

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH AT NAGPUR.**

ORIGINAL APPLICATION S NO. 217 and 218 of 2015

a) **ORIGINAL APPLICATION NO. 217 of 2015**

Shri Ravindrakumar Gangaram Mane,
Aged about 39 years,
Occ. Service,
R/o Civil Lines, Saoner, Tahasil
And Distt. Nagpur.

APPLICANT

VERSUS

1. State of Maharashtra,
through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nagpur Division, Nagpur.
3. The Collector, Nagpur,
Distt. Nagpur.

RESPONDENTS

b) **ORIGINAL APPLICATION NO. 218 of 2015**

Shri Vinod Manohar Harkande,
Aged about 56 years,
Occ.: Service/Dy. Collector,
(EGS) Chandrapur,

R/o Atr. No. Type 6/1/3, Civil Lines,
Chandrapur Tah. and
Distt. Chandrapur.

----- **APPLICANT**

VERSUS

1. State of Maharashtra,
through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Nagpur Division, Nagpur.
3. The Distt. Collector, Nagpur,
Civil Lines, Nagpur.
4. The Distt. Collector,
Chandrapur.

----- **RESPONDENTS**

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1. Shri S.Y. Deopujari, Counsel for Applicant.
 2. Shri A. P. Tathod, C. P.O. for Respondents .
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CORAM : B. Majumdar : Vice Chairman

DATE : 10th March , 2016

ORDER

Both the O.As. are being disposed of through
this common order as the facts and law points involved

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are common to them.

2. The applicant in O.A. No.217/2015 was posted as Tahsildar, Saoner from 24/2/2014 and the applicant in O.A. No.218/2015 as SDO, Saoner from 26/2/2014. Following the complaint about illegal excavation of sand from Gat No. 171 of village Raiwadi in Saoner Taluka, a starred question No.3618 was discussed on the floor of the Vidhan Sabha on 18/12/2014, when hon'ble Minister for Revenue gave an assurance to suspend the concerned officials and to conduct an enquiry. The Collector, Nagpur(R/3) on 19/12/2014 submitted his report to the Commissioner, Nagpur(R/2) on the allegations against the applicants. The enquiry concluded that both the applicants had taken timely action to control illegal excavation and transport of sand and there was no substance in the allegation made against them and therefore, it would not be proper to take any action against them. Respondent no. 2 submitted this report to the Govt. on

22/12/2014 . On 8/5/2015 the Govt. issued orders vide which the applicants were placed under suspension under Rule 4(1)(a) of the Maharashtra Civil Services (Discipline and Appeal) Rules. The applicants have challenged the legality of these orders in the O.As. On 21/5/2015 the Tribunal by way of interim relief stayed the above orders.

3. At the outset it is to be stated that as the applicants have been reinstated in service their prayer in the O.As. with regard to the impugned order of dtd. 8/5/2015 has become infructuous.

4. The applicants submit that as stated in the impugned orders, they were placed under suspension only on the basis of an assurance given by the hon'ble Minister in the State Assembly on 8/12/2014. Not even a preliminary enquiry was conducted before issuing of the orders. The orders of suspension were subject to an enquiry being conducted and the report of R/3, which is duly endorsed by R/2, clearly states that all the allegations against the

applicants are baseless. Thus, the orders of their suspension and contemplation of further disciplinary action against them are totally baseless and unjustified.

5. The Collector, Nagpur (R/3) submitted that he had conducted an enquiry into the alleged illegal excavation of sand in Mouza Raiwadi and had found that the applicants did not commit any illegality and permission/license to excavate sand was granted after obtaining reports from the concerned departments and the letter of the Govt. dtd. 22/8/2014. R/2 had submitted this report to Govt. after giving his concurrence to the findings in the enquiry.

6. The State in para 4 of its affidavit in reply submits as follows :-


Para 4: *"It is respectfully submitted that the Starred Question No.3618 in Legislative Assembly, related with issue of illegal excavation of sand was raised on 18/12/2014, where upon the issue was discussed at length on the floor of the House and finally the Hon'ble Minister (Revenue) assured the House about the*

suspension of the concerned officers and conduct of enquiry. The Hon'ble Minister specifically assured the House that if the concerned officers were not found guilty in enquiry, they would be reinstated immediately. Pursuant to the said assurance, a Report was called from the Divisional Commissioner, Nagpur Vide letter dated 19/12/2014. The Report, received with the letter of the Divisional Commissioner, was duly brought to the notice of Hon'ble Minister (Revenue) on the relevant office file, it was decided to first suspend the applicant so as to comply with the assurance given on the floor of the Assembly and then enquire into the matter and resubmit the case along with Enquiry Report. Accordingly the Respondent No. 1 has suspended the applicant under the provisions of Rule-4(1)(a) of the Maharashtra Civil Services(Discipline and Appeal) Rules, 1979. The Applicant is a Group 'A' officer and is in the rank of Tahsildar. The proposal of his suspension has been approved by Hon'ble Minister(Revenue) and Hon'ble Chief Minister. Accordingly necessary orders have been

issued for suspension of the Applicant herein."

7. Shri S.Y. Deopujari, Id. Counsel for the Applicants submitted that the applicants were placed under suspension without any justifiable reason for not conducting even a preliminary enquiry into the allegations leveled against them. The orders of suspension were issued merely on the basis of an assurance in that regard granted by the Hon'ble Minister in the Assembly. Thus, the action to suspend the applicants was arbitrary and in violation of all rules and statutes relating to the disciplinary proceedings.

8. Shri A.P. Tathod, Id. C.P.O. submitted that it is not denied that the orders of suspension were issued on the basis of an assurance given on the floor of the Assembly by the Hon'ble Minister. Once such an assurance is given, the Minister is required to fulfill the same as otherwise it will amount to breach of privileges of the Hon'ble Members of



the Assembly. Thus, this itself is a sufficient ground for placing the applicants under suspension

9. After carefully considering the arguments made on both the sides and the record placed before us, I find that it is undisputed that the applicants were placed under suspension, only on the basis of an assurance given to the Assembly by the Hon'ble Minister of Environment that the concerned officials who are responsible for the alleged irregularities in excavation of sand will be placed under suspension. The orders of suspension were issued without conducting even a preliminary enquiry into the veracity or substance in the allegations. It is the well settled law that an order of suspension issued by the State Govt., exercising its powers under the Discipline and Appeal Rules is liable to be interfered with by the Tribunal if it is passed under extraneous consideration or suffers from malice or is passed by an authority who is not competent to do so. [**State of Maharashtra vs Manoj Prabhakar Lohar (2011)(1) Mh.L.J. 732**]. In my clear view placing a govt. servant under

suspension only on the basis of an assurance given to the Assembly and on the basis of allegations which on enquiry were found to be unsubstantiated, is illegal. The respondents have stated that the applicants have approached the Tribunal without exhausting the channels of appeal and review available to them under the Rules. As per Section 20(1) of the Administrative Tribunals Act, the applicants are required to exhaust all the remedies available to them before they approach the Tribunal. According to the applicants, no purpose would have been served as the disciplinary authority or any other authority superior to it would not have interfered with an order that has approved at the level of the Chief Minister. In a similar matter filed by Dr. Subhash Dhondiram Mane (O.A. No.834/2014), before the Principal Bench of this Tribunal at Mumbai, the Tribunal vide its order dtd. 13/10/2014 had held that it would be an empty formality to go in appeal under Rule 17(1)(2) of the Discipline and Appeal Rules as the order of suspension was approved by the Chief Minister and no authority to which the appeal lies will



overturn it. The Tribunal relied on the order of Hon'ble the Supreme Court in **D.B. Gohil vs Union of India** (C.A. No.3528/2007) SC, in which it was held that " the Tribunal shall not ordinarily admit an application unless it is satisfied that the appellant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The use of words "Tribunal shall not ordinarily admit an application unless it is satisfied that the appellant had availed of all the remedies available to him under the relevant service rules " in Section 20(1) of the Act makes it evident that in exceptional circumstances for the reasons to be recorded the Tribunal can entertain applications filed without exhausting the remedy by way of appeal ". On the same basis as in case of **Dr. Subhash Dhondiram Mane**, I hold that the fact that the applicant had not preferred an appeal under Section 17(1)(2) of the Discipline and Appeal Rules against the impugned order will not come in the way of my entertaining the O.As.



10. In view of what is stated as above, I hold that the impugned orders of suspension are bad in law and unsustainable, being in violation of the provisions of Rule 4 of the Discipline and Appeal Rules and contrary to the law laid down as above. As the applicants have already been reinstated in service from the date from which they were placed under suspension, I direct that no disciplinary proceedings will be initiated against them on the basis of the impugned orders of suspension. The O.As. stand disposed of in terms of the above order with no order as to costs.

Skt.

sd/-
(B. Majumdar)
Vice-Chairman.