 pages. From the point of view of this Tribunal, relevant averments are contained in paragraph Nos.3 to 7 and grounds are contained in paragraph Nos.20 to 24 & 26 read with averments contained in rejoinder in paragraph No.3 at page No.257.

3. Instead of narrating those pleadings by supply of language of Tribunal, it is considered that it shall be useful to refer the pleadings by quotation, which is done as follows:-

*“3. The Applicant states that in view of the selection through MPSC in the year 1995, the Applicant was appointed as Deputy Superintendent of Jail at Nashik Central Jail. Thereafter, in the year 2000, the Applicant was promoted in the post of Superintendent of Jail (Class-I) and posted at Yerawada Jail, Pune. Thereafter, in the year 2005, the Applicant was further promoted as Central Jail Superintendent (Super Class-I) and posted at Nashik Central Jail. Thereafter, the Applicant was holding the charge of DIG, Nagpur in the year 2009 and 2010. Thereafter, on 15.02.2016, the Applicant was transferred in the post of Superintendent of Prison, Thane Central Jail. The Applicant is very strict and upright in his duties and took many steps to curb the corruption and malpractices in the Prison Departments and hence, he was targeted by Senior Officers in collusion with some of the Jail Staff on several occasions.*

*4. The Applicant states that the Respondent No. 1 is the Home Department of Government of Maharashtra represented through the Principal Secretary, Home Department (Prison) who have sole control over the affairs of Home Department including the Jail Administration. The Respondent No. 1 is the Disciplinary Authority of the Applicant. The Respondent No. 2 is the Suspension Review Committee appointed as per Government Resolution dated 14.10.2011 and 31.01.2015. Hereto annexed and marked as **Exhibit “A”(Collectively)** are the copies of the State Government Resolutions.*

5. The Applicant states that somewhere on 21.03.2016, one Lady Constable by the name Smt. Praja Choudhary (hereinafter called and referred to as "the aggrieved woman" or "the said Complainant" for the sake of brevity and convenience had applied to the Office of the Applicant for staff quarters. There were 17 applications received against the only 4 vacant staff quarters and the application of the aggrieved woman was at Serial No. 9. Therefore, as per the procedure of allotment, it was not possible for the Applicant to allot staff quarter to the aggrieved woman and therefore, vide order dated 23.08.2016, a copy of which is hereto annexed and marked as **Exhibit "B"**, the Applicant had allotted staff quarters to the first 4 staff members. The Applicant states that prior thereto because of indiscipline behaviors of Jail Constables viz. Shri Shrikant Thackeray, Shri Mulik, Shri Jumale and Shri Sagar Bhosale the Applicant warned said Constables and changed their duties.

6. Since the Applicant did not allot the staff quarters, the said Complaint kept grudge of the aforesaid fact in her mind. Taking benefit of the aforesaid fact, aforesaid Jail Constables viz. Shri Shrikant Thackeray, Shri Mulik, Shri Jumale and Shri Sagar Bhosale on instructions of Deputy Superintendent Shir Nitin Vaichal (who was interested in charge of post of Applicant) insisted to aforesaid aggrieved woman Smt. Praja Choudhary to give false complaint against Applicant. Thereafter all of a sudden, somewhere on 29.08.2016, the said Complaint approached to the Deputy Inspector General of Prisons (Western Region), Maharashtra State, Pune along with two other Constables namely Shir Shrikant Thackeray and Shri Mulik and submitted a so-called Complaint in the form of statement, a copy of which is hereto annexed and marked as **Exhibit "C"** recorded before the said Deputy Inspector General of Prisons, Maharashtra State, Pune alleging harassment against the Applicant. In the said statement, the said Complainant-Smt. Praja Choudhary nowhere contended that the applicant sexually harassed her at the workplace or elsewhere.

The Applicant states that surprisingly the aggrieved woman directly approached to Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune instead of approaching to the concerned superior Officer at Mumbai. It is firm allegation of the Applicant in that in order to take revenge to the several written complaints from the year 2012 onwards filed by the Applicant against the aforesaid Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune, the said Smt. Swati Sathe called the aggrieved woman at Pune and forced her to give statement against the Applicant and accordingly she approached to Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune. The said fact itself shows that Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune called the aggrieved woman and forced her to give complaint against the Applicant.

The Applicant states that on the basis of the so-called statement of the aggrieved woman, the said Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune submitted her report dated 29.08.2016 to the Additional Director General of Police and Inspector General of Prisons, Maharashtra State, Pune for taking appropriate action. Hereto annexed and marked as **Exhibit "D"** is the copy of the Report of Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune.

7. Thereafter, the Inspector General of Police (Prisons), Mumbai came to Thane Central Jail on 31.8.2016 whereat the Applicant was working as Superintendent of Prison and took his statement, a copy of which is hereto annexed and marked as **Exhibit "E"**. On the very same day, the Inspector General of Police (Prison), Mumbai transferred the aggrieved woman from Thane Central Jail to Byculla District Jail.

The Applicant states that the Inspector General of Police (Prisons), Mumbai did not record statement of any of the staff members or witnesses and also not collected any documentary record including alleged Whats app messages from the Applicant. Thereafter, on 1.9.2016, the Inspector General of Police (Prisons), Mumbai recorded the statement of the aggrieved woman at DIG Office, Byculla, Mumbai. Hereto annexed and marked as **Exhibit "F"** is the copy of the statement of the aggrieved woman recorded at DIG Office, Byculla, Mumbai.

The Applicant states that surprisingly, without seriously looking in to the matter, on 1.9.2016 itself, the Inspector General of Police (Prisons), Mumbai submitted his so-called Report, a copy of which is hereto annexed and marked as **Exhibit "G"** to the Additional Director General of Police (Prisons).

The Applicant states that the Additional Director General of Police (Prisons) without verifying the said Report, on the very same day, i.e. 1.9.2016 straightway recommended suspension of the Applicant. Hereto annexed and marked as **Exhibit "H"** is the copy of the said Confidential Letter of the Additional Director General of Police (Prisons).

The Applicant States that the Respondent also not scrutinized or looked into the documents and reports and hurriedly issued impugned order dated 2.9.2016, a copy of which is hereto annexed and marked as **Exhibit "I"** thereby suspended the Applicant allegedly as per Rule 4(1)(a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 for conducting the Departmental Enquiry."

(Quoted from page Nos. 3 to 6 of paper book of O.A.)

20. The Applicant states that impugned order passed by Respondent No. 1 is nothing but clear non-application mind. The Respondent No. 1 while passing impugned order not at all assigned any reason for continuation of suspension of Applicant. Therefore such non-reasoned order cannot be sustained under the eyes of law. Hence same is liable to be quashed and set aside.

21. The Applicant states that the Respondent No. 1 while passing the impugned order clearly breach the norms laid down in the Government Resolution dated 14.10.2011. The applicant states that as per Clause 7A only 'Disciplinary Authority' has power to take review of suspension of Government employees who are suspended for holding departmental enquiry. The Applicant further submits that Government Resolution dated 31.01.2015 provides the formation of Suspension Review Committees in respect of Government servants against whom criminal proceedings are pending. However the Applicant suspended only for conducting departmental enquiry. Hence Review Committee formed vide aforesaid Government Resolution dated 31.01.2015 is not having any power to take review of suspension of Applicant and only disciplinary authority has power to take review of Applicant. Hence, on this ground also impugned order is liable to be quashed and set aside.

22. *The Applicant states that atleast on 2 occasions Suspension Review Committee recommended for revocation of suspension of the Applicant. However though there is no any change in circumstances on the last occasion, the Committee for reasons best known to it refused to recommend the revocation and the Respondent No. 1 without application of mind and without passing any reasoned order straightway ordered to continue suspension of the Applicant.*

24. *The Applicant states that in judgment dated 22.12.2017 passed in Writ Petition NO. 8080 of 2017, the Hon'ble High Court has observed that after submission of the Committee Report, the Departmental Enquiry will be initiated against the Applicant. Therefore, it is very uncertain that when will Departmental Enquiry be initiated against the Applicant. The Applicant states that the Applicant is now suspended for more than two years and yet Departmental Enquiry is not initiated against the Applicant. Therefore, it will cause grave prejudice to the Applicant to keep him suspended for uncertain period. Hence, on this ground also impugned order is liable to be quashed and set aside and Applicant should be allowed to resume his duties.*

26. *The Applicant states that the complaints of sexual harassment are filed against the 14 Officer/Employees of Prisons Department. In addition to that recently similar complaints are filed against Shri Nitin Vaichal (Jail Superintendent, Thane) and Shri Chandane (Jail Superintendent, Nanded). No one among them was suspended from their services and only enquiry into complaint is initiated against all of them. The Applicant states that though the Applicant's case is of similar nature he is suspended for holding departmental enquiry straightway without initiating enquiry into complaint filed against him. Therefore, Respondent No. 1 has clearly committed hostile discrimination by treating two similar situated persons in two different manners as stated above. Therefore, the impugned order dated 29.10.2018 passed by the Respondent No. 1 is liable to quash and set aside."*

(Quoted from page Nos. 12 to 15 of paper book of O.A.)

"3. *I say and submit that I am filing this affidavit for brining on record some facts which clearly shows that while illegally continuing my suspension the Respondents has given discriminatory treatment to me. I say that there are various complaints of sexual harassment filed against the Government Servants. Details of such few complaints are as under:-*

- (i) *The complaint of sexual harassment is made by Lady Constable Smt. Shubnam Pinjari against Shri Nitin Waichal-Superintendent, Thane Central Jail, Thane.*
- (ii) *Lady Constable Kavita Dhotre filed complaint against Shri Ramraje Chandane, Superintendent-Nanded District Jail, Nanded.*
- (iii) *Smt. Saikh Anjum Parveen Mohiddin-Lady Constable filed complaint against Shri R.V. Marale, the then Jail Superintendent, Latur District Jail, Latur.*
- (iv) *Smt. Poonam Manohar Salave-Lady Constable filed complaint against Mr. Bhanvase, the then Superintendent, Ratnagiri District Jail, Ratnagiri.*

- (v) *Smt. Sheetal Karad-Lady Constable filed complaint against Shri D.D. Kale, the then Superintendent, Ahmednagar District Jail, Ahmednagar.*
- (vi) *Smt. Vaishali Jadhawar-Lady Constable filed complaint against Shri Mahadev Pawar, the then Superintendent, Sangli District Jail and as of today Mr. Pawar is working at Beed District Jail.*
- (vii) *Smt. Mandape-Lady Jailer filed complaint against Narayan Chonde, the then Superintendent, Satara District Jail, Satara.*
- (viii) *Smt. Khobragade Lady Constable filed complaint against Pramod Wagh at Nagpur Central Jail, who is presently posted at Kalyan District Jail as Dy. Superintendent.*
- (ix) *Smt. Suvarna Shinde-Lady Jailer and other Lady Constable filed complaint against Shri Nigade-the then Office Superintendent, Jail Officers Training College, Pune.*
- (x) *Smt. Swati Sateh-DIG herself filed Complaint against Jail Constable Shri Ashok Sarode working in Byculla District Jail, Byculla, Mumbai.*
- (xi) *One Lady Constable filed complaint against Shri Hanumant Raut-working as Hawaldar at Usamanabad District Jail.*
- (xii) *The complaint of sexual harassment against Yogesh Desai-DIG (Prison) was filed by a Lady Jailor Smt. Athavale. However, no any enquiry is conducted against Shri Desai and on the contrary Smt. Athavale was surprisingly transferred to Amravati Central Jail.*
- (xiii) *Smt. More-Clerk filed complaint against Shri Rajendra Borkar-PA to (DIG) Prison, Aurangabad.*
- (xiv) *Lady Constable-Smt. Reshma Fakir filed complaint against Shri Dayanand Sorate-Sr. Jailer, Ratnagiri District Jail, Ratnagiri.*
- (xv) *Smt. Navita Gaikwad-Clerk filed complaint against Shri Awale-Jail Superintendent, Kolhapur District Jail, Kolhapur. However, said matter was internally settled between both the parties.*
- (xvi) *Smt. Walunj-Jailor filed complaint against Shri P.J. Jagtap-Jailor, Yerwada Central Jail. However said matter was internally settled between both the parties.*
- (xvii) *Lady Constable Smt. Chavan filed complain against Shri Gite, Ratnagiri District Jail, Ratnagiri.”*

(Quoted from page Nos. 257 to 259 of affidavit-in-rejoinder)

4. The respondents have replied the averments by admitting the facts of the matter and averred further, saying that :-

- i) Mala-fides are denied.
- ii) Impugned action being improper, unjust, being in violation of principles of natural justice etc., is also denied.
- (iii) Completing the disciplinary enquiry in the matter of charge-sheet served on the applicant is not possible in view of the interim relief granted by the Hon'ble Supreme Court in Applicant's SLP No.92/2018 by order dated 22.01.2018.
- (iv) In so far as the aspect of discrimination averred in ground at paragraph Nos.25 and 26 is concerned, the State has replied that averment, which reads as follows :-

*"14. With reference to Paragraph 6.25, I say and submit that the contents raised in this para are not admitted. It is submitted that the grounds of suspension of Shri Chandaramani Indurkar, Shri J.S. Naik and Shri Vaibhav Kamble and the grounds of suspension of the Applicant are different. Further, it is submitted that the Applicant has been suspended on four counts previously and as per the direction given by the Hon'ble Tribunal in O.A. NO. 269/2018 dated 16.10.2018, the Government on 29.10.2018 took the decision after considering all facts.*

*15. With reference to Paragraph 6.26, I say and submit that the contents raised in this para as to the fourteen complaint of sexual harassment and no one amongst them suspended from the service, it is submitted that these issues are not pending at Government level. The Applicants case is of serious nature also his previous service record is not good. The Applicant has been suspended previously on four counts and mostly on charges of sexual harassment."*

(Quoted from page Nos. 770 &771 of affidavit in reply)

- (v) The allegations of discrimination as alleged/detailed in rejoinder are concerned, those have not been replied by the respondents even while filing additional affidavit, which is at page Nos.777 to 780.

5. In so far as grounds regarding mala-fides on the part of Smt. Swati Sathe, Deputy Inspector General of Prisons (Western Region), Yerwada, Pune are concerned, those do not warrant to be dealt with in the background that Smt. Swati Sathe is not arrayed as a party

respondent. However, steps taken by Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune, in so far as those are born on record are concerned those can be considered.

6. Applicant's plea that the suspension is propelled due to malafides in law, can be examined on its own merit in so far as it relates to official acts of respondents are concerned and if those get any support from record.

7. The facts which are antecedent and not in dispute are summarized as follows:-

- (a) The Applicant belongs to Hindu-Kaikadi Caste, which is recognized as the Vimukta Jathi / Nomadic Tribe (VJNT).
- (b) Applicant possess degrees of B.A., MSW and LL.B. etc. In 1995, in view of the selection through MPSC, the applicant was appointed as Deputy Superintendent of Jail at Nashik Central Jail. In 2000, the Applicant was promoted on the post of Superintendent of Jail (Class-I) and posted at Yerwada Jail, Pune. In 2005, the Applicant was further promoted as Central Jail Superintendent (Super Class-I) and posted at Nashik Central Jail.
- (c) Applicant has less than 3 years of tenure left before his superannuation.
- (d) On certain occasion, the applicant has been blamed, charge sheeted, and even suspended, however, so far, any adverse decision is not finally reached against the applicant. It is not shown that any penalty has been inflicted on him.
- (e) On 21.03.2016 Smt. Praja Choudhary an woman Jail Guard (Complainant) working in Central Jail at Thane, requested the applicant for allotment of staff quarter.
- (f) On 23.08.2016, the applicant has allotted quarter to four woman guards staff members, but did not make allotment of staff quarter to the complainant.
- (g) On 23.08.2016 the applicant changed allotment of duty to Constables viz. Shrikant Thackeray, Shri Mulik, Shri Jumale and Shri Sagar Bhosale and warned them to properly perform duties and maintain the discipline.



- (h) Applicant claims that these four Constables got disgruntled.
- (i) Record reveals (Page Nos.600 & 604) that Smt. Praja Choudhary has entered into conversation with some amongst these four disgruntled guards.
- (j) Smt. Praja Choudhary claims that she had received communication from the applicant by sending message on her cell phone. It is seen that the complainant responded and applicant was also actively engaged in further response/conversation.
- (k) Copies of screenshot of messages on whatsapp which were filed by complainant along with her report furnished to Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune, are placed on record of present O.A., which are at page Nos.580 to 593.
- (l) Complainant claims that she had secured the contact number of Smt.Swati Sathi, Director General of Prisons (Western Region), Yerwada, Pune. Text to above statement is seen at page No.576, which reads as follows:-

“हे सर्व घडत असतांना अधिकांचा वाईट हेतू लक्षात आल्याने मी खुप टॅन्शन मध्ये होते.दरम्यान मा. कारागृह उप. महानिरीक्षक स्वाती साठे मॅडम यांचा फोन नंबर मिळविला होता. त्याचा आधार वाटल्याने रात्री १.३० वाजता वरील सर्व मेसेज मी मॅडम ला पाठविले. सकाळी मॅडमला फोन करून वरील सर्व घटना सांगितल्या व मदत करण्याबाबत विनंती केली. त्यामुळे मॅडम च्या आदेशा नुसार मी आज दि. २९.०८.१६ रोजी पुणे येथील मुख्यालयात माननिय उप. महानिरीक्षक स्वाती साठे मॅडम यांना भेटून वरील नमुद केल्या नुसार सर्व सांगितले.”

(Quoted from page No. 576 of paper book of O.A.)

- (m) Complainant went to meet Smt. Swati Sathe at Pune and reported her the incidents of applicant's chatting on cell phone withher on 29.9.2019 and sought help.
- (n) The first response of the applicant is seen from this statement, which is recorded by the Director General of Prisons (Western Region), Yerwada, Pune, viz. Smt. Swati Sathe, the copy of response is at page Nos.49 and 50, which reads as follows:-

“जबाब

मी हिरालाल रा. जाधव अधिकाक ठाणे म. कारागृह विचारल्या वरून जबाब लिहून देतो की आज दि. ३१.०८.२०१६ रोजी मला श्रीमती प्रजा चौधरी या महिला रक्षकाचा जबाब दाखविण्यात आला त्यांची तक्रार मी वाचली, मी माझे म्हणणे पुढील प्रमाणे आहे.

मी त्यांना वॅन्जींग रुम म्हणून निवासस्थान दिनांक १.३.२०१६ रोजी २ महिन्यांअगोदर दिलेले आहे. सिनॅरिटी लिस्ट प्रमाणे निवासस्थान वाटप केलेले आहे. त्यांची निवासस्थानाची मागणी होती परंतु जेष्ठते नुसार निवास स्थान दिले आहे.

मी त्यांच्या विरुद्ध अर्जाची चौकशी श्रीमती चव्हाण तु.अ. यांना दिली त्या चौकशी मध्ये ती तक्रार खोटी असल्याचे सिध्द झाले होते ते दप्तरी दाखल कले.

सर्व महिला रक्षकांच्या ड्युट्या बदलण्यात आल्या. तसेच त्यांचीही ड्युटी बलण्यात आली. महिला विभागामध्ये एका महिला बंदयाने मोबाईल आनला. तो श्रीमती बिजान बॅडकुळे यांनी काढला हे मला माहित नव्हते. ही माहिती १५ दिवसाने झाली त्यानंतर एका महिला बंदीला हॉस्पिटल आजारी नसताना पाठविले त्याची माहिती समजताच मी ३२ नं. नोंदवही रद्द केली. या करिता महिला विभागाच्या आतील माहिती माला समजावी या साठी मी श्रीमती बिजान बॅडकुळे व श्रीमती भाग्यश्री ढोळे व श्रीमती प्रजा चौधरी यांना मला आतील माहिती वेळोवेळी देण्याबाबत सांगितले होते.

मला वॉटसअप मॅसेज पाहिल्यांदा श्रीमती चौधरी यांचा आला त्या नंतर फोन त्यांचाच पहिल्यांदा आला ते रेकॉर्ड वर दिसून येईल. त्याला मी रिप्लाय दिला. मी त्यांना ऑफीसमध्ये लोक संशय घेतात यामुळे जेलच्या बाहेरच सांगा. आतील बाब, हा उद्देश होता परंतु त्यांनी प्रिप्लॉन करून मला मॅसेजला मॅसेज रिप्लाय घेत गेले व अडकविण्याचा त्यांचा हेतु होता हे लक्षात आहे नाही. मी माझ्या वॉटसअप मॅसेज मध्ये स्पष्ट लिहले आहे. त्यांना की मला जेलच्या आतील खबर देता यावी करीता जेलच्या बाहेर सांगा असे लिहिले हे दिसून येईल. मी मॅसेज मध्ये कोणतेही वॉर्डट काहीच लिहलेले नाही.

श्री श्रीकांत ठाकरे, रक्षक, श्री जुमले, रक्षक, श्री मुळीक, रक्षक यांना E सेल ड्युटी बदलली त्याचा राग येवून त्यांनी प्रिप्लॉन करून या महिला रक्षकास पुढे करून वॉटसअप मॅसेज वर असे अडकविण्याचा हेतु होता. त्यांना श्री वायचळ या उपअधिकांकी सपोर्ट केला आहे.

मी श्रीमती चौधरी यांना जेष्ठता नसल्याने निवासस्थान दिलेले नाही त्याचा त्यांना राग होता. माझ्या विरुद्ध श्रीकांत ठाकरे याने यापूर्वी तक्रार केली हे ..... कर्मचारी एकत्र येवून हे षडयंत्र रचून तक्रार केलेली आहे.”

(Quoted from page Nos. 49 and 50 of paper book of O.A.)

- (o) Moreover, the applicant's version is also recorded by the Special Inspector General of Police (Prisons), South Division, Mumbai-8 Shri Rajwardhan, in letter/report written by him on 01.09.2016, Exhibit-G, page Nos.55 to 58, where the relevant text is narrated at page No.56, which reads as follows:-

“या संदर्भात चौकशीमध्ये श्री जाधव, अधीक्षक यांनी जाबाबात नमुद कले की, सदर महीला कर्मचा-यास मी वॅन्जींग रुम दिली आहे. त्यांच्या विरुद्ध केलेल्या तक्रार अर्ज दप्तरी दाखल करण्यात आला आहे. सर्व महीला कर्मचा-यांबरोबर श्रीमती. चौधरी यांची सुध्दा कर्तव्य बदलण्यात आले, महीला बॅरक मध्ये मोबाईल आढळून आल्यानंतर याबाबतची माहिती मला वेळोवेळी देण्याबाबत सांगितले होते. मला वॉटस अप मेसेज पहीला श्रीमती. चौधरी यांचा आला त्यानंतर फोन सुध्दा त्यांचाच आला. त्याला मला रिप्लाय केला आहे. त्यांना ऑफीसमध्ये लोक संशय घेतात म्हणून जेलच्या बाहेर बोलावले, मला सदर प्रकरणात हेतु पूर्वक अडकविण्यात आले आहे. मी कोणतेही मॅसेज वॉर्डट हेतुने पाठविले नाही. या संदर्भात श्री. ठाकरे, रक्षक, श्री. जुमले, रक्षक व श्री. मुळीक, रक्षक यांची ई सेलची ड्युटी बदलल्यामुळे नियोजन करून मला फसविण्यात आले आहे.”

(Quoted from page No. 56 of paper book of O.A.)

- (p) In summary, applicant's version appears to be to the effect that :-

“Complainant, Jail Guard, Shri Shrikant Thackeray, Shri Mulik and Shri Jumale all of them together have hatchup a plot to involve the applicant.”

- (q) Versions of the complainant contained in her report, which is summarized in the report sent to higher authority by Shri Rajwardhan, Special Inspector General of Police (Prisons), South Division, Mumbai-8, which is seen at page Nos.56 and 57 contains the summery of complainant's version. Relevant portion from Shri Rajwardhan, Special Inspector General of Police (Prisons), South Division, Mumbai-8, report reads as follows:-

“या संदर्भात, श्रीमती चौधरी, कारागृह शिपाई यांचेकडे घटनेबाबत चौकशी केली असता त्यांनी सदर प्रकरणी मुख्यालयास दिलेला जबाब खरा असून श्री जाधव, अधीक्षक यांनी त्यांचेशी वॉटस वरून व मोबाईल फोनवरून संपर्क साधला असून संभाषण केले आहे. या संदर्भात जबाब सुध्दा नोंदविला आहे. तसेच कंट्रोलरूम मध्ये कर्तव्य देण्यात आल्यानंतर गैरहजर राहिल्यानंतर जापन देण्याची धमकी अधीक्षकांनी दिली, दि. २६.०८.२०१६ रोजी फोन करून कळवा ब्रिज येथे भेटण्यासाठी गेली त्यावेळी माझ्या हाताला धरून “तु खुप सुंदर दिसतेस, गाडीत बस बाहेर फिरून येऊन” असे म्हणाले मी हाताला झटकून तिथून निघून गेली. श्री. जाधव यांना भेटण्यासाठी मी सुरक्षितरित्या गेली होती, श्री. जाधव यांचेशी संभाषण हे मी अपरात्री रिप्लाय केले आहे, त्याबाबत मी नमुद करते की, मला त्यांचे मनातला हेतु समजून घेणे आवश्यक होते, त्याकरीता मी अशा प्रकारे मेसेज केले. असल्यामुळे शेवटी त्यांनी मला मेसेज डिलीट करणेची सुचना दिली परंतु मी मेसेज डिलीट केलेले नाही. आवश्यक माझे पाच महीन्याचे कालावधीमध्ये श्री. जाधव, अधीक्षक यांची महीला कर्मचारी यांचेकडे पाहण्याचा दृष्टीकोन आदराचा नव्हता.”

(Quoted from page nos. 56 and 57 of paper book of O.A.)

8. In the process of examining rival contentions, at this stage, this Tribunal has to proceed on the foundation that :-

- Whatever thing material / version / prima-facie evidence which is borne on record may have to be accepted as facts, prima-facie established, unless gravely suspicious.
- Every word and line found therein may not be taken as gospel truth, yet those cannot be discarded at the outset.
- Total belief or disbelief on the statement of the complainant or even of the applicant would be premature.
- Hence, this Tribunal has to proceed upon accepting the version of the complainant, to be prima-facie based on the reality and truth, as well form opinion about palatability of applicant's version.

9. Now the job left before this Tribunal is of grasping from the events which have occurred, exact text of the complainant, and while appreciating/assessing worthiness of credit thereof, to refer to those in summary way and without repeating and reproducing the text in totality.

10. Therefore, now this Tribunal has to divide and narrate what is the gist of the grievance of the complainant, which is done as follows:-

- (a) The applicant (Shri Hiralal Jadhav) had threatened the complainant that he would take action against her (the complainant) towards her absence from duty.
- (b) The Applicant did contact the complainant initially by sending a blankcall / message on whatsapp or by contacting the complainant on her cellphone / mobile phone.
- (c) On 26.08.2016, the applicant orally asked the complainant to meet him outside the Prison near Kalwa Bridge.
- (d) The complainant went at Kalwa Bridge with due precaution and was accompanied by a male Jail Guard.
- (e) When the applicant meet the complainant at Kalwa Bridge, the applicant offered her frontseat in car, held / touched her hand and offered her to go for ride and uttered words that you look pretty (तु खूप सुंदर दिसतेस). The complainant shirked the hand of applicant and refused and went off.
- (f) Complainant received message from the applicant and complainant got engaged in replying those, and this was going on from around 10.00 p.m. of 27<sup>th</sup> August 2016 till late night mid-night between 27<sup>th</sup> and 28<sup>th</sup> August, 2016.
- (g) The complainant did not delete the messages, though applicant told to do it.
- (h) During last four months, the out-look/point of view of the applicant towards complainant and generally as regards female staff was lacking grace and proper respect.

11. Based on the report submitted by Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune, the Special Inspector General of Police (Prisons), South Division, Mumbai-8, file was moved on the same day, rapidly for proposing applicant's suspension. The Additional Director General of Police (Prisons), South Zone, Mumbai wrote a letter to the Additional Chief Secretary, Home Department and proposed disciplinary action and suspension of the applicant.

12. The record shows that the applicant's suspension was processed and moved within one day and it was approved by Hon'ble Chief Minister. The order of suspension was issued on 02.09.2016.

13. The applicant has been served a charge-sheet on 15.11.2016 i.e. after about two and half months.

14. The concluding part of charges against the applicant are based on the factual narration referred hereinbefore, and exact text of two charges reads as follows :-

(a) Charge No. 1 :-

“..... संस्था प्रमुख असतांना कार्यालयात भेटणे आवश्यक असतांना कारागृहाबाहेर भेटावयास बोलाविले. यावरून श्री हिरालाल जाधव, अधीक्षक यांनी त्यांचे कर्तव्यात नितांत सचोटी, कर्तव्यपारायणता राखली नाही व त्यांचे पदास अशोभनीय असे वर्तण करून त्यांनी नैतिक अधःपतन करून भष्ट वर्तन केले, कामकरी महिलेच्या लैंगिक छळावादाचे कृत्य करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ च्या नियम ३ आणि २२अ (१) चा भंग केला आहे.”

(Quoted from page No. 65 of paper book of O.A.)

(b) Charge No. 2 :-

जोडपत्र - २

श्री. हिरालाल रा. जाधव निलंबित अधीक्षक, ठाणे मध्यवर्ती कारागृह यांच्याविरुद्ध तयार करण्यात आलेल्या दोषारोपातील बाबींचा पुष्ट्यर्थ असलेल्या गैरशिस्तीच्या किंवा गैरवर्तणुकीच्या आरोपांचे विवरणपत्र  
अभिकथन :- श्री. हिरालाल रामा जाधव, यांना येथे दिनांक १५/०२/२०१६ ते ०२/०९/२०१६ या कालावधीत ठाणे मध्यवर्ती कारागृह येथील अधीक्षक या पदाचा कार्यभार देण्यात आला होता. श्रीमती प्रजा रमेश चौधरी, नवनियुक्त महिला रक्षक यांनी शासकीय निवासस्थान मिलण्याकरिता विनंती अर्ज सादर केला होता. त्या अनुषंगाने श्री हिरालाल जाधव, अधीक्षक यांनी श्रीमती प्रजा चौधरी, महिला रक्षक यांना अधीक्षक कार्यालयात बोलावून घेतले, त्यावेळी तुम्हाला रुम देण्यात येईल, त्या आधी मला फोन कर मला तुझ्याशी काही वैयक्तीक बोलायचे आहे, असे सांगितले आहे. परंतु निवासस्थान वाटप करणे हे शासकीय काम असतांना व श्रीमती प्रजा चौधरी, नवनियुक्त महिला रक्षक यांनी लेखी अर्ज केला, असतांना सुध्दा त्यांना दुरध्वनी करावयास सांगणे, यावरून श्री हिरालाल जाधव, अधीक्षक यांचा अंतस्थ हेतू चांगला नव्हता तसेच जाणीवपूर्वक व वाईट हेतूने एका महिला कर्मचा-याला दुरध्वनी करावयास सांगितले आहे. वास्तविक पहाता श्री हिरालाल जाधव, अधीक्षक यांनी एका महिला कर्मचा-याला वैयक्तीक बोलावण्याचे असल्याने फोन करावयास सांगणे गैर आहे. यावरून श्री हिरालाल जाधव, अधीक्षक यांनी त्यांचे अधीक्षक या पदाचा गैरवापर करून एका महिला कर्मचा-याला फोन अरायला प्रवृत्त केले आहे.

दिनांक ३०/०४/२०१६ रोजी ठाणे मध्यवर्ती कारागृह येथील “शासकीय वसाहतीत अश्लील व्यवहार होत असल्याबाबत” तक्रार अर्ज प्राप्त झाला. शासन परिपत्रक क्र.शाकाप-२०१५/प्र.क्र.५/१८/(र.व.का.) दिनांक २५/२/२०१५ अन्वये निनावी व खोट्या तक्रारी, खोट्या सहीने केलेल्या तक्रारीची तपासणी न करता दफतरी दाखल करण्यात यावेत, अशा स्पष्ट सुचना असतांना सुध्दा श्री हिरालाल जाधव, अधीक्षक यांनी रुम नं. १ व १६ कोणाच्या नावावर आहे. त्यांनी अधीक्षक यांचे समोर उभे करावे असा शेर दिला. त्यानंतर श्रीमती सुषमा वद्दहाण, तुरुंगाधिकारी यांनी चौकशी केली असता, त्यांनी त्यामध्ये काहीही तथ्य नाही, असा त्याच अर्जावर शेर दिलेला आहे. निनावी अर्ज दफतरी दाखल करावा ही बाब माहित असतांना देखील त्या रुममध्ये रहाणा-या कर्मचा-यांना उभे रहाण्यासाठी आदेश दिले. श्रीमती सुषमा वद्दहाण, तुरुंगाधिकारी श्रेणी-२ यांचेकडून चौकशी करून घेणे आक्षेपार्ह आहे, तसेच इथपर्यंत न थांबता रुम नं. १ मध्ये रहाणारे श्रीमती प्रजा चौधरी यांनी बोलावून अर्जातील आक्षेपार्ह मजकुर वाचून दाखविला. यावरून श्री हिरालाल जाधव, यांचा वाईट हेतू दिसून येतो. यावरून श्री हिरालाल जाधव, यांनी त्यांचे पदाचा गैरवापर करून एका महिला कर्मचा-यावर दबाव आणला आहे.

श्री हिरालाल जाधव, अधीक्षक यांनी, त्यांचे मोबाईल क्र.९५०३२५९०७७ वरून श्रीमती प्रजा चौधरी, नवनियुक्त महिला रक्षक यांचे मोबाईल क्र.९६०४४५६०५१ वर व्हॉट्स अॅपद्वारे स्वतःचे व श्रीमती प्रजा चौधरी यांचे फोटो उशिरा रात्री पाठविले आहेत. श्री हिरालाल जाधव, अधीक्षक यांनी एका महिला कर्मचा-याला अशाप्रकारे रात्री अपरात्री व्हॉट्स अॅपद्वारे फोटो पाठवून शासकीय गणवेशधारी अधिका-यास अशोभनीय वर्तन आहे. वास्तविक पहाता श्री हिरालाल जाधव, अधीक्षक हे अनुभवी व जबाबदार गट-अ चे अधिकारी आहेत. महिला कर्मचा-यांशी वागताना सौजन्याने वागणे आवश्यक होते. परंतु श्री हिरालाल जाधव, अधीक्षक यांनी महिला कर्मचा-यांशी वागतांना कोणतेही भान ठेवले नाही. अशाप्रकारे श्री हिरालाल जाधव, अधीक्षक यांनी जाणीवपूर्वक व हेतुपुरस्करपणे एका महिला कर्मचा-याला रात्री अपरात्री फोटो पाठवून गैरवर्तन केले आहे.

दिनांक २७/०८/२०१६ रोजी रात्री १०.३५ वाजता श्री हिरालाल जाधव, अधीक्षक यांनी त्यांचे मोबाईल क्र. ९५०३२५९०७७ वरून नवनिघुक्त महिला रक्षक, श्रीमती प्रजा चौधरी यांचेशी मोबाईल क्र. ९६०४४५६०५१ वरील व्हॉट्स अॅपद्वारे प्रथम स्वतःब्लॉक मेसेज करून संभाषण सुरु केले. सदरचे संभाषण रात्री १०.३५ वाजेपासून १.१६ वाजेपर्यंत सुरु ठेवून त्यांना त्रास दिला आहे. महिला कर्मचा-यांशी रात्री अपरात्री व्हॉट्स अॅप मेसेज करणे, ही बाब गंभीर व आक्षेपाई आहे. त्यानंतर शेवटी श्री जाधव, अधीक्षक यांनी श्रीमती प्रजा चौधरी, महिला रक्षक यांना आक्षेपाई व्हॉट्स अॅप मेसेज संभाषण डिलीट करवायास सांगितले. यावरून श्री हिरालाल जाधव, अधीक्षक यांनी जाणीवपूर्वक व वाईटहेतूने श्रीमती प्रजा चौधरी यांचेशी संभाषण केले आहे. श्री हिरालाल जाधव, अधीक्षक हे जबाबदार व अनुभवी वर्ग-१ चे अधिकारी असून कार्यालय प्रमुख या नात्याने महिला कर्मचा-यांना रात्री अपरात्री व्हॉट्स अॅप मेसेज पाठविताना भान ठेवणे आवश्यक होते.

श्री हिरालाल रामा जाधव, अधीक्षक यांनी नवनिघुक्त महिला रक्षक श्रीमती प्रजा चौधरी यांना शासकीय निवासस्थान देण्याकरिता कारागृह परिसराबाहेर कळवा ब्रीज, ठाणे येथे भेटावायस प्रवृत्त केले आहे. वास्तविक पहाता श्री हिरालाल जाधव, अधीक्षक यांनी श्रीमती प्रजा चौधरी, महिला रक्षक यांना कोणत्याही विषयावर बोलावयाचे होते तर अधीक्षक यांचे दालनात त्यांना बोलावून चर्चा करणे आवश्यक होते. श्री हिरालाल जाधव, अधीक्षक यांनी श्रीमती प्रजा चौधरी, नवनिघुक्त महिला रक्षक यांना सतत फोन करून भेटावायास प्रवृत्त करून दबाव आणला आहे. श्री हिरालाल जाधव, अधीक्षक यांनी त्यांचे पदाचा गैरवापर केला आहे. श्री हिरालाल जाधव, अधीक्षक हे श्रीमती प्रजा चौधरी, महिला रक्षक यांना दिनांक २६/०८/२०१३ रोजी फोन करून कारागृह परिसराबाहेर कळवा ब्रीज, ठाणे येथे भेटावयास संशयास्पदरित्या गेले. वास्तविक पहाता श्री हिरालाल जाधव, अधीक्षक यांनी महिला कर्मचा-यांना संस्थाप्रमुख म्हणून भेटताना नियमानुसार भेटणे आवश्यक होते. एका महिला कर्मचा-यांना संशयास्पदरित्या कारागृहाचे बाहेर भेटणे यावरून श्री हिरालाल जाधव, अधीक्षक यांनी नैतिक अधःपतन व भ्रष्ट वर्तन केले आहे. श्री हिरालाल जाधव, अधीक्षक यांनी त्यांचे पदाचा गैरवापर करून एका महिला कर्मचा-यावर दबाव आणला आहे. यावरून श्री हिरालाल जाधव, अधीक्षक यांनी त्यांचे कर्तव्यात नितांत सचोटी, कर्तव्यपारायणता राखली नाही व त्यांचे पदास अशोभनीय असे वर्तण करून त्यांनी नैतिक अधःपतन करून भ्रष्ट वर्तण केले, कामकरी महिलेच्या लैंगिक छळवादाचे कृत्य करून महाराष्ट्र नागरी सेवा (वर्तनूक) नियम १९७९ च्या नियम ३ आणि नियम २२ अ (१) चा भंग केला आहे.

“.....श्री हिरालाल जाधव, अधीक्षक हे श्रीमती प्रजा चौधरी यांना दिनांक २६.८.२०१६ रोजी फोन करून कारागृह परिसराबाहेर कळवा ब्रीज, ठाणे येथे भेटावयास संशयास्पदरित्या गेले. वास्तविक पहाता श्री हिरालाल जाधव, अधीक्षक यांनी महिला कर्मचा-यांना संस्थाप्रमुख म्हणून भेटताना नियमानुसार भेटणे आवश्यक होते. एका महिला कर्मचा-यांना संशयास्पदरित्या कारागृहाचे बाहेर भेटणे यावरून श्री हिरालाल जाधव, अधीक्षक यांनी नैतिक अधःपतन व भ्रष्ट वर्तन केले आहे. श्री हिरालाल जाधव, अधीक्षक यांनी त्यांचे पदाचा गैरवापर करून एका महिला कर्मचा-यावर दबाव आणला आहे. यावरून श्री हिरालाल जाधव, अधीक्षक यांनी त्यांचे कर्तव्यात नितांत सचोटी, कर्तव्यपारायणता राखली नाही व त्यांचे पदास अशोभनीय असे वर्तण करून त्यांनी नैतिक अधःपतन करून भ्रष्ट वर्तन केले, कामकरी महिलेच्या लैंगिक छळवादाचे कृत्य करून महाराष्ट्र नागरी सेवा (वर्तनूक) नियम १९७९ च्या नियम ३ आणि नियम २२ अ (१) चा भंग केला आहे.”

(Quoted from page No. 66 to 68 of paper book of O.A.)

15. In summary, what has been alleged against the applicant in the Charge is :-

- “(a) *Inappropriate behavior in calling women employee to meet outside place of work and inappropriate behavior by holding her hand and offering her for go to ride etc., and improperly entering in conversation through whatsapp messages etc.*
- (b) *Applicant got engaged himself in communication of Whatsapp through his mobile with the complainant and kept her engaged later hours and sent inappropriate and impolice messages, photographs etc with bad/unfair intention.”*

16. Next point that arises is as to manner in which the matter of review of applicant's suspension is considered.

17. The applicant has urged that :-

- (a) The respondents had treated that the matter of review of suspensionis processed by the Government, on the basis of Governmnet Resolution dated 14.10.2011 (Exhibit -A, page No. 21).
- (b) The Government decision dated 14.10.2011 contemplates or deals with only such cases of suspension which may have been ordered due to arrest in a criminal case charge, and the suspension which is ordered due to initiation of disciplinary action is not governed by said G.R. dated 14.10.2014 (Exhibit-A).
- (c) Admittedly, the record relied upon by the State also reveals that the matter of suspension of applicant was moved due to the statement given by the complainant to the Director General of Prisons (Western Region), Maharashtra State, Pune, and the complaint thereon and not due to any FIR.
- (d) Details of three FIRs lodged against applicant by the complainant are as follows:-
  - (i) Crime No.I-147/2016  
Dated of lodgment : 31.8.2016  
Date of incident : 22<sup>nd</sup> to 29<sup>th</sup> August, 2016  
Incidents : Applicant's objectionable conduct with complainant copy is at page 430 to 434.
  - (ii) Crime No.III-192/2016;  
Date of lodgement : 27.10.2016  
Date of incident : 27.09.2016  
Incidents : Applicant forcibly entered main gates of the gate of the precincts of Thane with 13 unrelated persons and five-six vehicles.
  - (iii) Crime No.II-109/2016;  
Date of lodgement : 29.12.2016  
Date of incident : 31.8.2016 to 23.12.2016  
Incidents : Alleged conduct of applicant of having instrumental for publishing scurlious material along with applicant's photograph in Daily Mirror & Daily Pudhari and for making false complaints against applicant. Copy of FIR is at page 682 to 686 of Paper Book.
- (e) Admittedly, the applicant was not arrested in said Crime No.I-147/2016 and later on had applied for and he got the anticipatory bail in the said matter.

- (f) The process of disciplinary enquiry subject matter of incident against Smt Praja Choudhary is stayed due to interim relief ordered by the Hon'ble Supreme Court on 22.01.2018 in SLP No.92/2018 filed by the applicant. Thus it is not legally possible and permissible for the Government to complete the enquiry in the matter of charge-sheet against the applicant due to the order of stay granted in favour of the applicant. Applicant had moved Hon'ble Court complaining grave illegalities in the enquiry being contrary to judgments of Hon'ble Supreme Court.
- (g) Even paragraph No.7A of the Government decision dated 14.10.2011 therefore its deals with the matter of review of suspension of case where the charge-sheet is served on the delinquent under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979, the review of suspension is to be taken after three months and in the event the disciplinary enquiry could not be completed within six months and the delinquent has to be posted on a non-executive post.
- (h) Since Applicant has not been suspended due to filing of FIR and since enquiry cannot be completed within six months, he is entitled to be reinstated.

18. In the background of rival pleadings, the questions which arise for consideration of this Tribunal in the present Original Application and Tribunal's findings thereon for the discussion and reasons hereinafter are as follows :-

Sr No.	Question	Findings
(a)	Whether in the background that due to act of law and order of Court, the enquiry in the matter of charge sheet agasint the applciant could not be concluded, due to stay of enquiry ordered in SLP No. 92/2018 dated 22.10.2018, could suspension be still continued on any other ground?	On facts of case, it is open to Government to take conscious decision.



(b)	Whether the applicant is entitled for relief that refusal to revoke the suspension done by the Government be declared to be bad being erroneous and it be quashed?	Applicant is entitled to declaration that suspension is liable to be revoked forthwith and he be posted on any suitable position as per the discretion of the State.
(c)	Whether from the record produced by the parties, the order / decision dated 29.10.2018 deciding to refuse to review / revoke the applicant's suspension is sustainable on facts as born on record?	
(e)	Is applicant entitled for further relief by issue of direction ordering the Government to issue an order to modify the said suspension and to allow the applicant to resume duty by treating that the suspension be deemed to have been reviewed or set aside?	

19. After scrutiny of record and after taking resume of facts and law as cited, and all questions which are agitated, it transpires that the decision which Tribunal has to take would be guided or governed by certain propositions viz. :-

- (A) If facts alleged against applicant which are regarded as the cause of suspension do constitute grave misconduct and those facts are shocking, suspension may be capable of continuation, irrespective of any technicality in observance of procedure and as to its duration.
- (B) If on facts, it is found that the suspension was justified and was right course of action to be adopted, point of mala-fides, discrimination etc. would take a back seat as these matters would not vitiate the action impugned.
- (C) The question as to whether the suspension was at all necessary and as to whether it deserves to be continued or as to whether the applicant deserves to be reinstated will solely depend upon the factual matter or the cause which has led to suspension due to the gravity of misconduct of the applicant.

20. In this background, it is necessary to have a look at what are the facts and what is the manner in which the suspension/its review was seen by the authorities.

21. Sequence of facts born on record is as follows :-

- (a) Complainant Smt. Praja Choudhary claims that soon after she had long drawn conversation with applicant till late night of 27.08.2016 and 28.08.2016. She sent the details of messages to Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune .
- (b) Complainant went to Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune and gave copies of conversation to Smt. Swati Sathe on 29.08.2016.
- (c) On 29.08.2016, Smt. Swati Sathe, Director General of Prisons (Western Region), Yerwada, Pune visited the Central Prisons Thane, made report against the applicant to Special Inspector General of Police (Prisons), South Division, Mumbai-8 by her communication dated 29.08.2016.
- (d) On 01.09.2016, Special Inspector General of Police (Prisons), South Division, Mumbai-8 wrote a letter to the Additional Director General of Police (Prisons), Maharashtra State, Pune.
- (e) On 01.09.2016, the Additional Director General of Police (Prisons), Maharashtra State, Pune submitted the proposal to suspend the applicant.
- (f) The said proposal was processed in the home department on same day and the decision was taken by the Hon'ble Chief Minister to suspend the applicant.
- (g) The order of suspension is issued on 02.08.2016.
- (h) Crime No. 147/2016 registered on 31.08.2016 relating to the incident allegedly held on 26.08.2016 to 29.08.2016, in which the complainant has reported the incident that it has occurred on 26<sup>th</sup> and 28<sup>th</sup> of August, 2016. In which she has reported the incident version contained in the complaint in this regard reads as follows:-

“ .....

नोकरीत हजर झाल्या दिवसापासून माझी नोकरी कारागृह गेटच्या नियंत्रण कक्षातच होती. त्यामध्ये कोणताच बदल करण्यात आला नाही. त्यामुळे मी खुप वेळा अधिक्षक साहेबांना माझी नोकरी बदलण्यासाठी विनंती केली म्हणुन आठ दिवसांपुर्वीच मला महिला कारागृह विभागात नाकरी दिली आहे. मी सध्या राहत असलेली रुम ही मला माझे नावावर न देता तात्पुरती राहण्यास दिली आहे. त्यामुळे मला माझे नावावर रुम मिळावी म्हणुन मी कार्यालयात अर्ज सादर केले होते त्यानुसार दिनांक २२/०८/२०१६ रोजी दुपारी ०२.०० वा. चे सुमारास अधिक्षक साहेबांनी त्यांचे कार्यालयात बोलावुन मला अधिक्षक साहेब बोलले की, तुम्हाला रुम देण्यात येईल त्याआधी मला एक फोन कर, मला तुझ्याशी वैयक्तिक बोलायचे आहे. त्यांच्या आदेशानुसार मी त्याच दिवशी संध्याकाळी ०७.०० वाजता अधिक्षक साहेबांना त्यांचे मोबाईल नंबरवर ९५०३२५९०७७ कॉल केला त्यावेळी अधिक्षक साहेबांनी मला “मी गाडी चालवत आहे मला अर्ध्या तासांनी फोन कर असे सांगितले” परंतु त्यांचाच मला फोन आला, तेंव्हा मी त्यांना रुम मिळणे बाबत विनंती केली. त्यावेळी ते म्हणाले की, तुला रुम तर देईनच पण आता कळवा सर्कल किंवा जांभळीनाका येथे बाहेर भेटायला ये तेव्हा मी अधिक्षक साहेबांना भेटण्यास नकार देवुन फोन बंद केला. काही वेळानंतर मला अधिक्षक साहेबांनीच त्यांचे मो.नं. ९५०३२५९०७७ वरुन माझा मो.नं. ९६०४४५६०५१ वर फोन केला व मी कळवा ब्रिज येथे अजुनही तुझी वाट बघत थांबलोय असे बोलले परंतु मी त्यांचेशी काही एक बोलले नाही. त्यानंतर अधिक्षक साहेबांनी मला दोन ते तीन दिवस फोन करुन भेटायला बोलावत होते. शेवटी दिनांक २६/०८/२०१६ रोजी रात्री ०८.०० वाजता मी व सहकारी श्रीकांत ठाकरे असे आम्ही दोघे त्या ठिकाणी गेलो. श्रीकांत ठाकरे हे लांब उभे राहिले व मी त्यांना भेटण्यासाठी कळवा ब्रिज येथे गेले तेव्हा अधिक्षक साहेब कळवा ब्रिज येथे त्यांचे स्वतःचे गाडीत बसुन माझी आधीच वाट बघत होते. मी त्यांचे गाडी जवळ गेल्यानंतर त्यांनी मला विचारणा केली की, श्रीकांत ठाकरे येथे काय करतो आहे? तु त्याला मला भेटायला आल्याबाबत काही सांगितले का? यावर मी त्यांना नाही असे सांगितले. परंतु तो माझे साठी तेथेच उभा होता. त्यानंतर त्यांनी गाडीचे दार उघडुन मला गाडीत बसण्यासाठी आग्रह करु लागले व मला आपण फिरुन येवु असे बोलुन माझा हात पकडुन त्यांचे खाजगी सिस्वर रंगाचे सिवफट गाडीत बसण्यास आग्रह करुन लागले. म्हणुन मी लगेचच त्यांचा हात झटकुन गाडीचे दार जोरात बंद करुन माझे रुममध्ये गेले.

त्यानंतर दिनांक २८/०८/२०१६ रोजी रात्री १०.३० वा. सुमारास घरी असताना मला अधिक्षक साहेबांनी त्यांचे मोबाईल नंबर ९५०३२५९०७७ वरुन माझे मोबाईल नंबर ९६०४४५६०५१ वर ब्लॅक मेसेज पाठविला. म्हणुन त्यांच्या मनातले जाणुन घेण्यासाठी मी परत माझे मोबाईलनंबर वरुन अधिक्षक साहेबांना बोला सर असा मेसेज केला. तेंव्हा त्यांनी मला तु मला हार्ट केलेसस आता पर्यंत मला कोणीच दुखविलेले नाही. असा मेसेज पाठविला. त्यानंतर ते रात्री ०१.३० वा पावेतो वारंवार मला मेसेज करुन माझेशी बोलण्याचा प्रयत्न करुन त्रास देवू लागले.....”

(Quoted from page Nos. 449 & 450 of paper book of O.A.)

- (i) FIR is lodged by Sharad Shripati Khot entire incident held on 27.09.2016, being Crime No.I 192/2016 dated 27.10.2016 alleging as follows :-

“तरी दिनांक २७.९.२०१६ रोजी ०१.५० वा चे दरम्यान मी व माझा सहकारी कारागृह शिपाई अजित विश्वास पिसाळ असे कारागृहाचे बाहेरील फाटकावर कर्तव्यावर असताना श्री. हिरालाल जाधव यांनी मी करीत असलेल्या सरकारी कामात अडथळा आणून, दम देवुन मला बाजुला करुन स्वतःचे हाताने कारागृहाचे बाहेरील फाटकाचे गेट उघडुन त्यावाटे त्यांचेकडे आलेल्या ६ चारचाकी गाड्या व त्यामध्ये असलेले सुमारे ३५ ते ४० इंसम आत घेवुन मी करीत असलेल्या सरकारी कामात अडथळा आणला म्हणुन माझी सध्याचे निलंबित जेल अधिक्षक श्री. हिरालाल जाधव यांचे विरुध्द तक्रार आहे.”

(Quoted from page No. 618 of paper book of O.A.)

- (j) Crime No. 109/2016 registered on 29.12.2016 on complaint filed by Smt. Praja Choudhari alleging that commission of offences under Section 3(2)(2) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989, complaining that the applicant was instrumental to file false complaint and publishing defamatory news against Smt. Praja Choudhari.
- (k) All three crimes have been investigated and charge-sheet is lodged in appropriate forum.
- (l) Applicant has been granted anticipatory bail in all offences.
- (m) Trial of none of the Criminal cases has commenced.
- (n) It is nobody's case that applicant is responsible for delaying the trial of either of the case.
- (o) The matter of review of suspension was taken up by the review committee thrice and the review committee recommended that the suspension be revoked and the applicant be assigned a non-executive post :-
- (p) Upon this note (dated 14.04.2018), query was made by the secretary of the Hon'ble Chief Minister, which reads as follows :-

“मुख्यमंत्री सचिवालय

दिनांक :- १७ एप्रिल, २०१८

श्री. हिरालाल जाधव यांनी मा. प्रशासकीय न्यायाधिकरण व मा. सर्वोच्च न्यायालय येथे निलंबन आदेश रद्द करण्याच्या अनुषंगाने दाखल केलेल्या याचिकेच्या प्रकरणाच्या सद्यःस्थितीसह फेरसादर करण्याच्या सूचना आहेत.

सहि/-  
(कैलास बिलोणीकर)  
उप सचिव”

(Quoted from page No. 179 of paper book of O.A.)

- (q) Matter of consideration of suspension was resubmitted by the department through office note dated 18.04.2018 and proposal to reinstate the applicant was reiterated.

Secretary of the Hon'ble Chief Minister again raised query, which reads as follows:-

“मुख्यमंत्री सचिवालय

नस्ती क्रमांक : जेएलई:०७१७/७६१/प्र.क्र.१७२/तुरुंग-१

श्री. हिरालाल जाधव यांच्याविरुद्ध सुरु असलेल्या प्रलंबित विभागीय चौकशीचा निलंबन आढावा समितीने विचार केला आहे किंवा कसे ? याबाबत तपासून फेरसादर करण्याच्या सूचना आहेत.

सहि/-  
(कैलास बिलोणीकर)  
उप सचिव”

(Quoted from page No. 181 of paper book of O.A.)”

(r) Thereafter a note was putup after consulting the committee. This note is dated 06.07.2018. It shall be useful to refer the text of the said note dated 06.07.2018, which reads as follows:-

“ .....

४. श्री. हिरालाल जाधव, निलंबित अधीक्षक, ठाणे मध्यवर्ती कारागृह यांचेवर तेथे कार्यरत असतांना त्यांनी केलेल्या गैरवर्तणुकीबाबत फौजदारी गुन्हे देखील दाखल झाले आहेत. त्या गुन्हेयांची सविस्तर माहिती प्रस्तावात नमूद करण्यात येईल असे ठरल्याप्रमाणे श्री जाधव यांच्यावर दाखल तीन फौजदारी गुन्हेयांचा तपशिल थोडक्यात पुढील प्रमाणे :-

१. ठाणे मध्यवर्ती कारागृह येथे अधीक्षक पदावर कार्यरत असताना महिला रक्षक यांचा विनयभंग केल्या प्रकरणी ठाणे नगर पोलीस स्टेशन गुन्हा क्र. १४७/१६ कलम ३५४, ३५४ (अ) अन्वये श्री हिरालाल जाधव, यांचेविरुद्ध गुन्हा दाखल आहे. सदर प्रकरणी श्री हिरालाल जाधव, यांना निलंबित करण्यात आले आहे. तसेच त्यांचेविरुद्ध शासन स्तरावर विभागीय चौकशी सुरु आहे.

२. उक्त नमूद विनयभंग प्रकरणी निलंबित झाल्यानंतर श्री हिरालाल जाधव यांनी अनधिकृतपणे काही पार्टीचे झेंडे लावलेले सहा चारचाकी गाडयांमधून सुमारे ३५ ते ४० अनोळखी व्यक्तींना कारागृह परिसरात घेतले असता, ड्युटीवर असलेल्या जेल गार्डने हटकले असता त्यांना दम देवून त्यांच्या शासकीय कामात अडथळा निर्माण करून व त्यांना बाजूला सारून त्या लोकांना आत घेतले म्हणून त्यांचेवर ठाणे नगर पोलीस स्टेशन येथे गुन्हा क्र. १९२/१६ कलम ३५३ नुसर गुन्हा दाखल आहे. या प्रसंगी श्री हिरालाल जाधव यांचेविरुद्ध शिस्तभंगविषयक कारावाई करण्याबाबतचा प्रस्ताव शासनास प्राप्त झाला असून सदर प्रस्तावावर शासनस्तरावर कार्यवाही सुरु आहे.

३. श्री हिरालाल जाधव यांच्या विरोधात विनयभंगबाबत दाखल असलेल्या फिर्यादीतील पिडीत महिला जेल गार्ड यांना त्रास देण्याच्या व बदनामी करण्याचे उद्देशाने श्री हिरालाल जाधव यांनी हस्तकाकरवी खोटी तक्रार केल्याचे निष्पन्न झाल्याने श्री हिरालाल जाधव, यांचेविरुद्ध ठाणे नगर पोलीस स्टेशन गुन्हा क्र. ११०९/१६ कलम ३(२)(२) अनु. जाती जमाती अत्याचार (अत्याचारास प्रतिबंध) अधिनियम १९८९ प्रमाणे दिनांक २९.१२.२०१६ रोजी गुन्हा दाखल आहे. या प्रकरणी विभागीय चौकशी होण्यासाठी ADG कार्यालय स्तरावर प्रक्रिया सुरु आहे.

५. उक्त मा. मुख्यमंत्री महोदय यांचे उप सचिव यांच्या निर्देशाच्या अनुषंगाने श्री. हिरालाल जाधव, निलंबित अधीक्षक, ठाणे मध्यवर्ती कारागृह यांच्यावर अद्यापपर्यंत महिलांशी केलेल्या गैरवर्तणुकीसंदर्भात प्रलंबित असलेल्या विभागीय चौकशीच्या प्रकरणांची सद्यस्थिती वरीलप्रमाणे शासनाच्या निदर्शनास आणण्यात येत आहे.”

(Quoted from page Nos. 184A and 185 of paper book of O.A.)

- (s) The proposal for revocation of the suspension was returned from the office of Hon'ble Chief Minister on 09.08.2018 with an endorsement as follows :-

“१,२, व ३ बघता समितीने विचारपूर्वक प्रस्ताव सादर करावा.”

(Quoted from page No. 185 A of paper book of O.A)

- (t) The aforesaid third back query was made by the office of the Hon'ble Chief Minister asking the reconsideration of the matter in the light of the earlier three points mentioned in the office note (dated 06.07.2018).
- (u) After direction from the office of the Hon'ble Chief Minister for submission of the matter afresh, was taken by review committee and fresh note has been put up on 24.10.2018 (page Nos. 185W and 185 X) and it is proposed not to revoke the suspension. The text of the said note consists of submissions/views which is about two pages, text whereof is as follows:-

“४. श्री. जाधव यांना पुर्नस्थापित करण्यासंदर्भात दिनांक ०७.०९.२०१८ रोजी अपर मुख्य सचिव (अ.व सु.) यांच्या अध्यक्षतेखली निलंबन आढावा घेण्यात आला. सदर बैठकीस पोलीस महासंचालक, कारागृह व सुधारसेवा मुंबई, अपर पोलीस महासंचालक व कारागृह महानिरीक्षक व सुधारसेवा, महाराष्ट्र राज्य, पुणे व उपसचिव (तरुंग-१) हे अधिकारी उपस्थित होते. सदरहू बैठकीत मा. मुख्यमंत्री महोदय यांनी दिलेल्या निर्देशाच्या अनुषंगाने तसेच श्री हिरालाल जाधव यांनी मा. महाराष्ट्र प्रशासकीय न्यायाधिकरण, मुंबई येथे उपस्थित कलेले विविध मुद्दे विचारात घेण्यात आले. श्री हिरालाल जाधव यांना यापूर्वीच तीन वेळा निलंबनातून पुर्नस्थापित करण्यात आले असून पुरेशा संधी देण्यात आली होती व सध्याचे प्रकरण श्री. जाधव यांनीच मा. उच्च न्यायलय, मुंबई यांच्या निर्णयाच्या विरोधात मा. सर्वोच्च न्यायलय, दिल्ली येथे विशेष अनुज्ञा याचिका क्रमांक ९२/२०१८ व ८३०/२०१८ अन्वये दाखल केल्यामुळे व त्यातील अंतरिम आदेशामुळे विभागाला चौकशी अहवाल शासनास निर्णयास्तव सादर करिता येत नाही म्हणून त्यांना पुन्हा पुर्नस्थापित करणेबाबत शिफारस करणे शक्य होणार नाही, असे बैठकीत ठरले. या शिफारशीस मान्यता असावी.”

(Quoted from page Nos. 185W & 185X of paper book of O.A.)

- (v) The said recommendation dated 24.10.2018 has been accepted by the Hon'ble Chief Minister.

22. Now this Tribunal has to consider as to whether the decision of the matter of continuation of suspension of the applicant is reasonable, fair and supported by facts as available on record.

23. It is thus evident that the decision to continue the applicant's suspension is taken in following backgrounds :-

The applicant has been named as an accused in three Crime Nos.

- (a) I 147/2016 (Thane Nagar Police Station),
- (b) I 192/2016 (Thane Nagar Police Station) and
- (c) 109/2016 (Thane Nagar Police Station), as the complaint of Smt. Praja Choudhari.

24. It is borne on record that:-

- (a) Applicant's suspension was effected due to complaint of Smt. Praja Choudhari submitted by her to Smt. Swati Sathe and on Smt. Swati Sathe's report.
- (b) The decision to refuse to revoke the suspension is taken, based upon considering the circumstances, namely
  - (i) the charge sheet in three criminal cases is filed.
  - (ii) Disciplinary enquiry has been stayed and conclusion thereof cannot be arrived.

25. Legality of this decision to refuse to revoke the suspension and continuation of suspension dated 24.10.2018 is under challenge in the present Original Application.

26. The Government Resolution dated 14.10.2011 governs to the matter of review of suspension.

27. Though according to the applicant, the review of suspension has been as contemplated by said G.R. dated 14.10.2011 can be done only when order effected on account of criminal case, paragraph No. 7A thereof essentially refers to review of suspension whenever done on account of disciplinary proceedings. Therefore, the applicant's contention that the said G.R. dated 14.10.2018 does not apply to his case is based on improper reading and of the applicant's failure to coherently read the entire G.R. by giving due weightage to paragraph No. 7A thereof.

28. The applicant's claim and contentions that various other officers in prison department who are undergoing an enquiry for serious charge and graver criminal case, for charges against them are graver and hence, the applicant has been discriminated. This plea of the applicant cannot be gone in for two reasons, namely:-

- (i) Those facts are not distinctly pleaded with all details.
- (ii) These facts are disputed, and the Government did not have occasion to apply mind to this fact because those facts were not averred with details in the O.A. or in any prior representation made before the Government.

Therefore, the aspect of discrimination is left open and undecided if at all any occasion thereto arises in future.

29. In the aforesaid background, this Tribunal would proceed to decide the aspects of reasonableness, fairness, and justifiability of the decision to continue the suspension of the applicant/ refusal to revoke it.

30. Record reveals that for more than 3 occasions competent Review Committee considered the facts and unanimously recommended that the applicant's suspension be reviewed and he be posted on any non-executive assignment as is evident from foregoing paragraphs 21(o), 21(q) and 21(r).

31. The file had four trips to the office of Hon'ble Chief Minister and back to Review Committee as below :-

- (i) First amongst the query from Hon'ble Chief Minister's office, which is dated 17.04.2018, the department was required to examine the "propriety of revocation of suspension in the light of the order passed by the Tribunal and the Hon'ble Supreme Court.
- (ii) The second query appears to be dated 18.04.2018 or sometime thereafter where the status of departmental enquiry was sought. The office then put up the note and gave details about the said enquiry as well as Criminal cases and recommendation of revocation of suspension.



- (iii) Third time, however, Hon'ble Chief Minister directed resubmission of the proposal after considering and taking in to account the effect of three criminal cases pending against the applicant.
- (iv) Fourth time, the proposal was resubmitted after securing recommendation of the committee and in the note dated 12.09.2018 it was proposed that revocation of suspension of the applicant could not be recommended. This adverse recommendation was accepted and that has led to present O.A.

32. In the aforesaid premises, this Tribunal has to see as to, whether the decision of the Government stands to the test of reasonableness, based on undisputed facts.

33. It is, therefore, necessary to recount the facts, which is done as below :-

- (i) Three Criminal cases in which the applicant is namely accused have been investigated and charge sheets have been filed and those are awaiting trial.
- (ii) In none of these three FIRs & charge sheet applicants' suspension was proposed
- (iii) The Departmental enquiry in the matter of misconduct was commenced against the applicant towards his conduct between 22.8.2016 to 28.8.2016 on the complaint of Smt. Praja Choudhari.
- (iv) Applicant did not participate in the enquiry by raising objections as to legality, power, jurisdiction etc. Applicant has challenged the enquiry on various grounds and in particular that it violates the dictum of Hon'ble Supreme Court based on Vishaka principle.
- (v) Applicant has approached Hon'ble Supreme Court and by interim order Hon'ble Supreme Court has directed that findings of D.E should be declared only with prior leave of Courts.

- (vi) It is not shown that any steps whatsoever were taken by the Government to make application for leave for declaration or findings of Enquiry Officer and for leave to proceed with the action thereon.
- (vii) In the background that all actions viz. criminal cases, as well as, disciplinary proceedings are in suspended animation, a decision is to be taken by the Government after taking into account all facts by deciding as to whether the continuation of suspension or refusal for revocation of suspension is to be taken.

34. Now this Tribunal has to see what are the prima-facie revelations from the facts as are borne on record and are not disputable by either party, at this stage.

35. These facts are culled and summarized below:-

- (a) Crime No.147/2016 registered on 31.8.2016 consists of imputation which are replication of the grievances of the complainant of Smt. Praja Choudhari, which is the foundation of imputations which have led to suspension.
- (b) The second FIR No.I-192/2016 dated 27<sup>th</sup> October, 2016 is relating to applicant's having acted in the nature of indiscipline behavior during midnight of 27<sup>th</sup> September, 2016 where the applicant (accused) arrived at the entrance of Jail premises and allowed about 30 persons and 6 vehicles to enter in the precincts of outer yard of fact. In this case, charge sheet is filed, trial is commenced and merit of this aspect also needs to be considered after the aspect of charge sheet is examined as may be discussed hereinafter.
- (c) The FIR 109/2016 dated 29.12.2016 is lodged by the complainant towards the conduct of the applicant relating to his act of false publicity etc. against complainant Smt Praja Choudhary etc. filed false complaints and hence offences u/s 3(2)(2) of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. The factual aspect of this offence do not warrant special cognizance in the background of peculiar facts. Admittedly, the applicant belongs to Vadar community which itself is a Vimukta

Jati, as backward as Schedule Castes and the complainant belongs to Schedule Caste.

- (d) In so far as charge sheet in disciplinary matter is concerned it relates to “improper conduct, ill motives and consequent indiscipline”.
- (e) In so far as improper conduct is conduct it may have been divided in two parts :-
  - i) Applicant’s act of calling complainant to meet outside the premises of place of work,
  - ii) Touching and / or holding hand of the complainant and asking her to sit in the front seat of Car on 26<sup>th</sup> August, 2017.
  - iii) Sending to the complainant blank whatsapp messages and inducing her to enter into chatting on whatsapp.
  - iv) Engaging in conversation of whatsapp messages with the complainant, sending photographs on whatsapp messages, and forcing her to continue to chat and disturbing her till late night on 28<sup>th</sup> August, 2016.

36. Gravity and seriousness as regards violation of propriety due to chatting etc. can be understood after reading or perusal of the the text of the messages. Without this exercise a feel of reality cannot be taken. Therefore, this Tribunal has read entire text of messages, line by line, which constitutes admitted piece of evidence truthful thereof is not in controversy and copies whereof are on record.

37. The impression which this Tribunal gathers after reading the whatsapp messages is as follows :-

- (i) Let it not be understood that the applicant is a rare species of innocuous person due to which at the outset he would harvest sympathy.
- (ii) It prima facie appears that, if proved it may be held that applicant has initiated or intimated response from the complainant.

- (iii) The manner in which the very first message dated 25.8.2016 from the complainant is seen, complainant has sent a laudible messages of spiritual flavor, the dialogue thereafter is relating to diet and appetite.
- (iv) Thereafter, the applicant seems to have initiated expression (apart from relevant) and the subject of dialogue has taken shape to complainant's soliciting for allotment of accomodation.
- (v) The complainant's slip of writing /gestures tend to exhibition or effort of attaining intimacy with applicant.
- (vi) It was open for complainant to have guised that the charge of the battery was lost the monetary balance for chatting was not in credit, and she could have escaped / avoided the chating. However, she continues to respond and supplicate for allotment of accommodation, and has kept on messaging which is a totally voluntary act of the complainant.
- (vii) Complainant had option to quit from chatting which she did not. Rather she has intimated the Applicant to continue to chat

38. All messages, exchange of photographs/pictures may prima facie leads an impression that the applicant be viewed as a predator. At the same time, prima facie, the complainant was not a naïve and innocent prey. It prima facie appears from the manner in which the complainant has engaged herself in a dialogue on the whatsapp message does not reliver her from escaping her plan or being planted as a bate, in terms of what applicant has averred.

39. Be all this, as it may, and as the facts may be proved in the process of trial of enquiry of charge, fact remains that one of the pictures as portrayed by the applicant and as is undisputably vivid, than bare speculation that it would not be safe to brand the Applicant as a predator full of lust and as of craving of lust.

40. The facts as alleged even if accredited worth of gospel truth, it would be hard to believe or get persuaded that if proved the charge could lead to major penalty of dismissal.

41. After considering facts of criminal cases pending against the Applicant and nature of charge attributed against the applicant, review committee which consisted of very Senior Secretary / Additional Secretary, Officers would recommend revocation and reiterate the same thrice.

42. Now the perspective with which this Tribunal has to examine the case is as to whether on facts of the case what were the grounds available with the Government for declining to accept the recommendations of the Committee, made / repeated on three occasions by raising queries, and then to solicit for an unfavourable recommendations and then to accept it without unfavourable recommendation demour.

43. As observed earlier and as quoted in foregoing paras no.21 the recommendations of Review Committee were for revocation of suspension of the applicant. The reason assigned in the last office note, text whereof is quoted in para 21(v) is that because the applicant has secured a stay order in the departmental enquiry, applicant's suspension need not be revoked. Text of the said note referred to in para 21(s) is quoted below at the cost of repetition:-

“श्री हिरालाल जाधव यांना यापूर्वीच तीन वेळा निलंबनातून पुर्नस्थापित करण्यात आले असून पुरेशा संधी देण्यात आली होती व सध्याचे प्रकरण श्री. जाधव यांनीच मा. उच्च न्यायलय, मुंबई यांच्या निर्णयाच्या विरोधात मा. सर्वोच्च न्यायलय, दिल्ली येथे विशेष अनुज्ञा याचिका क्रमांक ९२/२०१८ व ८३०/२०१८ अन्वये दाखल केल्यामुळे व त्यातील अंतरिम आदेशामुळे विभागाला चौकशी अहवाल शासनास निर्णयास्तव सादर करीता येत नाही म्हणून त्यांना पुन्हा पुर्नस्थापित करणेबाबत शिफारस करणे शक्य होणार नाही, असे बैठकीत ठरले. या शिफारशीस मान्यता असावी.”

[Quoted from para 21(r)]

44. Thus the grounds which turns out to be the ground on which revocation of suspension is declined are :-

- (a) The departmental enquiry is stayed due to the order passed by the Hon'ble Supreme Court in SLP 92/2018.
- (b) Implied reliance on the fact that on earlier three occasions suspension of the applicant was revoked and he was reinstated.

45. Therefore, the reasons assigned in the office note and approved by the Hon'ble Chief Minister needs to be viewed in the light of earlier recommendations.

46. None of the facts on record do reveal any circumstances due to which any overact is attributable towards the applicant from the date of his suspension till consideration of case by the Hon'ble Chief Minister, due to which the suspension must be continued.

47. Thus the decision to revoke the suspension rather to continue it, is based on the reasons liable to be regarded as those which are not germane to the settled principles on which the suspension is to be continued.

48. Though it has been alleged that applicant has already being subjected to complaint of sexual harassment, so far no complaint is shown to have reached any logical conclusion. Moreover non amongst previous enquiries are stayed by any court. Moreover, the superphonic speed with which the matter of suspension of the applicant was moved on Smt. Praja Choudhari's complaint, and the decision was reached and suspension was effected, suggests that someone was keen on quick and punctual action, as well was operating as a controlling hand to have repelled the revocation in the offing.

49. Moreover, it is not shown as to why the Governemnt did not move the Hon'ble Supreme Court with liberty to declare the findings. Be it that the enquiry conducted by the Departmental Enquiry Officer or Vishaka Committee, against the applicant was legal fair and proper.

50. A ground that applicant is a predator of such lustful temperament that is remaining in the office would pose a threat to the safety and security of the women folk around, could be reason so eloquently relied upon. However, the manner in which haunting enquiry of query one after other was made from the office of the Hon. Chief Minister, nothing of the sort of good governance emerges, prima facie, that one after other repelling queries were made to secure an unfavourable recommendations.

51. All these facts taken together reveal that :-

(a) The office of Hon'ble Chief Minister was constantly pursued to strive to take a decision unfavourable for revocation of suspension of the Applicant.

OR

(b) The office of Hon'ble Chief Minister was also acting under the fear psychosis /phobiya that if a person like the applicant who is indicted as a predator full of lust, is allowed to enter the functional premises, it would create a catastrophic effect.

52. It is most likely that due to either of the factors expressed in foregoing paragraphs, the applicant's case/ file has made three trips from the Review Committee in Home Department to the Hon'ble Chief Minister's office, and vice versa, until nothing containing unfavourable recommendation was made taking the feel / hint of the wishes of competent authority/ the office of the Hon'ble Chief Minister.

53. Same test and principle "as to when suspension is to be ordered would depend upon, the question as to whether the conduct subject matter, if proved, would attract major penalty", would apply while deciding whether the suspension has to be continued or revoked, except with consideration of change, if any, in the circumstances. If the change tends to add to the gravity the decision would be guided accordingly. If circumstances which aggravate the misconduct have not come forward, ordinarily the decision to revoke the suspension may

have to be taken. Public interest ought to be the factor which ought to govern and guide the decision making process.

54 In the present case, the charge against the applicant is of :-

- (a) 'Improper behavior' by way of 'contacting the complainant outside the office, which violates propriety as well as high degree of integrity and good behavior as an uniformed officer.
- (b) Contacting the complainant on WhatsApp chatting and forcing her to continue in said dialogue late till midnight, which too is behavior full of impropriety and unbecoming of a uniformed and high ranking officer'.

Even upon accepting all that is alleged against the applicant to be the only probability or a reality, prima facie emerging, it would be hard to believe that said conduct would ipso facto lead to imposition of major penalty.

55. Moreover any/ new over acts are not imputed. Rather, prima facie, preponderance of probabilities suggests strong probability of well planned attempt of implication of applicant. Ultimately, the judgment day is to be awaited, yet feel of what appears, prima facie, has to be taken. Therefore, it prima facie, appears that continuation of suspension does not withstand test of reasonableness. The fact do not emerge to be like marked aggravated story.

56. Hence, this Tribunal holds that continuation of suspension on the ground as borne on record do not stand to the test of suspension being required to be continued.

57. In the aforesaid background, mixed question of law and fact as to whether the grounds as are disclosed on record in foregoing para 21(v) do constitute adequate grounds for continuation of suspension or refusal for revocation of suspension has to be answered in negative. Neither the conduct of the Applicant nor probable penalty would justify continuation of suspension / refusal for revocation of suspension.



58. In the result, Original Application succeeds.

59. The impugned order dated 29.10.2018 is quashed and set aside. The Respondents are directed to issue necessary orders of revocation of applicant's suspension within 15 days from the date of this order.

60. Considering the long dragged series of litigation, no amount of courts would really retribute the applicant. Therefore, parties to suffer the costs.

Sd/-

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

**Place : Mumbai.**  
**Date : 14.05.2019**  
**Typed by : Shri A.K Nair**