

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI BENCH
AT AURANGABAD**

ORIGINAL APPLICATION NO. 738 OF 2022

DISTRICT : HINGOLI

Jagdish Madhukar Sahu,
Age : 55years, Occu. : Service BDO Class-I,
R/o. Jeejamata Nagar, Hingoli,
Tq. And Dist. Hingoli.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through the Divisional Commissioner,
Aurangabad Division, Aurangabad.
- 2) The Collector,
Dist. Hingoli.
- 3) The Chief Executive Officer,
Zilla Parishad, Hingoli,
Dist. Hingoli.

...RESPONDENTS

APPEARANCE : Shri S.K. Sawangikar, Counsel for
Applicant.
: Shri V.R. Bhumkar, Presenting Officer along for
respondent nos. 1 & 2.
: Shri Vivek V. Bhavthankar, learned counsel for
respondent no. 3.

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

DATE : **01.03.2023.**

ORAL - ORDER:

1. Heard Shri S.K. Sawangikar, Counsel for Applicant, Shri V.R. Bhumkar, Presenting Officer along for respondent nos. 1 & 2 and Shri Vivek V. Bhavthankar, learned counsel for respondent no. 3, Zilla Parishad, Hingoli.

2. The applicant has challenged the order passed by respondent no. 1 on 20.7.2022 whereby the applicant has been put under suspension in contemplation of the Departmental Enquiry against him. It is the grievance of the applicant that though the period of more than 7 months' has elapsed after passing of the order of suspension, the authorities concerned have not taken any review of the said order till date, neither the DE has been initiated against the applicant.

3. The learned counsel for the applicant has submitted that on the aforesaid 2 counts the order dated 20.7.2022 impugned in the present Original application needs to be set aside. The learned counsel also sought to contend that, in fact, in the preliminary enquiry conducted in the matter nothing specific has been alleged against the applicant so as to hold any DE against the applicant. The learned counsel further submitted that *prima facie* the allegation as about misappropriation also may not stand against the applicant. The learned counsel submitted that

the applicant did not do any such transaction which can be said to be illegal or unauthorized. The learned counsel submitted that the works in respect of which certain objections are raised that they were not included in the Action Plan, the said allegation is factually incorrect. The learned counsel, in the circumstances, prayed for setting aside the order of suspension impugned in the present Original Application.

4. The learned Presenting Officer resisted the contentions raised in the Original Application and the prayers made therein. The learned Presenting Officer submitted that in the preliminary enquiry the applicant is held to have involved in carrying out the work of 13 gabion bandharas which were not included in the Action Plan and has thus incurred huge amount on the work of said gabion bandharas illegally. After receiving the report of the preliminary enquiry conducted by 3 Members Committee and after having noticed the role of the applicant in occurrence of the said illegalities, the order of suspension has been passed against the applicant. The learned Presenting Officer submitted that the proposal of initiation of DE is proposed against the applicant and the steps are being taken in furtherance of the said proceedings. The learned Presenting Officer has, in the circumstances, prayed for dismissal of the application preferred by the applicant.

5. The learned counsel for respondent no. 3, Zilla Parishad, Hingoli adopted the arguments advanced by the learned Presenting Officer appearing for the State Authorities.

6. After having considered the submissions made on behalf of the applicant, the learned Presenting Officer and the learned counsel appearing for respondent no. 3 and after having gone through the documents filed on record it is apparently revealed that though the order of suspension has been passed on 20.7.2022, no review has been taken of the said order till date. The Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr. [(2015) 7 SCC 291]** has settled the law as about passing of the order of suspension, its continuation and its review. As laid down by the Hon'ble Supreme Court, the disciplinary authority mandatorily shall review the order of suspension immediately after completion of period of 90 days. The Hon'ble Supreme Court has also observed that within the period of 90 days after suspension, if the suspension is in contemplation of the DE, a statement of charge must be issued to the delinquent employee. If the suspension is ordered on the basis of some criminal prosecution against the Government employee, the charge sheet must be filed within period of 90 days and for non-compliance of the aforesaid mandatory requirements, the order of suspension cannot be continued beyond 90 days. The

Hon'ble Supreme Court has also held that in some cases even after filing the charge sheet in the Criminal Court and serving of the charge sheet in the DE, the continuation of suspension of the employee may be required. However, in such cases the Hon'ble Supreme Court has put the burden on the disciplinary authority to record reasons for such continuation of the suspension of the Government employee.

7. In the present matter admittedly no review has been taken by the Review Committee, which may be existing at the appropriate level though the order of suspension has been passed on 20.7.2022 and the period of more than 5 months has elapsed thereafter. Insofar as the grounds, which are raised by the applicant as about his non-involvement in the misconduct alleged in the preliminary report submitted by the Committee, it may not be within jurisdiction of this Tribunal to adjudicate or scrutinize the said material at this stage. Moreover, all these defences can be raised by the applicant during the course of the DE contemplated against him. In the circumstances, I may not indulge in making any discussion as about the misconduct alleged against the applicant. However, fact remains that the applicant is under suspension beyond the period of 90 days without any review of the said order.

8. In the circumstances, according to me, the present Original Application can be disposed of by giving direction to the competent

authority to take review of the order of suspension operating against the applicant since 20.7.2022 within 4 weeks from the date of this order. The Review Committee shall conduct fair and unbiased review of the order of suspension in light of the guidelines laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr.** (cited supra). I further wish to observe that the suspension of the Government employee as far as possible shall not be for indefinite period during which the enquiry is conducted against the said employee. There are certain other means to take the care of the apprehension of tampering of the evidence by the applicant. I may not elaborate the said aspects.

9. With the aforesaid directions the present Original Application stands disposed of. After decision of the Review Committee it would be open for the applicant, if he is aggrieved by the decision of the Review Committee, to approach this Tribunal challenging the decision rendered by the Review Committee. No order as to costs.

VICE CHAIRMAN

PLACE : Aurangabad.

DATE : 1.3.2023.

ARJ YUK O.A.NO.738-2022 (Suspension)