

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 491 OF 2022
(Subject – Suspension)**

DISTRICT : BEED

Utkarsh S/o Sopanrao Gute,)
Age : 39 years, Occu. : Service)
(as Chief Officer, Municipal Council),)
R/o. 455, 'Kavita' Niwas, Adarsh Ganesh)
Nagar, Beed.)

.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Urban Development Department,)
M.S. Mantralaya (Main Building),)
3rd Floor, Madam Kama Road, Hutatma)
Rajguru Chowk, Mumbai -32.)
2. **The Commissioner-cum-Director,**)
Municipal Administration, Directorate)
Of Municipal Administration, Worli,)
Mumbai.)
3. **The Collector, Beed,**)
Nagar Road, Beed.)

...RESPONDENTS

APPEARANCE : Shri Avinash Deshmukh, Advocate for the
Applicant.

: Shri M.S. Mahajan, Chief Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **30.09.2022.**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original Application is filed challenging the impugned order of suspension of the applicant dated 01.06.2022 (Annexure A-2) issued by the respondent No. 1 i.e. the State of Maharashtra through its Secretary, Urban Development Department and to extend all the consequential benefits.

2. The facts in brief giving rise to this Original Application can be summarized as follows :-

(a) The applicant entered into the service of Government of Maharashtra in its Urban Development Department as directly recruited Chief Officer, Group-A on 12.07.2010. Since then the applicant is working in the cadre of Chief Officer, Group-A. On 05.02.2020 he joined as Chief Officer of the Beed Municipal Council and discharging his duties there till May 2022. His normal statutory tenure of three years on that post was not completed. Hence, he was not due for transfer. However, the respondent No. 1 by the order 27.05.2022 (Annexure A-1) transferred the applicant from the post of Chief Officer, Municipal Council at Beed to

the post of Deputy Commissioner of the Parbhani Municipal Corporation. Being aggrieved by the said transfer order, the applicant was in the process of challenging it. However, meanwhile the impugned order of suspension dated 01.06.2022 (Annexure A-2) came to be issued by the respondent No. 1 only for the reason that after attending the proceedings of the Legislative Council when the applicant had sought permission to leave the Headquarter for his personal work, he had failed to intimate concerned officers / employees to wait there and attend further proceedings.

(b) In the circumstances as above, it is contended that even assuming the said reason to be correct it cannot be said that it would visit the applicant with any of the three major punishments of dismissal, removal or compulsory retirement from the service. The said allegations levelled against the applicant for placing him under suspension were not so serious as to visit the applicant with any of three major punishments as stated above. The impugned suspension order of the applicant is issued in contravention of the provisions of settled principles laid down by the Hon'ble Apex Court in the case of **State of**

Orissa Vs. Bimal Kumar Mohanty reported in **AIR 1994 SC 2296**, wherein it was ruled that an order of suspension should not be passed as an administrative routine and that the gravity of misconduct sought to be investigated / enquired and the nature of evidence placed before the Appointing Authority should be considered before passing the suspension order.

(c) It is further submitted that the respondent No. 1 issued the communication dated 15.03.2022 (Annexure A-3(i)) to the respondent No. 3 i.e. the Collector, Beed, District Administrative Officer in the Collectorate at Beed and the present applicant (in the capacity of Chief Officer of Beed Municipal Council) directing them to remain present in Mantralaya on 16.03.2022 at 8.00 am for discussing a matter relating to question raised by the Hon'ble Member of Legislative Council in the Budget Session. Pursuant to the said communication, the applicant remained present in Mantralaya on 16.03.2022 with detailed report dated 15.03.2022 (part of Annexure A-4 collectively), copy of which was forwarded to the respondent No. 1. As stated earlier, the applicant remained present in Mantralaya and attended the meeting on 16.03.2022. On 17.03.2022

(Annexure A-6), the respondent No. 1 issued communication to the District Administration Officer in the Collectorate at Beed and the present applicant (in the capacity of Chief Officer of Beed Municipal Council) to submit an additional note on the subject concerned and then remain present at Mumbai on 20.03.2022 for discussing the issue in advance with the Hon'ble Minister and Hon'ble State Minister of the Urban Development Department. In compliance of that the respondent No. 3 i.e. the Collector, Beed sent the additional note to the respondent No. 1 through e-mail and in addition issued a communication dated 18.03.2022 to the applicant and one Shri Sudhir Jadhav, Assistant Tax Superintendent in the office of Municipal Administration Department of the Collector Office at Beed directing both of them to remain present at Mumbai on 20.03.2022. The applicant duly attended the said meeting at Mumbai on 20.03.2022. The said meeting was also attended by Mr. Sudhir Jadhav, Rahul Talke (Water Supply Engineer of Beed Municipal Council) and one Shri Yogesh Hade (a contractual employee working as Construction Engineer under Beed Municipal Council).

(d) In the circumstances as above, it is the contention of the applicant that the impugned suspension order dated 01.06.2022 issued by the respondent No. 1 is uncalled for and unwarranted. In fact, the applicant was transferred by the order dated 27.05.2022 before issuance of the impugned suspension order dated 01.06.2022 and he was also relieved from his post on 27.05.2022. In view of that, there was absolutely no possibility of the applicant being in a position either to tamper with the documents and / or to try and win over any person who may be named as a witness in the Departmental Proceeding against him. However, in the impugned suspension order, the applicant is described as Chief Officer, Beed Municipal Council, from which post in fact, he was already relieved on 27.05.2022.

(e) In the circumstances as above, the impugned order of suspension of the applicant is illegal, arbitrary, high-handed, irrational and illogical being issued in contravention of the settled principles governing the suspension of the Government servant.

(f) The present Original Application is filed without exhausting remedy of Departmental Appeal challenging the

suspension order directly before this Tribunal more particularly contending that though Rule 17(i) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 provided appeal against the order of suspension, but no appellate authority is specified therein. The appellate authorities contemplated or specified under Rule 18 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 are the authorities dealing with orders of penalty. The impugned suspension order of the applicant is not penal order, but is an order by way of interim measure. Moreover, the applicant placed reliance on the citation of the Hon'ble Bombay High Court in the case of **State of Maharashtra Vs. Dr. Subhash Dhondiram Mane** reported in **2015 (4) Mh.L.J. 791**, wherein it is held that there is absolutely no embargo on the powers of this Tribunal to entertain the O.A. against the order of suspension.

3. The affidavit in reply is filed on behalf of respondent No. 1 separately and on behalf of respondent Nos. 1 to 3 jointly. Thereby at the outset the objection of non-maintainability of the O.A. without exhausting remedy of departmental appeal is raised. On merits it is contended that the applicant in spite of

direction being given to him to direct his subordinate officials to remain present in Mantralaya failed to do so, though he was given permission to leave Mumbai for his personal reason after meeting dated 16.03.2022. Thereafter, his subordinates were not available. The applicant was also not reachable on his mobile, as his mobile was switched off. It was a grave misconduct on the part of the applicant. Thereby inconvenience was caused to the administration and more particularly in answering the question raised by the Hon'ble Member of the Legislative Council and therefore, the Hon'ble Minister of the State (Urban Development) announced in the House that the concerned employees responsible for lapses of providing information were to be suspended. Before issuance of suspension order, the explanation was sought from the applicant vide letter dated 31.03.2022. The applicant was permitted to leave Mumbai on his personal ground, but he failed to perform his duties to instruct his subordinate officials to remain present for giving requisite information about question raised in the Legislative Council. Even contractual worker viz. Shri Yogesh Hade, who was responsible for not attending meeting was also terminated. Moreover, the other employees who are negligent in performing their duties, were also suspended, such as Shri Sudhir Jadhav,

Assistant Tax Superintendent in the office of Municipal Administration Department of the Collector Office at Beed. Hence, the present O.A. is liable to dismissed.

4. The applicant filed his affidavit in rejoinder denying the adverse contentions raised in the affidavit in reply reiterating his contentions raised in the Original Application. He specifically denied of having receipt of any letter dated 31.03.2022 before issuance of suspension order seeking explanation from him.

5. I have heard the arguments advanced at length by Shri Avinash Deshmukh, learned Advocate for the applicant on one hand and Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents on the other hand.

6. Perusal of the proceedings would show that the applicant has filed the present Original Application by invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 challenging his suspension order dated 01.06.2022. The suspension order is appealable order as provided under Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. It is true that in the said Rule 17, the appellate authority in that respect is not specified. As per the Rule 18 of the said Rules, the appellate

authorities in respect of appealable orders imposing penalties are specified. Perusal of the impugned order dated 01.06.2022 (Annexure A-2) would show that it is issued as an interim measure in contemplation of disciplinary action against the applicant. Hence, the said impugned suspension order cannot be said to be penal order. Hence, I hold that the authorities as specified under Rule 18 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 would not be of any help. However, perusal of the Rule 4(5)(c) and Rule 21 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, would be relevant for considering this aspect of the matter. The said provisions are as under :-

“4. Suspension –

(1).....

(2).....

(3).....

(4).....

(5)(a).....

(b).....

(c) *An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority, which made or is deemed to have made the order or by any authority to which that authority is subordinate.*

Provided that, where a criminal offence is registered against a Government servant, the recommendation of the Supervision Review Committee constituted by the Government in this behalf, shall be obtained by the authority which has

made or is deemed to have made the suspension order by or any authority to which that authority is subordinate, before revoking or modifying the order of suspension of such Government servant.”

21. Submission of appeals. *-(1) Every appeal shall be submitted to the authority which made the order appealed against: Provided that:*

- (a) where such authority is not the Head of the Office in which the appellant may be serving, or*
- (b) where the appellant has ceased to be in service and such authority was not the Head of the Office in which the appellant was serving immediately before he ceased to be in Service or*
- (c) where such authority is not subordinate to any Head of Office referred to in clause (a) or (b) the appeal shall be submitted to the Head of Office referred to in clause (a) or (b) of this sub- rule accordingly, as the appellant is or is not in service; and thereupon, such Head of Office shall forward the appeal to the authority against whose order the appeal is made.*

(2) A copy of the appeal shall also be submitted direct to the appellate authority.”

7. Reading both the above-said provisions together would show that even if the appellate authority for challenging the suspension order made appealable under Rule 17(i) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 is not specified under Rule 17 itself or even if the Rule 18 specifying

appellate authorities, is not applicable to such order, procedure for submission of appeal itself is provided under Rule 21 of the said Rules, 1979 and as per that provision the departmental appeal can be presented before the authority passing suspension order, who will place it before his superior authority. The appellate authority challenging the suspension order can be inferred by plain reading of Rule 4(5)(c) of the said Rules, 1979 as reproduced hereinabove. In view of the same, I find no substance in the contentions raised on behalf of the applicant. Section 20 of the Administrative Tribunals Act, 1985 provides that the application present under Section 19 of the said Act, 1985 not to be admitted unless other remedies being exhausted. The applicant has failed to comply with the provision of Section 20 of the Administrative Tribunals Act, 1985. Hence, this case is required held to be not maintainable.

8. In this regard, however, the learned Advocate for the applicant has specifically placed reliance on the case law of the Hon'ble Bombay High Court reported in **2015 (4) Bom.C.R. 563** in the matter of **State of Maharashtra Vs. Subhas Dhondiram Mane**. In para No. 9 of the said citation, it is held 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 Respondent. 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 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 present 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.”

In view of above ratio, if the present case is considered, it is seen that alternatively it is contended on behalf of the applicant that the impugned suspension order is bad and untenable. Learned Advocate for the applicant in this regard also submitted

that the impugned order of suspension said to have been issued on the direction of the Hon'ble Minister and as such, even if the departmental appeal was being filed, that would have been futility in exercise. He also submitted that in fact before issuance of the said suspension order dated 01.06.2022 (Annexure A-2) the applicant was already transferred from his post of Chief Officer of the Beed Municipal Council by the transfer order dated 27.05.2022 and as such, the applicant is being victimized. In these circumstances, in my considered opinion, the case of the applicant would be covered under the ratio laid down in the above-said citation of the Hon'ble Bombay High Court reported in **2015 (4) Bom.C.R. 563** in the matter of **State of Maharashtra Vs. Subhas Dhondiram Mane**. Hence, I hold that the present O.A. filed by the applicant without exhausting remedy of filing departmental appeal is maintainable.

9. While narrating facts, I have already given all the facts pertaining to circumstances behind issuing the suspension order of the applicant dated 01.06.2022. Perusal of the said suspension order would show that it is issued in contemplation of departmental action against the applicant, as the applicant failed to discharge his duties of following the directions issued by the Hon'ble Minister of State Urban Development to issue

instruction to his subordinate to remain present in Mantralaya for giving further instructions, though the applicant was granted permission to leave Mantralaya after meeting held on 16.03.2022 on his personal ground. In this regard, learned Advocate for the applicant submitted that the applicant has already placed on record detailed report dated 15.03.2022 (part of Annexure A-4 collectively) prepared by him before participating in the meeting in Mantralaya on 16.03.2022 and also he prepared additional note and communicated to the respondents and further additional note dated 18.03.2022 was submitted by the respondent No. 3 i.e. the Collector Beed to the respondent No. 1 based on the report of the present applicant and this applicant as per the directions attended the meeting at Mumbai held on 20.03.2022 and therefore, there is no any dereliction of duty on the part of the applicant. The allegation on which the applicant is suspended, is disproportionate and insufficient to issue suspension order. The impugned suspension order is issued mechanically only as pronouncement being made in the House of Legislative Council. To substantiate the said contentions, learned Advocate for the applicant placed reliance on the citation of the Hon'ble Apex Court in the case of **State of Orissa Vs. Bimal**

Kumar Mohanty reported in **AIR 1994 SC 2296**. In para Nos.

12 and 13 of the said judgment, it is laid down as follows :-

“12. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid

to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge.

13. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending inquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with and this Court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance.”

10. Learned Chief Presenting Officer while resisting the contentions raised on behalf of the applicant submitted that the role of the applicant in answering the question raised in the house of Hon'ble Member of Legislative Council was of paramount nature and the issue was sensitive. Hence, heavy duty was cast upon the applicant to instruct properly to his subordinates to remain present in Mantralaya for giving information from time to time after he was allowed to leave on his personal ground after attending the meeting held in Mantralaya on 16.03.2022. That amounts grave misconduct.

11. In the circumstances, if the fact of the present are taken into consideration in the background of the principles governing

suspension order ratio laid down in the citation of the **State of Orissa Vs. Bimal Kumar Mohanty** (cited supra) by the Hon'ble Apex Court, it is seen that the applicant after attending meeting on 16.03.2022 at Mantralaya, he was allowed to leave on his personal ground, but with the direction to instruct to his subordinates to remain present in Mantralaya. It is contended that his mobile is found switched off, when he was left in Mantralaya on 16.03.2022. It appears that the applicant before participating in meeting dated 16.03.2022, he prepared detailed report dated 15.03.2022 (part of Annexure A-4 collectively) and submitted it to the respondent No. 3 i.e. the Collector, Beed. Moreover, he also submitted required information for additional note to the respondent No. 3 for the purpose of attending further meeting on 20.03.2022. In that regard, the respondent No. 3 submitted additional note dated 18.03.2022 (Annexure A-5) to the respondent No. 1 and also the applicant participated in the meeting held on 20.03.2022. Thereafter, it appears that for the period of two months i.e. April and May nothing happened in that regard except issuance of transfer order of the applicant dated 27.05.2022 (Annexure A-1). It is mid-tenure transfer order, whereby the applicant is transferred as Deputy Commissioner of

the Parbhani Municipal Corporation. Thereafter, the impugned suspension order came to be issued on 01.06.2022 (Annex. A-2).

12. No doubt, the suspension order seems to have been issued under Rule 4(1)(a) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 in contemplation of disciplinary action. However, what is alleged against the applicant is that he failed to give necessary instructions to his subordinates to stay at Mantralaya to give necessary information and subordinates were not available. There is one more aspect that the pronouncement made in the house of Hon'ble Member of Legislative Council of State that the concerned employees are being suspended. There is another one more aspect that the applicant is already transferred before completion of his normal tenure of three years, which he was in the process to challenge the same. In view of the same, the applicant is already shunted out from the post of Chief Officer of the Beed Municipal Council, alleged irregularities of which office was subject matter of Assembly question.

13. In the circumstances as above, in my considered opinion, if the facts of the present case are examined in the background of the law laid down by the Hon'ble Apex Court in the matter of **State of Orissa Vs. Bimal Kumar Mohanty reported in AIR**

1994 SC 2296 (cited supra) it is seen that the nature of allegations made against the applicant cannot be said to be so serious, which would warrant to put the applicant under suspension. The impugned order of suspension is blatantly disproportionate to the misconduct alleged against the applicant and it can be said to have been issued in mechanical way. In these circumstances, in my considered opinion, the order of suspension would not be sustainable in the eyes of law and the same is required to be quashed and set aside. I therefore, proceed to pass the following order :-

ORDER

The Original Application No. 491/2022 is allowed in following terms:-

- A. The impugned order of suspension of the applicant dated 01.06.2022 (Annexure A-2) issued by the respondent No. 1 i.e. the State of Maharashtra through it's Secretary, Urban Development Department is hereby quashed and set aside.
- B. The respondents are directed to extend to the applicant all consequential benefits upon quashing and setting the said impugned order of suspension.
- C. There shall be no order as to costs.

PLACE : AURANGABAD.

DATE : 30.09.2022.

KPB S.B. O.A. No. 491 of 2022 VDD Suspension

(V.D. DONGRE)

MEMBER (J)