

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 44 OF 2023

DISTRICT : PARBHANI

Prashant s/o. Bhagwansingh Kachhawa,
Age:49 years, Occu. : Service as Sub-Divisional
Conservation Officer, Parbhani.
R/o. C/o. Water Conservation Department,
Parbhani, Tq. & Dist. Parbhani.

...APPLICANT

V E R S U S

- 1) The Secretary,
Soil & Water Conservation Department,
Maharashtra State, 1st Floor,
Mantralaya, Mumbai-32.
- 2) The Regional Soil & Water Conservation Officer,
Aurangabad Region, Snehanagar,
Adalat Road, Aurangabad.
Tq. & Dist. Aurangabad.

...RESPONDENTS

APPEARANCE : Shri K.G. Salunke, Counsel for Applicant.
: Shri M.P. Gude, Presenting Officer along
with Shri Ajay Deshpande, Special
Counsel for respondent authorities.

CORAM : **JUSTICE P.R. BORA, VICE CHAIRMAN.**

DECIDED ON : **09.02.2023.**

O R A L O R D E R:

1. Heard Shri K.G. Salunke, learned Counsel for the applicant
and Shri M.P. Gude, learned Presenting Officer along with Shri Ajay

Deshpande, learned Special Counsel representing respondent authorities.

2. Applicant has approached this Tribunal by filing the present O.A. seeking quashment of the order dated 10-01-2023 whereby he has been placed under suspension in contemplation of the departmental enquiry. Shri K.G. Salunke, learned Counsel appearing for the applicant pointed out that the applicant does not dispute the right of respondent State to put under suspension any of its employees as provided under clause 4(1)(a) and 4(1)(c) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, however, there must be valid reasons while ordering suspension of any of the Government servant making out a case that his presence in the office would prejudicially affect the departmental proceedings. Learned Counsel submitted that, from that view the charges or the misconduct as alleged against the applicant has to be scrutinized. Learned Counsel pointed out that as is revealing from the order of suspension, the misconduct is alleged against the applicant on following grounds:

[i] That, the applicant beat one Shri Kaviraj Kuche, District Soil Conservation Officer, Parbhani which has resulted in filing FIR against the applicant at CIDCO Police Station, Aurangabad.

[ii] That, the applicant created hurdles intentionally in remittance of the retiral benefits to the deceased retired Soil Conservation Officer, namely, Shivaji Bhairat.

[iii] That, the applicant frequently remained absent for the review meetings.

3. Learned Counsel submitted that none of the aforesaid charges is of such a nature that the presence of the applicant in office will in any way have some adverse effect on the departmental proceedings or there is any possibility of the departmental proceedings being prejudicially affected. Learned Counsel pointed out that, in so far as misconduct at Sr.No.1 above, Shri Kaviraj Kuche had already withdrawn the FIR filed by him against the applicant. Learned Counsel further submitted that in so far as the payment of retiral benefits to deceased Shivaji Bhairat is concerned, whatever correspondence was made by the applicant was under the instructions of his superior officers and there was absolutely no intention in making such correspondence to harass the retired Government servant or his family members. Learned Counsel submitted that the documents which he has filed on record would demonstrate that not only the applicant but some other officers also

have written similar letters calling similar information or documents from the family members of deceased ShriBhairat. Learned Counsel submitted that for conducting the departmental enquiry in that regard also, there may not be any adverse impact if the applicant is continued on work and not suspended. With regard to the third charge, the learned Counsel submitted that it does not have any nexus with the applicant pressurizing somebody or influencing the enquiry in that regard. Learned Counsel submitted that, there has to be some documentary evidence showing as to for how many meetings the applicant was present and to which meetings he was absent. Learned Counsel submitted that suspension attaches stigma on the Government servant and ultimately even if he is relieved from all the charges, damage caused to the reputation of the Government servant is not compensated.

4. Learned Counsel placed reliance on the judgment of the Tribunal delivered at Nagpur Bench in **O.A.No.46/2007** decided on 24-04-2007 in the case of **DamodharVithobaKhillare V/s. The State of Maharashtra &Ors.** Learned Counsel submitted that the objection raised in the affidavit in reply filed on behalf of the respondents as about the alternate remedy of filing appeal is concerned, the said issue has been answered by the Division Bench

of the Hon'ble Bombay High Court Bench at Aurangabad in **Writ Petition No.8137/2014** decided on 07-10-2014 in case of **SureshsingKunusingTaji V/s. The State of Maharashtra &Ors.** Learned Counsel submitted that in view of the law laid in the said judgment, the objection cannot be sustained. Learned Counsel in the circumstances has prayed for allowing the present O.A. by setting aside the impugned order.

5. Shri Ajay Deshpande, learned special counsel appointed in the matter on behalf of State Authorities, resisted the submissions advanced on behalf of the applicant. The learned special counsel submitted that rule 4(1)(a) and 4(1)(c) of M.C.S. (Discipline & Appeal) Rules, 1979 specifically provides that the employer can suspend an employee if the departmental enquiry is contemplated against him. The learned special counsel submitted that in the reply filed on behalf of respondent nos. 1 & 2 it has been clarified how the respondents deemed it necessary to suspend the applicant during pendency of the enquiry contemplated against him. The learned special counsel submitted that mere withdrawal of NC by Shri Kaviraj Kuche will not lead to an inference that the applicant is absolved from the charge, which was leveled against him in the FIR and withdrawal of NC by said Shri Kuche cannot be interpreted to

mean that no such incidence has ever occurred. The learned special counsel pointed out that Shri Kuche has denied that no such incidence ever occurred. It is further contended by the learned special counsel that conduct of the Government employee entering into such acts certainly gives right to the employer to enquire into it. The learned special counsel further submitted that the reasons, which are assigned on behalf of the applicant, are the defenses raised by the applicant against the misconduct alleged against him, which can be raised and examined only during the course of enquiry. The learned special counsel further submitted that whether keeping the delinquent employee on the post would result in prejudicially affecting the DE can be better judged by the employer. The learned special counsel further submitted that withdrawal of NCR by Shri Kuche in fact indicates the capability of the applicant of fabricating evidence in the enquiry proceedings. The learned special counsel further submitted that yet the relevant particulars as about the misconduct of the applicant are to be served upon the applicant. In the order of suspension all such particulars are not expected to be incorporated. According to the learned special counsel, in the circumstances, validity of the order of suspension cannot be adjudicated. The

learned special counsel for the reasons stated above prayed for dismissal of the Original Application.

6. I have considered the submissions advanced by the learned counsel appearing for the applicant and the learned special counsel for the respondent authorities. I have also gone through the documents filed on record by the applicant.

7. The impugned order speaks that the Department has resolved to take a disciplinary action against the applicant and has therefore decided to conduct a departmental enquiry against the applicant. In the first paragraph some incidences are quoted which have necessitated the respondents to take the impugned decision. It is true that in the said order as has been noted hereinabove broadly 3 incidences are given of the misconduct allegedly committed by the applicant. The Original Application and prayers made therein are based on the said allegations. An attempt has been made on behalf of the applicant to submit that for any of the aforesaid reasons if the enquiry is to be conducted, the suspension of the applicant is not warranted. It has also been contended that the order of suspension is influenced by the political pressure and only at the instance of MLA from Jintur that order has been passed.

8. Rule 4 of the M.C.S. (Discipline & Appeal) Rules, 1979 reads thus:-

"4. Suspension

(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b)

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made."

9. It is true that in every matter of the DE the suspension may not be warranted. There are judicial pronouncements laying down law in what circumstances the order of suspension may be sustained and in what circumstances it may not. According to learned counsel, even if the charges, which ostensibly reveal from the notice dated 10.1.2023, the suspension is not warranted and the enquiry can be very-well

proceeded further keeping the applicant on working and by withdrawing the order of suspension.

10. There cannot be a dispute of the proposition argued by the learned counsel for the applicant that in every matter it may not be necessary to suspend an employee only on the ground that enquiry is initiated against him. In the present matter, however, the respondents have not yet served upon the applicant the statement of charge or exact charges leveled against the applicant. As I have noted hereinabove in the order of suspension everything may not be incorporated. What is indicated in the said order is the intention of the respondents to initiate a disciplinary action against the applicant and certain misconducts are mentioned by way of illustration. The word used 'etc.' after mentioning 3 incidents that there may be other charges also and as I noted hereinabove everything is not to be incorporated in the order of suspension. Presently there is nothing before the Tribunal as to which would be the exact charges against the applicant and what material is likely to be produced in support of that. In the circumstances, only on surmises it would be unjust and improper to accept the prayer made by the applicant at this stage. The learned special counsel was right in submitting that the submissions which are

made on behalf of the applicant, are in fact, the defenses which may be raised by the applicant against the alleged misconduct and the same can be considered only in the DE by the Enquiry Officer. Moreover, Tribunal may not indulge in deciding the veracity of the said charges.

11. In the circumstances, whatever material is there at present before the Tribunal, is not sufficient to accept the request of the applicant so as to grant the relief as has been prayed by the applicant. In the result, the Original Application fails and is accordingly dismissed. No order as to costs.

VICE CHAIRMAN

PLACE : Aurangabad.

DATE : 9.2.2023.

ARJ YUK O.A.NO.44-2023 (Suspension)