

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 1080 OF 2015

DISTRICT :Mumbai

Shri Mahesh Manoharrao Mule,)
Dairy Engineer (Senior Class-I),)
Office of Regional Dairy Development)
Officer, Pune-1 and residing at)
Pune, Dist. Pune.)...**Applicant**

VERSUS

Government of Maharashtra,)
Through Principal Secretary,)
Agriculture, Animal Husbandry and)
Dairy Development and Fiosheries)
Department, Mantralaya,)
Mumbai - 400 032.)...**Respondent**

Shri M.D. Lonkar, learned Advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

DATE : 6.04.2016

ORDER

1. Heard Shri M.D. Lonkar, learned Advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

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2. This Original Application has been filed by the Applicant challenging his suspension order dated 14.12.2015.

3. Learned Counsel for the Applicant argued that the Applicant was working as Dairy Engineer in the office of the Regional Dairy Development Officer at Aurangabad from June 2011 to June 2015. He was transferred to Pune by order dated 29.6.2015. The Applicant was member of the Departmental Promotion Committee, when certain promotions were given to Group 'C' employees during August, 2011 to December, 2011. Learned Counsel for the Applicant stated that file notings of the Respondent No.2 indicate that the main delinquent in the irregularities committed during promotions viz. Shri P.B. Ade, then Dairy Development Officer, Aurangabad, had retired on 30.4.2012 and no D.E. could be started against him. It was recommended that it will not be proper to start D.E. against the Applicant and others as the main culprit had already retired. This note was submitted by Deputy Secretary of the Department on 14.9.2014. A joint D.E. was ordered against the Applicant and others on 21.4.2015, but the actual charge sheet was issued only on 17.12.2015. Learned Counsel for the Applicant stated that when the decision to start a D.E. against the Applicant was taken on 21.4.2015, there was no justification for suspending him by order dated 14.12.2015, after 8 months. In any case, there was no role of the Applicant in irregular promotions, as he had gone by the note

placed before him as a member of the D.P.C. He had no knowledge that persons recommended to be promoted were not eligible as the notes given to members of D.P.C. did not disclose any such information. Learned Counsel for the Applicant argued that the Applicant is not challenging the D.E. against him. He is only challenging the fact that the Applicant has been placed under suspension, when there is no apprehension that he can influence witnesses or temper with the evidence. The Applicant has already been transferred out of Aurangabad and there was no reason to place him under suspension after lapse of such a long period.

4. Learned Presenting Officer (P.O.) argued on behalf of the Respondent that the Applicant has not exhausted all the remedies before approaching this Tribunal. Under Rule 17(1) of the M.C.S. (Discipline & Appeal) Rules, 1979, there is remedy of appeal provided against the order of suspension under Rule 4 of the said rules. Learned P.O. argued that on this ground alone, this O.A. is liable to be dismissed. The Applicant has not made a representation against his suspension also. The claim of the Applicant that no effective alternative remedy is available is not correct.

5. It is a fact that rule 17(1) of M.C.S. (Discipline and Appeal) Rules, 1979, provides for appeal against the order of suspension. The Applicant has not explained any reasons as to why he did not file appeal against the order of suspension dated 14.12.2015. It is seen that the present O.A. was filed on 18.12.2015. It is also not known whether the Applicant

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had made any representation against his order of suspension, and if so, what was the result. The Applicant has not placed any material on record in this regard. In the circumstances, the claim of the Applicant that no effective alternative remedy is available to him is difficult to accept. It has to be held that the Applicant has approached this Tribunal before exhausting all the remedies.

6. Learned Counsel for the Applicant has relied on the judgments of this Tribunal dated 15.12.2015 in O.A.No.26 of 2015 and also 16.6.2015 in O.A.s 357 to 363 of 2015. In O.A.No.26 of 2015, this Tribunal declined to interfere with the order of suspension. It was directed that the order of suspension must be reviewed in keeping with the law laid down by Hon'ble Supreme Court in **Ajay Kumar Chowdhary in case (2015) 7 S.C.C. 291**. In O.A.Nos. 357 to 363 of 2015, this Tribunal had held that there is no legal bar to the Tribunal entertaining any O.A. without the Applicant having taken recourse to the appellate remedy. However, that doesnot mean that in all cases, O.A.s can be admitted without the Applicant having exhausted all remedies available to him. In the peculiar facts and circumstances in these O.A.s, the relief was granted. No such case has been made out in the present O.A.

7. Learned Counsel for the Applicant has relied on the judgment of Hon'ble Bombay High Court in W.P.No.9660 of 2014. In this case, Hon'ble High court has upheld decision of this Tribunal to quash the suspension of the

Applicant therein. In that case, when the State could not succeed in transferring the Applicant from the post he was occupying due to stay granted by this Tribunal, he was placed under suspension. The facts are entirely different here and the case is clearly distinguishable.

8. I donot find any reason to hold that the Applicant is justified in approaching this Tribunal before exhausting all remedies. In fact, he could have filed appeal or representations against his suspension. This O.A. is not maintainable as he has failed to exhaust alternate remedies available to him.

9. This O.A. is accordingly dismissed with no order as to costs. It is clarified that dismissal of this O.A. will not bar the Applicant from seeking appropriate legal remedies. The Applicant, if he files representation within a period of two weeks, the same may be decided by the Respondents within a period of two months and communicate the decision to the Applicant, one week thereafter.

Sd/-

(RAJIV AGARWAL)
(VICE-CHAIRMAN)

Date : 06.04.2016

Place : Mumbai

Dictation taken by : SBA

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