

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1040 OF 2022

DISTRICT : SOLAPUR
Sub.:- Suspension

Shri Mahesh B. Hiremath.)
Age : 37 Yrs, Working as Forester Class-III,))
Residing at 16/21, Ramlal Nagar,))
Hotagi Road, Solapur – 413 224.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 400 032.)
2. Chief Conservator (Territorial), Pune)
Vanbhavan, Bhamburda Vanvihar,)
Ghkhale Nagar, Pune – 411 016.)
3. Deputy Conservator of Forest)
(Territorial), Ghod Project Forest)
Division, Junnar, Dadoji Konddeo)
Wada, Near Tahasil Office, Junnar,)
District : Pune.)...**Respondents**

Smt. Punam Mahajan, Advocate for Applicant.

Smt. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 29.03.2023

JUDGMENT

1. The Applicant has challenged the legality of suspension order dated 10.10.2022 issued by Respondent No.3 – Deputy Conservator of Forest, Division Junnar on the ground of competency of Respondent No.3

and secondly, misconduct attributed in suspension order does not warrant suspension.

2. Briefly stated facts giving rise to this Original Application are as under :-

The Applicant is serving as Forester (Class-III). He was promoted to the post of Forester by Respondent No.2 – Chief Conservator of Forest (Territorial), Pune on 15.06.2021. Respondent No.3 – Deputy Conservator of Forest by order dated 10.10.2022 suspended the Applicant in contemplation of departmental enquiry (DE) for misconduct invoking Rule 4 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity). [Appeal preferred by the Applicant against the suspension order has been dismissed by Respondent No.2 – Chief Conservator of Forest (Territorial), Pune on 19.01.2023]. The Applicant has challenged the legality of suspension order dated 10.10.2022 *inter-alia* contending that Respondent No.3 has no jurisdiction or power to suspend him and secondly, misconduct attributed to him in DE does not warrant the suspension.

3. The Respondents resisted the O.A. *inter-alia* denying any illegality in suspension order. The Respondents contend that Deputy Conservator of Forest is the disciplinary authority and legally empowered to suspend the Applicant. They further contend that Applicant habitually remained absent on duty unauthorizedly and developed habit to remain absent and then to apply for leave. He continuously remained absent from 29.08.2022 and disobeyed the orders of superior and is guilty of misconduct.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the impugned suspension order *inter-alia* contending that Applicant's appointing authority in view of his promotion is Chief

Conservator, Pune, and therefore, Respondent No.3 - Deputy Conservator of Forest has no power or jurisdiction to suspend the Applicant. As regard charges of unauthorized absence attributed to the Applicant, she submits that once the Department/authority has granted or sanctioned leave, in that event, so called unauthorized absence cannot be the ground for suspension for initiation of DE. She further submits that it is only the case of serious charges which may entail punishment of dismissal or removal from service, the suspension would be warranted, but in the present case, having regard to the charges levelled against the Applicant, it cannot be termed grave or serious charges warranting any such major punishment. In this behalf, she referred to certain decisions which will be dealt with during the course of discussion.

5. Per contra, Smt. A.B. Kololgi, learned Presenting Officer sought to justify the suspension order *inter-alia* contending that Deputy Conservator of Forest, Division Junnar is declared Regional Head of the Department and by virtue of it, he is disciplinary authority in terms of Rule 6 of 'D & A Rules of 1979' as well as by virtue of provisions of Maharashtra Forest Manual, 2020 and is competent to suspend the Applicant. She has further pointed out that the charge-sheet is also issued under the signature of Deputy Conservator of Forest, Division Junnar in the capacity of disciplinary authority, and therefore, the challenge to the competency holds no water. As regard misconduct, she has pointed out that the Applicant was habitually remained absent and developed habit to remain absent without getting leave sanctioned in advance, and thereafter, applied for leave and some occasions, it was granted. However, he was again continuously absent from 29.08.2022 without making application for leave and it affected the administration as well as discipline in the Department. The Applicant thus committed misconduct, and therefore, suspension was necessitated.

6. Firstly, let us see the issue of competency of Respondent No.3 – Dy. Conservator of Forest, Division Junnar to suspend the Applicant. Rule 4(1) of ‘D & A Rules of 1979’ is here relevant, which is as under :-

“4(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.”

7. It is thus manifest that suspension order has to be by appointing authority or any authority to which the appointing authority subordinate or the disciplinary authority or any other authority empowered in this behalf by the Government. Its proviso also provides 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.

8. Here, it would be also apposite to see Rule 6 of ‘D & A Rules of 1979’, which is as under :-

“6. Disciplinary authorities

- (1) The Governor may impose any of the penalties specified in rule 5 on any Government servant.
- (2) Without prejudice to the provisions of sub-rule (1), Appointing Authorities may impose any on the penalties specified in rule 5 upon members of Class III and Class IV Services serving under them, whom they have power to appoint:

Provided that the Heads of Offices shall exercise the powers of imposing minor penalties on the Class III and Class IV Government servants under their respective administrative control:

Provided further that Heads of Departments and Regional Head of Departments shall exercise the powers of imposing minor penalties only in relation to Government servants of State Service (Class II) under their respective control:

- Provided also that, the Heads of Departments shall exercise the powers of imposing minor penalties only in relation to Government servants of State service (Class-I) under their respective administrative control who draw pay in a scale, the minimum of which does not exceed +(Rs.10650).”

9. Thus, in view of 2nd proviso of Rule 6 as reproduced above, the Heads of the Departments and Regional Heads of Departments are empowered to impose minor penalties in relation to Government servants (Class II) under their respective control. The Applicant is Class-II employee. Here one need to see the definition of Heads of Departments in the light of Rule 9(22) of ‘General Conditions of Service Rules, 1981’ which provides “Heads of the Departments includes the Officers mentioned in Appendix II and any others whom Government may from time to time declare to be Heads of Departments”.

10. Now turning to the facts of the present case, as pointed out by learned P.O, the Government by G.R. dated 01.01.2021 declared certain authorities as Head of the Department and Regional Head of the Department. The perusal of the said G.R. reveals that Dy. Conservator of Forest are also declared Regional Head of the Department. True, the declaration of Head of the Department/Regional Head of the Department was under Financial Rules of 1979, but fact remains that Dy. Conservator of Forest is also one of the authority declared as Regional Head of the Department. That apart, perusal of Maharashtra Forest Manual, 2020 (Page No.111 of Paper Book) also reveals that Dy. Conservator of Forest are declared disciplinary authority for the post of Forester (Group ‘C’). There is also specific reference that Dy. Conservator

of Forest is declared disciplinary authority for exercising powers under Rule 6 of 'D & A Rules of 1979'.

11. Thus, the harmonious construction of G.R. dated 01.01.2021 in *juxta-posita* of Rule 6 'D & A Rules of 1979' leaves no doubt that Dy. Conservator of Forest is the disciplinary authority for the post of Forester (Group 'C') in which category Applicant falls. As stated above, it is Respondent No.3 – Deputy Conservator of Forest who had issued the charge-sheet to the Applicant on 02.11.2022 as a disciplinary authority. The Applicant has not challenged the initiation of DE on the ground of competency of Dy. Conservator of Forest. Suffice to say, the contention that Respondent No.3 is not empowered to suspend the Applicant holds no water.

12. Now turning to the submission advanced by the learned Advocate for the Applicant about non-compliance of proviso, no doubt, in terms of proviso to Rule 4(1) where 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. Whereas in the present case, the suspension by Chief Conservator of Forest [Territorial], who is admittedly lower than the appointing authority. However, the issue as to whether suspension could be held illegal for want of compliance of proviso is no more *res-integra* in view of the decision of Full Bench of this Tribunal. This issue was subject matter of O.A.Nos.60/2000, 68/2000, 123/2000 and 403/2000 which was decided by Full Bench on 12.01.2001. The issue referred to Full Bench was as under :-

“Whether suspension order in respect of delinquent Government employee issued under Rule 4(1) of 'D & A Rules of 1979' would become void and legal on account of his failure to make a report to the appointing authority of the reasons for issuing such suspension order.”

13. Full Bench categorically held that the suspension order would not become void or illegal on account of failure of the authority to make report to the appointing authority, as contemplated under proviso to Rule 4(1) of 'D & A Rules of 1979'. The learned Advocate for the Applicant sought to contend that proviso to Rule 4(1) of 'D & A Rules of 1979' is mandatory and failure to do so vitiates suspension order. This Bench (Single Bench) is obviously bound by the decision of Full Bench. No other contrary decision is shown so as to deviate from the Judgment of Full Bench.

14. Full Bench observed that no serious prejudice can be said caused to a delinquent where the authority has failed to make report to the appointing authority. No doubt, Full Bench clarified that "However, it is always open to the Tribunal to interfere where it come to the conclusion that the power has been used by the subordinate authority without adequate justification or where prejudice has been caused to the affected person." In the present case, no such prejudice is shown to have been caused. In this view of the matter, it will have to be held that mere failure to report to the appointing authority would not render suspension order illegal.

15. Next question comes whether Respondents have make out a case warranting suspension. Needless to mention, suspension order can be passed by competent authority considering the gravity of alleged misconduct and facts of each case will have to be taken into consideration as to whether suspension was warranted and there is no strait-jacket formula in this behalf. The effect of misconduct attributed to the Applicant is also one of the consideration to be borne in mind. It is also equally well settled that the power of suspension should not be exercised in an arbitrary manner and without any reasonable ground. The learned Advocate for the Applicant sought to refer the decision of Hon'ble Supreme Court in **(2013) 16 SCC 147 [Union of India Vs.**

Ashok Kumar Aggarwal] and reference is made to Para Nos.21 and 22 of the decision, which are as under :-

“21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee’s continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank etc.”

16. Thus, ultimately, one need to see the facts and circumstances of the case and there is no such formula of universal application in this regard. Each case has to be considered on its own facts bearing in mind the gravity of the charges and its effect in the administration. It is nevertheless trite that the scope of judicial review is limited to the deficiency in decision making process and not the decision. In other words, if given set of facts, the decision of suspension is found arbitrary or misuse of power, in that event, the Tribunal must step in to interdict the suspension order.

17. Now, let us see the misconduct attributed to the Applicant to find out whether suspension was justified. The Applicant was suspended in contemplation of DE, mainly for charge of frequent unauthorized

absence. As per charge-sheet and imputation of charges, the Applicant developed habit to remain absent frequently and thereafter only apply for leave. The charge is as under :-

“श्री. महेश बमलिंग हिरेमठ, वनपाल बोतार्डे (गैरहजर) वन परिक्षेत्र कार्यालय, जुन्नर या पदावर कार्यरत असताना दिनांक २९/०८/२०२२ पासून आजतागायत कर्तव्यावर अनधिकृत अनुस्पृतीत अनुपस्थित राहणे, पदोन्नतीचे पदावर प्रदीर्घ कालावधीपर्यंत रुजू न होता कर्तव्यावर गैरहजर राहणे, त्यानंतर वारंवार विनापरवानगीने कर्तव्यावर अनुपस्थित राहणे. सदर गैरहजरीचे पृष्ठयर्थ कोणताही खुलासा न देणे, वरिष्ठांच्या आदेशाचा अवमान करणे, याद्वारे महाराष्ट्र नागरिक सेवा (वर्तणूक) नियम १९७९ च्या नियम ३ चा पोट नियम (एक)(दोन)(तीन)(२)(३)(४) चा भंग करणे.”

18. In this behalf, the perusal of charge-sheet reveals that by order dated 15.06.2021, the Applicant was promoted to the post of Forester and was relieved on 18.06.2021. However, he did not join the post and remained absent for 89 days. It is on 17.09.2021 only, he reported on duty and made an application for Earned Leave of 89 days stating that because of some family difficulties, he could not remain present. The leave was granted by order dated 24.02.2022. Thereafter again, in second phase from 22.11.2021 to 07.01.2022, he was absent on duty and applied for grant of leave on 10.01.2022 again stating the reason that because of family difficulties, he could not remain present. Leave was again granted on 07.03.2022. Thus, on both these occasions, leave was granted as *ex-post facto*. Insofar as absence for this period is concerned, since Department had already sanctioned the leave though as *ex-post facto*, it is difficult to treat the said absence as misconduct. In this behalf, reference is made to the decision of Hon'ble Madras High Court delivered in **Writ Petition No.31934 of 2014 [C. Jagadeesan Vs. Additional Director General of Police] decided on 15.07.2022** wherein it has been held that once the authority competent accepted the reasons for absence and regularized the period of leave, the misconduct, if at all committed become condoned and initiation of disciplinary proceedings on the ground of unauthorized absence would be invalid. But, this is not end of the matter in view of further unauthorized absence from 29.08.2022.

19. There is further period of unauthorized absence for which there is no proper and reasonable explanation from the Applicant to justify the absence. Though Department regularized earlier two phases of absence by granting leave, it is explicit from the record that even thereafter also, Applicant was absent from 29.08.2022 without making any application in advance and all that, he sent e-mail for Medical Leave on 12.09.2022. The record further reveals that he reported on duty on 15.09.2022 and tendered Medical Certificate. He was sent to Medical Board, but did not remain present before Medical Board and was continuously absent from 29.08.2022. It is thus clearly visible that Applicant was habitually absent and though his earlier unauthorized absence was regularized by granting leave *ex-post facto*, thereafter also from 29.08.2022, he was continuously absent and did not produce himself before the Medical Board as directed. It is on this background, he was suspended by order dated 10.10.2022 in contemplation of DE for unauthorized absence. In such situation, the submission advanced by learned Advocate for the Applicant that there was no sufficient material to invoke the powers of suspension holds no water. One need to see the totality of the conduct of a Government servant vis-à-vis its effect on the administration. The Applicant did not obey the order to present himself before the Medical Board, which is *prima-facie* in-subordination. If it is ignored, it would affect the discipline and would sent wrong signal. As such, *prima-facie* there was sufficient material to suspend the Applicant.

20. However, it is no more res-integra in view of Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 [Ajay Kumar Choudhary Vs. Union of India & Anr.]** that currency of suspension should not extend beyond three months, if within the said period memorandum of charges is not served upon the delinquent and if memorandum of charges is served, a reasoned order must be passed for extension of suspension. In the present case, though DE was initiated by issuance of charge-sheet on 02.11.2022 (within three months), no review has been taken about the extension of suspension. The Respondents was under obligation to see

whether further extension of suspension is warranted in the facts and circumstances of the case and to pass reasoned order to that effect at the time of issuance of charge-sheet. But there is complete failure on their part, since admittedly, no such steps were taken. Indeed, Respondents ought to have expedited DE, but still it is pending awaiting the report of Enquiry Officer. Now period of more than 5 months is over, but Applicant is subjected to prolong suspension, which is in contravention of the decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. The Applicant is, therefore, liable to be reinstated in service.

21. The totality of aforesaid discussion leads me to sum-up that the challenge to the suspension order on the ground of competency holds no water. There was enough material *prima-facie* sufficient for suspension and it cannot be said his suspension was totally bad in law. However, Applicant now being under suspension for more than five months, he is required to be reinstated immediately with full pay and allowances on expiration of period of 90 days from the date of suspension. It is clarified that the observation made by the Tribunal is confined to the legality of suspension order and the disciplinary authority is required to decide the issue of misconduct on its own merit without being influenced by the observations made by the Tribunal. Hence, the order.

ORDER

- (A) Original Application is allowed partly.
- (B) The legality of suspension order dated 10.10.2022 is upheld.
- (C) The Applicant be reinstated in service immediately and would be entitled to full pay and allowances after expiration of 90 days' period of suspension and it be paid within a month from today.

- (D) The Respondents are further directed to ensure completion of DE including passing final order therein within three months from today in accordance to law.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 29.03.2023

Dictation taken by :

S.K. Wamanse.

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