

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.852 OF 2021

**DISTRICT: SOLAPUR
SUBJECT: ILLEGAL
SUSPENSION**

- 1) Shri Nuroddin Kashimso Mujawar,)
Age 55 years, Talathi (Under Suspension))
Talathi: Akkalkot, Taluka: Akkalkot,)
Sub-Division Solapur No.2, District Solapur.)
Residing at: Mujawar Galli, Khwaja Daud)
Dargha Area, Taluka: Akkalkot, District Solapur)... **Applicant**

Versus

- 1) The Assistant Collector,)
Sub-Division Solapur No.2, 3rd Floor,)
Above District Central Bank,)
Collector Compound, District Solapur 413 001.)
- 2) The Collector, Solapur,)
Collector Compound, 1st Floor, Main Building,)
Sidheshwar Peth, District Solapur 413 001.)... **Respondents**

Shri U.V. Bhosale, learned Advocate for the Applicant.

Smt. Archana B.K., learned Presenting Officer for the Respondents.

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

DATE : 03.12.2021.

JUDGMENT

1. Small issue posed for consideration in present O.A. is whether the suspension of the Applicant by order dated 13.10.2021 who was working as Talathi Akkalkot is legal and valid when disciplinary authority itself propose to initiate Departmental proceeding for minor penalty invoking Rule 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

2. While Applicant was working as Talathi Akkalkot, inspection of his record was carried out and certain discrepancies and lapses of not updating the record was noticed. Therefore Respondent No.1 Assistant Collector by order dated 13.10.2021 suspended the Applicant invoking Rule 4(1) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Importantly while doing so, he directed Talathi Akkalkot to prepare charge-sheet against the Applicant under Rule 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, within 8 days for further action. The Applicant replied to the Show Cause Notice which is evident from his reply dated 29.09.2021. However thereafter no further steps were taken. Then again Respondent issued 2nd Show Cause Notice on 06.10.2021 stating that in inspection it was revealed that the Applicant has not taken necessary steps for recovery of Rs.38,26,843/- (Rupees Thirty Eight Lakhs Twenty Six Thousand Eight Hundred and Forty Three Only) towards revenue. Here again in Show Cause Notice dated 06.10.2021 it is also stated that if reply is not found satisfactory further action for initiation of D.E. under Rule 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 will be initiated. The Applicant by his reply dated 18.10.2021 stated that recovery pending is of Rs.31,85,860/- (Rupees Thirty One Lakhs Eighty Five Thousand Eight Sixty Only) and because of COVID-19 Pandemic situation it could not have been recovered and further assured in reply that now notices are being issued for recovery of the same.

3. Suffice to say in both Show Cause Notices 28.09.2021 & 06.10.2021 Respondent No.1 on his own proposed D.E. under Rule 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 which *inter-alia* provides proceeding for imposing of minor penalty. The Applicant made representation for his reinstatement in service but not responded.

4. In reply all that Respondent No.1 stated is as under:-

“With reference to contents of paragraph No.6.4, I say that the contents therein are not admitted by this Respondents. I say that Rule 10 of M.C.S. (Discipline and Appeal) Rules 1979 provides for procedure for imposing minor penalties as well as initiation of Departmental enquiry. I say that it is specifically provided in Rule 10 (2) of M.C.S. (Discipline and Appeal) Rules 1979 that an Inquiry shall be held in the manner laid down in Sub Rule 3 to 27 of Rule 8. Therefore mere issuing notice under Rule 10 of M.C.S. (Discipline and Appeal) Rules 1979 the suspension order passed under Rule 4 does not become invalid.”

5. As such Respondent No.1 seems to contend that it may adopt procedure laid down under Sub Rule 3 to 27 of Rule 8 and mere issuing of notices under Rule 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 will not invalidate suspension. But fact remains that enquiry was proposed for minor penalty.

6. Thus, admittedly Respondent No.1 has consciously taken decision to adopt the procedure of imposing minor penalty as contemplated under Rule 10 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. If this is so, how the suspension is warranted and legal is the question.

7. Needles to mention as per disciplinary enquiry manual Government servant can be suspended where there are allegations of serious misconduct or misappropriation of Government Money etc. which may result in major punishment. The object of suspension is twofold one of forbid the Government servant for discharging his duties, so that he should not repeat such mistakes again and secondly to conduct enquiry without there being any influence on the witness by Government servant. It is well settled that suspension should not be invoked routinely or casually. It should be invoked where there is serious misconduct warranting major punishment and where enquiry

cannot be fairly and satisfactorily completed unless the Government servant is kept away from his post.

8. True adequacy of the material or evidence before disciplinary authority justifying the suspension cannot be subject matter of assessment by the Tribunal. However, at the same time it needs to be seen whether suspension was legal and warranted in fact situation. In present case the charges are of certain irregularities in the record, and therefore, Respondent No.1 consciously has taken decision to initiate proceeding for imposing minor penalty. If this is the situation where is the necessity of suspending such Government servant. It is nowhere the case of Respondent that there is possibility of tempering of record. Enquiry can be fairly completed without suspending the Applicant. Indeed, where disciplinary authority itself proceeded for initiating proceeding of imposing minor penalty, the question of suspension does not survive. Enquiry can be very well continued and completed without any suspension. Indeed, when specific query was raised to learned P.O. as to what was the progress in matter after issuance of Show Cause Notice dated 18.10.2021 and 06.10.2021. All that she stated that no further action is taken. Be that as it may, the decision of suspension of the Applicant is clearly arbitrary and non-application of mind. It is *ex-facie* not legal and liable to be quashed.

9. Totality of aforesaid discussion leads me to sum up that impugned suspension order in the peculiar facts and circumstances of the case is not at all sustainable in law and liable to be quashed.

ORDER

- a) Suspension order dated 13.10.2021 is quashed and set aside.
- b) The Applicant be reinstated in service within a week with all consequential service benefits.
- c) Respondent is at liberty to continue and proceed with the enquiry which is already initiated against the Applicant in accordance to Rules.

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

Place: Mumbai
Date: 03.12.2021
Dictation taken by: N.M. Naik.