

O.A. 197/2020(D.B.)

**Coram:Shri Shree Bhagwan,
Vice-Chairman and
Shri A.D. Karanjkar,
Member(J)**

Dated : 17/03/2020.

Heard Shri A.P. Sadavarte, Id. counsel for the applicant and Shri A.P. Potnis, Id. P.O. for the State.

2. The learned counsel for the applicant submitted the case of a candidate who is nominee of the Freedom Fighter and who has been appointed by giving direct application to the Appointing Authority office and not by giving through any advertisement.

3. Issue notice to the respondents returnable **in three weeks**. Learned P.O. waives notice for the State. Hamdast allowed.

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

5. 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.

6. 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.

7. 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.

8. 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.

S.O. three weeks.

Member (J)

Vice-Chairman

dnk.

O.A. No. 196 of 2020 (DB)

**(Kailash T. Kalamkar Vs. State of
Maharashtra & Ors.)**

**Coram :- Shri Shree Bhagwan,
Vice-Chairman and
Shri Anand Karanjkar,
Member (J).**

Dated :- 17/03/2020.

ORDER

Heard Shri S.P. Palshikar,
learned counsel for the applicant and
Shri S.A. Deo, learned CPO for the
State.

2. The applicant is
challenging the order impugned dated
16/12/2019 by which the
Superintendent of Police, Akola the
respondent no.2 dismissed the
applicant from service after exercising
powers under Article 311(2) (b) of the
Constitution of India. The learned

counsel for the applicant submitted that the reason for the dismissal was Crime No.256/2019 was registered and it was in investigation and for showing favour to the person involved in that crime, illegal gratification was demanded by the applicant. There was complaint before the ACB, the trap was arranged and the trap was successful, consequently, the applicant was arrested. It is contended that merely because the Crime No.270/2019 under Section 7 of the Prevention of Corruption Act,1988 was registered against the applicant, therefore, the extra ordinary power is exercised by the respondent no.2 though there was no

circumstance or reason to exercise the power.

3. It is submission of the Id. CPO that it is necessary to examine the circumstances for which this power was exercised by the respondent no.2 and therefore it is necessary to give opportunity to the respondents to file their reply.

4. We have perused the order Annex-A-4 which is at page no.24. It is true that as a result of the trap Crime No.270/2019 under the Prevention of Corruption Act was registered and the applicant was arrested in this Crime. The respondent no.2 observed that the conduct of the applicant was

irresponsible, reckless and indecent and due to this conduct he has defamed the Police Department and lowered down the image of the Police Department in the esteem of the Society and therefore it was not suitable to retain the applicant in service of the Police Force. The respondent no.2 in the last but one para of the order has mentioned that he gave hearing to the applicant in person and after hearing the applicant, the respondent no.2 formed opinion that it was not necessary to give opportunity to defend the applicant and consequently the respondent no.2 dismissed the applicant from the service.

5. In order to decide whether the order Annex-A-4 was in within four corners of the Article 311 (2) (b) of the Constitution of India, it must be examined only in view of the reasons which are recorded in the order itself. After reading this order, it seems that no circumstance is discussed by the respondent no.2 as to why it was not practicable to initiate / conduct the inquiry as contemplated by the Services Rules by which the applicant was governed. As a matter of fact, the disciplinary proceeding as provided in the Service Rules was a rule and deviation from this procedure was permissible only in rarest of the rare case where there were strong circumstances to adopt same. While

deciding similar matters i.e. O.A. Nos. 696/2019,313/2019,356/2019 and 126/2019 decided on 22/11/2019, similar orders were examined by this Bench in view of the law laid down by the Hon'ble Apex Court in cases of **Jaswant Singh Vs. State of Punjab & Ors., AIR 1991 SC,385** and **Sudesh Kumar Vs. State of Hariyana & Ors. (2005) II SCC,525.**

It is held by the Hon'ble Apex Court in both the Judgments that the authority dispensing with the inquiry under Article 311 (2) (b) must satisfy itself for reasons to be recorded in writing that it is not reasonably practicable to hold an inquiry. This is crux of the matter. In the present matter, it seems that the inquiry is dispensed with only

for the reason that the applicant was arrested in Crime punishable under the Prevention of Corruption Act for the reason that by the conduct, the applicant has defamed the Police Department. In our opinion, this cannot be a ground for deviating from the normal rule to conduct the inquiry before dismissal. In view of this, in our opinion it is not a case where opportunity to file reply be given to the respondents, because as no reason is mentioned in the order to bring it under the scope of Article 311(2) (b) and now supplying the reasons is not permissible.

6. In view of this, the O.A. stands allowed. The order of dismissal Annex-A-4 is hereby set

aside. The respondent no.2 is at liberty to follow the procedure as prescribed in the service rules applicable to the applicant. The 50% back wages be paid to the applicant. The respondent no.2 to comply the order within 30 days from the date of this order. No order as to costs.

Steno copy be supplied.

(Anand Karanjkar)
(Shree Bhagwan)
Member(J).
Vice-Chairman.

Dated :- 17/03/2020.

*dnk..

O.A. St.No.403/2020 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 17.03.2020

C.A. No. 66 of 2020 -

Heard the applicant in person and Shri H.K. Pande, Id. P.O. for the respondents.

2. For the reasons stated in the application, the C.A.No.66 of 2020 is allowed.

C.A. No. 67 of 2020 –

Heard the applicant in person and Shri H.K. Pande, Id. P.O. for the respondents.

2. The applicant submitted that he is not pressing the application for review of the order passed by the Mumbai Bench issuing direction to place the O.A. and C.A. before the Nagpur Bench, therefore, the C.A.No.67/2020 is disposed of as not pressed.

O.A. St. No.403/2020 –

Heard the applicant in person and Shri H.K. Pande, Id. P.O. for the respondents.

2. The respondent no.1 is directed to take decision on the letter dated 2/8/2018 written by the applicant and received by the respondent no.1 on 6/8/2018 within two weeks from the date of this order.

S.O. 31/3/2020.

Steno copy be supplied.

Member (J)

dnk.

O.A. 259/2018 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 17.03.2020

C.A. 92/2020 -

Shri A.P. Sadavarte, Id .counsel for the applicant, Shri H.K. Pande, Id. P.O. for R-1,4&5, none for R-2&3 and none for other respondents.

S.O. 9/4/2020.

I.R. to continue till then.

Member (J)

dnk.

O.A. 838/2018 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 17.03.2020

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

At the request of Id. counsel for the applicant, **S.O. 7/4/2020**.

Member (J)

dnk.

O.A. 77/2020 (SB)

**Coram : Hon. Shri A.D. Karanjkar,
Member (J).**

Dated : 17.03.2020

Shri S.P. Palshikar, Id. counsel for the applicant and Shri A.M. Ghogre, Id. P.O. for R-1&2 and none for R-3.

At the request of Id. counsel for the applicant, **S.O. three weeks.**

Member (J)

dnk.

O.A.No.902/2019 (D.B.)

**Coram:Shri Shree Bhagwan, Vice Chairman and
Shri A.D.Karanjkar, Member(J)**

Dated :17/03/ 2020.

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

2. The Id. P.O. was directed to seek instructions from the Government as to why the applicant was not considered for the promotion. The Id. P.O. submitted that he has not received the instructions. The Id. P.O. is directed to produce the minutes of the D.P.C. till 23.03.2020.

3. S.O. 23.03.2020 for final hearing.

4. *Steno copy is granted.*

Member(J)
Date:-17/03/2020.
aps.

Vice Chairman

O.A.No.165/2020 (D.B.)

**Coram:Shri Shree Bhagwan, Vice Chairman and
Shri A.D.Karanjkar, Member(J)**

Dated :17/03/ 2020.

Heard Shri S.A.Radke, the Id. Counsel for the applicant and Shri S.A.Sainis, the Id. P.O. for the State.

2. Issue notice to R-2 & 3, returnable on three 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. 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.

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. Applicant is 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. three weeks.**

Member(J)
Date:-17/03/2020.
aps.

Vice Chairman

O.A.No.195/2020 (D.B.)

**Coram:Shri Shree Bhagwan, Vice Chairman and
Shri A.D.Karanjkar, Member(J)**

Dated :17/03/ 2020.

Heard Shri S.P.Palshikar, the Id. Counsel for the applicant and Shri S.A.Deo, the Id. C.P.O. for the State.

2. The only grievance is that the representation made by the applicant on 09.10.2019 is not yet decided by the respondent no. 1.

3. In view of this, the respondent no. 1 is directed to decide this representation **within a period of three months** from the date of this order.

4. With the above directions, **O.A. stands disposed of with no order as to costs.**

Member(J)
Date:-17/03/2020.
aps.

Vice Chairman

O.A.No.199/2020 (D.B.)

**Coram:Shri Shree Bhagwan, Vice Chairman and
Shri A.D.Karanjkar, Member(J)**

Dated :17/03/ 2020.

Heard Shri S.A.Marathe, the Id. Counsel for the applicant and Shri A.M.Ghogre, the Id. P.O. for the State.

2. It is brought to our notice that the list of the eligible candidates were prepared for the promotion on the post of Naib Tahsildar. In this list the name of the applicant was at Sr. No. 06 and against his name remark was that the applicant did not take the benefit of reservation, name of respondent no. 4 was at Sr. No. 08 and against his name remark was that benefit of reservation was taken by him.

3. It is grievance of the applicant that now all of a sudden stand is taken by the department that the applicant has taken the benefit of reservation and such benefit was not taken by respondent no. 4 and disregarding the D.P.C. proceedings and the select lists of year 2018, in which the applicant was held eligible, now applicant is not considered for the promotion. It is submitted that as per impugned order at Annexure-A-1, dated 12.03.2020, the respondent no. 4 is promoted as Naib Tahsildar.

4. We are satisfied that strong case is made out to interfere; it is submitted by Id. counsel for the applicant that posting is not given to the respondent no. 4 till today.

5. In view of this, the respondent nos. 1 to 3 are directed not to give effect to the order dated 12.03.2020 till further orders so far as respondent no. 4 is concerned.

6. Issue notice to R-2 to 4, returnable on three weeks. Learned P.O. waives notice for R-1. Hamdast allowed.

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

8. 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.

9. 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.

10. 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.

11. 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.

12. S.O. three weeks.

Member(J)
Date:-17/03/2020.
aps.

Vice Chairman

O.A.No.1002/2018 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.

Heard Shri A.P.Raghute, the Id. Counsel for the applicant and Shri S.A.Deo, the Id. C.P.O. for the State. Await service of respondent nos. 2 to 5.

2. The Id. counsel for the applicant submits that he will file service affidavit today itself. The Id. P.O. desires time to file reply, **S.O. three weeks.**

Vice Chairman

Date:-17/03/2020.
aps.

O.A.No.80/2020 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.

Heard Shri R.V.Shiralkar, the Id. Counsel for the applicant and Shri A.P.Potnis, the Id. P.O. for the State. Await service of respondent no. 2.

2. The Id. P.O. has filed reply of respondent nos. 3 and 4. It is taken on record. Copy is served to the other side.

3. In the reply at para no. 8 it is mentioned that suspension of applicant is reviewed by respondent no. 4 from time to time. However, no documentary evidence has been filed about the review. The respondent no. 4 is directed to file record of review committee meeting before 31.03.2020. In para no. 11 of reply, respondents have contended that subsistence allowance from 14.09.2019 to 30.11.2019 are pending due to pendency of grant from Government.

4. However, subsistence allowance is drawn against salary head and as per Finance Department directions in salary head repetitive withdrawal is allowed. So, respondents are directed to pay pending all the subsistence allowance immediately or produce bill before Treasury and if any objection from Treasury they should file on record objection of the Treasury. Admittedly, as per para no. 11, applicant is due for retirement on 31.03.2020.

5. The respondent nos. 3 and 4 are directed to take the decision regarding reinstatement of the applicant before the retirement i.e. 31.03.2020 and D.E. should be continued and finalized **within six months** from the date of this order.

6. With the above directions, **O.A. is disposed of with no order as to costs.**

7. *Steno copy is granted.*

Vice Chairman

Date:-17/03/2020.

aps.

O.A.Nos.103,104,105&106/2020 (S.B.)

**Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.**

None for the applicant. Shri S.A.Sainis, the Id.
P.O. for the State. Await service of respondent no. 2.

2. **S.O. three weeks.**

Vice Chairman

Date:-17/03/2020.
aps.

O.A.No.1018/2019 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.

Heard Shri S.C.Deshmukh, the Id. Counsel for the applicant and Shri V.A.Kulkarni, the Id. P.O. for the respondents.

2. The Id. counsel for the applicant has placed on record letter dated 04.07.2019 by Divisional Deputy Commissioner written to Superintendent, State Excise Department and direction has been given to pay H.R.A. to the applicant as per Rules.

3. The Id. P.O. desires time to file reply. However, there is no substance in giving chance to file reply. Since, letter produced by the Id. counsel for the applicant clearly shows that respondent no. 2 has been directed by Superior to pay H.R.A. as per existing Rules and Regulations.

4. In view of this, following order:-

ORDER

A. As per prayer clause 1, the respondent no. 2 is directed to pay H.R.A. to the applicant from April, 2018 to August, 2019 as per letter dated 04.07.2019 (Exh. X) **within two months** from the date of this order and as per Rules and Policy of Government.

B. With the above direction, **O.A. is disposed of with no order as to costs.**

Date:-17/03/2020.
aps.

Vice Chairman

O.A.No. 1019/2019 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.

Heard Shri S.C.Deshmukh, the Id. Counsel for the applicant and Shri V.A.Kulkarni, the Id. P.O. for the respondents.

2. The Id. P.O. desires time to file reply. However, there is no substance in giving chance to file reply.

3. In view of order passed in similar O.A. No. 1018/2019, following order:-

ORDER

- A. As per prayer clause 10 (i), the respondent nos. 1 to 3 are directed to pay H.R.A. to the applicant from May, 2018 to November, 2019 and continue it till applicant are posted there **within two months** from the date of this order as per Government Rules and Policy.
- B. With the above direction, **O.A. is disposed of with no order as to costs.**

Vice Chairman

Date:-17/03/2020.

aps.

O.A.No.194/2020 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.

Heard Shri A.B.Moon, the Id. Counsel for the applicant and Shri S.A.Deo, the Id. C.P.O. for the State.

2. As submitted by Id. counsel for the applicant, father of the applicant expired on 15.03.1997 (Annexure-A-1, P.B., Pg. No. 18) and subsequent to that mother of the applicant submitted application for appointment on compassionate ground on 15.03.1997 (Annexure-A-6). After attaining the age, the applicant applied on 20.02.2008 (Annexure-A-7, P.B., Pg. No. 24), the contention of the counsel is that mother attained the age of 45 and respondents meanwhile appointed junior candidates on the compassionate ground list and didn't informed the mother. The applicant made application on 20.02.2008 and submits that Juniors to mother were appointed but they failed to approach to this Tribunal in time, there is almost delay of approximate 12 years from the date of application by applicant. Hence, the Id. counsel for the applicant is directed to file C.A. for condonation of delay, but point of delay and relief clause both are kept open.

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

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

5. 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.

6. 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.

7. 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.

8. 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.

9. **S.O. four weeks.**

Vice Chairman

Date:-17/03/2020.

aps.

O.A.No.198/2020 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.

Heard Shri A.M.Sudame, the Id. Counsel for the applicant and Shri V.A.Kulkarni, the Id. P.O. for the respondents.

2. The Id. counsel for the applicant is challenging two orders:-

A. Order dated 13.02.2020 which is at P.B., Pg. No. 27, Annexure-A-5 were applicant has been posted by this order to Amravati.

B. However, applicant vide order dated 09.03.2020 (Annexure-A-3, P.B., Pg. No. 24) has been placed under suspension and his headquarter has been placed at Mumbai.

3. Aggrieved with these order, the applicant has approached to this Tribunal.

4. Issue notice to R-2 & 3, returnable on three 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. three weeks.**

Vice Chairman

Date:-17/03/2020.

aps.

O.A.No.119/2020 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.

Heard Shri S.N.Gaikwad, the Id. Counsel for the applicant and Shri H.K.Pande, the Id. P.O. for the respondents.

2. The Id. counsel for the applicant has relied upon G.R. dated 11.09.2019 in which Government has taken decision to provide 20 % of appointment of a calendar year to the candidates who are to be appointed on compassionate ground. In G.R. Government has categorised Group-C and D category, specific posts has not been mentioned.

3. The Id. counsel for the applicant has filed documents yesterday and as per that in Gondia District in Group-D category total posts were 08 in Daftarband category, 07 were filled and 01 post vacant as on 31.12.2019. In case of Peon, total sanctioned posts 46, filled posts 34 and vacant posts are 12. So, if 13 posts are rounded to 20 % then it goes to 2.6 and as per calculation given by Government this 2.6 will be rounded to 03 posts.

4. The applicant has relied upon G.R. dated 11.09.2019 at P.B., Pg. No. 120, applicant is completed 45 years of age as on 20.03.2020 and after that applicant will debar from appointment on compassionate ground. Since there are 13 posts vacant as per chart placed by the Id. counsel for the applicant and 20 % of that becomes 03 posts.

Respondents are directed to take decision on applicant's appointment on compassionate ground on or before 20.03.2020 in the category of Daftarband or Peon i.e. Group-D posts, if otherwise applicant fulfils other requirements of the posts of Daftarband or peon category.

5. **S.O. one week.**

Vice Chairman

Date:-17/03/2020.

aps.

O.A.No.603/2019 (S.B.)

Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.

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

2. The Id. P.O. submits that applicant has been reinstated from suspension. However, copy of the same order is yet to be received to the Id. P.O..

3. The Id. P.O. is directed to get the copy and place it on record. **S.O. 23.03.2020.**

Vice Chairman

Date:-17/03/2020.
aps.

O.A.No.345/2019 (S.B.)

**Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.**

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

2. At the request of Id. counsel for the applicant, **S.O. three weeks.**

Vice Chairman

Date:-17/03/2020.

aps.

O.A.No.930/2017 with C.A.03/20 (S.B.)

**Coram:Shri Shree Bhagwan, Vice Chairman
Dated :17/03/ 2020.**

None for the applicant. Shri V.A.Kulkarni, the
Id. P.O. for the respondents.

2. **S.O. three weeks.**

Vice Chairman

Date:-17/03/2020.
aps.