

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 632 OF 2016**

**(Subject – Suspension of Police Patil)**

**DISTRICT: PARBHANI**

**Shri Narayan Ramrao Nirval,**  
Age: 51 years, Occupation : Service,  
R/o Sadi, Taluka- Manvat,  
District- Parbhani.

.. **APPLICANT**

**V E R S U S**

- 1) **The Collector & District Magistrate,**  
Parbhani.
- 2) **Sub-Divisional Magistrate,**  
Pathri.

(Copy for all the respondents to be  
Served through the Presenting Officer  
Maharashtra Administrative Tribunal,  
Mumbai Bench at Aurangabad)

.. **RESPONDENTS**

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**APPEARANCE** : Ms. Amruta Paranjape, Advocate holding for  
Shri P.S. Paranjape, Advocate for the Applicant.  
: Shri M.P. Gude, learned Presenting Officer for  
the Respondents.

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**CORAM : HON'BLE SHRI B.P. PATIL, MEMBER (J)**  
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**O R D E R**

**(Delivered on this 21<sup>st</sup> day of September, 2017.)**

1. The applicant has challenged the suspension order dated 24.06.2016 passed by the Sub Divisional Magistrate, Pathri, suspending him as Police Patil by filing the present Original Application.

2. The applicant was appointed as Police Patil of village Rudhi, Taluka Manvat, District Parbhani on 16.04.1990. From time to time, he was given an extension on the post of Police Patil. There was no single complaint against him regarding his work as Police Patil. It is his contention that his services are governed by the Maharashtra Village Police Act, 1967 r/w Maharashtra Village Police Patils (Recruitment, Pay Allowances and Other Conditions of Service) Order, 1968. It is his contention that as per Rule 10 of the said order, the person appointed as Police Patil can also carry out his agricultural activities and other business also. In view of the said provision, the Police Patil is entitled to do any work. However, he is prevented from doing a full time service with any other employer. It is his contention that he was appointed by the Superintendent of Post Offices, Nanded Division, Nanded to work as E.D.B.P.M. in common parlance known as Extra Departmental Branch Post Master and he is governed by the Posts and Telegraph Extra Departmental Agents (Conduct and Service) Rules, 1964. He is getting honorarium of Rs. 9,453/- per month. It is his contention that neither the job of a Police Patil nor the job of E.D.B.P.M. is a full time job and in many villages, both these jobs are being performed by a single person and the service conditions of both permits him to do so. It is his contention that he is appointed as E.D.B.P.M. w.e.f. 4.4.1990 and he has been

given extension from time to time. It is his contention that one journalist tried to blackmail him and demanded to Rs. 1,00,000/- and a monthly bhatta of Rs. 2,000/- and gave threat to file complaint against him to the concerned authorities if he fails to pay the amount. It is his contention that on 14.07.2016, he received show cause notice dated 31.05.2016 signed by the respondent No. 2 asking him to give a reply within 24 hours. Before issuing the said notice, the respondent No. 2 on 24.06.2016 suspended the applicant from the post of Police Patil on the basis of news published in weekly newspaper namely as Parbhani Praja Garjana. Therefore, he filed the Original Application and challenged the suspension order dated 24.06.2016 and show cause notice dated 31.5.2016 issued to him on 14.07.2016. It is his contention that after issuance of suspension order, he made representation to the respondent No. 3 to withdraw the suspension order, but the respondents had not paid any heed to his representation and therefore, he filed the present Original Application. It is his contention that action taken by the respondents is not legal one and the suspension order came to be passed without giving opportunity to him. Therefore, he prayed to quash the suspension order.

3. The respondent No. 2 has filed an affidavit in reply and resisted the contentions of the applicant. It is his contention that

the applicant is working as Police Patil, as well as, E.D.B.P.M. at Rudhi Taluka Manvat. It is his contention that the Sub-Divisional Officer *sue moto* made enquiry and during enquiry, it was revealed that the applicant is working as Branch Post Master, which is not a business in contravention of the provisions of Rule-8. It is his contention that in view of Rule 8, a person who has been appointed as Police Patil may cultivate land or engage in local business or trade in the village, in such manner as is not detrimental to the performance of his duties as Police Patil, but he shall not undertake any full time occupation elsewhere. It is his contention that Rule 8 does not permit the Police Patil to do any full time employment. It is contention of the respondents that the applicant was appointed as Police Patil of village Rudhi, Taluka Manvat on 16.04.1990, by the Sub Divisional Officer, Selu. Thereafter, extension was given to the applicant on the post of Police Patil. It is his contention that on 10.03.2016, one Shri Vitthal Salve has filed complaint against the applicant with the respondents contending that the applicant is working on the post of Police Patil and he has accepted another job of Branch Post Master, at Post Office Rudhi, Taluka Manvat and therefore, he requested to terminate the present applicant from the post of Police Patil. On receiving the complaint, the respondents called the report from the concerned Tahsildar, Manvat. The Tahsildar,

Manvat conducted due enquiry and submitted his report on 11.5.2016. On receiving the report from the Tahsildar, Manvat, the respondents issued show cause notice to the applicant on 31.05.2016 and called upon him to submit his explanation within 24 hours. But the applicant had not submitted his explanation. Therefore, respondent No. 2 issued suspension order suspending the applicant from the post of Police Patil on 24.6.2016 in view of the provisions of Section 8 of the Maharashtra Village Police Act, 1967 r/w Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Order, 1968. It is his contention that the proper opportunity was given to the applicant to be heard by the respondents before passing the impugned suspension order. But the applicant has not given reply to the show cause notice issued by the respondents and therefore, respondents passed the impugned order of suspension of the applicant. It is his contention that the suspension order is as per the provisions of the Maharashtra Village Police Act, 1967 r/w Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Order, 1968. There is no illegality in issuing the suspension order and therefore, he prayed to reject the Original Application.

4. Heard Ms. Amruta Paranjape, Advocate holding for Shri P.S. Paranjape, Advocate for the applicant and Shri M.P.

Gude, Presenting Officer for the respondents. I have perused the documents placed on record by the parties.

5. Admittedly, the applicant was appointed as Police Patil of village Rudhi, Taluka Manvat, District Parbhani on 16.04.1990. Thereafter, extension was given to him on the said post from time to time. Admittedly, the applicant is getting salary of Rs. 3000/- per month. The applicant is appointed as E.D.B.P.M. i.e. in common parlance known as Extra Departmental Branch Post Master, Rudhi, Tauluka Manvat, Dist. Parbhani by the Superintendent of Police, Nanded and governed by Post and Telegraph Extra Departmental Agents (Conduct and Services) Rules, 1964. He is getting salary of Rs. 9,453/- per month for the said part time job. It is not much disputed that the applicant is discharging his duties as E.D.B.P.M. w.e.f. 4.4.1990 and extension was given to him on the said post from time to time. By order dated 24.06.2016, the applicant was suspended from the post of Police Patil and the said order has been served on him on 14.07.2016 on the ground that he has accepted Government job, which is against the provisions of Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968.

6. Learned Advocate for the applicant has submitted that the applicant received impugned suspension order dated 24.06.2016 and the show cause notice dated 31.05.2016 on 14.07.2016. She has submitted that the show cause notice dated 31.05.2016 has not been served on the applicant prior to 14.07.2016 and no opportunity of being heard had been given to the applicant by the respondent No. 2 before passing the impugned order of suspension dated 24.6.2016. She has submitted that the respondent No. 2 had not followed the principles of natural justice before passing the impugned order of suspension and therefore, it is liable to be quashed and set aside. She has further submitted that the applicant was doing part time job as E.D.B.P.M. in the Post Office, Rudhi and he is getting honorarium of Rs. 9,453/-. He is doing the said job since the year 1990 and it is not a full time job and the applicant has not accepted any full time job in contraventions of the provisions of the Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968. She has submitted that in view of the provisions of Rule 8 of Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968, the Police Patil is restrained from undertaking any full time occupation and there is no provision to accept part time job. She has submitted that Rule 8 of the

Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968 prohibits the Police Patil from undertaking any full time occupation, but a Police Patil may cultivate land or engage in local business or trade in the village, in such a manner as it is not detrimental to the performance of his duties as Police Patil. She has submitted that the applicant is discharging duties as E.D.B.P.M. only for three hours and therefore, it is detrimental to the performance of his duties as Police Patil and therefore, there is no violation of provision in the Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968 by the applicant. She has submitted that the respondent No. 2 has not considered the said aspect and thereby, he has wrongly passed the impugned order of suspension of the applicant. Therefore, she prayed to allow the Original Application and to quash the impugned order of suspension.

7. Learned Presenting Officer has submitted that the Rule 8 of the Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968 provides that the Police Patil may cultivate land or engage in local business or trade in the village, in such manner as is not detrimental to the performance of his duties as Police Patil, but he shall not



undertake any full-time occupation elsewhere. He has submitted that the said Rule does not permit the Police Patil to accept full time or part time employment/job. He has submitted that the said Rule permits the Police Patil to cultivate land or engage in local business or trade and therefore, there is specific bar to the Police Patil to accept other employment either full time or part time job. He has submitted that the applicant is working as E.D.B.P.M. since the year 1990 in the Postal Department, which is part time job and he is getting salary for it and therefore, it amounts breach of the Service conditions of the Recruitment Rules of Police Patil. He has submitted that the opportunity was given to the applicant to give his say. The applicant appeared before the Tahsildar and submitted his say. After considering his say, the Tahsildar submitted his report to the respondent No. 2 on 11.5.2016 and on the basis of his report, the respondent No. 2 passed the impugned order after giving opportunity to show cause to the applicant. He has submitted that the applicant has not given reply to the show cause notice and therefore, impugned order has been passed. He has submitted that the respondent No. 2 has followed the principles of nature justice and he has given an opportunity of being heard to the applicant before passing the said order and therefore, he supported the impugned order.

8. On going through the documents on record, it reveals that on receiving the complaints, the S.D.O., Selu directed the Tahsildar, Manvat to make enquiry in the complaint filed against the applicant. The Tahsildar, Manvat made enquiry and submitted his report dated 11.5.2016 to the respondent No. 2. The said report is at paper book page no. 22 (Exhibit R-2) of the paper book. On perusal of the said report, it reveals that he recorded statement of the applicant during the enquiry, wherein the applicant has admitted the fact that he is working as E.D.B.P.M. in the postal department since the year 1990. After considering his statement and other documents on record, the Tahsildar, Manvat submitted his report on 11.5.2016. It shows that the opportunity of being heard was given to the applicant by the Tahsildar, Manvat and after considering his explanation, the Tahsildar, Manvat submitted his report. On the basis of report, the respondent No. 2 issued show cause notice dated 31.5.2016 to the applicant. But the applicant has not given explanation to the said notice and therefore, he passed the impugned order dated 24.6.2016 suspending the applicant, which was served on the applicant on 14.07.2016. This fact shows that the proper opportunity was given to the applicant to defend himself before passing the impugned order of suspension by respondent No. 2. The applicant has appeared before the Tahsildar and the

Tahsildar recorded his statement during enquiry. But thereafter, the applicant has not given explanation to the show cause notice issued by the respondent No. 2. Therefore, the respondent No. 2 i.e. the Sub Divisional Officer, Selu has passed the impugned order of suspension of the applicant. Considering the said fact, in my opinion, there is no violation of principles of natural justice by the respondent No. 2 while conducting the enquiry. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard.

9. Admittedly, the applicant was doing part time job in the postal department and he is getting regular salary since the year 1990. The Rule 8 of the Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968 reads as under:-

***“ Engagement in business or trade-  
Notwithstanding anything contained in this order,  
a Police Patil may cultivate land or engage in local  
business or trade in the village, in such manner as  
is not detrimental to the performance of his duties  
as Police Patil, but he shall not undertake any full-  
time occupation elsewhere.”***

In view of the above said Rule, the Police Patil may cultivate land or engage in local business or trade in the village, in

such manner as is not detrimental to the performance of his duties as Police Patil. The said Rule prohibits the Police Patil to undertake any fulltime occupation elsewhere. The said Rule, explicitly does not permit the Police Patil to accept part time or full time job that too in the Government department. In the instant case, the applicant has accepted the temporary job, which is part time job in the postal department, which is against the provisions of Rule 8 of the Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968. Therefore, in my opinion, the act of the applicant accepting the Government part time job in the postal department is in contravention of the provisions of the said Rule. Therefore, the respondent No. 2 has rightly passed the impugned order suspending the applicant. I do not find any illegality in the impugned order.

10. Learned Advocate for the applicant has submitted that the Rule 8 of the Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968 does not refrain the Police Patil from accepting the part time job in the village and therefore, the act of the applicant accepting part time job in the postal department is not against the provisions of the Rule 1968. In support of her submission, she has placed reliance

on the judgment delivered by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in W.P. No. 4977 of 2012 in case of **Ishwar S/o Vithalroa Mohite Vs. The State of Maharashtra and others** on 31.08.2012 and in case of **Rajeshwar Sayanna Vs. State of Maharashtra and another** reported in **1983(1) Bom CR 343**. I have gone through the above said citations. I have no dispute regarding legal principles laid down therein. In that case, the kerosene retail licence granted to the Police Patil was cancelled by the District Supply Officer on the ground that he was working as a Police Patil i.e. the Government servant and not entitled for licence of kerosene retail shop. The Hon'ble High Court considered Rule 8 of the Maharashtra Village Police Patil (Recruitment, Pay, Allowances and other conditions of Service) Rules, 1968 and held that the Rule 8 does not refrain the Police Patil from engaging in local business or trade in the village and therefore, it has quashed the impugned order. The facts in the present case are different and therefore, said decision is not much useful to the applicant in the instant case. As discussed above, the applicant has accepted job in the Postal Department and Rule 8 does not permit the Police Patil to undertake such job, but it only permits the Police Patil to cultivate land or engage in local business or trade in the village, in such manner as is not detrimental to the performance of his duties. Therefore, the

principles laid down in the above decision are not attracted in the instant case.

11. Learned Presenting Officer has submitted that the applicant has contended in the Original Application that she made representation to the respondent No. 2 to withdraw the suspension order before approaching the Tribunal. He has submitted that since the applicant has availed alternate remedy available to him, the present Original Application filed on 9.8.2016 without waiting the decision on the representation within six months, is not maintainable in view of the provisions of Section 20 of the Administrative Tribunals Act, 1985.

12. Learned Advocate for the applicant has submitted that the Rule 20 of the Administrative Tribunals Act, 1985 does not place an absolute embargo on the Tribunal to entertain an application if alternate remedy is available. She has submitted that the said provision provides that the Tribunal shall not ordinarily entertain application unless the Tribunal is satisfied that the applicant has availed the alternate remedy. She has submitted that this phraseology itself indicates that in a given case, the Tribunal can entertain an application directly without relegating the applicant to the alternate remedy. She has submitted that in view of the said provisions, the Original

Application is maintainable and in support of her submissions, she has placed reliance on the judgment delivered by the Hon'ble High Court of Judicature at Bombay in case of the **State of Maharashtra, through Secretary Cooperation Vs. Dr. Subhash Dhondiram Mane in W.P. No. 9660/2014** on 1.12.2014, wherein it is observed as follows:-

***“9. The first contention raised on behalf of the Petitioner State is that the Tribunal ought not to have entertained the Original Application in view of the alternate remedy available to the Respondents. Reliance was placed by Mr. Sakhare, on Section 20 (1) and (2) of the Administrative Tribunals Act, 1985. According to Mr. Sakhare, as per Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, a remedy of appeal against the order of suspension has been provided. Mr. Sakhare submitted that the reason given by the Respondent for not availing of this remedy that since the order is passed in concurrence of the Chief Minister and therefore no appellate authority will give a decision against him, is an untenable reason. He submitted therefore, that the discretion used by the Tribunal in entertaining the application was improper and therefore the order be set aside. We do not find any merit in this submission. Section 20 (1) of the Administrative Tribunal Act does not place an absolute embargo on the Tribunal to bsb 7 WP 9660.14.doc entertain an***

*application if alternate remedy is available. It only states that the Tribunal shall not ordinarily entertain application unless the Tribunal is satisfied that the applicant has availed the alternate remedy. This phraseology itself indicates that in a given case the Tribunal can entertain an application directly without relegating the applicant to the alternate remedy. In the preset case, the Tribunal has found, on examination of various peculiar facts and circumstances, that, it will be futile to drive the Respondent to an alternate remedy. The Tribunal found that the order of suspension was based on the same grounds as the order of transfer, which was stayed and the order of suspension was an act of victimization. Having convinced that strong case for entertaining an application was made out, the Tribunal entertained the application. It was within the discretion of the Tribunal to do so. No absolute bar was shown, neither it exists. We are not inclined, at this stage, to accede to the submission of Mr. Sakhare, and set aside the impugned order on this ground alone.”*

13. Learned Advocate for the applicant has also placed reliance on the judgment delivered by the Hon'ble Andhra High Court in case of **P. Chandra Mouli Vs. Government of A.P., Dept. of Home and others** reported in **2005 (4) ALD 663, 2005 (3) ALT 162**, wherein it is observed as follows:-



***“Submissions at length were made on the strength of the language employed in [Sections 20](#) and [21](#) of the Act. It is no doubt true that Sub-section (1) states “.....the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.” The term “ordinarily” in the context means generally, but not always in all cases. The provision does not bar the ultimate jurisdiction of the Administrative Tribunal but it only requires the party to exhaust the other remedies available. The aim of introducing this provision is to provide for an additional forum and certain opportunities to the redressal of grievances and to prevent short-circuiting of normal Departmental procedures specified under the service rules. In [Kailash Chandra v. Union of India](#), while dealing with the interpretation of the words “should ordinarily be retained” in Rule 2046(2)(a) of Railway Establishment Code the Apex Court held that the intention is made clear and beyond by the use of the word “ordinarily” and ordinarily means in the large majority of cases, but not invariably. In the decision referred (4) supra, it was held at paras 16, 19 and 20 as hereunder:***

***“The Rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of [Section 20](#) of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the [Administrative Tribunals Act](#). Administrative Tribunals have been set up for Government servants of the Centre and several States have already set up such tribunals under the Act for the employees of the respective States. The law is soon going to get crystallized on the line laid down under [Section 20](#) of the Administrative Tribunals Act.***

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***The question of consideration is whether it should be disposal of one appeal or the entire hierarchy of reliefs as may have been provided. Statutory guidance is available from the provisions of Sub-sections (2) and (3) of [Section 20](#) of the Administrative Tribunals Act. There, it has been laid down:***

***"20.(2) For the purposes of Sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-***

***(a) If a final Order has been made by the Government or other authority or officer or other person competent to pass such Order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or***

***(b) where no final Order has been made by the Government or other authority or officer or other person competent to pass such Order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.***

***(3) For the purposes of Sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.***

***We are of the view that the cause of action shall be taken to arise not from the date of the original adverse Order but on the date when the Order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made and where no such Order is made, though the remedy has been availed of, a six months' period from the date of preferring of the appeal or making of the representation shall be taken to be the date when cause of action shall be taken to have first arisen. We, however, make it clear that this principle may not be***

***applicable when the remedy availed of has not been provided by law. Repeated unsuccessful representations not provided by law are not governed by this principle."***

14. I have gone through the above cited decision relied on by the learned Advocate of the Applicant. I have no dispute about the settled legal principles laid down therein. Provisions of Rule 20 of the Administrative Tribunals Act, 1985 reads as follows:-

***"20. Applications not to be admitted unless other remedies exhausted :-***

*(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-*

*(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-*

*(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or*

*(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the*

*appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.*

*(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial.”*

The said provision provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed the alternate remedies available to him under the relevant service Rules. In the instant case, in paragraph no. 6(g) page No. 4 of the O.A., the applicant has specifically contended that he made a representation on 24.06.2016 to the respondent No. 2 to withdraw the suspension. It means he has availed the alternate remedy available to him by making representation with the respondent No. 2 and the said representation is still pending with the respondent No. 2. Therefore, the present Original Application is not maintainable since he has availed the remedy to challenge the suspension before the competent authority and the same is still pending.

Therefore, in view of the provisions of Section 20(2)(b) of the Administrative Tribunals Act, 1985, the present Original Application is not maintainable. The applicant has filed present Original Application before expiry of six months period as provided in Section 20(2)(b) of the Administrative Tribunals Act, 1985. On that count, the present Original Application cannot be entertained and admitted.

15. Considering the above said discussion, it is crystal clear that the present Original Application is not maintainable in view of Section 22(2)(b) of the Administrative Tribunals Act, 1985. Not only this, but on considering the documents on record also, it reveals that the impugned order of suspension has been passed by the respondent No. 2 after giving an opportunity of hearing to the applicant. The applicant has accepted part time job, which is in violation of the provisions of the Maharashtra Village Police Patil (Recruitment, Pay Allowances and Other Conditions of Service) Rules, 1968 and therefore, respondent No. 2 has rightly passed the impugned order of suspension and suspended him. There is no illegality in the impugned order passed by the respondent No. 2. Therefore, no interference is called for in it. I do not find merit in the present Original Application.

Consequently, it deserves to be dismissed. Resultantly, the Original Application stands dismissed with no order as to costs.

**(B.P. PATIL)**  
**MEMBER (J)**

**KPB/S.B. O.A. No. 632 of 2016 BPP 2017 Suspension**