

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.99 OF 2011**

**DISTRICT : PUNE**

Shri Jaydev Yashwant Gangawane, )  
C/o R.V. Ovhal, Building No.134/4483, Neharu Nagar, )  
Kurla (E), Mumbai 400024 )

**..Applicant**

**Versus**

1. The State of Maharashtra, )  
Through the Additional Chief Secretary, )  
Home Department, Mantralaya, Mumbai )

2. The Commissioner of Police, Pune City )

**..Respondents**

Shri J.Y. Gangawane – Applicant in person.

Shri A.J. Chougule – Presenting Officer for the Respondents.

CORAM : Shri Justice A.H. Joshi, Chairman  
Shri P.N. Dixit, Member (A)

RESERVED ON : 12<sup>th</sup> September, 2018

PRONOUNCED ON : 5<sup>th</sup> October, 2018

PER : Shri Justice A.H. Joshi, Chairman

**J U D G M E N T**

1. Heard Shri J.Y. Gangawane, Applicant in person and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The Applicant has approached this Tribunal for challenging the order dated 12.5.2000 passed by the Government dismissing the Applicant's appeal dated 9.7.1998 (Exhibit 'D' page 20-22) and consequently the order dated 21.4.1998 passed by the

Additional Commissioner of Police, Pune removing the Applicant from service (Exhibit A page 12-15).

3. Applicant has prayed for following reliefs :-

*“10. (a) The Respondents be directed that the Respondents shall take into consideration the seniority of the Applicant as a P.S.I. since 22nd May, 1986 and shall give him all other consequential, appropriate and absolute correct next step to steps all promotions by exempting the departmental examination with full back-wages and all other consequential benefits from 22nd May, 1986 to till today.*

*(aa) The Respondents be directed that the Respondents shall take into consideration the seniority of the Applicant as a PSI since 22<sup>nd</sup> May, 1986 and shall give him all other consequential, appropriate and absolute correct next step to steps all promotions by exempting the departmental examination with full back wages and all other consequential benefits from 22<sup>nd</sup> May, 1986 till today.”*

(Quoted from page 10 A of the paper book of O.A.)

4. The Applicant has averred various facts and grounds for challenge, however, the main grounds on which Applicant has focused his plea are quoted ad verbatim as follows :-

Against removal:

*“6.3 The Applicant states that though he was reinstated in service as per the order of the Hon’ble Bombay High Court, the Applicant has been harassed through various ways, means, directly or indirectly during his service tenure. For instance, though the Applicant was in unarmed police constable category he was transferred to Armed Division which amounts to harassment and illegal transfer and working conditions of imbalancing mental health of the Applicant. Due to such state of mental conditions the Applicant could not be able to attend PSI qualifying examination. The Applicant was not recovered from his sickness over 6 to 7 years as he was terribly disturbed state of mind and as Applicant had no financial back up and family backup, as the Applicant is leaving lonely and suffered a lot. Interestingly, the Respondents never had ordered for medical checkup of the Applicant, though he is suffered to be. The Applicant was admitted by his some well wishers, friends to Sasoon Hospital, Pune on 22.3.1998 in Ward No.26 for giving mental/physiological treatment. The Applicant got discharged on 7.4.1998.”*

(Quoted from page 5 of the paper book of OA)

For plea of promotion, deemed date and compensation:

*“The Hon’ble High Court passed the order of reinstatement of the Applicant in W.P. No.593/89 dated 9.8.1989, due to this the Respondent enraged and started harassing the Applicant in various ways, due to the behaviour of the Respondents to the Applicant, the Applicant’s mental condition deteriorated, through the Hon’ble High Court has given the direction in the Contempt Petition No.198/89 regretting the promotion, seniority as the Applicant is eligible for the same provided he should pass the qualifying examination*

*for the post of PSI, he could not appear the examination and for this the present Respondents are mainly responsible. They made injustice and harassed to the Applicant. At the time of training period at Nagpur RPTS Applicant stood first in law examination entire all over Maharashtra in 1983-84 batch and another trainee constable Mr. Narendra Kishanrao Gaikwad stood second in Law examination and now he is promoted up to post of Dy. S.P. at State CID, Pune and both we got first and second prize by the auspicious hands of Late Spl. IGP Shri Suryakant Jog Saheb in April, 1984 in the passing parade programme at Nagpur RPTS.*

*The Applicant says that he was eligible to appear the examination for the post of PSI since 22<sup>nd</sup> May, 1986 as a SSC passed Unarmed Police Constable and completed three years of the service as a Unarmed Police Constable, but due to the injustice caused by the Respondents, Applicant could not appear the said examination. Now the Applicant says that the Respondents shall take into consideration the seniority of the Applicant since 22<sup>nd</sup> May, 1986 as a PSI and shall give him all other consequential, appropriate and absolute correct next step to steps all promotions by exempting the departmental examination with full back wages and all other consequential benefits.”*

*(Quoted from page 4A of the paper book of O.A.)*

5. During oral submissions, the Applicant has made oral prayer for compensation of rupees ten crores.

6. In the affidavit in reply filed by the State, para 6.3 of OA is replied as under :-

*“8. With reference to para 6.3, I say and submit that the contentions stated therein are false, illegal, incorrect and hence denied.*

*8.1 There is absolutely no evidence to support the contentions that the Applicant was harassed by the Respondents and further it is false to say that he was transferred illegally from unarmed to armed division and the transfer working conditions are the reason of his mental illness.*

*8.2 There is absolutely no evidence on record to show that he was mentally sick for about 6-7 years. Further, it is false that he was admitted for all 6-7 years in the mental hospital for his mental illness. There is no medical certificate on record to prove it. Even the documents at Exh. ‘C’ does not prove his mental illness for period of 6-7 years.”*

*(Quoted from page 25 of OA)*

Amended part of OA is not replied by the State, and it is orally opposed.

7. The Applicant has filed rejoinder and placed on record various documents. In the rejoinder the Applicant has averred as follows:

*“13. With reference to Para 16 and sub Para 16.1 of the affidavit, I say that the contents of the said Para are false and incorrect hence denied. It is incorrect to say that I was served the show-cause notice and that means Respondents was followed the natural justice. In fact the show cause notice has not been served on me and I have not signed any acknowledgment to that effect as stated by the Respondents. In addition to*

*this I say that, at the relevant time I was not in good mental condition and under these circumstances the entire proceeding carried out by the Respondents renders, illegal and void – ab initio.* The impugned order dated 21.4.1998 of the Respondent Exhibit A page no.12 to 15 of this OA is the fully strong evidence against the Respondent. From top to bottom this impugned order clearly showing and indicating fully injustice about me. In this order final authority Additional C.P. Pune has admitted that I was informed them in writing that I was in mentally imbalanced condition and therefore unable to defend myself in departmental inquiry and Additional C.P. has also pointed out in his impugned order that I was talking irrelevant and irregular things also. In these situation it is clear that I was not in good mentally position to defend myself in DE and I was not in position to answer single question seems fishy, inhuman approach of the Respondents and same time the Respondent have not examined me by Civil Surgeon regarding my mental illness and fitness under these circumstances impugned order is void-ab-initio. Therefore, the entire DE proceedings is itself illegal and the case of Beer Singh Vs. Union of India and others reported in (1990) 14 ATC 279 is 100% applicable for this OA.”

(Quoted from page 36 of OA)

8. Original Application is to be considered on the pleadings as seen in the OA, applicant's rejoinder and documents annexed to the O.A. and to the rejoinder.
9. It would be useful to have a glance at various facts and events as narrated by the Applicant in the OA, synopsis, annexures to OA, to the rejoinder, oral submissions, and those are summarized as hereinbelow :-
  - (a) 04.04.1986 : By order dated 4.4.1986 the Applicant was dismissed from service.
  - (b) 01.12.1989 : The Applicant filed Writ Petition No.593 of 1989 which was allowed by judgment and order dated 1.12.1989 and of late Applicant was reinstated.
  - (c) The Applicant has served after reinstatement.
  - (d) April, 1991 : Applicant has pursued the 5 years LL.B. course from University of Poona and he has passed it LL.B. course with second division.
  - (e) Applicant was transferred to S.R.P.. Following the transfer to S.R.P. applicant reported to be sick and remained absent from duty, continuously.
  - (f) Applicant remained absent from the date of service of charge-sheet.
  - (g) 31.01.1998 : Applicant was served with a communication dated 31.01.1998 (copy whereof is at Exhibit R-1, page 31.

- (f) 21.4.1998 : The Applicant was removed.
- (g) 9.7.1998 : The Applicant preferred appeal against removal.
- (h) 12.5.2000 : Applicant's appeal is rejected.
- (i) 6.10.2004 : Applicant has enrolled as Advocate and thereafter he is practicing at Pune.
- (j) 15.09.2010 : Present OA is filed challenging dismissal order dated 24.4.1998 along with application for condonation of delay.
- (k) 20.01.2011 : Applicant's MA No.403/2010 for condonation of delay was rejected by this Tribunal and consequently OA No.99 of 2011 was dismissed by this Tribunal by order dated 20.1.2011.
- (l) 05.08.2011 : RA No.16 of 2011 in MA No.403 of 2010 in OA No.99 of 2011 filed by the Applicant was allowed by order dated 5.8.2011 and OA No.99 of 2011 was restored.
- (m) 25.11.2014 : O.A.No.99 of 2011 was dismissed for default.
- (n) 25.04.2018 : Writ Petition No.3530 of 2012 filed by the State of Maharashtra challenging the restoration order dated 5.8.2011 in RA No.16 of 2011, was dismissed with a direction to the parties to appear before this Tribunal on 5.6.2018.
- (o) Record of OA was destroyed as routine activity.
- (p) Record of OA is reconstructed in view of judgment of Hon'ble High Court, and now OA is being heard.

10. The Applicant's plea is that DE conducted against the Applicant by the enquiry officer appointed by the Additional Commissioner of Police, Pune was not proper and fair.

11. Applicant's contentions are denied by the State in the affidavit filed by the Government.

12. In the background that applicant did not reply to the charge sheet, Applicant's plea has to be examined on the basis of recitals in order of dismissal, grounds of challenge thereto as incorporated in memo of appeal, then in OA and lastly from the rejoinder.

13. In the order of removal from service which is passed by the Additional Commissioner of Police, Pune he has made certain observations about the manner and conduct of Applicant. It would be useful to refer to the observations ad verbatim which reads as follows :-

“जा. क्र.विधी/आस्थापना/१९९८  
पोलीस आयुक्त, पुणे कार्यालय  
पुणे, दिनांक:- २१/०४/१९९८

संदर्भ:- इकडील जा.क्र.विधौ/आस्थापना/९८ वि.२.२.९८ ची कारणे दाखवा नोटीस

विषय:- विभागीय चौकशी

पो.शि.ब.नं २६४४ जे.वाय. गंगावणे, नेमणूक पोलीस मुख्यालय पुणे शहर यांचे कसूरीबाबत.

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पो.शि.ब.नं. २६४४ जे.वाय. गंगावणे, नेमणूक पोलीस मुख्यालय पुणे शहर यांचे विरुद्ध खालील पेमाणे दोषारोप ठेवून विभागीय चौकशी आदेशीत करण्यात आलेली आहे.

**दोषारोप :-**

तुम्ही पो.शि.ब.नं २६४४ जे.वाय. गंगावणे, नेमणूक पोलीस मुख्यालय पुणे शहर कर्तव्यार्थ बेपत्ता (Dismiss), बेशिस्त (Indiscipline), बेजबाबदार (Irresponsbile) चे पोलीस कर्मचा-यास अशोभनिय गैरवर्तन केले की,

दिनांक १८/०१/१९९३ रोजी सिक मध्ये गेले ते अदयापर्पत हजर झालो नाहीत.

सदर विभागीय चौकशीत चौकशी अधिकारी म्हणून पोलीस निरीक्षक खडक पोलीस ठाणे यांची नियुक्ती करण्यात आली होती. **चौकशी अधिकारी यांनी कसूरदार यांना विभागीय चौकशीचे आदेश, दोषारोपपत्र, दोषारोपत्र अभिकथनपत्र देणेसाठी रा.पो.नि.मुख्यालय यांचेमार्फत समजपत्र पाठविले असता ते घरी मिळून आले नाहीत. त्यानंतर दि.१३/१०/१९९७ रोजी कसूरदार पो.शि. गंगावणे यांना समजपत्र अदा करणेसाठी १३९५ सोनावणे यांना आदेश देवून पाठविले असता, कसूरदार पो.शि. २६४४ गंगावणे यांना दि. १६/१०/१९९७ रोजी समजपत्र अदा केले.** सदर पत्राचे दुय्यम प्रतीवर कसूरदार यांनी आपली बदली निशस्त्र शाखा ते सशस्त्र शाखा अशी बेकायदेशीर बदली झालेने माझी मानसिक स्थिती बिघडली असून, सदर बेकायदेशीर बदली रद्द होईपर्यंत मी कोणत्याही चौकशीस सामोरे जाणेस मानसिक दृष्ट्या असमर्थ असलेने मी हजर राहणेस असमर्थ आहे, **वगैरे लिहून त्याखाली सही केलेली आहे.** कसूरदार यांना त्यांचे विरुद्धचे विभागीय चौकशीकामी हजर राहणेसाठी काढलेले समजपत्र अदा करून रिपोर्ट करणेबाबत सहा.फौज. आल्हाट नेमणूक खडक पोलीस स्टेशन पुणे यांना लेखी आदेश देवून दि. २१/१०/१९९७ रोजी

पाठविले असता सदरचे समजपत्र **कसूरदार यांना समक्ष अदा केले**. समजपत्राचे एका प्रतिवर कसूरदार यांना प्रत मिळाली व पूर्वी आपणांस कळविलेप्रमाणे पीपीएन १६/१/९३ अन्वये झालेली बदली बेकायदेशीर असल्याने ती बदली रद्द होईपर्यंत चौकशीचे कामकाज एकतर्फी चालवलेस बेकायदेशीर ठरेल, कृपया नोंद घ्यावी वगैरे लिहून **त्याखाली सही केली आहे**. सहा.पो.फौज. आल्हाट यांनी लेखी रिपोर्ट दिला की, पो.शि २६४४ गंगावणे यांना त्यांचे विरुद्ध विभागीय चौकशीचे कगदपत्र **दि.२१/१०/१९९७ रोजी चौकशीस हजर राहणेचे समजपत्र त्यांचे निवासस्थानी जावून त्यांची समक्ष भेट घेतली. व कागदपत्रे घेणेबाबत कळविले असता त्यांनी ते स्विकारण्यास नकार दिला**. कागदपत्र व समजपत्र स्विकारले नाहीत. त्यांनी त्यांच्यावरील दोषारोप वाचून पाहिला आहे.....not completed”

(Quoted from pages 12, 13 and 14 of the O.A. paper book)

14. It is seen that the observations contained in the order which are quoted hereinabove reveal the following :-

- (a) Applicant reported to be sick on 18.1.1993.
- (b) Applicant did not communicate the reason of sickness etc.
- (c) Applicant was called by sending a letter to receive the charge sheet on 13.10.1997.
- (d) Applicant has acknowledged by the letter on 16.10.1997.
- (e) Applicant was called to remain present for enquiry and the letter was sent to him on 21.10.1997 which he has received and endorsed while giving acknowledgment that 'his state of mind was not good and any enquiry conducted against him would be vitiated'.
- (f) On 21.10.1997 notice of hearing of enquiry was sent to the Applicant for delivery at his residence, which he refused to accept after reading the charge.

15. In the appeal memo submitted by Applicant before the Government against the order of removal, applicant did not dispute factual aspect which are recited in details in the order of removal and particularly the text which is noted in foregoing paragraph No.13 and the portion which is underlined/printed in bold letters for easy identification. He has even failed to plead whatsoever in regard to the observations and narrations contained in the order of removal.

16. We have minutely perused Applicant's memo of appeal against order of dismissal copy whereof is at Page 20 onwards. The Applicant's appeal memo does not contain even single line averment suggesting that the Applicant was not served with the charge-sheet though he admits in the appeal memo at page 22/1 as follows :-

“दि.१३/०४/९८ रोजी मा.अतिरिक्त आयुक्त साहेबांना समक्ष भेटीत माझ्यावर झालेला अन्याय सांगितला तसेच माझा गणवेश हा जिर्ण व नादुरुस्त असलेने घातला नाही हे सांगितले. परंतू काही उपयोग झाला नाही. उलट सेवेतून काढून टाकण्याचे आदेशात त्यांनी मी असंबंध बोलत होतो असे म्हटले आहे. जर मी असंबंध बोलत होतो तर माझी मेडिकल बोर्डाकडे तपासणी करणे आवश्यक होते. तसेच केले गेले नाही व परस्पर एकतर्फी निर्णय घेऊन मला नोकरीतून कमी केलेने माझे घोर अन्याय झाला असून सदर बडतर्फीच्या आदेशात बेकायदेशीर ठरला आहे.”

(Quoted from page 22/1 of OA)

17. The Applicant has not made any disclosure or whisper suggesting if he was taking any medical treatment as an outdoor patient in Sasoon Hospital or in any other hospital during the period of enquiry or at any time, prior to 22.3.1998 during the period before or when he was delivered the show cause notice issued by the Additional Commissioner after delivery of findings by enquiry officer on 2.2.1998 against acknowledgment.

18. All that the Applicant has done is that, he has prayed in the appeal memo before the Government that the order of removal may be set aside. Applicant did not plead that he was denied fair trial due to non observance of principles of natural justice.

19. Applicant has orally denied during averments that he was served with the order of removal as well as show cause of removal.

20. Denial of fair opportunity to defend (fair trial) is a question of fact, and facts leading to denial of fair hearing and violation of principles of natural justice, ought to have been pleaded in appeal memo and also in O.A by narrating as to how i.e. reasons due to which he pleads/ claims violation of principals of natural justice.

21. Applicant's plea in rejoinder which is ad verbatim quoted in foregoing para no.7 suggests that the Applicant has made a grievance about the text contained in the order passed by the Additional Commissioner of Police which refers to what had transpired before the Additional Commissioner of Police at the time of hearing, when applicant was called for personal hearing in orderly room.



22. This Tribunal considers that denial of fair opportunity of hearing is a question which goes to the root, and this Tribunal would not decline to bank upon technicality and would choose to examine the merits thereof.

23. Applicant could have shown in present O.A., that principles of natural justice have been violated during departmental enquiry.

24. What is pleaded in present OA is to be found in para no.14 of O.A. The text contained in para no.14 is scant, as well the story pleaded in O.A. is disproved from the medical evidence at page 18 of O.A. which evidence is strongly relied upon by Applicant.

25. Page 18 of the O.A. shows the dates of Applicant's admission in Sasoon Hospital due to Applicant's mental ill health, between 22.3.1998 to 7.4.1998. Applicant's plea that he was served with the show cause notice while he was hospitalized and the enquiry was conducted while he was actually admitted in hospital is not congruent with the observations incorporated in the order of removal. The recitals and fact finding recorded in the order of removal has not been disputed not only till filing of rejoinder, rather those are not denied even till oral arguments were completed and the contradiction generated due to medical evident at page 18 relied by applicant is not explained.

26. In either of the opportunities available to the applicant i.e. (a) oral submissions before Additional Commissioner, (b) appeal memo before Government in the OA before this Tribunal, (c) the rejoinder before this Tribunal, the Applicant has failed to dispute rather has failed to suggest that the observations contained in the order of removal to be on facts erroneous. The consequence of failure to challenge the observations contained in the order of removal has to be concluded as non availability of ground on facts.

27. The Applicant pleads that after reinstatement he was mentally disturbed and was not able to attend the departmental examination held by the Government for

selection to the post of PSI. Amazingly enough the Applicant has pursued LL.B. (New) a 5 years Degree course almost during same intervening period during which due to alleged ill-health, he has absented from the duty.

28. The Applicant has shown on record that Applicant was pursuing LL.B. Course and had passed LL.B. 5 years examination in April 1991 and has placed on record copy as Exhibit G-1 page 68. The Applicant has also shown that he had enrolled as an Advocate on 6.10.2004 with Bar Council of Maharashtra and Goa and has been practicing as a Lawyer at Pune.

29. Applicant's act of studying and passing LL.B but being mentally unfit to appear for P.S.I's examination is a conduct which is mysterious on the part of the Applicant.

30. It is a matter of common knowledge, that vast syllabus is prescribed for completion over 10 semesters and 10 examinations have to be taken for 5 years LL.B. (New) degree course which is a full time instructional course. Applicant has passed said 5 years LL.B. Fulltime course from prestigious Pune University, following his reinstatement after judgment of Hon'ble High Court in Writ Petition No.593 of 1989 and the order in Contempt Petition filed by him, during which period he was serving as a constable though he pleads that he was not mentally strong enough to appear for PSI's examination.

31. Applicant has fervently relied on the observation of Hon'ble High Court in the Contempt Petition No.198 of 1989 in W.P. No.593 of 1989 for claiming deemed date if eventually Applicant passes PSI examination. Those observations of Hon'ble High Court are appearing at page 67 of paper book. Those read as follows:

*"..... Now that this termination order has been set aside, if he has already become eligible, he will be entitled to appear in the necessary examination for promotion as Police Sub Inspector but because of the directions given in the Writ Petition in case he qualifies for promotion he shall be deemed to have become qualified from the date he had become eligible for promotion. ....."*

(Quoted from page 67 of OA)

32. The result of the observation of Hon'ble High Court which is quoted in foregoing paragraph No.12 and is underlined for emphasis is to confer upon the Applicant the deemed date only **'if Applicant appears and passes the examination'**.

33. Admittedly, though the Applicant has passed LL.B. 5 years Degree course followed by reinstatement with second class, he did not appear and attempt for the departmental examination for PSI's post sheerly of own choice and volition. This failure may be because career as Advocate must be more attracting than subordination and salary as constable as compared to fortune as an Advocate.

34. It is evident from record that Applicant has enrolled as an Advocate in 2004 and has been practicing at Pune. It must be that Applicant was busy in earning his livelihood as well fortune as an Advocate and, therefore, he cared the least to challenge the order of dismissal of appeal dated 12.05.2000, passed by the appellate authority.

35. The Applicant has also failed to show as to what were the compelling circumstances due to which despite being active in legal profession, what are the reasons which have precluded the Applicant from challenging the order passed in May, 2000, after 2000 and particularly during October, 2004 till September, 2010, during which period Applicant was practicing as an Advocate.

36. The Applicant's challenge to the order dated 12.5.2000 before this Tribunal was agitated in September, 2010 and this span is of 10 years and few months from the date of order which is delayed by 9 years and 5 months. This delay exhibits acceptance of the order of removal, the order of dismissal of appeal, and alternatively an act of supine indifference, acquiescence, laches and neglect to take recourse to right of challenge.

37. Be it that the Applicant was not in a sound mental condition to challenge the order passed by the Government in September, 2000, however, the Applicant has failed to disclose, rather he has suppressed as to what was his pursuit of life and source of survival since his absentism during 2000 to 2004. He has also failed to present any

reason such as poverty or mental sickness between 2000 to October 2004 supported by evidence whatsoever.

38. Now, this Tribunal has to balance the things viz.:

- (a) Allegation of non-observance of principles of natural justice.
- (b) Failure to plead and prove non-observance of principles of natural justice before first appellate authority in OA and even in the rejoinder.
- (c) Failure to challenge the impugned order i.e. order passed by the Government from 2000 till 2010.

39. The ground of non-observance of principles of natural justice by failure to serve the charge-sheet is on the very face of it and *ex-facie*, afterthought for the reasons viz.:

- (a) Applicant has fervently argued that when the enquiry was conducted when he was admitted in the hospital.
- (b) The dates of admission in the hospital seen from page 18 (22.3.1998 to 7.4.1998), relied by the Applicant contradicts and falsifies Applicant's own version.
- (c) The Applicant has not even whispered or pleaded directly or indirectly that the charge-sheet was not served on him, even during his personal meeting with the Additional Commissioner, when he was called in orderly room for hearing before passing the order of dismissal.
- (d) The Applicant has failed to raise a ground that the charge-sheet was not served on him and enquiry was conducted during his hospitalization in the memo of appeal.
- (e) The fact that Applicant has passed LL.B. (New) 5 years course in April 1991 tends to prove that Applicant's plea that he was unfit mentally to appear for PSI's examination is sheer concoction and is an afterthought or is a vexatious plea used by taking a chance.
- (f) The Applicant's plea that he was precluded from appearing departmental examination after his reinstatement also does not inspire confidence in the background that Applicant was healthy and fit enough to pursue a

full time LL.B. course of 5 years Degree of Law and has passed with second class, was not mentally fit for appearing PSI's examination.

40. The Applicant's claims are artificially taller to be *ex-facie* unreal, fake and unjust. The Applicant's act of challenging the order of dismissal of appeal after 9 years and five months (after the date of rejection of appeal by the Government) and engaging himself in active practice as Lawyer, speaks in volumes about Applicant's indolence and supine indifference about his urge and wish to challenge the order of removal and order of Government upholding the order of dismissal. Applicant has distanced himself miles away from truth. The suppression and deliberate acts of misleading are evident writ large.

41. The Applicant's claim of effect of assigning him a deemed date of PSI's post is based on Applicant's riveri and wish based on fiction of passing examination. Applicant has consciously and deliberately evaded appearing for PSI's examination. It remains unexplained as to what are the compelling circumstances due to which though as pleaded by the Applicant, he was strong, sound in law and was intelligent enough to study and pursue a full time 5 years LL.B. instructional course, and passed in 2<sup>nd</sup> division, but was not mentally able to prepare and to appear for PSI's examination. In the result, the Applicant's claim for deemed date turns out to be totally fake as well baseless. Applicant has been day dreaming, and O.A. deserves to be dismissed.

42. This Tribunal cannot part with the judgment without mentioning Applicant's conduct while before this Tribunal.

43. Applicant wrote a letter to Chairman and Member(A) of this Tribunal. In his letter which is dated 15.8.2018 he has made irresponsible allegations against Chairman apart from scurrilous and contemptuous allegations consisting of allegations of discriminatory behaviour based on biased attitude based on caste, by one of the Hon'ble sitting Judges of the Hon'ble High Court. Para 2 & 3 of said letter is quoted

hereinafter. The text containing scurrilous imputation is underlined in para 2 of said letter which is quoted below for ready reference as below:

“२) वास्तविक अर्जदाराने दि.५/७/२०१८ रोजी नेमलेल्या तारखेच्या दिवशी न्यायालयात मा. न्यायमूर्ती श्री. बी.पी. पाटील व मा. न्यायमूर्ती श्री. पी.एन. दिक्षित यांचे खंडपीठापुढे दाखल केलेले आठपानी लेखी युक्तीवादात व दि.१५/७/२०१८ रोजी पुणे येथून स्पीड पोस्टाद्वारे आपले नावे पाठविलेले महत्वाचे दोन पानी अर्जात अर्जदाराने सर्व म्हणणे पुराव्यासह आयसोलेट केलेले आहे व फक्त आणि फक्तच आदरणीय न्यायमूर्ती महोदयांनी भारतीय राज्य घटनेप्रमाणे न्यायदान करणेचे काम शिल्लक राहिले आहे असे असताना मा. न्यायालयाकडूनच अर्जदाराचे बाबतीत जातीभेद अथवा अन्य कोणता तरी भेदभाव करून अथवा अर्जदाराविषयी पूर्वग्रह दूषितपणे विचार करून कामकाज लांबविले जात असून मा. न्यायालयासमोर आवश्यक महत्वाचे सर्व पुरावे आलेले असताना सुध्दा न्याय दानाचे पवित्र असे काम करणे ऐवाजी पुढील तारखा देणेत येत असून त्यामुळे अर्जदार न्यायापासून वंचित राहिला आहे ही न्याय व्यवस्थेतील एक अत्यंत दुःखाची बाब आहे. “ दूधाने तोंड पोळल्यानंतर माणूस ताक सुध्दा फुंकून पितो” अशी अर्जदाराची अवस्था झाली आहे कारण अर्जदारास यापूर्वी मा. उच्च न्यायालय मुंबई येथील मा. न्यायमूर्ती श्री. अभय ओक सो. यांचेकडून भेदभाव होत असले बाबतचा आलेला अत्यंत वाईट अनुभव अर्जदाराचे संदर्भातील रीट पिटीशन नं.३५३०/२०१२ मध्ये मा. श्री. अभय ओक सो. यांनी केवळ अर्जदार हा मागासवर्गीय जातीचा आहे म्हणून जुलै २०१३ मध्ये बेकायदेशीर (व्हेग) आदेशाद्वारे अर्जदाराचे सदर ओ.ए.क्र९९/२०११ चे कामकाजास स्थगिती दिली. या विरुद्ध अर्जदाराची आर्थिक परिस्थिती गरीबीची असल्यामुळे अर्जदार सर्वोच्च न्यायालय नवी दिल्ली येथे पोहचू शकला नाही. पुढे अर्जदाराचे सुदैवाने दि. २५ एप्रिल २०१८ रोजी आदरणीय मुंबई उच्च न्यायालयाचे आदरणीय अॅक्टिंग चिफ जस्टीस तहीलरामानी मॅडम व आदरणीय जस्टीस श्री. सोनक सो. यांचे खंडपीठाने मा. अभय ओक सो. यांचे खंडपिठाने जुलै २०१३ मध्ये दिलेला स्थगितीचा आदेश रद्दबातल ठरवलेने सदर ओ.ए.क्र.११/२०११ चे कामकाज कैक वर्षे गेलेनंतर चालू झालेले आहे.

३) मुंबई उच्च न्यायालयाचे मा. न्यायमूर्ती श्री. अभय ओक सो. हे दुर्दैवाने जातीभेद, धर्मभेद व वर्णभेद करतात याचा ठोस पुरावा म्हणजे त्यांचेच आदरणीय खंडपिठाने सन २०१६ चे दिलेले एका निवाड्याद्वारे संपूर्ण महाराष्ट्र राज्यात फक्त “गो” वंश हत्या बंदी लागू केली व अधिकतम प्रमाणात घट्ट व सकस दूध देणा-या व संपूर्ण मानव जातीचे पालन पोषण करणा-या जननी समान असलेल्या म्हैस या प्राण्यास

तथा संत ज्ञानेश्वरांनी ज्याच्या मुखी वेद वदविले अशा “रेडा” या पवित्र व पूज्य प्राण्यास त्याच्या मातेसह कत्तलखाना दाखवला. त्याच मा. उच्च न्यायालय मुंबई येथील मा. न्यायमुर्ती श्री. अभय ओक सो. यांचे खंडपीठाने दिलेले बेकायदेशीर “स्टे” चे आदेशाने अर्जदाराने अनेक वर्षे अन्याय सहन केला असलेने आज सुध्दा अर्जदार संभाव्य जातीभेदाने भयग्रस्त झालेला आहे.”

(Quoted from page 81-83 of OA)

44. The Applicant was called to state whether he adheres and maintains the imputations made by him against Honourable Judge of High Court. In answer to our query, the Applicant undertook to tender written apology for his expression against Honourable Judge of Hon’ble High Court, and has tendered the written apology which is taken on record. Apology does not wipe out misdemeanor. Be it as it may.

45. In view of the discussion of facts and law contained in foregoing paragraphs, excluding para Nos.42 and 43, present Original Application does not merit any interference and is dismissed.

46. Hence, Original Application is dismissed with no order as to costs.

Sd/-

**(P.N. Dixit)**  
**Member (A)**  
**05.10.2018**

Sd/-

**(A.H. Joshi, J.)**  
**Chairman**  
**05.10.2018**

Dictation taken by: S.G. Jawalkar.

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