

O.A. No.840/2018.

(S.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J)
Dated : 11th March 2019.

Heard Shri A.K. Waghmare, the Ld. counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents.

The Ld. P.O. has filed reply on behalf of R. 6 and 7, it is taken on record and a copy thereof is supplied to the Ld. counsel for the applicant.

ADMIT.

Shri H.K. Pande, the learned P.O. waives notice for the respondents.

S.O. for final hearing in **the month of April 2019.**

Vice-Chairman(J)

Dt. 11.3.2019.

pdg.

O.A. Nos.894 & 919 of 2019. (S.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J)
Dated : 11th March 2019.

Heard Shri D.M. Surjuse, the Ld. counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondents.

The Ld. P.O. has filed reply on behalf of R. 2 and 3, it is taken on record and a copy thereof is supplied to the Ld. counsel for the applicant.

S.O. for filing rejoinder, if any in **the month of April 2019.**

Vice-Chairman(J)

Dt. 11.3.2019.

pdg.

O.A. No.120/2017.

(S.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J)

Dated : 11th March 2019.

C.A. No. 60/2017

Heard Shri A.P. Tathod, the Ld. counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondent No.1.

For the reasons stated in the application No. 60/2017, C.A. to sue jointly is allowed on payment of requisite court fee to be paid to the office of this Tribunal. C.A. stands disposed of.

C.A. No. 87/2019.

The applicant has challenged the G.R. issued by the Govt. dated 27.2.2017. The Ld. P.O. submits that the said challenge is based on the judgment delivered by Principal Bench of this Tribunal at Mumbai on 24.2.2015 (Page 23) in O.A. No. 315/2014 in case of Subhash Eknath Pawar V/s State and 3 others and, therefore, the point of limitation be kept open. *Prima facie*, it seems that the G.R. has been challenged within limitation. However,

keeping the point open and for the reasons stated in the application for amendment, application for amendment is allowed and disposed of. It be incorporated within a week and a copy thereof be supplied to the other side.

O.A. No.120/2017.

After amendment, issue notice to R. 2 to 4 returnable in **four weeks.**

2. Shri A.M. Ghogre, the learned P.O. waives notice for the respondent No.1. Hamdast granted.

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. **four weeks.**

Vice-Chairman(J)

Dt. 11.3.2019.

pdg.

O.A. Nos. 943,944 & 945 of 2018. (S.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J)
Dated : 11th March 2019.

C.A. Nos. 369,370, 3701 of 2018.

Heard Shri A.R. Ingole, the Ld. counsel for the applicants and Shri H.K. Pande, the learned P.O. for the respondent Nos. 1,2 and 4. Shri M.M. Sudame, Adv. for R.3.

The respondent No.3 has filed reply affidavit, it is taken on record and a copy thereof is supplied to the other side.

The Ld. counsel for respondent No.3 submits that the application is not maintainable for want of jurisdiction and, therefore, the matter be heard on the point of jurisdiction.

At the request of Ld. counsel for the applicants, S.O. **18.3.2019 for taking instructions.**

Vice-Chairman(J)

Dt. 11.3.2019.
pdg.

O.A. No. 84/2019. (S.B.)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J)
Dated : 11th March 2019.

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

S.O. **four weeks** for filing reply.

Vice-Chairman(J)

Dt. 11.3.2019.
pdg.

O.A. No. 165/2019. (S.B.)
(Sandhya D. Pendor V/s State and 2)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J)
Dated : 11th March 2019.

Heard Shri S.M. Khan, the Ld. counsel for the applicant and Shri S.A. Deo, the learned C.P.O. for the respondents.

2. The Ld. CPO submits that there is no need to file reply affidavit in this case and he will make oral submission.

3. The applicant is claiming that the order dated 8.1.2019, whereby her

suspension has been revoked and she has been transferred in the office of Commissioner of Labour, Mumbai, be quashed and set aside. She is also claiming that the subsequent notice issued to her on 20.2.2019 (A-2) also be quashed and aside. Vide this letter / notice, the applicant has been asked to take charge of the post at Mumbai.

4. The Ld. counsel for the applicant submits that prior to the order of revocation of applicant's suspension, the applicant has filed O.A. No. 846/2018 before this Tribunal and in the said order dated 8.1.2019, the respondents were directed to revoke the suspension. However, in the order of revocation, it does not mention about this fact. It is material to note that the order in O.A. No. 846/2018 has been passed on 8.1.2019, whereas the order of revocation of suspension is also of the same date and it also mentions about the report of the Revocation Committee dated 10.12.2018. Naturally therefore, the order does not mention the order passed by this Tribunal on 8.1.2019. Therefore, because the suspension order does not mention about the order passed by this Tribunal on 8.1.2019 in O.A. No. 846/2018, it cannot be said that the order is illegal.

5. I have also perused the order passed by this Tribunal dated 8.1.2019 in O.A. No. 846/2018. In the said case, the applicant has claimed revocation of suspension and to take her back on work with immediate effect and also to re-transfer her at her previous place of posting i.e. at Chandrapur. While considering the said request, this Tribunal has observed in Para No.3 of the order (P.15) as under:-

“3.The applicant has been kept under suspension vide order dated 18.2.2017 (Page 20) and admittedly no charge-sheet has been filed against him in the departmental enquiry prior to 90 days. It is stated that now charge-sheet has been served on the applicant. But the Enquiry Officer is not yet appointed. In any case, enquiry has been initiated against the applicant. A criminal case under the Prevention of Corruption Act was also filed. In view of this, it will not be proper to retain the applicant at Chandrapur as prayed for by him in the interest of justice, fair enquiry and to avoid interference of the applicant. Prayer in this regard is, therefore, rejected.”

6. From the aforesaid observation, it is clear that the applicant's claim at Chandrapur was rejected even by this Tribunal. Considering this aspect and considering the fact that the case under the

Prevention of Corruption Act has been filed against the applicant at Chandrapur, the respondents seem to have thought it proper to transfer her at Mumbai, cannot be said to be illegal.

7. The Ld. counsel for the applicant submits that there are other vacancies available at Nagpur and the applicant may have been adjusted at Nagpur also. However, this point has not been agitated specifically in the application. If the applicant aggrieved by the order, it is open to her to file representation, claiming the posting and if the administration thinks it proper, it may be considered on its own merits, which cannot be a ground to challenge the order.

8. The applicant has been transferred in special circumstances and administration seems to have thought it proper to transfer her at Mumbai in the administrative convenience and in the interest of the applicant and, therefore, it will not be proper to interfere in the order.

9. The Ld. counsel for the applicant also placed reliance on the judgment in WPS No. 217/2015 in case of Prakash Narayan Tiwari V/s State of Chhattisgarh and four others, decided by the Hon'ble High Court of Chhattisgarh at Bilaspur on 7.7.2015.

Particularly he relied on para No.6 of the judgment and submits that the revocation of suspension, the employee becomes entitled to report back to the place of her posting from where she was suspended. Once he reports back to duty, the employer may, in exercise of power of transfer, transfer him. In view of observations of this Tribunal that continuation of the applicant at Chandrapur, cannot be interest of justice and the respondents have taken right decision and there is no need to interfere in the order. Hence, the O.A. stands dismissed with no order as to costs.

Vice-Chairman(J)

Dt. 11.3.2019.
pdg.

O.A. No. 767/2018. (S.B.)
(P.D.Rathod V/s State and others)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J)
Dated : 11th March 2019.

Oral order

Heard Shri N.S. Bhelkar, the Ld.
counsel for the applicant and Shri

M.I. Khan, the learned P.O. for the respondents.

2. The Ld. P.O. has filed reply of R.1, it is taken on record and a copy thereof is supplied to the Ld. counsel for the applicant.

3. The applicant has been kept under suspension vide order dated 21.12.2017 and is still under suspension. It is the case of the applicant that, no chargesheet has been served on him till today and, therefore, in view of the guidelines issued by the Hon'ble Apex Court in case of **Arun Kumar Choudhari V/s Union of India reported in (2015) 2 SCALE 432,** applicant's suspension order shall immediately be quashed. In the reply affidavit, it has been stated that as per G.R. dated 14.9.2011, the Govt. has formulated some procedure for consideration of revocation of suspension of employees and as per the procedure, the applicant's case was not placed before the Review Committee, since

no cases shall be placed before expiry of one year. The said G.R., however, appears that will not come into picture, since the Hon'ble Apex Court has observed that suspension shall not be a routine matter and the employee shall not be kept under suspension beyond the period of 90 days. In the reply, it is stated that the applicant has filed representations on 28.6.2018 and 31.8.2018 and the same have not been considered. The application, therefore, can be disposed of with a direction to the respondents to consider the case of the applicant for revocation in view of guidelines issued by the Hon'ble Apex Court in case of **Arun Kumar Choudhari V/s Union of India reported in (2015) 2 SCALE 432**, as well as in view of the judgment in **O.A. No. 269/2018 passed by Principal Bench of this Tribunal at Mumbai in case of Hiralal Rama Jadhao V/s State of Maharashtra and others decided on 16.10.2018**. Hence, the following order:-

ORDER

- (i) The respondent No.1 to take appropriate decision on revocation of suspension of the applicant in view of the judgment pronounced by the Hon'ble Apex Court in case of **Arun Kumar Choudhari V/s Union of India reported in (2015) 2 SCALE 432.**
- (ii) Such a decision shall be taken within a period of two weeks from the date of this order.
- (iii) No order as to costs.

Vice-Chairman(J)

Dt. 11.3.2019.

pdg.

O.A. No.120/2019. (S.B.)

(G.N. Naphade V/s State and one)

Coram:Shri J.D. Kulkarni,
Vice-Chairman (J)

Dated : 11th March 2019.

Oral order

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

2. The applicant has claimed that suspension order dated 25.6.2018 be quashed and set aside and the respondent No.2 be directed to reinstate the applicant. The applicant is serving as Administrative Officer, Class-III in Municipal Council, Nandura, has been kept under suspension vide impugned order dated 25.6.2018 (A-1) on the ground that he demanded bribe and criminal case was registered against him vide Crime No. 577/2018 for the offence punishable U/s 7, 13 (1) (d) read with section 13 (2) of the Prevention of Corruption Act, 1988. Admittedly in this case, chargesheet has been served in the departmental enquiry against the applicant as well as the criminal case is filed on 4.12.2018. Chargesheet in the departmental enquiry has been served on the applicant on 15.1.2019. Admittedly therefore, no chargesheet was served on the applicant within three months. The Ld. counsel for the applicant, therefore, submits that in view of the

judgment in case of **Arun Kumar Choudhari V/s Union of India reported in (2015) 7 SCALE 299 and a judgment in Civil Appeal No. 8427 and 8428 of 2018 in case of State of Tamil Nadu V/s Promod Kumar, IPS and another, delivered on 21.8.2018**, a copy of which is filed on record at Annexure A-4, applicant's suspension be revoked. It is further stated that, the applicant will be retiring on superannuation on 31st March 2019 and, therefore, necessary order may be passed.

3. The learned P.O. stated that the case of **Arun Kumar Choudhari V/s Union of India** (supra) is not applicable in this case, since chargesheet has been served in the departmental enquiry as well as the criminal case is also pending. The Ld. P.O. submits that the applicant has not filed an appeal against the order of suspension.

4. The Ld. counsel for the applicant drew my attention to the

representation filed by the applicant at Page No.15 (A.2) dated 10.12.2018 for revocation of suspension and submits that the same may be treated as an appeal. Admittedly, however, the said appeal is not filed before the appellate authority.

5. Though, this is a fact that the chargesheet has been served on the applicant in a criminal case as well as in the departmental enquiry, fact remains that the applicant is going to retire on superannuation on 31st March 2019. In such circumstances, there are two possibilities i.e. (i) the respondents may initiate departmental enquiry against the applicant / continue the departmental enquiry after obtaining due sanction or for continuation of the departmental enquiry and (ii) they may revoke the suspension.

6. The competent authority will have to see as to whether the continuity of suspension is necessary or not, particularly in view of the fact

that the applicant is going to retire on superannuation on 31st March 2019 and, therefore, in view of this, it will be necessary to direct the respondent No.2 to take a decision on the revocation of suspension of the applicant on or before retirement of the applicant. Hence, the following order:-

ORDER

- (i) The O.A. stands disposed of with directions to the respondent No.2 to take a decision on the representation of the applicant within two weeks from today.
- (iv) The respondent No.2 shall taken into consideration the guidelines issued by the the Hon'ble Apex Court in case of **Arun Kumar Choudhari V/s Union of India reported in (2015) 2 SCALE 432.** (supra) and also to

consider as to whether the
continuation of the
suspension is necessary
or not

(v) No order as to costs.

Vice-Chairman(J)

Dt. 11.3.2019.

pdg.

O.A.St.No. 1441/2016. (D.B.)

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

Dated : 11th March 2019.

C.A.No.368/2016:-

None for the applicant. Shri H.K.Pande,
the Id. P.O. for the State. Await service of
respondent nos. 2 to 4.

S.O. three weeks.

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 601/2016. (D.B.)

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

Dated : 11th March 2019.

None for the applicant. Shri H.K.Pande,
the Id. P.O. for the respondents.

At the request of Id. P.O., **S.O. next
week.**

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 754/2016. (D.B.)

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

Dated : 11th March 2019.

Shri Shende holding for Shri N.R.Saboo,
the Id. counsel for the applicant and Shri
H.K.Pande, the Id. P.O. for the respondents.

At the request of Id. counsel for the
applicant, **S.O. next week.**

Member(J)

Date:-11/03/2019.

aps.

Member(A)

O.A.No. 58/2017. (D.B.)

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

Dated : 11th March 2019.

Shri D.M.Kakani holding for Shri G.K.Bhusari, the Id. counsel for the applicant and Shri H.K.Pande, the Id. P.O. for the respondents.

At the request of Id. counsel for the applicant, **S.O. next week.**

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 858/2018. (D.B.)

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

Dated : 11th March 2019.

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

The Id. counsel for the applicant submits that he will file Rejoinder during the course of the day. As agreed by Id. P.O., **S.O. next week.**

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 346/2018. (D.B.)

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

Dated : 11th March 2019.

C.A.No.208/2018:-

Shri M.V.Joshi, the Id. counsel for the applicant and Shri H.K.Pande, the Id. P.O. for the respondents.

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

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.No. 965/2018. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**
Dated : 11th March 2019.

None for the applicant. Shri M.I.Khan,
the Id. P.O. for the respondents.

The Id. P.O. filed the Hon'ble Supreme
Court Judgment in **(2011) 14 Supreme Court
Cases 739 (Bharat Sanchar Nigam Limited
& Ors. Vs. Mishri Lal & Ors.)**. It is taken on
record. He further submits that he will serve
the copy to the other side.

The matter is **admitted** and kept for
final hearing.

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

S.O. 01/04/2019.

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 614/2017. (D.B.)

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

Dated : 11th March 2019.

Shri R.V.Shiralkar, the Id. counsel for the applicant, Shri V.A.Kulkarni, the Id. P.O. for the respondent nos. 1 & 2 and Shri N.B.Rathod, the Id. counsel for the respondent no. 3.

2. The Id. P.O. filed the Government letter no. U; kf; d 2017@i;d:348@l ok 5] fnukd 06-03-2019] by which it appears that Tribunal order dated 01/03/2019 has been complied and Government has directed Commissioner Public Health Mumbai and Joint Director, Public Health, Pune to take necessary action.

3. Hence, Commissioner Public Health Mumbai and Joint Director, Public Health, Pune are directed to take decision **within three weeks time.**

4. **S.O. three weeks.**

5. **Steno copy is granted.**

Member(J)

Date:-11/03/2019.

aps.

O.A.No. 508/2018.

Member(A)

(D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**
Dated : 11th March 2019.

Shri P.N.Shende, the Id. counsel for the applicant and Shri A.M.Khadatkar, the Id. P.O. for the respondents.

The Id. P.O. seeks two weeks time to go through the Rejoinder filed by Id. counsel for the applicant.

S.O. two weeks.

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 69/2016. (D.B.)

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

Dated : 11th March 2019.

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

Since reply has been filed. Matter is **admitted** and kept for final hearing with liberty to the Id. counsel for the applicant to file amendment, if he so desires.

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

S.O. three weeks.

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.St.No. 266/2019. (D.B.)

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

Dated : 11th March 2019.

C.A.NO.53/2019:-

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

The Id. P.O. submit that there is a delay
of total four years.

S.O. two weeks.

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.No. 1025/2018. (D.B.)

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

Dated : 11th March 2019.

Shri N.B.Rathod, the Id. counsel for the applicant and Shri A.M.Khadatkar, the Id. P.O. for the respondent nos. 1 to 3. None for the respondent no. 4.

The Id. P.O. seeks two weeks time to file Reply. **S.O. 25.03.2019.**

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 910/2018. (D.B.)

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

Dated : 11th March 2019.

Shri S.D.Borkute, the Id. counsel for the applicant and Shri A.M.Khadatkar, the Id. P.O. for the respondent nos. 1 & 2. None for the respondent nos. 3 to 21.

The Id. P.O. submits that he further seeks two weeks time to file reply. S.O. two weeks as a last chance. In case of not filing of reply till next date, the matter will be heard on merits.

S.O. two weeks.

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.No. 465/2018. (D.B.)

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

Dated : 11th March 2019.

C.A.No.388/2018:-

Shri R.V.Shiralkar, the Id. counsel for the applicant and Shri V.A.Kulkarni, the Id. P.O. for the respondents.

The Id. P.O. has filed M.P.S.C. letter no. 15/9/14/34/1860@ngk]fnukd 02-03-2019 along with the marks obtained in the Interview. Both are taken on record. Copies are served to the other side.

S.O. two weeks.

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.No. 761/2016. (D.B.)

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

Dated : 11th March 2019.

Shri A.Deshpande, the Id. counsel for the applicant and Shri V.A.Kulkarni, the Id. P.O. for the respondents.

The Id. P.O. filed the affidavit in reply on behalf of the respondent nos. 1 & 2 in Rejoinder filed by the applicant. It is taken on record. Copy is served to the other side.

The Id. Counsel for the applicant wants to file Rejoinder on the same.

S.O. two weeks.

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.No. 791/2018. (D.B.)

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

Dated : 11th March 2019.

Shri R.V.Shiralkar holding for Shri C.A.Joshi, the Id. counsel for the applicant and Shri V.A.Kulkarni, the Id. P.O. for the respondent nos. 1 to 3. None for the respondent nos. 4 & 5.

The Id. P.O. requested three weeks time to file reply. **S.O. three weeks.**

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 378/2018. (D.B.)

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

Dated : 11th March 2019.

C.A.No.36/2019:-

None for the applicant. Shri P.N.Warjurkar, the Id. P.O. for the respondents.

Amendment not carried out by Id. Counsel for the applicant. **S.O. three weeks.**

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.No. 489/2017. (D.B.)

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

Dated : 11th March 2019.

Shri C.A.Joshi holding for Shri R.M.Tiwari, the Id. Counsel for the applicant and Shri S.A.Sainis, the Id. P.O. for the respondents.

S.O. next week.

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.No. 274/2017. (D.B.)

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

Dated : 11th March 2019.

None for the applicant. Shri S.A.Sainis,
the Id. P.O. for the respondents.

S.O. two weeks.

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.No. 661/2016. (D.B.)

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

Dated : 11th March 2019.

Shri D.M.Kakani, the Id. Counsel for the applicant, Shri A.P.Potnis, the Id. P.O. for the respondent nos. 1 & 2 and Shri S.C.Deshmukh, the Id. Counsel for the respondent no. 3.

The Id. Counsel for the applicant desires to file amendment application regarding show cause notice issued to him. He also placed on record the Judgment in case of **Ramdas Shankarrao Digraskar Vs. Union of India, 2007 (2), Mh. L.J. at Pg. No. 211**. It is taken on record. Copy is supplied to the other side.

S.O. two weeks.

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 166/2019. (D.B.)

**Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)**
Dated : 11th March 2019.

Shri M.I.Dhatrak, the Id. Counsel for the applicant and Shri S.A.Deo, the Id. C.P.O. for the State.

2. The Id. Counsel for the applicant submitted that he would file his first appointment order. The Id. C.P.O. submitted that in the first appointment order, it is mentioned that so long as during in service the applicant shall not be entitled and, therefore, to decide the controversy, perusal of the appointment order is necessary.

3. Issue notice to R-1 & 2, returnable on two 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. two weeks.**

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 606/2016. (D.B.)

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

Dated : 11th March 2019.

None for the applicant. Shri A.P.Potnis,
the Id. P.O. for the Respondents.

None for the applicant on 17/02/2017,
10/03/2017, 24/03/2017, 02/05/2017,
17/07/2017 and today also. It appears that
the Id. Counsel for the applicant as well as
applicant are not interested in prosecuting the
matter.

Hence, Dismissed in Default.

Member(J)
Date:-11/03/2019.
aps.

Member(A)

O.A.No. 167/2013. (D.B.)

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

Dated : 11th March 2019.

Heard Shri Vishal Anand, the Id.
Counsel for the applicant and Shri
V.A.Kulkarni, the Id. P.O. for the Respondents.

Closed for orders.

**Member(J)
Date:-11/03/2019.
aps.**

Member(A)

O.A.No. 141/2016. (D.B.)

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

Dated : 11th March 2019.

Heard Shri S.Khandekar, the Id. Counsel for the applicant, Shri M.I.Khan, the Id. P.O. for the Respondent nos. 1 & 2 and Shri P.D.Meghe, the Id. Counsel for the respondent nos. 3 & 4.

2. It is the contention of the applicant that though he was possessing qualification as per the promotion Rules, which are amended in the year 1998, the applicant was entitled to be promoted, but the promotion was refused on the ground that the Departmental Examination conducted by the Engineering Staff College was not cleared by the applicant. It is submitted that as per the Rules, Rule 3 (a) (ii) there was a provision that the Civil Engineering Assistant, possessing part time or distance learning diploma and who has completed the required length of service, was eligible for promotion. As per the Rules, 5 % quota was reserved for the Departmental Candidates to be promoted on a higher post. The Id. P.O. has invited our attention to letter no. ei/141/2016@vklfkk&3] fnukd 06-10-2018 which is at P.B., Pg. No. 111 of the record. In

paragraph no. 8 of this letter, it is candidly observed that the present applicant and another person Shri Ukey were eligible for the promotion under the 5 % quota and the department was directed to take immediate action for their promotions.

3. The Id. Counsel for the applicant relied on the Judgment of Hon'ble High Court of Bombay, Bench at Nagpur in the **W.P. No. 741/2015 in case of State of Maharashtra & 2 Ors. Vs. Ravikant S/o Arjunrao Gedam & 10 Ors.** In this W.P., the Rule 2 & 3 of a Public Health Department and Irrigation Department Recruitment Rules 1998 (Pg. No. 10) are examined and it was observed that *"who have passed the qualifying examination for the post of Junior Engineer, conducted by the Engineering Staff College. The second category of Civil Engineering Assistants that are entitled to be promoted to the post of Junior Engineer are required to possess a part time or distance learning diploma. It is apparent from a reading of Rule 3 of the Rules that either those Civil Engineering Assistants, who have passed the qualifying examination and who have not rendered less than three years regular service on the said post and the Civil*

Engineering Assistants who possess a part time or distance learning diploma would only be

entitled to be promoted to the post of Junior Engineer."

4. In view of the issue decided by the Hon'ble High Court and the contents of the paragraph no. 8 of the letter no. eilj; k 2016@iz d;53@v;LFk&3] fnukd 06-10-2018] the decision of the Government communicated by the Under Secretary, Government of Maharashtra to the Id. P.O., we have no hesitation in holding that the applicant was entitled for promotion as he was qualifying the eligibility criteria. Therefore, we direct that the applicant be considered, if he is covered under the 5 % quota for the promotion available to the Departmental Candidates. It is also directed that, if the applicant was eligible and he was in 5 % quota, then the department shall give him the deem date of promotion.

5. The respondents are directed to comply with these directions **within three months** from the date of this order.

6. Hence the O.A. is disposed of with no order as to costs.

Member(J)

Member(A)

O.A.No. 142/2016.

(D.B.)

Coram: Shri Shree Bhagwan,
Member (A) and
Shri A.D.Karanjkar, Member(J)
Dated : 11th March 2019.

Heard Shri S.Khandekar, the Id. Counsel for the applicant and Shri M.I.Khan, the Id. P.O. for the Respondents.

2. It is the contention of the applicant that though he was possessing qualification as per the promotion Rules, which are amended in the year 1998, the applicant was entitled to be promoted, but the promotion was refused on the ground that the Departmental Examination conducted by the Engineering Staff College was not cleared by the applicant. It is submitted that as per the Rules, Rule 3 (a) (ii) there was a provision that the Civil Engineering Assistant, possessing part time or distance learning diploma and who has completed the required length of service, was eligible for promotion. As per the Rules, 5 % quota was reserved for the Departmental Candidates to be promoted on a higher post. The Id. P.O. has invited our attention to letter no. ei 11; k 2016@i z d z 53@vkl.Fkk&3] fnukd 06-10-2018 which is at P.B., Pg. No. 111 of the record. In paragraph no. 8 of this letter, it is candidly observed that the present applicant and another person Shri Nagdive were eligible for the promotion under the 5 % quota and the

department was directed to take immediate action for their promotions.

3. The Id. Counsel for the applicant relied on the Judgment of Hon'ble High Court of Bombay, Bench at Nagpur in the **W.P. No. 741/2015 in case of State of Maharashtra & 2 Ors. Vs. Ravikant S/o Arjunrao Gedam & 10 Ors.** In this W.P., the Rule 2 & 3 of a Public Health Department and Irrigation Department Recruitment Rules 1998 (Pg. No. 10) are examined and it was observed that *"who have passed the qualifying examination for the post of Junior Engineer, conducted by the Engineering Staff College. The second category of Civil Engineering Assistants that are entitled to be promoted to the post of Junior Engineer are required to possess a part time or distance learning diploma. It is apparent from a reading of Rule 3 of the Rules that either those Civil Engineering Assistants, who have passed the qualifying examination and who have not rendered less than three years regular service on the said post and the Civil Engineering Assistants who possess a part time or distance learning diploma would only be entitled to be promoted to the post of Junior Engineer."*

4. In view of the issue decided by the Hon'ble High Court and the contents of the paragraph no. 8 of the letter no. eiU; k 2016@iz dZ53@vklFK&3] fnukd 06-10-2018] the decision of the Government communicated by the Under Secretary, Government of Maharashtra to the Id. P.O., we have no hesitation in holding that the applicant was entitled for promotion as he was qualifying the eligibility criteria. Therefore, we direct that the applicant be considered, if he is covered under the 5 % quota for the promotion available to the Departmental Candidates. It is also directed that, if the applicant was eligible and he was in 5 % quota, then the department shall give him the deem date of promotion.

5. The respondents are directed to comply with these directions **within three months** from the date of this order.

6. Hence the O.A. is disposed of with no order as to costs.

Member(J)
Date:-11/03/2019.
aps.

Member(A)