

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.388 OF 2022

**DISTRICT: NASHIK
SUBJECT: SUSPENSION**

Smt. Lata Shantaram Lahane, Age 38 years,)
Occupation – Service, R/at Flat No.001, Dhruv)
Enclave, Damodar Nagar, Jail Road, Nashik.).... **Applicant**

Versus

1. The State of Maharashtra, through)
the Secretary, Public Work Depart.)
Mantralaya, Mumbai 32.)
2. The Superintending Engineer, Public)
Work Circle, Nashik Bandhkam Bhavan,)
Tryambak Road, Nashik.)
3. The Superintending Engineer, Public)
Work Circle, Bandhkam Bhavan, Dhule.)...**Respondents**

Shri L.S. Deshmukh, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

CORAM : A.P. Kurhekar, Member (J)

DATE : 02.09.2022.

JUDGMENT

1. The Applicant has challenged suspension order dated 08.10.2021 whereby he is suspended from 23.09.2021 (with retrospective effect) invoking Rule 4(1)(C) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.
2. The Applicant is serving as Senior Clerk on the establishment of Respondent No.2 - Superintendent Engineer, Nashik. On 24.09.2021 he came to be arrested for the offence under the provisions of Prevention

of Corruption Act, 1988. He was produced before Learned Special Judge, Nashik on 24.09.2021 and released on bail on same day. It is on this background, Respondent No.2 - Superintendent Engineer, Nashik by order dated 08.10.2021 suspended the Applicant with retrospective effect from 23.09.2021 invoking Rule 4(1)(C) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

3. Heard Shri L.S. Deshmukh, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

4. In view of submission advanced, issue posed for consideration is whether suspension order dated 08.10.2021 issued by Respondent No.2 – Superintendent Engineer, Nashik is legal and valid and the answer is in emphatic negative.

5. Respondent No.2 – Superintendent Engineer by order dated 08.10.2021 suspended the Applicant w.e.f. 23.09.2021 (with retrospective effect) though it is not a case of Deemed Suspension as contemplated under Rule 4(2) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Undisputedly, the Applicant was arrested on 24.09.2021 and released on same day. The pleading and contention raised to that effect in Para 6.2 of O.A. is not disputed by the Respondents in their Affidavit-in-Reply. In Para 4 of Affidavit-in-Reply Respondents admits that the Applicant was arrested on 24.09.2021. This being the position, date of arrest shown as 23.09.2021 in suspension order dated 20.10.2021 is apparently incorrect. Be that as it may, even that date is to be read as 24.09.2021, in that event also when there is suspension in view of registration of offence as contemplated under Rule 4(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 suspension has to be from the date of order and not with retrospective effect from the date of arrest. However, Respondent No.2 has suspended the Applicant with retrospective effect which is totally illegal.

6. As stated above, it is only in the case of Deemed Suspension where the Government servant is detained in custody for more than 48 hours by legal fiction, he is Deemed to be suspended from the date of arrest. Whereas, in present case, admittedly the Applicant was not in custody for more than 48 hours. He was arrested on 24.09.2021 and released on bail on same day. This being the position, there is no question of suspension with retrospective effect. Thus *ex-facie* impugned suspension order is bad in law and liable to be quashed.

7. At the time of suspension, headquarter of the Applicant was kept at Dhule instead of Nashik which is in contravention of Circular issued by Government dated 19.03.2008 which provides that, headquarters of a Government servant should normally be assumed to be his last place of duty and it is only in place of request for change of headquarter by concerned Government servant it can be changed if authorities are satisfied that such course will not put Government into extra expenditure like T.A. etc. Whereas, in present case there is no request by the Applicant for change of headquarter, his headquarter has been changed from Dhule to Nashik. This is also one of the material irregularity in the suspension order.

8. As stated above, impugned suspension order is given effect retrospectively though not permissible in law, and therefore liable to be quashed and set aside. In O.A. legality of the suspension order is challenged on the ground of impermissibility of retrospective suspension. Regrettably, Respondents did not take any remedial measure by issuance of corrigendum order, and therefore I have no other option except to quash and set aside the suspension order.

ORDER

- A) Original Application is allowed.
- B) Suspension order dated 08.10.2021 is quashed and set aside.

- C) The Applicant be reinstated in service within a week.
- D) No order as to costs.

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

Place: Mumbai
Date: 02.09.2022
Dictation taken by: N.M. Naik.

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