

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.325 OF 2020**

**DISTRICT: THANE  
SUBJECT: SUSPENSION**

**Shri Vinay Dattatraya Sulochane, )  
Aged 54, Occ. Assistant Commissioner (Drug) with )  
last posting (while under suspension )  
being at Satara,R/o. 6, Yamuna Building, )  
Mukund Society, Anand Park, Majiwada, Thane (W). )... Applicant**

**Versus**

- 1) The Commissioner, )  
Food and Drugs Administration (M.S.), )  
Mumbai, Having Office at Survey No.341, )  
2<sup>nd</sup> Floor, Bandra-Kurla Complex, Bandra (E), )  
Mumbai-51. )**
- 2) The State of Maharashtra, )  
Through Principal Secretary, Medical )  
Education and Drugs Department, Having )  
Office at Mantralaya, Mumbai-400 032. )...Respondents**

**Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.**

**Smt.Kranti Gaikwad, learned Presenting Officer for the Respondents.**

**CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)**

**DATE : 11.01.2022.**

**ORDER**

1. Heard Shri A. V. Bandiwadekar , learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

2. The Applicant has challenged the legality of suspension order dated 26.07.2018 issued by the Respondent No.1 –Commissioner, Food and Drugs Administration, Mumbai mainly on the ground of competency of Respondent No.1 and secondly the Applicant being not in custody for more than 48 hours, the deemed suspension order is bad in law.

3. The Applicant is serving in the cadre of Assistant Commissioner, (Drugs). On 22.07.2018, he was arrested for offence under Section 7, 13(1) (d) read with 13(2) of Prevention of Corruption Act, 1988 vide Crime No.667/2018. Consequent to arrest of the Applicant on 22.07.2018, Respondent No.1 by order dated 26.07.2018 suspended the Applicant with retrospective effect from 22.07.2018. The Applicant has challenged the suspension order dated 26.07.2018 *inter-alia* contending that Applicant's appointing authority is Government and Respondent No.1- Commissioner was not competent to suspend the Applicant. Secondly, the Applicant was not in judicial or police custody for 48 hours or more since he was released on bail immediately on next date i.e. 23.06.2018, and therefore, the suspension order with retrospective effect from 22.07.2018 is *ex-facie* bad in law.

4. O.A. was filed on 14.07.2020 and, enough chances were given to P.O. for filing reply but no reply was filed within the time granted by Tribunal. Having found that Respondents are not interested in filing Reply the matter was posted for hearing at the stage of admission without reply. Suffice to say, more than eighteen months is availed by the Respondents but they did not bother to file affidavit-in-reply to counter the pleading made in O.A. It appears that the Respondents did not bother to respond to the letters and communications made by learned P.O. which necessarily exhibits total indifferent and irresponsible attitude of the Respondents. Be that as it may, the issue posed for consideration is whether the suspension order is legal and valid.

5. Learned P.O. submits that she has communicated the Respondents from time to time but respondents have not furnished any instructions for preparation of reply. Therefore, all that she submits that since the Applicant has been reinstated in service, by order dated 02.11.2020, O.A. has become infructuous.

6. Whereas, learned Counsel for the Applicant sought to assail the impugned suspension order *inter alia* contending that Respondent No.1 has no power to suspend the Applicant and secondly the Applicant being not in custody for 48 hours or more, the suspension order with retrospective effect is *ex-facie* bad in law and liable to be quashed.

7. True, from order dated 02.11.2020 tendered by learned P.O. during the course of hearing, it seems that the Applicant has been reinstated in service and posted at Akola. Though the Applicant is reinstated in service, legality of suspension order needs to be decided in accordance to law on merit.

8. In view of submission advanced at a bar, the issue posed for consideration is whether the Respondent No.1 is competent to suspend the Applicant and impugned order is legally sustainable in law, the answer is in emphatic negative.

9. It would be apposite to reproduce Rule 4 of 'Discipline and Appeals Rules 1979' for ready reference, which is as follows :-

"4. Suspension :

(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the behalf by the Governor by general or special order may place a Government servant under suspension –

*(a) where a disciplinary proceeding against him is contemplated or is pending, or*

*(b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or*

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial ;

*Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.*

*(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority –*

*(a) with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forth-eight hours.*

*(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.*

*(3) .....  
.....*

*(4) .....  
..... ”  
[underline is supplied]*

10. Thus, it is explicit from Rule 4(1) of ‘Discipline & Appeal Rules 1979’ that the suspension order should be passed by appointing authority or any authority to which the appointing authority is subordinate or disciplinary authority or any other authority empowered in this behalf by the Government by special or general order.

11. Admittedly, the disciplinary authority and appointing authority of the Applicant is Government. This being the position, in absence of empowerment by special order in favour of Respondent No.1 – Commissioner, Food & Drugs Administration, he cannot be said competent to suspend the Applicant. Needless to mention where order is issued by authority not competent in law, it is totally bad in law and null and void.

12. Secondly, as rightly pointed out by learned Counsel for the Applicant, the Applicant was not in police custody for 48 hours or more so as to bring the case within the scope of deemed suspension from the date of arrest as contemplated under Rule 4(2) of Maharashtra Administrative Tribunal (Discipline & Appeal) Rules 1979. There is specific pleading in O.A. that the Applicant was released on bail on 23.07.2018 and the question of being in custody for 48 hours or more does not survive.

13. Learned Counsel for the Applicant during the course of hearing has also tendered a copy of order dated 23.07.2018 passed by learned Sessions Judge whereby the Applicant was released on bail of Rs.50,000/-. As such, there is denying that the Applicant was not detained in police or judicial custody for 48 hours or more which is condition precedent for deemed suspension as contemplated under Section 4(2) of Maharashtra Administrative Tribunal (Discipline & Appeal) Rules, 1979. This being the position, the suspension order dated 22.07.2018 thereby suspending the Applicant from the date of arrest is *ex-facie* bad in law.

14. True, it appears that the Government by order dated 30.08.2018 has given *expo-facto* approval to the suspension of the Applicant. However, learned P.O. could not point out any such provision permitting *expo-facto* sanction to the suspension order. That apart, basic suspension order of deemed suspension with retrospective effect itself being bad in law. The approval given by Government will not cure illegality crept in suspension order.

15. Mrs. K.S. Gaikwad, learned P.O. made feeble attempt canvassing that as per proviso to Rule 4(1) of 'Rules of 1979', the Respondent No.1 submitted report to the Government (appointing authority) and in turn, the Government has accorded *ex-post facto* approval to the suspension order. In other words, according to her, there is compliance of proviso,

and therefore, suspension order is sustainable. To say the least, this submission is misconceived and totally unsustainable in law. Mere forwarding of such proposal even if it is considered as report contemplated in proviso of Rule 4(1) of 'Rules of 1979' that itself does not cure legal defect of competency of Respondent No.1. What law requires is the empowerment to the authority by the Government by special or general order and in case, if such powers are exercised by such specially empowered authority, in that event, such authority needs to comply proviso to Rule 4(1) by forwarding the report forthwith to the competent authority about the circumstances in which order was made. In other words, in first place, there has to be empowerment to such authority by special or general order and then compliance of proviso. Whereas in present case, there is no empowerment by the general or special order by the Government in favour of Respondent No.1. This being the position ex-facie the order of suspension issued by Respondent No.1 is without jurisdiction and bad in law.

16. In view of above, there is no escape from the conclusion that impugned suspension order dated 22.07.2018 is totally bad in law and liable to be quashed. Hence the following order :-

**ORDER**

- (A) Original Application is allowed.
- (B) The suspension order dated 22.07.2018 is quashed and set aside.
- (C) The Applicant is held entitled to the consequential service benefits of the suspension period.
- (D) No order as to costs.

Sd/-  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 11.01.2022  
Dictation taken by: Vaishali S.Mane