

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 792 OF 2016

DIST. : AHMEDNAGAR

Smt. Sarika Bhaskar Wandhekar,
Age. 35 years, Occu. : Awwal Karkoon
(under suspension),
R/o C/o Tahsil Office, Pathardi,
Tq. Pathardi, District - Ahmednagar.

-- APPLICANT

V E R S U S

1. The State of Maharashtra,
Through Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai – 32.
2. The Collector,
Ahmednagar, Dist. Ahmednagar.
3. Sub Divisional Officer,
Pathardi Division, Pathardi,
District Ahmednagar.
4. The Tahsildar,
Pathardi, Tq. Pathardi,
District Ahmednagar.

-- RESPONDENTS

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant.

: Smt. Resha S. Deshmukh, learned
Presenting Officer for the respondents.

CORAM : Hon'ble Shri B.P. Patil, Member (J)

DATE : 11th April, 2017

ORDER

1. The applicant has filed this original application challenging the order dated 12.9.2016 issued by the res. no. 3 by which she was placed under suspension from the post of Awwal Karkoon, Tahsil Office, Pathardi, Tal. Pathardi, Dist. Ahmednagar and prays to quash the said order.

2. The applicant was initially appointed as a Clerk in the Tahsil Office, Shevgaon, Dist. Ahmednagar by the order dated 16.9.2006. Thereafter, she was promoted to the post of Awwal Karkoon by the order dated 1.11.2013 and was posted in the office of District Supply Office, Ahmednagar. The applicant was transferred to Tahsil Office, Pathardi by the order dated 8.9.2014. The applicant was assigned the work of various branches during her tenure at Tahsil Office, Pathardi. She was working as Awwal Karkoon in Tahsil Office, Pathardi and was also holding the additional charge of the post of Circle Inspector at the time of issuance of the impugned suspension order.

3. One Shri Devidas Limbaji Khedkar, District President of Maharashtra Navnirman Sena – Political Party, Ahmednagar and the Member of the Panchayat Samiti, Pathardi filed a complaint before res. no. 2 on 25.4.2016 and made various

allegations against the applicant and requested to initiate an enquiry against the applicant. The copies thereof were also forwarded to res. no. 1 and various authorities. The res. no. 1 referred back the said complaint to res. no. 2 with a direction to enquire into the said complaint filed by Shri Devidas Limbaji Khedkar against the applicant. Accordingly, the res. no. 2 directed the res. no. 3 to enquiry into the allegations made in the said complaint. The res. no. 3 called the report from the res. no. 4 in the said matter. The res. no. 4 submitted report dated 9.9.2016 mentioning the previous complaints received against the applicant as well as punishments imposed on the applicant and requested to transfer the applicant elsewhere. The res. no. 3 without considering the report of res. no. 4 passed the impugned order dated 12.9.2016 and placed the applicant under suspension.

4. It is the contention of the applicant that, she had filed complaint against said Shri Devadas Limbaji Khedkar for the offences punishable U/s 294, 354, 500, 501, 504, 506, 509 of the Indian Penal Code with the Police Authority on 24.4.2016, but no action was taken in the said complaint. One Shri Malhari Baburao Batule, at the behest of Shri Devidas Limbaji Khedkar filed complaint on 23.4.2016 against the applicant since the

applicant has filed complaint against him to pressurize her. He used to give threats to her. The res. no. 3 has not considered all these facts and has passed the impugned order of suspension without making proper enquiry and without following the principles of natural justice and it was issued at the behest of Shri Devidas Limbaji Khedkar. The impugned suspension order is issued without application of mind and, therefore, the same is liable to be quashed and set aside.

5. It is the contention of the applicant that, she has submitted representation on 17.9.2016 and also filed departmental appeal on 3.10.2016 challenging the validity of the impugned suspension order dated 12.9.2016 before the res. no. 2, but she apprehended that, she will not get justice and, therefore, she has filed this original application challenging the said suspension order.

6. The respondent nos. 1 to 4 have filed affidavit in reply and contended that the applicant was working as Awwal Karkoon in Tahsil Office, Pathardi and was also holding additional charge of the post of Circle Officer, Koradgaon, Tal. Pathardi. On 25.4.2016, the res. no. 2 received a complaint against the applicant from Shri Devidas Limbaji Khedkar along with details

regarding F.I.R. filed by him against the applicant and details of illegalities committed by the applicant while discharging the official duties, with a request to initiate a departmental enquiry against her. He has also sent copies of the said complaint to the res. no. 1 and other authorities. On the basis of the said complaint, the res. no. 1 vide letter dated 13.6.2016 directed the res. no. 2 to take necessary action in pursuance of the complaint dated 25.4.2016 received from Shri Devidas Limbaji Khedkar against the applicant. Thereafter the res. no. 2 forwarded the said complaint dated 25.4.2016 to res. no. 3 with a direction to enquire into the said complaint. Accordingly, the res. no. 3 issued a letter to the res. no. 4 on 12.8.2016 and directed him to submit a report in respect of the complaint dated 25.4.2016 after enquiry. On 9.9.2016 the res. no. 4 submitted a report to the res. no. 3. In the said report the res. no. 4 has reported that a F.I.R. has been filed against the applicant on 24.4.2016 U/ss 384, 323, 341, 504, 506 r/w 32 of the Indian Penal Code. He has also mentioned therein about the various complaints filed against the applicant. On the basis of the said report dated 9.9.2016 submitted by the res. no. 4, the res. no. 3 suspended the applicant vide the impugned order dated 12.9.2016 and sought ex-post-facto sanction of res. no. 2 thereto. The res. no. 2 granted ex-post-facto sanction on 19.10.2016. It is the contention of the respondents that the

representation dated 17.9.2016 and departmental appeal dated 3.10.2016 filed by the applicant before the res. no. 2 against the impugned suspension order dated 12.9.2016 have been dismissed by the res. no. 2 on 27.10.2016 and the applicant has been informed accordingly. It is the further contention of the respondents that the applicant was punished and his one increment came to be withheld previously on the ground that she has fabricated the signature of Naib Tahsildar Shri Lokhande in the matter of beneficiaries of Shravan Bal Rajya Nivrutti Vetan Yojana. The res. no. 4 has also reported other various complaints received against the applicant in the letter dated 9.9.2016 to res. no. 3 and those complaints were of serious nature and, therefore, the res. no. 2 has rightly suspended the applicant by the impugned order dated 12.9.2016. The suspension order is legal and, therefore, no interference in it is called for.

7. The learned Advocate for the applicant submits that the applicant was placed under suspension by the impugned order dated 12.9.2015 and the main ground was the complaint filed by one Shri Devadas Limbaji Khedkar with the res. no.1 as well as other various authorities. However, the respondents have not conducted the enquiry properly in the allegations made against the applicant and the res. no. 3, on the basis of report

dated 9.9.2016 submitted by the res. no. 4, passed the impugned suspension order on 12.9.2016. He has submitted that in the report of res. no. 4 there was only mention regarding the nature of previous complaints against the applicant and the res. no. 4 nowhere proposed about suspension of the applicant in his report dated 9.9.2016 (paper book page 44 of the O.A.) and on the contrary, the res. no. 4 proposed to transfer the applicant from the present posting. He argued that the applicant is under suspension from 12.9.2016 and more than 3 months have been passed, but no charge sheet is filed against her and, therefore, the suspension required to be withdrawn.

8. In support of his submission the learned Advocate for the applicant has placed reliance on the judgment of Hon'ble Supreme Court in the case of **AJAY KUMAR CHOUDHARY VS. UNION OF INDIA (UOI) AND ORS [(2015) 7 SCC 291 : AIR 2015 SC 2389]**, wherein it has been observed as under :-

“14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the memorandum of Charges / Chargesheet is not served on the delinquent officer / employee; if the Memorandum of Charges / Chargesheet is served a reasoned order must be passed

for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

9. He has also placed reliance on the order of this Tribunal at Nagpur Bench in O.A. no. 788/2015 dated 22.9.2016. He has submitted that, no opportunity of being heard was given to the applicant before passing the impugned suspension order

dated 12.9.2016 and, therefore, the same is against the principles of natural justice.

10. The learned P.O. has submitted that the applicant was previously punished and minor punishment of withholding one increment was imposed on her on the charges that she fabricated the signature of Naib Tahsildar Shri Lokhande. There are several complaints against the applicant in respect of demanding illegal money for supplying sand, distribution of ration cards, complaint in respect of Maharashtra Employment Guarantee Scheme, complaint in respect of Indira Gandhi Rastriya Vrudhapakal Nivrutti Vetan Yojana and, therefore, the Tahsildar, Pathardi submitted report on 9.9.2016 (paper book page 44 of the O.A.) to the res. no. 3 and on the basis of the said report, the res. no. 3 passed the impugned order on 12.9.2016 as there was no improvement in the functioning and working of the applicant in spite of imposition of minor punishment on her. He has submitted that the res. no. 3 has recorded reasons and has rightly issued the impugned suspension order against the applicant and has also obtained ex-post-facto sanction from the res. no. 2 on 12.9.2016. He has submitted that the applicant has filed representation on 17.9.2016 challenging her suspension before the res. no. 2. The applicant has also filed departmental

appeal on 3.10.2016 challenging the impugned suspension order dated 12.9.2016, but without waiting for the decision in the said representation and the departmental appeal, the applicant has filed the present original application on 13.10.2016 and, therefore, the original application is not maintainable. The learned P.O. has prayed to dismiss the original application.

11. I have perused the documents. On receiving the complaint from Shri Devidas Limbaji Khedkar the res. no. 1 directed the res. no. 2 to make enquiry in the allegations made in the complaint. The respondent no. 2 forwarded the complaint to no. 3 and called report from him regarding the allegations made in the said complaint. Shri Khedkar had sent copy of the said complaint to various authorities. The res. no. 3 accordingly called report from res. no. 4 in respect of allegations made against the applicant by the complainant Shri Devidas Khedkar in his complaint. The res. no. 4 submitted his report on 9.9.2016 and mentioned therein regarding the previous complaints received against the applicant. It has been mentioned by the res. no. 4 in his report dated 9.9.2016 that previously minor punishment has been imposed on the applicant and her one increment has been withheld for the charge that she had fabricated the signature of Naib Tahsildar Shri Lokhande. The other complaints received

against the applicant were also of serious nature. The res. no. 3 considered the said report of res. no. 4 and found that there was no improvement in the working and functioning of the applicant in spite of imposition of minor punishment and, therefore, the res. no. 3 has issued the impugned order of suspension on 12.9.2016 and sought ex-post-facto sanction of the res. no. 2, which has been granted on 15.9.2016. The applicant made representation against the said suspension order before the res. no. 2 on 17.9.2016. Not only this, but she has also preferred departmental appeal before the res. no. 2 on 3.10.2016. The said representation and departmental appeal have been dismissed by the res. no. 2 on 27.10.2016 (Annex. R. 2 paper book page 73 of the O.A.). In the meanwhile the applicant has filed this original application on 13.10.2016 without giving reasonable time to res. no. 2 to decide her representation dated 17.9.2016 and the departmental appeal dated 3.10.2016 and thus the present original application seems to be premature.

12. At the time of filing this original application hardly one month has passed since the date of issuance of impugned suspension order dated 12.9.2016 and, therefore, the principles laid down by Hon'ble Supreme Court in the case of **AJAY KUMAR CHOUDHARY** (supra) are not attractable in this

case. So also the facts mentioned by the Tribunal in the order dated 22.9.2016 passed in O.A. no. 788/2015 and the facts in this original application are not identical and, therefore, the applicant in this case cannot take benefit of the said decision of the Tribunal.

13. The res. no. 3 has passed the impugned suspension order dated 12.9.2016 considering the serious nature of allegations made against the applicant and as there was no improvement in the working and functioning of the applicant. There is no illegality in the impugned order of suspension dated 12.9.2016 and, therefore, no interference at the hands of this Tribunal is called for in the impugned order. There is no merit in the original application and, therefore, it deserves to be dismissed. Hence, I pass the following order :-

ORDER

The original application is dismissed without costs.

MEMBER (J)