

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.362 OF 2023

DISTRICT : PUNE

Sub.:- Suspension

Shri Madhukant V. Garad.)
Age : 57 Yrs, Working as Secretary,)
APMC, Pune and residing at D/402,)
Bharti Vihar, Behind Bharti Vidyapeeth,)
Katraj, Pune – 46.)...**Applicant**

Versus

The State of Maharashtra.)
Through Additional Chief Secretary,)
Co-operation and Marketing Dept.,)
Having Office at Mantralaya)
Extension, Room No.353, 3rd Floor,)
M.K. Road, Hutatma Rajguru Chowk,)
Mantralaya, Mumbai – 400 032.)...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 27.04.2023

JUDGMENT

1. The Applicant has challenged the suspension order dated 23.03.2023 issued by the Respondent whereby he was suspended in contemplation of departmental enquiry (DE), invoking Rule 4(a) of

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity).

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

The Applicant is serving in the cadre of Deputy Registrar, Co-operative Societies and his parent Department is Co-operation Department. He was deputed as Secretary, APMC, Pune which falls under the administrative control of Marketing Department. While he was working in borrowing Department as Secretary, APMC, Pune, the Respondent suspended him by order dated 23.03.2023 in contemplation of DE on the allegation of certain serious irregularities and dereliction in duties while working as Secretary, APMC, Pune. The Applicant has challenged the suspension order inter-alia contending that he being on deputation with borrowing Department, the concerned Minister of borrowing Department i.e. Marketing Department is the only competent authority to suspend him and secondly, there was no such justification warranting the suspension.

3. The Respondent resisted the O.A. *inter-alia* contending that though Applicant's parent Department is Co-operation Department, 3 Departments viz. Co-operation, Marketing and Textile are functioning as one combined Department. In view of serious misconduct and dereliction in duties, the Minister Incharge of Co-operation Department accorded approval for the suspension of the Applicant and it is legal and valid.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the suspension order by making two-fold submission. Firstly, the Applicant being on deputation as Secretary, APMC, Pune with Marketing Department, it being borrowing Department, if at all suspension was necessitated, then it ought to have been with the approval of Minister Incharge of borrowing Department i.e. Marketing

Department, as required under Rule 14(1) of 'D & A Rules of 1979' and it being not so, the suspension order is bad in law.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify the suspension order inter-alia contending that Co-operation, Marketing and Textile are though three different Departments, all these three Departments are working as one combined Department. According to him, there is common Secretary for Co-operation and Marketing whereas for Textile, it is under different Secretary. He further canvassed that the post of Secretary, APMC, Pune is sanctioned post falling in Co-operation Department as per approved cadre strength in terms of G.R. dated 15.09.2022, and therefore, Minister Incharge of Co-operation Department is competent to suspend the Applicant. As regard sufficiency of material for suspension, he submits that in view of preliminary enquiry report, serious lapses and dereliction in duties were found in functioning of the Applicant while working as Secretary, APMC, Pune and suspension was found necessitated.

6. In view of submissions, the issue posed for consideration is whether the Minister Incharge of Co-operation Department who issued the suspension order dated 23.03.2023 is competent and have jurisdiction to suspend the Applicant.

7. Notably, Applicant's parent Department is Co-operation Department and he was on deputation as Secretary, APMC, Pune which falls in Marketing Department. The Respondent in Affidavit-in-reply in Para Nos.11 clearly admits that Market Committee comes under Marketing Department and Applicant belongs to Co-operation Department. All that in Para Nos.11.1, 11.2, 11.4 and 11.5, the Respondent pleads as under :-

"11.1 I say and submit that, as per G.R. dtd. 15.9.2022, there is common cadre strength of three divisions of the Cooperation Department i.e. (1) Marketing, (2) Cooperation and (3) Textile and all administrative powers regarding services of employees i.e. transfer, promotion,

deputation etc. are vested with Additional Chief Secretary, (Cooperation & Marketing), Cooperation, Marketing and Textile Department, Mantralaya, Mumbai. Therefore, the proposal of Applicant's suspension was moved through Additional Chief Secretary, (Cooperation & Marketing), Cooperation, Marketing and Textile Department, Mantralaya, Mumbai to Hon`ble Minister for Cooperation. Copy of said G.R. dtd. 15.9.2022 is annexed hereto and marked as Exhibit R-1.

11.2 I say and submit that, as per G.R. dtd. 17.12.2016 regard deputation policy, the Applicant was sent on deputation as Secretary, APMC, Pune by the Respondent herein. Copy of said G.R. dtd. 17.12.2016 is annexed hereto and marked as Exhibit R-2.

11.4 Thus, as the administrative powers are vested with Additional Chief Secretary, (Cooperation & Marketing), Cooperation, Marketing and Textile Department, Mantralaya, Mumbai. Accordingly, the Hon`ble Minister for Cooperation is empowered to take administrative decisions regarding services of employees of all these three Divisions i.e. (1) Cooperation, (2) Marketing and (3) Textile.

11.5 In view of above, the proposal of Applicant's suspension moved by Additional Chief Secretary, (Cooperation & Marketing), Cooperation, Marketing and Textile Department, Mantralaya, Mumbai was duly approved by the Hon`ble Minister for Cooperation and accordingly suspension order was issued on 23.3.2023."

8. Thus, the entire thrust of submission of learned Presenting Officer is that in view of G.R. dated 15.09.2022, the post of Secretary, APMC, Pune for administration falls under Co-operation, Marketing and Textile Department, and therefore, approval to the suspension of the Applicant by Minister of Co-operation is legal and valid.

9. In the first place, G.R. dated 15.09.2022 talks about the cadre strength of Co-operation Department and does not talk about keeping the powers of suspension with lending Department i.e. parent Department. Indeed, in G.R. dated 15.09.2022 itself, it is clarified that the post of Secretary, APMC, Pune is being filled-in by deputation. This being so, G.R. dated 15.09.2022 does not advance Respondent's case a little bit, so as to legalize the suspension order.

10. Admittedly, even if the Department of Co-operation, Marketing and Textile is now clubbed together and known as Co-operation, Marketing

and Textile Department together, there is no denying that for all these 3 Departments which are different Departments have their independent Minister looking after the administration of the concerned Department. The learned P.O. concedes that Shri Atul Save is the Minister of Co-operation and Shri Patil is the Minister of Textile Department and Shri Shinde is Incharge of Marketing Department. As such, notably, these 3 Departments are under the control and administration of these different independent Minister. This being so, the Applicant being on deputation in Marketing Department, there has to be approval of concerned Minister holding the charge of Marketing Department. However, there is no approval of the Minister Incharge of Marketing, but it is approved by the Minister Incharge of Co-operation, which is in contravention of Rule 14(1) of 'D & A Rules of 1979'.

10. At this juncture, it would be apposite to reproduce Rule 14(1), which is as under :-

“14. Provisions regarding Officers lent to any Government in India, Local authority, etc.

(1) Where the Services of a Government servant are lent by one department of Government to another department of Government or to any other Government in India or to an authority subordinate thereto or to a local or other authority (including any Company or corporation owned or controlled by Government) (hereinafter in this rule referred to as “the borrowing authority”) the borrowing authority shall have the powers of the appointing authority for the purpose of placing such Government servant under suspension and of the disciplinary authority for the purpose of conducting a disciplinary proceeding against him:

Provided that, the borrowing authority shall forthwith inform the authority which lent the services of the Government servant (hereinafter in this rule referred to as “the lending authority”) of the circumstances leading to the order of suspension of such Government servant or the recommencement of the disciplinary proceeding, as the case may be.”

11. In this behalf, reference may be made to the decision of Hon'ble High Court in **Writ Petition No.2152 of 2016 [Prajwal N. Bhoir Vs. The Chief Engineer, Maharashtra Jeevan Pradhikaran, Thane &**

Anr.] dated 6th September, 2017. In that case, Petitioner Prajwal Bhoir was Executive Engineer with Maharashtra Jeevan Pradhikaran, Thane, but was working on deputation with Zilla Parishad, Palghar and while he was working on deputation, in view of registration of offences under the provisions of Prevention of Corruption Act, he was suspended by Chief Engineer, Maharashtra Jeevan Pradhikaran in contemplation of DE and in view of registration of offences. Prajwal Bhoir challenged the suspension by filing Writ Petition *inter-alia* contending that he being on deputation with borrowing Department viz. Z.P, the borrowing Department was only empowered to suspend him in terms of Rule 14(1) of 'D & A Rules of 1979'. Hon'ble High Court accepted the contention and held as under :-

“Rule 14(1) of the Rules of 1979 lays down that if the services of an employee are lent by one department to another department or to any other Government in India or to an authority subordinate to it or to a local or other authority including any company or corporation owned or controlled by Government (hereinafter referred to as “the borrowing authority” for this Rule), the borrowing authority shall have the powers of the appointing authority for placing the employee under suspension and the borrowing authority shall have the powers of the disciplinary authority for conducting a disciplinary proceeding against the employee. As the petitioner was working with Zilla Parishad, Palghar on the date when the impugned order suspending the petitioner with retrospective effect was issued, in view of Rule 14(1) of the Rules of 1979 the corporation had no power to place the petitioner under suspension and if at all the petitioner was to be placed under suspension, the action should have been taken by Zilla Parishad, Palghar.

In view of the above, we find that the impugned order issued by the Chief Engineer of corporation suspending the petitioner is without authority and is unsustainable in law.”

12. Notably, as rightly pointed out by learned Advocate for the Applicant that as per Maharashtra Government Rules of Business published in the Notification framed in exercise of powers under Article 166 of Constitution of India and came into force w.e.f. 01.07.1975, it is Minister Incharge of a Department shall be responsible for the business appertaining that Department or part of the Department. Rule 5 and 10(1) of the Rules are relevant which are as under :-

“5. The Governor shall on the advice of the Chief Minister allot among the Ministers the business of the Government by assigning one or more Departments or part of Departments to the charge of a Minister.

10(1) Without prejudice to the provisions of rule 8, the Minister-in-charge of a Department shall be primarily responsible for the disposal of the business appertaining that Department or part of the Department.”

13. Thus, since admittedly, the Department of Marketing (borrowing Department) have its own independent Minister to govern the Department and responsible for the disposal of the business and governance of the Marketing Department, the competent authority for suspension would be the Minister for Marketing Department, which is admittedly lacking in the present matter. The issue that when Government servant is on deputation, it is for the borrowing Department to suspend the Government servant is no more *res-integra* in view of specific provision contained in Rule 14(1) of 'D & A Rules of 1979' and the decision of Hon'ble High Court in **Prajwal Bhoir's** case (cited supra). I have, therefore, no hesitation to sum-up that the suspension order dated 23.03.2023 being not approved by Minister of Marketing (borrowing Department) is totally bad in law and liable to be quashed.

14. Insofar as submission of insufficiency of material warranting the suspension is concerned, needless to mentioned that normally it does not fall within the jurisdiction of Tribunal unless it is shown *malafide* or abuse of process of law. In the present case, the Applicant was suspended in view of preliminary enquiry report whereby serious lapses

and dereliction of duties is attributed to the Applicant. The report being bulky is not filed along with Affidavit-in-reply. But during the course of hearing, it was tendered for the perusal of the Tribunal. Having gone through it, *prima-facie*, it was sufficient to invoke the powers of suspension. I see no such malice in law in this behalf.

15. It needs to be noted here that while Applicant was serving as Secretary, APMC, Pune, he was transferred to the post of Deputy Director of Marketing, Directorate of Pune by order dated 02.02.2023 which was challenged by the Applicant by filing O.A.147/2023. In that O.A, the Tribunal has granted interim relief by order dated 06.02.2023 meaning thereby he was continued on the post of Secretary, APMC, Pune. Later he withdrew O.A.No.147/2023, but in the meantime, he was suspended by order dated 20.03.2023, which is challenged in the present O.A. After withdrawal of O.A, some other Government official has been posted in place of Applicant as Secretary, APMC, Pune. Now since suspension order dated 23.03.2023 is quashed and set aside, he needs to be reinstated on the post of Deputy Director of Marketing, Directorate of Pune with liberty to the Respondent to take remedial measures and to proceed with DE in accordance to law.

16. The totality of aforesaid discussion leads me to conclude that the suspension order dated 23.03.2023 is bad in law for want of powers and competency of issuing authority and on that ground, O.A. is liable to be allowed. The Respondent is free to take remedial measures, if so advised. Hence, the order.

ORDER

- (A) The Original Application is allowed.
- (B) The suspension order dated 23.03.2023 is quashed and set aside.

- (C) The Applicant be reinstated in service within two weeks from today.
- (D) No order as to costs.

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

Mumbai

Date : 27.04.2023

Dictation taken by :

S.K. Wamanse.

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