

**O.A. No. 886/2018. (S.B.)**

**Coram: Shri Shree Bhagwan, Member(A)**

**Dated: 16<sup>th</sup> November 2018.**

Heard Shri P.V.Thakre, the Id. counsel for the applicant and Shri S.A.Sainis, the Id. P.O. for the State in detailed.

2. The Id. Counsel for the applicant has placed letter no. d{A & 1@vklFAk@3537@I u 2018&19 dated 14/11/2018, which is marked Exh. X-1 at (P.B. Pg. No. 21) for the purpose of identification, by which it appears that respondents have served chargesheet to the applicant after the matter was heard in this Tribunal on 13/11/2018.

3. However, the Id. P.O. has placed on record the letter no. d{A@vklFAk@1646@I u 2018&19 dated 15/11/2018 at (P.B. Pg. No. 22) from the respondents in which it is mentioned that payment of subsistence allowance is in progress and it will be paid immediately.

4. The Id. Counsel for the applicant relied on following Judgements of Hon'ble Supreme Court and Principal Bench of MAT, Mumbai in O.A. No. 35/2018 delivered on 11/09/2018. In this case, since the suspension period is

now more than 100 days, so respondents are directed to examine following Judgments of Hon'ble Apex Court and Principal Bench of MAT, Mumbai and take decision regarding the same.

(i) The Apex Court in Civil Appeal No. 1912 of 2015 (arising out of SLP No.31761 of 2013) in the case of Ajay Kumar Chaudhary Vs. Union of India through its Secretary and another in its Judgment dated 16/02/2015 in para no. 14, it has observed that :-

*14 We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental*

*proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.*

(ii) 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.*

(iii) The Principal Bench of Maharashtra Administrative Tribunal Mumbai Bench in O.A. No. 35/2018 Judgment delivered on 11/09/2018 has also rejected continuation of suspension beyond 90 days.

5. In view of the above three Judgments respondents are directed to review suspension order of the applicant considering

duration beyond 90 days and file reply with reasons for continuation of suspension.

6. The respondents are further directed to pay subsistence allowance **within two weeks** from the date of this order and clarify this position in their reply. Hence the Id. P.O. is directed to file the reply with speaking order within two weeks.

7. Issue notice to R-2 to 4, returnable on 26/11/2018. Learned P.O. waives notice for R-1. Hamdast allowed.

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

9. 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.

10. 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.

11. 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.

12. 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.

13. **S.O. 26/11/2018.**

**Member(A)**

aps.

**O.A. No. 889/2018.**

**(S.B.)**

**Coram: Shri Shree Bhagwan, Member(A)**

**Dated: 16<sup>th</sup> November 2018.**

Heard Shri S.S.Joshi, the Id. counsel for the applicant and Shri S.A.Sainis, the Id. P.O. for the State in detailed.

2. The Id. Counsel for the applicant has pointed out the impugned order on P.B., Pg. No. 27, the order appears to be without any strong reasons, under top right side, the stamp is of 26/10/2018. Whereas in a reference letter number is mentioned but date is not mentioned and month is also mentioned 8 i.e. August. The Id. Counsel for the applicant has also invited my attention of letter at P.B., Pg. No. 13 i.e. letter no. cnyh&2017@i:dz 100@17@i:Alk&5 dated 11/12/2017, by which applicants request was considered and he was posted at Nagpur. Afterwords the transfer order has been cancelled but does not mention any reason and as pointed out in above paras date and reference letter are also mentioned in a misleading way.

3. In view of these facts, the impugned letter dated 26/10/2018 is stayed till further orders. The Id. P.O. is directed to file the reply

with all the mistakes mentioned in the impugned order.

4. Issue notice to R-2 to 4, returnable on four 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. **S.O. four weeks.**

**Member(A)**

aps.



**O.A. No. 890, 891 & 892/2018 (S.B.)**

**Coram: Shri Shree Bhagwan, Member(A)**

**Dated: 16<sup>th</sup> November 2018.**

Heard Shri D.M.Kakani, the Id. counsel for the applicant and Shri S.A.Sainis, the Id. P.O. for the State in detailed.

2. The Id. Counsel for the applicant has invited my attention in O.A.No.890/2018 the impugned order is at P.B., Pg. No. 11 bearing letter no. dftiuk@vkjkk; @LFAk2@ft-va cnyh@2409@18] dated 13/04/2018 (Annexure-A-1) and P.B., Pg. No. 13 bearing letter no. eo&kl @o&xV&v] dated 14/11/2018 (Anneuxure-A-3), O.A.No.891/2018 the impugned order is at P.B., Pg. No. 11 bearing letter no. dftiuk@vkjkk; @LFAk2@ft-va cnyh@2412@18] dated 13/04/2018 (Annexure-A-1) and P.B., Pg. No. 14 bearing letter no. eo&kl @o&xV&v] dated 14/11/2018 (Anneuxure-A-3) and O.A.No.892/2018 the impugned order is at P.B., Pg. No. 11 bearing letter no. dftiuk@vkjkk; @LFAk2@ft-va cnyh@2411@18] dated 13/04/2018 (Annexure-A-1) and P.B., Pg. No. 14 bearing letter no. eo&kl @o&xV&v] dated 14/11/2018 (Anneuxure-A-3).

3. As pleaded by Id. Counsel for the applicant by these orders in O.A.Nos. 890, 891 & 892/2018 are not legal, Government has power to issue such orders.

4. The Id. P.O. is yet to take instructions. In view of this, impugned orders are stayed till further orders. Respondents are directed to file reply within four weeks from the date of this order.

5. Issue notice to R-2 to 5, returnable within four weeks. Learned P.O. waives notice for R-1. Hamdast allowed.

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

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

8. This intimation / notice is ordered under Rule 11 of the Maharashtra Administrative Tribunal (Procedure) Rules, 1988, and the questions such as

limitation and alternate remedy are kept open.

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

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

11. **S.O. four weeks.**

**Member(A)**

aps.

**O.A. No. 893/2018 (D.B.)**

**Coram: Shri Shree Bhagwan, Member(A)**

**Dated: 16<sup>th</sup> November 2018.**

Heard Shri S.G.Jagtap, the Id. counsel for the applicant and Shri A.M.Khadatkar, the Id. P.O. for the State in detailed.

2. The Id. Counsel for the applicant has requested to file Joint O.A.. However, he has pleaded that during the course of the day, he will file Civil Application for Joint O.A. He is permitted to do so.

**Later on:-**

**C.A.No.348/2018:-**

The Id. Counsel for the applicant files today C.A. for Joint application. It is taken on record.

2. By this C.A., the applicants are seeking leave to sue jointly. For the reasons stated in the C.A., leave to sue jointly as prayed for is granted, subject to the applicants' paying requisite Court fees, if not already paid. C.A. is disposed of accordingly.

**O.A.No. 893/2018:-**

1. The Id. Counsel for the applicant has pointed out in Annexure-A-1, the promotion order issued by Executive Engineer, Vigilance Nagpur circle letter no. 990@ifj@vklFAk2@2018- As per his pleading the applicant should have been placed in between 23 and 25. However, there names do not appear in this list. Issue notice to the respondents and matter will be **placed in regular D.B. on 19/11/2018 at high on board.**

2. Issue notice to R-2 to 8, returnable within four weeks. Learned P.O. waives notice for R-1. Hamdast allowed.

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

4. Applicants are 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.

5. 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.

6. 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. Applicants are directed to file Affidavit of compliance and notice.

7. 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.

8. **S.O. 19/11/2018 at high on board.**

**Member(A)**

aps.