

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1007 OF 2018

DISTRICT : THANE

Shri Himmat Vasant Sapale.)
Age : 33 Yrs., Working as Range Forest)
Officer [now under suspension], having)
Office at Tal.: Wada (W), Dist.: Palghar and)
R/o. F/05, Vitthaldham Apartments,)
Rahul Nagar, Shahapur, Dist. : Thane.)...**Applicant**

Versus

1. The Chief Conservator of Forest [T],)
Thane Forest Circle, Thane and)
having Office at Micro Wave Tower,)
Bara Bunglow Area, Kopri,)
Thane [E].)
2. The Deputy Conservator of Forest,)
Jawhar Forest Division, Jawhar,)
District : Palghar and having Office)
at Opp. To Rajiv Gandhi Stadium,)
Jawhar, District : Palghar.)
3. The Assistant Conservator of Forest.)
[Afforestation Forest Station and)
Wild Life] Wada, Khandeshwari)
Naka, Wada, District : Palghar.)
4. The State of Maharashtra.)
Through Principal Secretary,)
Forest Department, Mantralaya,)
Mumbai – 400 032.)
5. The Additional Principal Chief)
Conservator of Forest)
[Administration & Subordinate)

Services], M.S, Nagpur, Van Bhawan)
Civil Lines, Nagpur – 1.)...Respondents

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Ms. S.P. Manchekar, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 16.12.2019

JUDGMENT

1. The Applicant has challenged the suspension order dated 14.09.2018 issued by Respondent No.1 – Chief Conservator of Forest, Thane invoking Section 19 of Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

The Applicant was serving as Range Forest Officer, Wada (W), District : Palghar. He was served with the charge-sheet dated 10.09.2018 alleging negligence in discharging of duties for minor punishment under Rule 10 of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Discipline & Appeal Rules, 1979' for brevity). Though the Charge-sheet was for minor punishment, he was suspended in contemplation of Departmental Enquiry (DE). The Applicant has challenged the suspension order dated 14.09.2018 on the ground that there was no cause much less justifiable to suspend him in view of issuance of Charge-sheet for minor punishment. He further contends that he was suspended by Respondent No.1 invoking Rule 4(1)(a) of 'Discipline & Appeal Rules 1979' but Respondent No. 1 is not appointing authority, and therefore, in absence of compliance of proviso below 4(1), which *inter alia* provides that where the order of suspension is made by authority lower than the appointing authority, such authority shall forthwith

report to the appointing authority, the circumstances in which the order was made, the suspension order is bad in law. The Applicant further contends that the matter of suspension being not placed before the Civil Services Board (CSB) before issuance of suspension order, the same is bad in law on that count also.

3. However, during the pendency of O.A, the Respondent No.4 – State of Maharashtra revoked the suspension of the Applicant and he was reinstated at Pimpalner, Nashik Division by order dated 08.03.2019.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant challenged the legality of suspension order on the following grounds :-

(i) The Applicant was served with Charge-sheet dated 10.09.2018 for minor punishment under Rule 10 of 'Discipline & Appeal Rules 1979', and therefore, there was no reason much less justifiable to suspend the Applicant by order dated 14.09.2018.

(ii) There is no compliance of proviso to Rule 4(1) of 'Discipline & Appeal Rules 1979', as there is complete failure on the part of Respondent No.1 to submit report forthwith to the appointing authority explaining the circumstances in which the order of suspension was made.

(iii) While placing the Applicant under suspension, the matter was not placed before the CSB which also rendered the suspension order bad in law.

(iv) Though during the pendency of O.A, the Applicant is reinstated by order dated 08.03.2019, his Division is changed from Konkan to Nashik, and therefore, the same is in contravention of 'Revenue Division Allotment for appointment by nomination and promotion to the post of Group 'A' and 'B' (Gazetted and Non-Gazetted) of the Maharashtra Rules, 2015'

(hereinafter referred to as 'Division Allotment Rules 2015' for brevity).

(v) The proposal of reinstatement being not placed before the CSB, it also renders the suspension order illegal.

5. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer for the Respondents fairly concede that, initially, the Applicant was served with the Charge-sheet for minor punishment under Rule 10 of 'Discipline & Appeal Rules 1979' but sought to contend that, subsequently, the said Charge-sheet was cancelled by order dated 13.12.2018 by issuing fresh Charge-sheet under Rule 8 of 'Discipline & Appeal Rules 1979', and therefore, the suspension cannot be faulted with. As regard non-compliance of proviso to Rule 4(1) of 'Division Allotment Rules 2015', the learned CPO submits that the report was submitted to the Government on 01.12.2018, and therefore, it is not the case of total non-compliance of proviso. In respect of non-placing the issue of suspension or reinstatement of the Applicant before CSB, she submits that there is no such legal requirement. She thus submits that the Applicant being already reinstated in service though at different place, the O.A. has become infructuous.

6. True, during the pendency of O.A, the Applicant has been reinstated in Nashik Division by order dated 08.03.2019. However, the Applicant choose to continue the proceedings to determine the legality of suspension order. Therefore, the legality of suspension order being under challenge, it needs to be decided on merit in view of submissions advanced at the Bar.

7. Normally, the adequacy of material before Disciplinary Authority for suspension of Government servant cannot be looked into by the Tribunal, as it falls within the province of the Disciplinary

Authority. However, where the legality of suspension order itself is under challenge, it is necessary to adjudicate the same.

8. **As to Point No.(i) :**

Now turning to the facts of the present case, admittedly, the Applicant was initially served with the Charge-sheet dated 10.09.2018 (Page No.78 of P.B.) for minor punishment under Rule 10 of 'Discipline & Appeal Rules 1979'. The charges in D.E. are as follows :-

- “दोषारोप क्रमांक १) :- स्वकर्तव्यात अक्षम्य हलगर्जीपणा करणे व शासकीय कर्तव्यात कसूर करणे.
२) :- गुन्हा दाखल करणे व चौकशी करणे कामामध्ये हलगर्जीपणा करणे.

श्री. हिम्मत वसंत सापळे, वनक्षेत्रपाल पश्चिमवाडा म्हणून दिनांक १२/०२/२०१८ पासून कार्यरत आहेत. विभागीय वनअधिकारी (दक्षता) ठाणे यांचे दिनांक ११/०७/२०१८ रोजीचे श्री. सुनिल चंद्रकांत आंबवणे यांचे दास्तान डेपोची तपासणी दरम्यान प्रस्तुत डेपोवर प्रत्याक्ष पासाप्रमाणे आलेल्या मालापेक्षा जास्तीचा माल असल्याचे निदर्शनास आले होते. तसेच सहाय्यक वनसंरक्षक (वनीकरण व वन्यजीव) वाडा यांच्याकडील जा.क्र./स.व.सं./६१०/ दिनांक २४/०७/२०१८ अन्वये या कार्यालयास सादर केलेला अहवाल व निम्नस्वाक्षरीकर्ता यांचे दिनांक ३०/०७/२०१८ रोजीचे श्री. सुनिल चंद्रकांत आंबवणे यांचे दास्तान डेपो तपासणीचे दरम्यान महाराष्ट्र नियमावली २०१४ मधील अटीव शर्ती चे पालन केलेचे दिसून आले नाही.

दास्तान डेपो तपासणीनुसार अवैध मालाचा तपशिल खालीलप्रमाणे

अ. नं.	प्रजातीनिहाय किटा माल	प्रजातीनिहाय इमारती माल
१	सग किटा	२८७.४३४ घ.मी.
२	खैर किटा	७५.७२१ घ.मी.
३	इंजायली किटा	६४९.६१२ घ.मी.
	एकूण -	१०१२.७६७
		२.४६१ घ.मी.

महाराष्ट्र वन नियमावली २०१४ मधील नियम ४३ व ४५ मध्ये वनक्षेत्रपाल यांची कर्तव्य विषय करणेत आली आहेत. दास्तान आगरा मधील मालाच्या आवक-जावक रजिस्टर व त्यातील सर्व नोंदीची तपासणी करणे. दर महिन्याच्या ५ तारखेला दास्तान आगारधारकांने संबंधित वनपरिक्षेत्र अधिकारी यांचे कार्यालयास मासिक प्रगती अहवाल सादर करणे बंधनकारक असून सदरचा अहवाल वनक्षेत्रपाल यांनी कार्यालयास आल्याची खात्री करून तपासणी करणे वनक्षेत्रपाल यांचे कर्तव्य आहे. तसेच दास्तान आगारावर अवैध माल अथवा नियमबाह्य बाब आढळल्यास सादरच्या आगाराचा परवाना त्वरीत रद्द करण्या बाबत योग्य तो अहवाल वरीष्ठ कार्यालयास सादर करणे हे वनक्षेत्रपाल यांचे कर्तव्य आहे. तसेच सदर प्रकरणी गांभीर्य लक्षात घेवून वनक्षेत्रपाल पश्चिमवाडा श्री. सापळे यांनी तात्काळ कार्यवाही करणे अपेक्षित होते परंतु गुन्हा दाखल करण्यास विलंब झाल्याचे दिसून आले. महाराष्ट्र वन नियमावली २०१४ मधील नियम ४५ अन्वये किरकोळ विक्री अगार हे वनपरिक्षेत्र अधिकारी यांचे नियंत्रणाखाली कार्यरत असतो.

दास्ताना आगारा बाबत वनक्षेत्रपाल पश्चिमवाडा यांनी वरीलप्रमाणे त्यांचे कर्तव्यात कसूर केलेने सदरचा दोषारोप त्यांचेवर सकृतदर्शनी सिद्ध होत आहे.’’

9. As such, though the Charge-sheet was issued for minor punishment, the Applicant was suspended by order dated 14.09.2018. Needless to mention that the suspension should not be resorted to as a matter of Rule and it has to be taken as a last resort where enquiry cannot be fairly and satisfactorily completed without the delinquent Officer being away from the post and the allegation made against the Government servant, *prima-facie* serious and likely to result in major punishment of dismissal, removal or compulsory retirement from service. Whereas, in the present case, the Disciplinary Authority itself issued Charge-sheet for minor punishment under Rule 10 of 'Discipline & Appeal Rules 1979'. This being the position, the suspension seems to have been ordered without application of mind.

10. Here, it would be useful to refer the observation made by Hon'ble Bombay High Court in **1987 (3) Bom.C.R. 327 (Dr. Tukaram Y. Patil Vs. Bhagwantrao Gaikwad & Ors.)**, which are as follows :

"Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned."

11. Similarly, reference was made to the Judgment of Hon'ble Supreme Court in **1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)**. It would be apposite to reproduce Para No.9, which is as follows :

"9. *It is settled law by several judgments of this Court as well as the Apex Court that suspension is not to be resorted as a matter of rule. It is to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being away from the post."*

12. True, later by order dated 13.12.2018, the Disciplinary Authority revoked the Charge-sheet issued under Rule 10 of 'Disciplinary & Appeal Rules 1979' and on the same day issued another Charge-sheet under Rule 8 of 'Disciplinary & Appeal Rules 1979'. However, this would hardly makes any difference, as the very foundation of the suspension order was in contemplation of D.E. for minor punishment. One need to see the situation as on the date of suspension order i.e. 14.09.108. Admittedly, that time, the D.E. was already initiated by issuance of Charge-sheet dated 10.09.2018 for minor punishment. As such, after issuance of Charge-sheet for minor punishment, four days later, the suspension order was issued. Suffice to say, the D.E. for major punishment was neither contemplated nor in existence on the date of issuance of suspension order. On the contrary, the Applicant was already subjected to Charge-sheet for minor punishment on 10.09.2018. This being the position, it is explicit that there was no such serious charge to warrant the suspension, as amply demonstrated from the course of action adopted by the Department in issuance of Charge-sheet for minor punishment.

13. In this behalf, the learned Advocate for the Applicant rightly referred to the decision in **O.A.196 of 2010 (Dattaram M. Kokare Vs. The State of Maharashtra) decided on 16.11.2010** where in similar situation, the suspension order was quashed in view of it being passed for initiating the D.E. under Rule 10 of 'Disciplinary & Appeal Rules 1979'. The Tribunal held that normally, the delinquent is suspended only when major punishment is contemplated. As such, in the present case, the suspension order seems to have been issued without bothering to see whether the charges warrant major punishment. As a matter of fact, by issuance of Charge-sheet for minor punishment, the concerned authority itself at that point satisfied that it was not a case of major punishment. I, therefore, find merit in this submission advanced by the learned Advocate for the

Applicant that suspension in the present set of facts was not warranted on 14.09.2018 i.e. the date of suspension order.

14. **As to Point No.(ii) :**

Now tuning to the non-compliance proviso to Rule 4(1) of 'Disciplinary & Appeal Rules 1979', let us see the provision to that effect, which is as under :-

"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 in 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."

15. In the present case, admittedly, the suspension order was passed by Respondent No.1 – Chief Conservator of Forest, Thane who is not appointing authority of the Applicant. In view of proviso referred to above, where the order of suspension is made of an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made. As such, it is mandatory to forward report forthwith mentioning the circumstances in which the order of suspension was made. In the present case, the suspension order was passed on 14.09.2018. Material to note that the Applicant has filed O.A. challenging the suspension order on 19.11.2018 raising the

ground of non-compliance of proviso. It is only after filing of O.A, the Respondent No.1 seems to have realized the mistake and for the first time, forwarded letter to the appointing authority on 01.12.2018 (Page No.174 of P.B.). As such, it is quite belated. Apart, it is not at all in consonance with the mandate of law. All that, by letter dated 01.12.2018, the Respondent No.1 – Chief Conservator of Forest informed the appointing authority about the suspension of the Applicant. What law requires is to mention the circumstances in which the order of suspension was made and mere forwarding letter along with copy of suspension order can hardly be treated compliance of proviso. There is absolutely no explanation or circumstances mentioned in letter dated 01.12.2018 as to why the suspension order was immediately warranted. At any rate, it is quite belated though law mandates that it should be sent forthwith.

16. Shri A.V. Bandiwadekar, learned Advocate for the Applicant in this behalf rightly referred to the decision rendered by this Tribunal in ***O.A.300/2014 decided along with 301/2014 (Sunil S. Jain & Anr. Vs. The Commissioner, Food & Drugs Administration, Mumbai)*** wherein the suspension order was quashed on the ground of non-compliance of proviso.

17. As such, there is no escape from the conclusion that there is no compliance of proviso in letter and spirit.

18. **As to Point Nos.3 to 5 :**

Indeed, in view of above discussion, the suspension order being bad in law deserves to be quashed on the aforesaid grounds. Therefore, the discussion and finding on Point Nos. 3 to 5 would be only of academic nature. Since the submissions were advanced at the Bar, it would be appropriate to record the findings thereon. I find no substance in the submission advanced by the learned Advocate for

the Applicant that the suspension order is bad because of absence of placing the same before CSB. Needless to mention that the suspension orders are issued in emergent situation considering the gravity of the alleged misconduct as well as necessity of immediate suspension. Therefore, it is for the Disciplinary Authority/Appointing Authority to step in and to issue necessary orders of suspension. There is no such requirement of law to place the matter of suspension for vetting before CSB. True, the CSBs are established in pursuance of the decision given by the Hon'ble Apex Court **in (2013) 15 SCC 732 (T.S.R. Subramanian and Ors. Vs. Union of India & Ors.)** to consider the service related matters of Government servants. However, in so far as the suspension is concerned, it is exclusively falls within the prerogative of Disciplinary Authority or other competent authority. The learned Advocate for the Applicant could not point out any express provision which mandates the placing of matter of suspension before the CSB for its prior approval.

19. The submission advanced by the learned Advocate for the Applicant that after reinstatement, the Applicant ought to have been reinstated at the same post without changing his division, also holds no water. He sought to contend that the Applicant's Division is Konkan, and therefore, his reinstatement in Nashik Division is in contravention of 'Divisional Cadre Allotment Rules 2015'. In so far as this aspect is concerned, it is rightly pointed out by the learned CPO that, by Circular dated 20.04.2013, policy decision is taken by the Government that where the Government servant is suspended and the suspension is revoked, he should be reposted in Division on Non-executive post other than the Division to which he belongs. It is in pursuance of it, the Applicant has been reinstated in Nashik Division. The object behind it to ensure fair trial of D.E. or Criminal Case so that the delinquent should not tamper with the evidence. Indeed, this aspect is acknowledged and reiterated by Hon'ble Supreme Court in

Para No.21 of the Judgment in **Ajay Kumar Choudhary Vs. Union of India : (2015) 7 SC 291** held as under :-

“21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet 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 person concerned 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 prepared 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 the 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.”

[underline supplied]

20. The ‘Divisional Cadre Allotment Rules 2015’ are applicable to usual postings and promotions. Whereas, in the present case, we were dealing with the situation of posting of Government servant on revocation of suspension. It is transitory arrangement. Therefore, the question of breach of ‘Divisional Cadre Allotment Rules 2015’ does not arise.

21. Similarly, the submission advanced by the learned Advocate for the Applicant that at the time of reinstatement, the proposal ought to have been placed before the CSB for its prior approval is also misconceived. The learned Advocate for the Applicant referred to the proceeding of O.A.336 of 2018 wherein, at the time of reinstatement of the Government servant in service, the matter seems to have been placed before the CSB. If in that matter, the Department placed the

matter before CSB for its approval, that itself does not create precedent in absence of any express provision which requires the placing of matter before CSB. I, therefore, see no substance in the submission advanced by the learned Advocate for the Applicant in this regard.

22. In view of aforesaid discussion, the impugned suspension order deserves to be quashed. However, before parting with the matter, it is necessary to point out that, though the Charge-sheet under Rule 8 of 'Discipline & Appeal Rules 1979' was served upon the Applicant on 13.12.2018, there is no further progress in D.E. The learned CPO fairly concedes that even no Enquiry Officer appointed in D.E. This shows lukewarm attitude of the Respondents in the matter of completion of D.E. Only because the Applicant is reinstated in service, the D.E. cannot be prolonged and it should be completed within reasonable time. It is, therefore, necessary to issue appropriate direction for completion of D.E. within stipulated period. In so far as the reposting of the Applicant is concerned, in view of aforesaid finding that the suspension order is bad in law, the Applicant is now required to be reposted on the same place. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned suspension order dated 14.09.2018 is quashed and set aside.
- (C) The Applicant be reposted on the post of he was suspended from within a month from today with all consequential service benefits.
- (D) The Respondents are directed to complete the D.E. within three months from today and final order therein should be passed within a month thereafter, in accordance to

Rules and it shall be communicated to the Applicant within two weeks thereafter.

- (E) The Applicant shall cooperate for expeditious completion of D.E. and shall not tamper the evidence.
- (F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 16.12.2019

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2019\12 December, 2019\O.A.1007.18.w.12.2019.Suspension.doc