

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD****COMMON ORDER IN ORIGINAL APPLICATION NOS. 737 AND
744 BOTH OF 2017
(Subject – Suspension)****1. ORIGINAL APPLICATION NO. 737 OF 2017.****DISTRICT: AURANGABAD**

Shri Sureshsing S/o Kannusing Taji,)
 Age: 52 years, Occu. : Service)
 As Deputy Engineer, Public Works)
 Division, Jalna,)
 R/o Samyak Arcade, Connaught Place,)
 CIDCO, Aurangabad)

.. APPLICANT**V E R S U S**

- 1) **The State of Maharashtra,)**
 Through Secretary,)
 Public Works Department,)
 Mantralaya, Mumbai- 32.)
- 2) **The Chief Engineer,)**
 Public Works Circle,)
 Aurangabad.)

.. RESPONDENTS**W I T H****2. ORIGINAL APPLICATION NO. 744 OF 2017.****DISTRICT: NANDED**

Shri Dashrath s/o Arjun Gaikwad,)
 Age: 52 years, Occu. : Service,)
 Sectional Engineer, P.W.D., South)
 Sub-Division, Aurangabad.)
 R/o. Plot No. 25, D-Sector, N-12,)
 CIDCO, Aurangabad.)

.. APPLICANT

V E R S U S

- 1) **The State of Maharashtra,**)
 Through its Under Secretary,)
 Public Works Department,)
 Mantralaya, 4th Floor, Central)
 Building, Madam Cama Road,)
 Hutatma Rajguru Square,)
 Mumbai- 400 032.)
- 2) **Chief Engineer,**)
 Public Works Department,)
 Aurangabad Region,)
 'Bandhkam Bhavan', Adalat Road,))
 Aurangabad – 431 005.)

.. RESPONDENTS

APPEARANCE : Shri S.D. Dhongde, Advocate for the Applicants
 in O.A. No. 737/2017.

: Shri A.S. Jondhale, Advocate for the Applicant
 in O.A. No. 744/2017.

: S/shri D.R. Patil & I.S. Thorat, Presenting
 Officers for the respective Respondents in the
 respective O.As.

CORAM : B.P. PATIL, MEMBER (JUDICIAL).

C O M M O N - O R D E R

(Delivered on this 14th day of February, 2018.)

1. I am disposing of both these Original Applications by a common order as the facts and issues involved in both the matters are similar and identical.

2. In O.A. No. 737/2017, the applicant viz. Shri Sureshsingh Kannusing Taji is working as a Deputy Engineer with the respondents. He was serving as a Deputy Engineer at

Kannad from 4.06.2012 to 2014. Thereafter, he was placed under suspension for 23 months and again he was reinstated in service on 03.06.2016 at Hingoli. Thereafter, he has been posted at Jalna since 20.07.2017. He was posted at P.W.D., Sub Division Jalna during the period from 05.08.2009 to 04.06.2012. On 04.06.2012, he had handed over the charge of the post of Deputy Engineer, P.W.D. Sub Division, Jalna to Mr. D.A. Gaikwad, Junior Engineer, P.W.D. Jalna, since he has been posted at Kannad.

3. The renovation work of road No. 52/500 to 53/000 was done. The date of commencement of road No. 53/000 to 53/500 and road No. 53/500 to 55/000 has been shown on 12.06.2012 and its date of completion is on 28.10.2013. It is contention of the applicant that he was not working at Jalna when the work of said roads commenced and completed, but on 26.09.2017 the respondents suspended him.

4. On 27.12.2016, a charge sheet was served on him alleging that the incorrect entries in the measurement book regarding completion of renovation work of road No. 53/500 to 55/000 were made and thereafter, proposal to make payment of bill to the contractors has been made. Consequently, payment has been made to the concerned contractors and thereby he committed misconduct as per the Maharashtra Civil Services

(Conduct) Rules, 1979. He has submitted his reply to the said charge sheet contending that he never made any entries in the measurement book and submitted it to the office. It is his contention that he had not worked at Jalna during the said period, since he has been transferred from Jalna to Kannad and he handed over his charge of the post of Deputy Engineer, PWD Sub Division, Jalna on 04.06.2012 and therefore, he was not responsible for the alleged misappropriation.

5. The applicant in O.A. No. 744/2017 viz. Shri Dashrath Arjun Gaikwad, was working as a Junior Engineer with the Public Works Department w.e.f. 17.01.1986. In the year 1989, he was promoted as a Sectional Engineer and since then he is working as a Sectional Engineer. It is his contention that he rendered more than 30 years' service without any allegations and blot.

6. One Shri S.K. Kadam, had filed complaint to the Hon'ble Lokayukta, Maharashtra State alleging about the corruption in the work of BT Renewal to Hatta Talani Shivangiri Seoli Road SH-218 KM 52/00 to 53/500 Tq. Dist. Jalna and BT Renewal to Hatta Talani Shivangiri Seoli Road SH-218 KM 53/500 to 55/00 Tq. Dist. Jalna. It has been alleged by Mr. Kadam that the bill of the said work had been disbursed to the concerned contractor without doing any work. As per the directions of the

Hon'ble Lokayutka, Maharashtra State, the Superintending Engineer, Vigilance and Quality Control Circle, P.W.D., Aurangabad and Superintending Engineer, P.W.D. Circle Aurangabad enquired the matter and submitted their report to the respondent No. 2. On the basis of their report, the respondent No. 2 called explanation from the applicant and others. The applicant submitted his explanation stating that he was not concerned with the said works and he had not made measurements of the said work and made entries in the measurement book and put his signatures on it. He has contended that his signature has been forged and false measurement book has been prepared accordingly. It is his contention that, without considering his reply, the respondent No. 1 initiated Departmental Enquiry against him and issued charge sheet by order dated 02.05.2016. It is his contention that since then no enquiry has been started till today.

7. It is contention of the applicants that all of a sudden they were served with a suspension order dated 26.09.2017 suspending them from the service in view of the Departmental Enquiry initiated against them. It is their contention that they made application with the respondents stating that the measurement book does not bear their handwriting and their signature and handwriting and their signature has been forged

and therefore, they requested their superior authorities to make thorough enquiry in the matter and take action against the concerned, who forged the record and documents. It is their contention that they got examined their handwriting and signatures on the measurement book in dispute through one Shri Suresh N. Katare, Handwriting Analyst & Grapho-Therapist, Forensic Expert and Document Examiner, Aurangabad who had stated that the measurement book does not bear their signatures. The Executive Engineer, P.W.D., Jalna had dealt with the matter and caused recovery of the amount of bill paid to the said Labour Agencies and accordingly, submitted his report to the Superintending Engineer, P.W.D., Aurangabad stating that the amount erroneously paid to the said agencies had been recovered from them and deposited in the Government account and no loss has been caused to the Government. It is their contention that since the amount has been recovered from the concerned labour agencies, no question of misappropriation arises. It is their contention that there was no misconduct on their part, but the respondents without making any further enquiry suspended them and therefore, the orders of suspension suspending them are illegal. It is their contention that the alleged incidence took place in the year 2012. The charge sheet was issued to them in the year 2016, but no inquiry in the D.E. has been yet commenced. It is their contention that the respondents had not taken action

against the main culprit and therefore, action taken against them suspending them is illegal. Therefore, they prayed to quash the impugned orders of suspension issued against them by allowing the present Original Applications.

8. The respondent Nos. 1 and 2 have filed their affidavit in reply and resisted the contention of the applicants. They have not disputed the fact regarding appointment of the applicants, their promotions and their present postings and their tenure at P.W.D. Sub Division, Jalna. It is their contention that one Shri S.R. Kadam has filed complaint against the officers and contractors with the Hon'ble Lokayukta, Maharashtra State, Mumbai. The complaint was heard by the Hon'ble Upa-Lokayukta and on the basis of report submitted by the authorities, he came to the conclusion that there was irregularities in the work done by the officers who were working in the P.W.D. at Jalna. The work of Hatta to Talni, Neher to Sivli road was done without following due process. These works were allotted to the Labour Co-Operative Societies by violating the Government norms though they were not entitled to get the work. The concerned Societies had not done the work allotted to them. In spite of that, the Executive Engineer had drawn the bills for the said work, which was not completed. He paid the disputed amount to the contractors without finalizing the bills. Considering the said fact, the

Lokauykta had come to the conclusion that the said act of the concerned Engineers and others was of very serious nature and therefore, he recommended that the account officer to the Executive Engineers and others be suspended immediately and necessary actions may be taken against them and accordingly, directions were given to the concerned authority and directed them to report the compliance. Accordingly, the Government has suspended all concerned Engineers viz. Shri D.A. Gaikwad, Sectional Engineer the applicant in O.A. No. 744/2017, Shri S.K. Taji, Deputy Engineer, the applicant in O.A. No. 737/2017 and Shri G.H. Rajput, Executive Engineer by issuing the order dated 26.09.2017. It is their contention that the applicants made entries in the measurement book and put their signatures on it. On the basis of entries in the measurement book, payment has been made to the labour agencies, though they had not done the work. It is their contention that D.E. has been initiated against them in that regard and the charge sheet has been issued to the applicants. It is their contention that the Executive Engineer, P.W.D. Jalna has filed a complaint against the applicants and other 6 persons bearing F.I.R. No. 0696 dated 01.11.2017 in the Sadarbazar Police Station Jalna for the offence punishable u/ss. 406, 409, 467, 468, 471, 420, 201 & 120-B of the Indian Penal Code and investigation is going on. It is their contention that prima-facie, there is a strong case against the applicants to show

their involvement in the grave misconduct and indiscipline. Huge public money was misappropriated by the applicants and others. Therefore, they have been suspended by impugned suspension order dated 26.09.2017. It is their contention that there is no illegality in the impugned order suspending the applicants and therefore, they prayed to reject the present Original Applications.

9. I have heard Shri S.D. Dhongde, learned Advocate for the applicant in O.A. No. 737/2017, Shri A.S. Jondhale, learned Advocate for the applicant in O.A. No. 744/2017, Shri D.R. Patil, learned Presenting Officer for the respondents in O.A. No. 737/2017 and Shri I.S. Thorat, learned Presenting Officer for respondents in O.A. No. 744/2017. I have perused the documents placed on record by all the parties.

10. Admittedly, the applicant in O.A. No. 737/2017 viz. Shri Sureshsingh Kannusing Taji, was serving as a Deputy Engineer with the respondents. Admittedly, the applicant in O.A. No. 744/2017 viz. Shri Dashrath Arjun Gaikwad was working as a Sectional Engineer in the year 2012, when the alleged incidence of misappropriation took place. Admittedly, the applicant in O.A. No. 737/2017 viz. Shri Sureshsingh Kannusing Taji was working as a Deputy Engineer in P.W.D., Sub Division, Jalna during the period from 05.08.2009 to 04.06.2012.

Admittedly, the work regarding renovation of work of road No. 52/500 to 53/000 and 53/500 to 55/000 had been allotted to the labour agencies in the year 2012 and the date of commencement of the work has been shown on 12.06.2012 and the date of its completion was shown 28.10.2013. Admittedly, the measurement in respect of said work has been allegedly done by the applicant Shri D.A. Gaikwad and the measurements had been recorded by him in the measurement book. Admittedly, the said entries had been verified and checked by the applicant Shri S.K. Taji and on the basis of said entries in the measurement book, huge amount of Rs. 23,000,00/- had been disbursed to the concerned labour agencies. There is no dispute about the fact that one Shri S.R. Kadam, had filed a complaint with the Hon'ble Lokayukta, Maharashtra State, Mumbai regarding misappropriation in the said work. As directed by the Hon'ble Lokayukta, the enquiry has been conducted by the Superintending Engineer, Vigilance and Quality Control Circle, P.W.D., Aurangabad and Superintending Engineer, P.W.D. Circle Aurangabad and they submitted their report to the respondent No. 2 and thereafter, notice had been issued to the applicants calling their explanation. The applicants had filed their replies to the said notices and on considering their replies; a charge sheet has been issued against both the applicants for the alleged misconduct and misappropriation made by them. It is not much disputed that meanwhile the amount

paid to the labour agencies had been recovered and deposited with the Government account. Admittedly, both the applicants have been suspended by impugned orders dated 27.09.2017 considering the nature of allegations, its seriousness and in view of the Departmental Enquiry initiated against them.

11. Learned Advocates for the applicants have submitted that none of the applicants maintained the measurement book, which is in dispute. They have submitted that the entries made in the measurement book were not in the handwriting of both the applicants. They have submitted that their signatures had been forged and therefore, Departmental Enquiry, as well as, Criminal case initiated against them on the basis of said measurement book is not legal one. They have submitted that the respondents have not considered the said aspect and wrongly suspended the applicants. It is their submission that the applicants raised their grievance regarding their forged signatures in the measurement book before the concerned authorities, when they received the show cause notice, but the respondents had not taken any action against the person who made mischief and committed forgery. They have submitted that the bill had been prepared on the basis of forged measurement book and the amount has been paid to the labour agencies. They have submitted that during the enquiry, it was found that the amount has been paid to the labour agencies,

though they had not done the work. They have argued that the Executive Engineer, P.W.D. Jalna by his letter dated 04.07.2016 informed the Superintending Engineer, P.W.D., Aurangabad that the amount paid to the concerned labour agencies had been recovered and therefore, no loss has been caused to the Government. They have submitted that in view of the said report made by the Executive Engineer, Jalna, the respondents ought to have dropped the enquiry against the applicants, as the applicants have no role in making the payment to the labour agencies.

12. Learned Advocate for the applicants have further argued that the respondents ought to consider the fact that the signatures of the applicants on the measurement book has been forged and therefore, they ought to have made enquiry in it as per the request of the applicants. But no response has been received from the respondents and therefore, they appointed handwriting expert to examine their signatures on the said measurement book and accordingly, one Shri Suresh N. Katare, Handwriting Analysis & Grapho-Therapist, Forensic Expert & Document Examination, Aurangabad examined their signatures on the measurement book and compared with their admitted/genuine signatures and submitted report that signatures on the measurement book are forged one and they are not belonging to the applicants. They

have submitted that all these facts show that the applicants were innocent and therefore, they prayed to allow the present Original Applications and to quash the impugned order of suspension, as there is no strong prima-facie case to suspend them.

13. Learned Advocate for the applicant in O.A. No. 737/2017 (applicant Shri S.K. Kaji) has argued that the applicant is due for promotion and he is at Sr. No. 1 and because of suspension order issued by the respondents, he will not get the promotion and he will be deprived of his legal rights and therefore, on that ground also, he prayed to quash the suspension order. He has further argued that the applicant Shri S.K. Taji has been transferred from P.W.D., Sub Division, Jalna on 04.06.2012 and he has handed over the charge of the post of Deputy Engineer, P.W.D. Sub Division, Jalna to Mr. D.A. Gaikwad, Junior Engineer, P.W.D. Jalna on 04.06.2012 and proceeded to join his new posting at Kannad. He has submitted that the work order in disputed road has been given on 12.06.2012 and the work was completed on 28.10.2012. The measurement book has been filled thereafter and thereafter, payment has been made. He has submitted that the applicant Shri S.K. Taji has no concern with the said fraud. The alleged misappropriation was done when he was not working there and he is falsely involved in this case. Therefore, he prayed to quash the impugned order. He has placed

reliance on the rules for Taking Measurements and Keeping Measurements Books from the Maharashtra Public Works Manual and submitted that the measurement book was not in his custody and it was not issued in his name and therefore, the applicant is not responsible for any illegality committed in making payment to the labour agencies and therefore, he prayed to allow the Original Application No. 737/2017.

14. Learned Advocate for the applicant in O.A. No. 737/2017 (applicant Shri S.K. Taji) has argued that there is no prima-facie case against the applicants about their misconduct and therefore, impugned order of suspension is illegal. In support of his submissions, he has placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **State of Orissa V/s. Bimal Kumar Mohanty (AIR 1994 SC 2296)**, wherein it is observed as follows:-

“.....the order of suspension would be passed taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider.....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 should be laid down in that behalf.... In other words, it is to refrain him to avail further opportunity to perpetuate the alleged misconduct or to remove the impression among the members of service that dereliction of duty will pay fruits and the offending employee may get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation to win over the other witnesses or the delinquent having had an opportunity in the office to impede the progress of the investigation or inquiry etc. It would be another thing if the action is actuated by male fide arbitrarily 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 continuation in office while facing departmental inquiry or a trial of a criminal charge."

*(See also : **R.P. Kapur v. Union of India and Anr. AIR 1964 SC 787; and Balvantrai Ratilal Patel v. State of Maharashtra, AIR 1968 SC 800)***

9. *The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving more turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are*

there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

10. In view of the above, the law on the issue can be summarized to the effect that suspension order can be passed by the authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of the evidence available. It cannot be actuated by malafide, arbitrariness or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor.”

15. Learned Presenting Officers have submitted that the huge fraud of Rs. 23,000,00/- has been committed by the applicants. They have submitted that the applicant in O.A. No. 737/2017 viz. Shri S.K. Taji and applicant in O.A. No. 744/2017 viz. Shri D.A. Gaikwad made false entries in the measurement book and certified the entries. On the basis of said entries, payment of the said work, which was never done, had been paid to the concerned labour agencies. They have submitted that the applicant Shri S.K. Taji, has been transferred from P.W.D., Sub Division, Jalna and he has no concerned with the said work, but

he has made endorsement against the entries made in the measurement by Shri D.A. Gaikwad and put his signature and certified that he has verified the entries and then made endorsement on it. On the basis of said endorsement, bills had been prepared and amount has been paid to the concerned labour agencies. They have submitted that on the basis of complaint filed by one Shri S.R. Kadam, the said illegality has been noticed. The separate enquiries had been made by the Superintending Engineer, Vigilance and Quality Control Circle, P.W.D., Aurangabad and Superintending Engineer, P.W.D. Circle Aurangabad and they submitted their reports to the Government. On the basis of said reports, the applicants have been suspended. He has submitted that there is prima-facie ample evidence on record to show the involvement of the applicants in practicing fraud and in making illegal payment to the contractors without executing the work and therefore, the disciplinary authority has rightly passed the impugned order suspending the applicants.

16. Learned Presenting Officers have further submitted that the report of the hand writing expert which was appointed by the applicant cannot be considered, as the original disputed document i.e. measurement book which has been in the handwriting of the applicant Shri D.A. Gaikwad and endorsement of the applicant Shri S.K. Taji had not been produced before the

handwriting expert to compare handwriting of both the applicants with their admitted signatures and therefore, the report of handwriting expert on which the applicants are relying cannot be considered. They have submitted that a FIR is registered against the applicants and the investigation is going on and considering all these aspects, the disciplinary authority has passed the impugned orders of suspension. There is no illegality in the suspension orders. They have submitted that the huge public money was involved in the matter and the huge amount has been disbursed to the contractors, without doing any work and this fraud has been unearthed on the complaint filed by one Shri S.R. Kadam and thereafter, the amount has been recovered from the concerned contractors. Merely because, the amount has been recovered it cannot be said that the applicants were innocent and they have not played any role in the said incidence and therefore, they prayed to reject the present Original Applications.

17. I have gone through the documents on record. On going through the same, it reveals that the applicant Shri S.K. Taji in O.A. No. 737/2017 was working as a Deputy Engineer at Jalna. He has been transferred to Kannad on 04.06.2012. Applicant in O.A. No. 744/2017 viz. Shri D.A. Gaikwad was working as a Sectional Engineer in the same division. The record shows that the work order in respect of construction of renovation

of road No. 52/000 to 53/500 and 53/500 to 55/000 had been issued on 12.06.2012 and it has been shown as completed on 28.10.2013. The applicant Shri D.A. Gaikwad allegedly took measurement of the said work and noted in the measurement book and signed it. The applicant Shri S.K. Taji, checked the said work and measurements and put his signature on it. On the basis of said entries in the measurement book, the bills had been prepared and the amount has been disbursed to the concerned labour agencies. A compliant has been made by one Shri S.R. Kadam to the Hon'ble Lokayukta regarding this fraud and misappropriation and the Hon'ble Lokayukta directed the concerned authority to make enquiry and that time the said fraud has been unearthed. Thereafter, amount from the concerned labour agencies has been recovered. These facts prima-facie show that the amount has been disbursed to the concerned agencies without doing any work. The labour agencies received amount on the basis of bill prepared by the concerned Account Officer of P.W.D. Sub Division, Jalna on the basis of entries made in the measurement book by the applicants. The Superintending Engineer, Vigilance and Quality Control Circle, P.W.D., Aurangabad and Superintending Engineer, P.W.D. Circle Aurangabad, made enquiry in the matter and on the basis of their report, charge sheet has been issued to the applicants and Departmental Enquiry has been initiated against them. Not only

this, but F.I.R. has been registered against the applicants and others. Prima-facie the documents on record show that the applicant Shri D.A. Gaikwad made entries regarding measurement of work in the said measurement book and the said entries in the measurement book had been checked and verified by Shri S.K. Taji. Shri S.K. Taji had no concern with the P.W.D. Sub Division, Jalna after 04.06.2012, but prima-facie, it reveals that he verified and checked the entries made in the measurement book noted by Shir D.A. Gaikwad. Those documents show that the applicants colluded with each other and made false entries in the measurement book. Because of the entries made by the applicants in measurement book, the bills had been prepared and huge amount of Rs. 23,000,00/- has been paid to the contractors, though they had not done the work. These are the prima-facie sufficient evidence on the basis of which the disciplinary authority took the decision to suspend the applicants. Therefore, I do not find illegality in the impugned order issued by the respondents in that regard. Therefore, I find no substance in the submissions advanced by the learned Advocate for the applicants.

18. So far as the report of the handwriting expert appointed by the applicant is concerned, the said cannot be considered at this stage as the same is prepared by a private

handwriting expert appointed by the applicants on the basis of photocopy of the measurement book supplied by the applicants. No original record on which the disputed signatures of the applicants were available has been produced before the handwriting expert for examination and therefore, the said report cannot be considered. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicants in that regard.

19. I have gone through decisions referred by the learned Advocate for the applicant. I have no dispute about the settled legal principles laid down therein. The disciplinary authority i.e. the respondents have followed the settled principles laid down, while issuing the impugned order of suspension. Therefore, the said decisions/citations are not much useful to the applicants in the instant cases. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant in that regard.

20. Considering the above said facts and circumstances, in my opinion, there is no illegality in the impugned order and therefore, no interference is called for in it. There is no merit in the present Original Applications. Consequently, both these O.As. deserve to be dismissed.

21. In view of the above discussions in foregoing paragraphs, the O.A. Nos. 737/2017 and 744/2017 are dismissed with no order as to costs.

(B.P. PATIL)
MEMBER (J)

PLACE : AURANGABAD.

DATE : 14.02.2018.

KPB/S.B. O.A. No. 737 & 744 of 2017 BPP 2018 Suspension