

O.A. No. 490/16 (SB)

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

**C.A. 211/2018-**

None for the applicant. Shri S.A. Sainis, Id .P.O. for R-1&2. None for R-3.

At the request of Id. P.O., **S.O. after two weeks.**

**Vice-Chairman.**

dnk.

C.A. 547/17 in O.A. No. 113/2017 **(SB)**

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Shri R.V. Shiralkar, Id. counsel for the applicants and Shri S.A. Sainis, Id .P.O. for the respondents.

At the request of learned P.O., **S.O. three weeks** for filing reply on C.A. as well as on O.A. also.

**Vice-Chairman.**

dnk.

O.A. No. 196/2017 (SB)

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

**C.A.284/2019 -**

None for the applicant. Shri A.M.  
Khadatkar, Id. P.O. for R-1&2. None for R-3.

**S.O. after four weeks.**

**Vice-Chairman.**

dnk.

O.A. No. 61/2019 (SB)

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Shri S.P. Palshikar, Id. counsel for the applicant and Shri S.A. Sainis, Id. P.O. for the respondents.

The learned P.O. submitted that he will file reply during the course of day. He is permitted to do so.

With the consent of learned counsel for both the parties, **S.O. 21/8/2019**.

**Vice-Chairman.**

dnk.

O.A. No. 121/2019 (SB)

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Heard Ms. Sayali Bhave, Id. counsel holding for Shri A. Mardikar, Id .counsel for the applicant and shri S.A. Sainis, Id. P.O. for the respondents.

The learned P.O. files reply on behalf of R-2. It is taken on record. Copy is served on the applicant. He further submitted that reply of other respondents is not necessary.

**Heard. Admit.**

The Id. P.O. waives notice for the respondents.

**S.O. in due course.**

**Vice-Chairman.**

dnk.

O.A. No. 123/2019 **(SB)**

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

**C.A. 70/2019 -**

Shri D.S. Sawarkar, Id. counsel for the applicant and Shri V.A. Kulkarni, Id. P.O. for the respondents.

The learned P.O. submitted that reply of respondent no.2 who has finally rejected the appeal of the applicant is yet not received and therefore he seeks further two weeks time to file necessary reply. At his request, **S.O. 30/8/2019.**

**Vice-Chairman.**

dnk.

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Shri A.R. Kalele, Id .counsel for the applicant and Shri A.M. Khadatkar, Id. P.O. for the respondents.

2. The learned P.O. submitted that since the impugned order is passed by the respondent no.2, i.e., Additional DGP, Office of the Directorate General of Police (M.S.), Mumbai, the reply of R/2 is necessary and for that purpose he seeks two weeks time.

3. The learned counsel for the applicant submitted that now the applicant is aged about 77 years and therefore time may be given as a last chance to file reply.

4. In view thereof, **three weeks** time is granted to file reply as a last chance. It is made clear that if the reply is not filed on the next date, the matter will be heard on merit.

**S.O. three weeks.**

Steno copy is granted.

**Vice-Chairman.**

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Heard Shri A.G. Girdekar, Id. counsel for the applicant and Shri P.N. Warjurkar, Id .P.O. for the respondents.

2. The learned P.O. files reply on behalf of R-3. It is taken on record. Copy is served on the applicant.

3. The main contention of the learned counsel for the applicant is that suspension order was illegal because it was issued by the respondent no.3 who was not Competent to issue the order. However, in the reply Para-5 the respondents have submitted that the applicant was suspended vide order dated 10/5/2019 and get post fact sanction from the respondent no.2, i.e. Additional Tribal Commissioner, Tribal Development, Nagpur vide their order dated 14/6/2019.

4. The learned P.O. is directed to file on record this document and also supply to the learned counsel for the applicant.

5. **Heard. Admit.**



6. The Id. P.O. waives notice for the respondents.

**S.O. 26/8/2019.**

**Vice-Chairman.**

dnk.

O.A. No. 415/2019 (SB)

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Heard Shri S.P. Palshikar, Id .counsel for the applicant and Shri H.K. Pande, Id. P.O. for the respondents.

2. The learned P.O. has placed on record Government order dated 14/8/2019 issued by the Home Department which is marked Exh-X for the purposes of identification. By the said order the applicant has been reinstated in service as per the order dated 2/8/2019 of this Tribunal. However, in the last para of the said order it is mentioned –

*"R; kvFkij Jh- ih-vlj-iVhy] rRdkyhu ikyhl vf/k{kd] , -I h-  
ch] ukxi j ; kkk 'kkI u l or i p%LFkfi r dj.; kr ; r vkgs r l p  
R; kb; k i nLFkfi upsvknsk Loræ-i .ksfuxter dj.; kr ; rhy-"*

3. However, it is mentioned that as discussed in para 4 (ii) of the order dated 11/6/2019 of this Tribunal following observations were made –

"The Hon'ble Apex Court in its Judgment in Civil Appeal No. 8427-8428 of

2018 (Arising out of S.L.P. (Civil) No. 12112-12113 of 2017) in the case of State of Tamil Nadu Vs. Pramod Kumar IPS and Anr. delivered on 21/08/2018 in its para no. 23 had observed as follows:-

*23. This Court in Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291 has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration.*

*On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post."*

4. In view thereof, the respondents are directed to take decision regarding posting of the applicant within two weeks from the date of this order as it has been mentioned in last para of Government order dated 14/8/2019.

5. The learned counsel for the applicant submits that the applicant has not yet been paid subsistence allowance of his suspension period since January, 2019 which is totally bad in law and denial of justice to the applicant. However, the learned P.O. submitted that the Certificate required by the applicant that he has not taken employment anywhere has not been submitted to the office for getting subsistence allowed. This

Certificate is prerequisite for payment of subsistence allowance by the employers.

6. The learned counsel for the applicant is directed to ask his applicant to submit required Certificate to the office within one week time and respondents are directed to make payment of subsistence allowance within four weeks from the date of this order.

**S.O. after four weeks.**

**Vice-Chairman.**

dnk.

O.A. No. 181/2019 (SB)

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Heard Shri S.P. Palshikar, Id. counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the respondents.

2. The learned counsel for the applicant has relied upon the Judgment in O.A.401/2018 passed by the MAT, Mumbai on 9/7/2019. On para-14 it is mentioned as under-

*" As regard gratuity, the Rule 130(c) says "no gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon." Here, the legislature has not used the word "pensioner" and has specifically used the word "Government Servant", which is significant in the present context. This leads to suggest that Rule 130(c) is applicable where the enquiry is initiated before retirement and continued after the retirement. The learned P.O. could not point out any other provision which provides for withholding gratuity where charge-sheet is issued after retirement. Whereas, we have specific*

*provision in the form of Rule 27, which provides for withholding pension where any D.E. either instituted before retirement or even after retirement, subject to limitations mentioned in Rule 27(2)(b) of 'Rules of 1982', in case pensioner is found guilty of conclusion of D.E. However, pertinently, there is no such provision in Rules for withholding the gratuity where charge-sheet is issued after retirement. Once the Government servant stands retired, right to receive pension and gratuity accrues to him and such right cannot be kept in abeyance on the speculation or possibility of initiation of D.E. in future. All that permissible is to withhold pension, if found 10 O.A.401/2018 guilty in D.E, if initiated fulfilling embargo mention in Rule 27(2)(b) of 'Pension Rules 1982'. In case, the D.E. is instituted after retirement, then the scope of such D.E. and its outcome cannot go beyond the scope of Rule 27 as adverted to above and highlighted in the Judgment of Hon'ble High Court referred to above. This being so, the initiation of D.E. after retirement will not empower the Government to withhold pension or gratuity in absence of Rule to that effect. Whereas, the Rules discussed above, only provides that withholding of pension, if found guilty in D.E."*

3. The copy of the said Judgment is taken on record and also supplied to the learned P.O.

4. The applicant in O.A. 401/2018 of the MAT, Mumbai Bench retired on 31/12/2017 by order dated 31/12/2017 as per para-2 of the said Judgment. As per para-17 it is clear that no charge sheet was issued to the applicant till the date of retirement i.e. 31/12/2017.

5. However, in case of present O.A. admittedly as per para-3, page no.5 of the O.A. departmental inquiry was initiated in October,2018 against the applicant prior to his retirement date 31/12/2018.

6. Hence, applicant in this O.A. has different type of case than O.A.401/2018 of MAT, Mumbai Bench on which learned counsel for the applicant has relied upon. So said Judgment is not relevant to the present O.A. in hand.

7. I have gone through the Maharashtra Civil Services (Pension) Rules,1982 Rule 130 (c) which read as follows –

*“No gratuity shall be paid to the Government servant until the conclusion of the departmental or judicial proceedings and issue of final orders thereon.”*

8. In order which has been relied by the learned counsel for the applicant i.e. in O.A. 401/2018 of MAT, Mumbai in para-14 itself it has been clarified that “This leads to suggest that Rule 130(c) is applicable where the enquiry is initiated before retirement and continued after the retirement.” The present O.A. and applicant are covered under this provision of MCS (Pension) Rule, 130 (C) as per citation given by the learned counsel for the applicant himself.

9. The learned P.O. is directed to file on record letter related to initiation of departmental inquiry against the applicant and take necessary instructions from the Department and file on record during next date of hearing.

**S.O. 23/8/2019.**

**Vice-Chairman.**

dnk.



**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Heard Shri S. Borkute, Id. counsel for the applicant and Shri V.A. Kulkarni, Id. P.O. for the respondents.

2. The learned P.O. has filed affidavit-in-reply on behalf of R-2 along with the document. Along with the reply at Annex-R-1 at page no.74 in para-2 following paragraph is mentioned -

^'kkI u 'kq/nhi =d dækad , u , , DI 05162izdz158@fo'kk-1c  
fnukad 26 vkkdVksj] 2016 vUo; s fuxfer 'kkI u fu.kz kps  
vuqkækus oru fyihd ; kæk n; ko; kps vknskæe/; s ; k  
dk; kÿ; kknjs fuxfer dj.; kr vkyÿ; k ofjy uem I mfHKZ  
vknsk dækad 1 e/; s pæhus mi e[; ky; i k.kfgrk ; k ?kVdkpk  
fnMi V oru I ækkusl ekosk dj.; kr vkysykgærk- ; klor] fnMi V  
oru I æi/kr oGkoGh fuxfer dj.; kr vkyÿ; k xgfoHkkx  
; kpsMhy 'kkI u fu.kz kæe/; smi e[; ky; i k.kfgrk ; k ?kVdkpk  
I ekosk ul Y; kus i k.kfgrk vrxr dk; jr ekWj ifjogu foHkkx]  
fcurkjh I ask foHkkx @ jkT; jk[ko isyhl nykrhy dk; jr  
depkjhoxGrk i ksyhl mi e[; ky; i k.kfgrk vrxr dk; jr brj  
dkskR; kgh vf/kdkjh@ depkjh ; kæk fnMi V orukpk ykHk vuqkS  
Bjr ul Y; kus egkjkrV^ 'kkI u foRr foHkkx 'kkI u fu.kz dækad  
foviz 2013@izdz30@2013@fofu; e] Hkkx&2] fnukad 17  
, fiy]2015 vUo; s foRrh; vf/kdkj fu; e i[Lrdk 1978  
vrxr Hkkx ifgyk mi foHkkx , d e/khy v-dz3 fu; e dækad 2  
vUo; s dk; kÿ; i æ[k Eg.ku o I mfHKZ dækad 4 ps 'kkI u

ifji=dkuq kj foHkkx iæqk Eg.kuu vl yŷ; k vf/kdkjKP; k vf/ku jkguu ofjy uem v-dz5 rs6 l mfHkz, 'kk l u jkti=@ ifji=dkr uem vl yŷ; k cichvUo; svki .kkd vfrinku dj.; kr vkyŷ; k jdeB; k ol gyhckr rRdkyhu ikyhl vf/k{kcd ;kuh ; k dk; kŷ; kpsofjy uem l mfHkz; vknk dækd 2 vUo; sdj.; kr vkysyhd; žkgh; k; vkg\*\*

3. By their own document in above para the respondents have admitted that any employee working in the State Reserve Police Force is entitled for 1½ times benefit of their salary. Other officers or employees are not entitled for 1½ times benefit of pay working in Pranhita Sub Head Quartet..

4. With this admission in their own document, it is difficult to understand since the applicant is an employee in SRPF only, why the respondents are denying the benefit to the applicant of granting 1½ times benefit of pay as per the Government policy.

5. The learned P.O. seeks time to take instructions in this regard from the Department. At his request, **S.O. 27/8/2019 (PH).**

**Vice-Chairman.**

dnk.

O.A. No. 292/2018 (SB)

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Heard Shri S.P. Palshikar, Id. counsel for the applicant and Shri H.K. Pande, Id. P.O. for the respondents.

2. The learned counsel for the applicant has pointed out the punishment order at Annex-A-1, Page nos.15 & 16 and also order at Annex-A-2, page nos. 17&18 in which the following order has been passed on page no.18-

^v ihykFkZ oJfy Jh- ješk okeujko ?kqjs ue.knd l eknskd  
dk; kÿ; ] jk-jk-ilsicy xV dz4 ulxij ; kpk vity vtZ  
QVKG.; kr ; r vkgs

v ihykFkZ; kawk foHkxh; pkd' kh fu; ei q,rhdk] 1991 fu; e 8-  
3 e/khy rjrmhuu kj Qjrikl .kh vukS ukgh.\*\*

3. However the learned counsel for the applicant desires to place on record departmental inquiry book of 1991, Section 8.3. In view of this, the matter will be heard on 21/8/2019.

**S.O. 21/8/2019. (PH).**

**Vice-Chairman.**

dnk.

**Coram : Hon'ble Shri Shree Bhagwan,  
Vice-Chairman.**

**Dated : 16.08.2019**

Heard Shri S.N. Gaikwad, Id. counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for the State.

2. As pointed out by the learned counsel for the applicant, the applicant was first transferred vide order dated 8/6/2018 (P-12) at sr.no.38 from Jalna to Karanja, District Washim. Again the applicant has been transferred vide order dated 14/8/2019 (Annex-A-3,P-22) the applicant is at sr.no.20 from Karanja, District Washim to Economic Crime Branch, Yavatmal.

3. The learned counsel for the applicant has also pointed out details on page no.27. As per those details, the applicant joined in service on 16/06/1986 and his retirement date is 30/09/2019. From the date of issue of transfer order dated 14/8/2019 the applicant's service is left only 1½ months. It is impossible to understand what urgency was caused to transfer the applicant at the fag end of his career.

4. In view of this, issue notice to R-2 to 4, returnable **in six weeks**. Learned P.O. waives notice for R-1. Hamdast allowed.

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

6. Applicant is authorized and directed to serve on Respondents intimation / notice of date of hearing duly authenticated by Registry, along with complete paper book of O.A. Respondent is put to notice that the case would be taken up for final disposal at the stage of admission hearing.

7. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as limitation and alternate remedy are kept open.

8. The service may be done by Hand delivery, speed post, courier and acknowledgement be obtained and produced along with affidavit of compliance in the Registry within one week. Applicant is directed to file Affidavit of compliance and notice.

9. In case notice is not collected within **three days** and if service report on affidavit is not filed **three days** before returnable date. Original Application shall stand dismissed

without reference to Tribunal and papers be consigned to record.

10. **Till next date of hearing the transfer order dated 14/8/2019 to the extent of the applicant at sr.no.20 is stayed.**

**S.O. six weeks.**

Steno copy is granted.

**Vice-Chairman.**

dnk.

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