

**THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI****ORIGINAL APPLICATION NO.444 OF 2015****DISTRICT : MUMBAI**

Dr. Narender Omprakash Bansal )  
having his address at 5/30, J.J. Hospital, )  
Byculla, Mumbai 400 008 ).... **Applicant**

**Versus**

- 1) Dean, )  
Grant Medical College and )  
Sir J.J. Group of Hospital, )  
Byculla, Mumbai 400 008 )
- 2) Director, )  
Medical Education & Research, )  
St. George's Hospital, )  
Mumbai )
- 3) Additional Chief Secretary, )  
Medical Education & Drugs Department, )  
Mantralaya, Mumbai )....**Respondents**

Shri R.D. Soni, the learned Advocate with Shri S.N. Gawade, the learned Advocate for the Applicant.

Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

CORAM : Justice Shri A.H. Joshi, Chairman

RESERVED ON : 28.09.2015

PRONOUNCED ON : 16.10.2015



## J U D G M E N T

1. Heard Shri R.D. Soni, the learned Advocate with Shri S.N. Gawade, the learned Advocate for the Applicant and Shri N.K. Rajpurohit, the learned Chief Presenting Officer for the Respondents.

2. By this Original Application the Applicant has challenged the order issued by the Government on 29.05.2015 (copy whereof is at Exhibit 'I' of the O.A.), by which applicant is kept under suspension.

3. After notice, ordered on 08.06.2015 the case was listed before this Tribunal [CORAM : SHRI R.B. MALIK, HON'BLE MEMBER(J)] on 09.06.2015. It was adjourned for filing reply and after various adjournments, which may be referred hereinafter at appropriate stages, ultimately, the O.A. was heard and was reserved for order.

This case was initially heard on 26.08.2015. However, as the judgment could not be delivered, it was listed for rehearing on 28.09.2015. Parties submitted that the written submissions are already on record and fresh hearing is not necessary.

4. Perused the record and citations relied by the parties. Learned Advocate Shri R.D. Soni appearing for the Applicant submitted that though four months time is passed, till date the charge sheet is not served on the applicant.

5. Original Application runs into over 24 pages including the grounds added after amendment, few annexures apart from rejoinders and annexures to the rejoinder.

6. The State has filed voluminous reply. The pleadings contained in the O.A., can be divided into various sections based on the point involved. For the sake of convenience those are analysed and condensed as follows :-

Sr. No	Points	Paragraph Numbers (both inclusive)	Page Numbers (both inclusive)
(a)	Bio-data and narration of performance / work done by the applicant.	6.1 to 6.14	3 to 7
(b)	The background of permitting private practice by Medical Doctors serving under Government of Maharashtra, change in policy by way of for withdrawal of said concession to undertake private practice, stay to changed policy by Hon'ble High Court, availability of permission to the Government servant doctors to undertake private practice by not taking allowance for not practicing.	6.15 to 6.20, 6.22 to 6.25	7 to 10
(c)	That despite leave to practice which became available, in view of the stay granted by various courts applicant opted not to undertake private practice and continued to draw non practicing allowance.	6.21 to 6.26	9 to 11
(d)	Background and circumstances in which some people have animus against the applicant.	6.27 to 6.29	11
(e)	Circumstances in which the applicant has examined one patient Shri Kanayyalal Soni, and conducted procedure for angiography on him in Kambala Hill Hospital.	6.30, 6.31, 6.32	11 to 13
(f)	Show cause notice, it's reply and issuance of impugned order.	6.33 to 6.37	13 and 14.
(g)	Malafides against Respondent No.1 i.e. the Dean J.J. Hospital.	6.38 and 6.40	15



7. Grounds on which the suspension order is assailed by the applicant are summarised as follows :-

Sr. No.	Substance of grounds	Ground No.	page No.
(a)	The explanation given by the applicant in two letters / replies dated 13.03.2015 and 23.03.2015 are neither considered nor appreciated.	6.38, 6.47	15, 17
(b)	According to Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which deals with suspension and which empowers the Appointing Authority to place a Government servant under suspension only when disciplinary enquiry is pending or is contemplated and charge is for serious / grave misconduct. There is no disciplinary proceeding pending against Applicant, nor any notice to that effect is given to him.	6.39, 6.44, 6.46	15, 16, 17
(c)	According to the Applicant he should have been given an opportunity to present his case and to explain his plea and to put forward his case, before passing the suspension order against him.	6.39, 6.44, 6.46	15, 16, 17
(d)	Show cause notice was served upon the Applicant on the basis of one solitary incident, wherein Applicant had examined a patient in a private hospital which is adequately explained by him.	6.40, 6.49, 6.59	15, 17, 18
(e)	There is not a single blemish against the Applicant for all these years.	6.40, 6.49, 6.59	15, 17, 18
(f)	The Government Resolution क्र.एनपीए-२०१०/प्र.क्र.११५/१०/वैसेवा-२ dated 18.08.2010, permits private practice. Applicant was not given any opportunity to present his case before issuance of suspension order, though such opportunity should have been given to him. The show cause notice and the State's affidavit-in-reply along with other documents, do not show any charge of misconduct or defalcation of funds or any serious act of omission and commission, which would warrant the order of suspension.	6.40, 6.49, 6.59	15, 17, 18

(g)	The weapon of suspension cannot be used against any Government servant to victimize him. The suspension can be ordered only if continuation of Government servant in service creates any hindrance and / or obstruction in the enquiry proceedings.  The Government Resolution क्र.एनपीए-२०१०/प्र.क्र.११५/१०/वैसेवा-२ dated 18.08.2010 permitting private practice is completely ignored in Applicant's case.	6.50, 6.52	18
(h)	The Appointing Authority / Disciplinary Authority who has issued suspension order of the Applicant has not charged him for misconduct or defalcation of funds or serious acts of omission and commission and / or moral turpitude.	6.53	18-A
(i)	The suspension order should be issued only on the ground of gravity of alleged misconduct or nature of allegations imputed to the delinquent employee, while no such imputations actually exist against the applicant.	6.55, 6.56	18-A
(j)	The object of suspension is to ensure fair enquiry to prevent witness/witnesses being influenced, however these grounds do not exist.	6.55, 6.56	18-A

8. The O.A. is opposed by the State by filing affidavit-in-reply. Second affidavit is filed by State for replying the amended part of O.A. as well by way of rejoinder, which is at page 262 of the paper book.

9. Allegations and counter allegations, relevant and irrelevant issues have occupied the volume of pleadings and annexures.

10. In these premises, it shall be necessary to focus on the contents of reply which are relevant.

11. The important points in the reply are summarised as follows :-

- (a) The aspect of applicant's bio-data is not in serious dispute, however, it is described as unrelated to the issue involved in the case.
- (b) The applicant had opted not to undertake private practice, he has been drawing N.P.A., and hence stay for withdrawal of permission for private



practice by Doctors in employment of Government by State Government and stay granted by Hon'ble High Court is irrelevant.

- (c) The aspect of non-practicing allowance and leave to private practice as regards position as it stands is not in dispute nor is relevant.
- (d) Applicant admits that he has treated one patient Shri Kanhailal Soni in Kambala Hill Hospital, though the applicant disputes that he does any private practice.
- (e) The misconduct committed by Applicant is serious and a departmental enquiry against applicant is contemplated towards serious misconduct of serious nature, which attracts major penalty.
- (f) The O.A. is not maintainable due to availability of statutory remedy of appeal which is available to the applicant under Rule 17 of M.C.S. (D & A) Rules, 1979.

12. In so far as aspect of propriety of suspension, respondent has averred answering averments contained in paragraph no. 6.30 which reads as follows :-

"34. With reference to Para 6.30, I say that, as aforesaid, the applicant has continued his private practice. The available records (**Exhibit R-16 colly**) from the Cumballa hill hospital clearly show that the patient Mr. Soni Kanaiyalal was admitted under the applicant's care dated 28.02.2015 and the applicant performed the procedure of angiography and issued signed report as well as advice on dated 2.3.2015, Monday morning. This fact corroborates with applicant's appointment schedule mentioned on various websites. Also this proves that that applicant still continued to do private practice during office hours while taking Non Practicing Allowance from Government. Monday is shown as his appointment / procedure day at Cumballa Hill Hospital as per the Website information. (Exhibit R-11, R-12 and R-13). The website Justdail.com clearly shows that he was operating on Monday 11.00 A.M. to 2.00 P.M. at Cumballa Hill Hospital and that website mentions that he also visited from 9.00 A.M. to 12.00 P.M. on Friday at J.J. Hospital. It means that applicant is Part-time Consultant at J.J. Hospital and more focused at Cumballa Hill Hospital. The Cumballa Hill Hospital administration has not provided the records even after repeated request. Copies of letter dtd. 10.4.2015 and 16.6.2015 are annexed hereto and marked as **Exhibit R-17 colly.**"

(Quoted text is of paragraph no. 34, page no. 57, of the affidavit-in-reply on behalf of Respondent nos.1, 2 & 3.)

13. It is necessary to refer to Applicant's rejoinder. In the rejoinder the Applicant has focused on following points:-

- (a) Treating one patient Shri Kanaiyalal Soni is a solitary act done by the applicant purely on humanitarian ground. This was done by the Applicant without receiving any remuneration and was done due to Student Teacher relation towards treating cardiologist.
- (b) It was an exercise towards saving life.
- (c) Solitary incident of treating a patient does not constitute private practice.
- (d) Just-dial.com has confirmed that they have removed the information about Applicant, as it was based on un-authenticated sources.

14. The State has filed a Sur-rejoinder and placed on records showing certain records of Tax returns of Applicant showing that Applicant has been getting certain remuneration / money from Kambala Hill Hospital for which TDS was deducted from payment which Applicant has received from the said Kambala Hill Hospital.

15. Learned P.O. has pointed out from page 179 of the paper book the letter/mail sent by 'Just-dial.com' to the Applicant informing that certain information about Applicant to the effect that Dr. Bansal works in Kambala Hill Hospital and is also available in J.J. Hospital etc. was removed from its Website.

16. In support of his submission, learned Advocate Shri Soni has placed reliance on following judgements :-

Sr. No.	Judgments (where suspension may be ordered)
1.(a)	State of Maharashtra & Anr. V/s. Manoj Prabhakar Lohar. Writ Petition No.7642 of 2010 dated 30.09.2010 and 01.10.2010 reported in 2011(2) ALL MR 309.
1.(b)	Minaxi Zaverbhai Jethva V/s. State Special Court Application Appeal No.3708 of 1998 decided on 15.12.1999 reported in CDJ 1999 GHC 580.
1.(c)	A.C. Barot V/s. District Superintendent of Police, Panchmahals. Special Court Application Appeal No.1930 decided on 19.08.1989 reported in CDJ 1989 GHC 118.



1.(d)	State of Orissa V/s. Bimal Kumar Mohanty Civil. Decided on 21.02.1994 reported in AIR(SC)-1994-0-2296/SCC-1994-4-126/FLR-1994-68-970.
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Ratio relied upon by the learned Advocate for the Applicant, based on these citations is condensed and noted as below :-

(a)	Before exercising the power of suspension the competent authority has to consider various aspects viz. the gravity of alleged misconduct seriousness of the offence availability of the evidence; prima facie case for dismissal removal or compulsory retirement.
(b)	Continuance in service is likely to hamper the inquiry or investigation or affording an opportunity to interfere with the witness or tampering with the evidence or that the continuance of such public servant would afford an opportunity to indulge in similar misconduct or offence.
(c)	If the acts of misconduct or misbehaviour or the alleged offences or any other irregularity or misconduct ought to be of grave nature. Other misconduct should not be a ground for the suspension of the public servant.
(d)	No specific criteria is laid down for exercising the power of suspension but suspension should not be resorted in case of other minor irregularity or misconduct.
(e)	Before exercising or resorting to the power of suspension, the criteria indicated in foregoing points are required to be satisfied.

2. Madanlal Sharma V/s. State of Maharashtra & Ors.  
Writ Petition No.5227 of 2002 decided on 14.07.2003 (Aurangabad)  
reported in 2004(1) Mh.L.J..

Ratio :-

(a)	It is well established that the order of suspension cannot be issued as a matter of routine and an order of suspension can be issued when a disciplinary enquiry is pending or is contemplated, as is clear from rule 4(1) of the M.C.S. Rules and for the other reasons stated therein.
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(b)	It is settled law by several judgements of Hon'ble High Court as well as the Apex Court that suspension is not to be resorted to as a matter of rule.
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3. State of Maharashtra V/s. Shivram Shambhajirao Sadawarte.  
Writ Petition No.4425 of 2000 decided on 16.12.2000 reported in BCR-2001-2-492/MHLJ-2001-3-249 /LLJ-2001-1-1198.

Ratio :-

(a)	In the case of (State of Himachal Pradesh V.B.C. Thakur), reported in 1994 (27) A.T.C. 567 the Supreme Court upheld the order of the Tribunal quashing the suspension order, where the employee had been under suspension for three years and no substantial progress in the disciplinary proceedings had been made.
(b)	Exercise of right to suspend an employee has to be justified on the fact of a particular case.
(c)	Instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employees' trivial lapse which has often resulted in suspension.
(d)	Suspension notwithstanding, non-payment of subsistence is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed suspension, he is demobilised and the salary is also paid to him at a reduced rate the nick of "subsistence allowance", so that the employee may sustain himself.

Sr. No.	Judgments
4.(a)	Nansaheb Namdeo Nirmal V/s. State of Maharashtra & Anr. Writ Petition No.3363 of 1992 dated 18.10.2001 reported in 2002 (2) ALL MR 876.
4.(b)	Harbanslal Sahni & Anr. V/S. State of Maharashtra & Anr. Writ Petition No.2585 of 2013 decided on 12.12.2014 (Nagpur) reported in 2015 (3) Mh. L.J.

4.(c)	Sandeep Inderchand Gandhi & Ors. V/s. State of Maharashtra & Anr. Writ Petition No.2585 of 2013 decided on 12.12.2014 (Nagpur) reported in 2015(3) Mh. L.J.
4.(d)	Deorao Vithoba kale V/s. Divisional Joint Registrar Co-op. Soc. Nagpur & Ors. Writ Petition No.39 of 1981 decided on 27.03.1981 (Nagpur) reported in 1982 Mh.L.J.
4.(e)	K.V.K.S. Seva Society Ltd. V/s. Assistant Registrar, Co-operative, Societies, Patan & Ors. Writ Petition No.4272 of 1992 decided on 12.11.1992 reported in 1993 (1) Bom.C.R.586.

Ratio :- When the impugned order is passed in violation of principles of natural justice availment of alternate remedy can be dispensed with. No interference due to alternate remedy is a rule of practice and not the rule of Law.

5. Ambarish Raghshahi Patnigere & Ors. V/s. State of Maharashtra & Ors. Writ Petition No.1797 of 2011 decided on 22.12.2011 reported in AIRBOMR-2012-1-823/BCR-2012-1-505/MHLJ-2012-1-900.

This judgment is rendered on reference to Full Bench on the point of power of foreign employers to whom a Government servant is deputed on foreign service. Therefore, this case is not relevant as regards the point involved.

Though this judgement is cited any submission were not made based on this judgement.

#### **ALTERNATE REMEDY**

17. Learned C.P.O. Shri N.K. Rajpurohit appearing for the Respondents has strongly opposed the O.A. on the ground of availability of alternate remedy. Since the learned C.P.O. was called to address even on merits of O.A.. Learned C.P.O. has stressed his submissions on preliminary objection on the ground of existence of alternative remedy and he has placed reliance of following judgments:-

1. Hiralal Rama Jadhav Vs. The State of Maharashtra Original Application No.280 of 2013 decided on 11.09.2013 (Mumbai) by this Tribunal.

Ratio :- It is the case of facts. No specific ratio of law helping either parties can be deducted from the reasoning recorded in this judgment.

2. Sanjay Vishram Billewar & Ors. Vs. The State of Maharashtra & Anr.  
Original Application Nos. 668 to 671 of 2014 decided on 21.04.2014 (Mumbai) by this Tribunal.

Ratio :- (a) Suspension would be continued whenever the misconduct alleged is of serious nature and likely to lead to major penalty, holding that :-

“The eventual result in a DE is based on various factors and the same is not very often predictable. Such a conjecture cannot be accepted as a justification for reinstatement of the applicants.”

(Quoted from page 27 from the copies of order in O.As.No.688 to 671/2014).

- (b) If the applicant has submitted representation the direction to consider the same can be given.

3. Smt. Reshma Kishore Pamnani Vs. The Sub-Divisional Officer,  
Original Application No.224 of 2007 decided on 04.01.2008 (Mumbai) by this Tribunal.

Ratio :-

“Rule 17 clearly provides that a Government servant may prefer an appeal against an order of suspension made under Rule 4. Even though a specific Appellate Authority is not provided under Rule 18, Rule 21 provides that every appeal shall be submitted to the authority which made the order appealed against and Rule 22 provides for transmission of appeals by the authority which made the order to the Appellate Authority. Rule 23(1) provides what Appellate Authorities should consider in an appeal against an order of suspension. Thus, it cannot be accepted that for lack of specific provision in Rule 18, the applicant was unable to file an appeal.

9. The other ground that because of directions from the State Government, the appeal would have been a mere formality is difficult to sustain. It cannot be presumed that the Appellate Authority would not apply his mind independently to the facts of the case. Thus, I do not find that the applicant has exhausted remedies available to her before coming to this Tribunal.”

(Quoted from page 4 from the copies of order in O.A.No.224/2007).

4. S.A. Khan. Vs. State of Haryana  
Writ Petition (Civil) 923 of 1991 dated 18/12/1992 reported in 1992(12) CPSC867.



Ratio :- Order of suspension need not be revoked if it is likely to prejudice the D.E. or would be detrimentally treated.

5. Divisional Manager, Plantation Division, Andaman and Nicobar Islands Vs. Munnu Barrick  
Dated 17/12/2004 reported in 2004 (12)CPSC1218.

Ratio :- This judgment is on fairness of D.E.. The observance of principles of natural justice etc. and does not served as the direct president on the aspect of suspension.

6. Shri Lalitkumar Gulabrao Chawardol & Ors. Vs. The State of Maharashtra  
Original Applications No.1153 and 1154 of 2010 decided on 08.04.2011  
(Mumbai) by this Tribunal.

Ratio :-

“11. Also, it is true that the order is passed “By and in the name of Governor of Maharashtra”. However, that is a format which is used in all Government orders, as per the Rules of Business, and it does not make it an order ‘by’ the Governor as envisaged in Rule 16(1) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. If the contention of the applicants is accepted, then the provisions regarding appeal to the Governor in Rules 18(1)(i)(b) will be meaningless. As is well settled, during judicial review, the Courts have to harmoniously interpret the various provisions based on the arguments advanced. Viewed from this point, only because an order is made, “By and in name of Governor of Maharashtra” does not make it an order by the Governor as mentioned in Rule 16(1) supra. Thus, I am of the view that the appeal to the Governor lies even against such orders.”

(Quoted from page 8 from the copies  
of order in O.A.No.1153 & 1154/2010).

18. Questions/issues which fall for consideration while deciding this O.A. are as follows:-

- (1) Whether present O.A. be entertained in view of Rule 17 of M.C.S. (D & A) Rules 1979, due to availability of alternate remedy of appeal.
- (2) Whether the power to order of suspension is exercised by the Respondent in a manner which is illegal or otherwise it is vitiated due to arbitrariness or due to breach of any binding precedent?
- (3) Whether the action of suspension impugned in actuated with malafides?

**DISCUSSION ON ISSUE NO.1 :-**

19. Question/issue No.1 shall be dealt with first as follows:-
- (a) Remedy of appeal exists under Rule 17 of M.C.S. (D & A) Rules, 1979 is an admitted position.
  - (b) Remedy of appeal is sought to be dispensed with below mentioned grounds :-
    - (1) Impugned order is issued under the order of Hon'ble Minister who took decision to suspend in the background that suspension was not proposed/recommended. Therefore, appeal could not be an effective remedy.
    - (2) Remedy before this Tribunal is not barred due to existence of appellate remedy under the Rules, particularly if Applicant is able to show that the action of the Government was taken in high handed manner and is not stainable.
    - (3) The Applicant claims that he has demonstrated that the action is based on suspension, without any evidence in hand, is based on solitary instance of treating one patient, without holding any preliminary enquiry.
    - (4) The mis-conduct alleged is not serious, is not likely to lead to major penalty. No prejudice was caused to the State, as entire action was motivated and is not sustainable.
    - (5) O.A. is practically heard on merits and 'of late', i.e. at a later stage Applicant ought not be shunted on account of alternate remedy.
    - (6) Therefore, alternate remedy deserves to be dispensed with.
20. Learned P.O. has opposed the dispensation of alternate remedy, urging that :-
- (a) Considering actual time spent due to procedural stages it would not be proper to urge that "of late, after entering the hearing an merits" the objection of alternate remedy ought not be entertained.
  - (b) The objection as regards alternate remedy pursued from the beginning persistently and it was never given up.
  - (c) While the Government persists with objection on the ground of alternate remedy could not have refused to produce the papers and refuse to reply the O.A..
  - (d) Filing reply to O.A. on merit and does not amount to foregoing objection as to alternate remedy.



21. This Tribunal has perused the record and had a second look on the progress of this case. Record shows that the proceedings in the O.A. have advanced in the following manner :-

- 08.06.2015 : O.A. was filed.
- 09.06.2015 : Hon'ble Member(J) heard it and granted time to file Reply.
- 23.06.2015 : Respondent-Government was directed to produce the record.
- 30.06.2015 : Learned P.O. had filed reply and brought the record. Thereafter at the request of applicant, the hearing was adjourned.
- 08.07.2015 : Applicant filed rejoinder and at learned P.O.'s request hearing was adjourned for enabling learned P.O. to consider the rejoinder.
- 15.07.2015 & 16.07.2015 : Hearing could not take place, mostly due to paucity of time.
- 17.07.2015 : Applicant prayed for leave to amend the O.A. which was granted.
- 27.07.2015 : Learned P.O. prayed for time to reply amended O.A..
- 07.08.2015 : Learned P.O. filed common affidavit to amend the O.A. and a sur-rejoinder.
- 11.08.2015, 12.08.2015 & : O.A. was heard, but remained.
- 14.08.2015 : Applicant gave oral proposal that if Government agrees to drop its plan for disciplinary proceedings, applicant would opt to apply for voluntary retirement, and the case was adjourned for the response of the Government.
- 20.08.2015 : Government expressed inability to act on oral proposal. Tribunal recorded that oral statement which was recorded by this Tribunal be considered by Government.
- 26.08.2015 : Learned P.O. reported that the Government has declined the offer of the applicant.  
Hearing was concluded. Parties agreed to furnish citations along with index. Case was closed for order.
- 28.09.2015 : It was listed for rehearing and was again closed for order.

22. Perusal of foregoing narration of adjournments, the reasons and various steps which were taken by the parties due to which the hearing of the case was postponed becomes evident. In this premises, it would be unsafe to argue or hold that the Tribunal has entered into the enquiry or trail on merits from the beginning. It would also be unsafe to urge that the State has acquiesced with objection of alternate remedy, and that 'of late' or belatedly the objection of alternate remedy is being agitated to prevent further hearing or scrutiny of the case by this Tribunal.

23. This Tribunal has first to discuss the aspect of alternate remedy.

24. It is an admitted position that alternate remedy of appeal to Governor under Rule 17 of M.C.S. (D & A) Rules is available. Applicant's prayer is for dispensation. Law as regards existence of alternate remedy and reasons and circumstances when the availment of alternate remedy may or can be dispensed with is well settled. Those principles may be recalled for quick reference as follows :-

- (a) Blatant violation of principles of natural justice must be apparent writ large.
- (b) Impugned action is vitiated due to obvious malafides.
- (c) Impugned action is so grossly arbitrary violative of law, lack of fairness, and action so shocking that sending a party to alternate remedy may amount to convincing at the violation of arbitrariness.
- (d) Impugned action is vitiated due to total want of power that relegation of a party to alternate remedy will either be an exercise in futility, and directing a party to appellate forum would amount to sending the party from one butcher to another.
- (e) Facts even considering that the imputations if misconduct even if admitted, do not constitute a misconduct which could attract major penalty. Hence on this sole ground if the suspension order shown on its face grossly in excess of authority available in law, and hence being abuse of power, alternate remedy needs to be dispensed with.



25. In the background of settled position of law, this Tribunal has to examine the facts with reference to parameters as to dispensation of alternate remedy, and find out as to whether alternate remedy be dispensed with.

26. **VIOLATION OF PRINCIPLES OF NATURAL JUSTICE :-**

The ground that the principles of natural justice are not followed and that on this sole ground the alternate remedy ought to be dispensed with, cannot and is not applicable in present case.

The rule of hearing prior to taking of action is not attracted while in the process of ordering suspension. Hearing before ordering suspension is not prescribed or provided by any statutory rule or any precedent. Therefore on the ground of non-observance of principles of natural justice, dispensation of alternate remedy cannot be done.

27. **MALAFIDES**

Next point on which alternate remedy is sought to be dispensed with is that the action is propelled due to malafides. The allegations of malafides are made against Respondent No.1. Whenever pure legal malice is pleaded, arraying any officer personally would not be required. In present case, allegations which are suggested are factual. The incumbent holding said post is not arrayed as respondent in individual capacity. Therefore, so long the incumbent against whom malafides are pleaded is not arrayed as party, this aspect cannot be considered or dealt with. Moreover, any allegations of malafides are not pleaded against the Hon'ble Minister who has endorsed in favour of suspension, is not arrayed as respondent.

Therefore, the ground of malafides does not carry any weightage in favour of applicant for the purpose of dispensation of alternate remedy.



28. **ARBITRARYNESS : LACK OF FAIRNESS, ACTION BEING SHOCKING ETC.**

Second point on which the action complained is criticised by the applicant is on the ground that impugned action is arbitrary and wholly unjust and on this ground alternate remedy is sought to be dispensed. The impugned action being in violation of statutory Law is not plea of Applicant. Moreover arbitrariness can be tested only after reference to and upon discussion of facts. Therefore, barely on this ground too alternate remedy cannot be dispensed with.

29. **TOTAL WANT OF POWER :**

Next point on which the alternate remedy may be dispensed with is total want of power & / or authority with the officer/ authority taking action. On facts and in law this aspect does not apply to present case. Want of authority is not the ground of challenge.

30. **NO CASE EVEN IF IMPUTATIONS BE ADMITTED**

Last point on which alternate remedy may be dispensed with is that even if the facts relied upon by the authority are admitted to be true, even then the misconduct complained against the applicant does not constitute misconduct of grave / major or serious misconduct attracting major penalty. Even for scrutiny of this point, advertence to the facts has to be done, and discussion of facts and analysis thereof is necessary.

31. Therefore, the point as to whether alternate remedy needs to be dispensed would be decided after discussion on point no.2, at appropriate place.

32. **DISCUSSION ON ISSUE NO.2**

This is not a stage in the disciplinary proceedings to examine as to whether the facts which have led to imputation of misconduct are true or otherwise. The order of suspension has to be scrutinised or examined on the point of existence of power & / or authority to suspend. It is well settled position of law that action of suspension cannot



be legally taken, except for misconduct which is likely to lead to punishment of removal/ dismissal in the event the misconduct based on which suspension is ordered, is held proved.

33. In present case, the suspension is ordered on the ground that though the applicant receives non-practicing allowance he undertook private practice and other acts & omissions such as not attending the duty on all days, lacked devotion as full time professor etc.

34. Applicant has disputed allegation that he undertakes Private Practise. He has pleaded that he has treated only one patient and it is a solitary incident. He further pleads/ explains that some money which he has been receiving from Kambala Hill Hospital may be towards services rendered by him in past when in past he was permitted and undertook to do private practice.

35. It is also seen from record that suspension is ordered in contemplation of a departmental enquiry towards misconduct which the respondents denote as acts and omissions which constitute the misconduct of serious nature.

36. At this stage, this Tribunal has to make an estimate as to what is the nature of misconduct, for which respondents allege that disciplinary proceedings are within contemplation, and in case in the D.E. which may be instituted, as to what may / could probably be the punishment.

37. A look at relevant rules i.e. Maharashtra Civil Services (Conduct) Rules, 1979 is necessary. Rules 3(1) of the said rules provides as follows :-

**“3. Duty of Government servant to maintain integrity, devotion to duty, etc.**

(1) Every Government servant shall at all times –

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty ; and

(iii) do nothing which is unbecoming of a Government servant.”

(Quoted Rule 3(1) from M.C.S. (Conduct) Rules, 1979 of the MCSR, page 90.)

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 provides as regards major penalty that three major penalties are prescribed. Those are :-

**“5. Penalties :**

(1) .....

Minor penalties –

(i) .....

to

(vi) .....

Major Penalties –

(vii) compulsory retirement;

(viii) removal from service which shall not be a disqualification for further employment under Government;

(ix) dismissal from service which shall ordinarily be a disqualification for future employment under Government.”

(Quoted Rule 5(vii), (viii) & (ix) from M.C.S. (D & A) Rules, 1979 of the MCSR, page 138 & 139.)

Explanation to Rule 5 provides that in so far as offences / misconducts of taking bribe or favour in discharge of duties is punishable as per clauses (viii) and (ix) of Rule 5 i.e. removal or dismissal with disqualification for employment in Government in future.

38. In so far as misconduct other than bribery / illegal gratification is concerned Rule 5 does not provide as to what shall be the punishment in case of different acts or omissions which constitute misconduct of serious nature which could attract major penalty.

It appears that the rules do not provide as to which acts / omissions constitute misconduct of serious nature.

39. It is necessary to have a relook at the facts of case to find out as to whether, prima facie the charge of doing private practice as main occupation which is suggested has sole ground and foundation.



At this stage, the Government has relied upon the following points :-

- (a) Applicant's admission, though in Single case.
- (b) The information available on website of a general information provider known as "Just Dial". Text of that information reads thus :-  
"also Visits in J.J. Hospital (byculla) Friday : Timings : 9.00 A.M. to 12.00 P.M."  
(Quoted from exhibit R-11, page 132 of the paper book.)
- (c) The information about money received by the applicant from Kambala Hill Hospital evidenced from income tax on source deducted by said Hospital towards the payments made to the applicant.

40. In contrast with the evidence of information on the website of "Just Dial", Applicant has relied on a communication from Just dial informing that it has re-structured the information displayed/ included on its Website. It is evident from page 132, exhibit R-12 of the paper book, that the operator of Website "Just-Dial" has deleted the information about applicant mostly relating to the narration that the applicant works in Kambala Hill Hospital.

41. Perusal of record shows that version of another web-site operator "Sehat.com" has communicated to applicant in response to his email dated 11.06.2015 which is at page 178 of paper book stating as follows :-

*"From : "Sehat Support" <[support@sehat.com](mailto:support@sehat.com)>*

*To : "Narender Bansal" [bansalnodr@yahoo.in](mailto:bansalnodr@yahoo.in)*

*Dear Dr. Narender Bansal,*

*Sehat.com is a platform, we created for undecided users/ patients to research and choose their doctors from all-over India. For that purpose only we are creating individual profiles of the doctors all over India. My team has created your profile based on the information of you website. We do not want to create any inconvenience to our doctors. As per your request we have deleted your profile from our website.*

*Regards*

*Sd/-*

*Sehat Team."*

(Quoted from page 178 of the paper book)

The applicant has not offered any explanation or denial in regard to the version of "Sehat.com", in response to applicant's plea, of denying authenticity of the information displayed by said Sehat.com on its website.

42. Applicant had burden to plead and explain if he has or does not have his own Website and what was / is the information / text displayed on it. It was perfectly and absolutely within the power and control of the applicant to prove the text published / displayed by him on his own web-site. Applicant has failed to discharge this burden and hence has to own the benefit or loss due to said non-disclosure / suppression of information and evidence, which is exclusively within his own knowledge, power and control.

43. Now the question to be discussed is as to whether applicant is under the shadow of cloud of a charge sheet which may be in the offing and disciplinary proceedings/ enquiry which is within contemplation, towards misconduct of grave and serious nature, which if proved, may entail in imposition of major penalty as provided in Rule 5 (vii), (viii) or (ix) of M.C.S. (D & A) Rules.

44. Explanation of Rule 5 of M.C.S. (D & A) Rules, 1979, quoted in the foregoing paragraph No.37 provides an explanatory rider that in relation to conduct falling in the category colloquially identified as "bribery" the penalty has to be of the nature provided in clause (viii) or (ix) of Rule 5. This clause serves guidance for directing a locus of major penalty. Misconduct of bribery is specie of the generic term conduct violating rule of imperative need to "absolute integrity". The misconduct of grave or serious nature has to be read, interpreted or construed by applying the rules of "ejusdem generis".

45. On going by the line of interpretation indicated in the foregoing paragraph, it prima facie appears that the misconduct of undertaking private practice touches, the arena of the 'integrity'. The term 'integrity' does not admit anything less than total purity. Any shortfall or deficiency vitiates it, in its totality. From this point of view, if



the applicant's misconduct falls in the category of major misconduct, the punishment which may entil at the end of the departmental enquiry which is contemplated, could be a major penalty and it could be removal or dismissal without or with the tag of disqualification for further implementation in the Government.

46. In so far as the aspects of action of suspension being arbitrary or shocking is concerned, if the misconduct being of serious and grave nature when it is seen from the admitted facts that :-

- (a) Applicant admits that he undertook private practice i.e. examined at least one patient.
- (b) The foregoing point (a) coupled that the fact that the applicant has been receiving money from Kambala Hill Hospital and no plausible explanation is given.
- (c) It has transpired from page 176 i.e. communication from Website Operator 'sehate.com' that the applicant has his own 'Website' and the information included in the Website of the said Operator 'sehate.com; was drawn from the 'applicant's own Website',
- (d) The version of the said Website "sehat.com" is not clarified / denied / explained by the applicant.

47. It is not evident that the misconduct impleaded against the applicant for which enquiry is in contemplation, cannot be described as an imputation sheerly based on figment of imagination, and it cannot be brushed aside as based on malicious imputations. The material on record prima facie demonstrates that imputations of misconduct relating to integrity are described and are supported by factual material.

Therefore, the applicant has failed to make out case for dispensation of alternate remedy.

48. In the light of foregoing discussion now it is necessary to undertake the answer to the questions which are framed on the points of the questions which are stated paragraph 18 of this order :-

Question 1 : Whether present O.A. be entertained in view of Rule 17 of M.C.S. (D & A) Rules 1979, due to availability of alternate remedy of appeal and whether the action of suspension impugned in actuated with malafides?

Findings : (a) In view of Rule 17 of M.C.S. (D & A) Rules 1979, alternate remedy exists. Applicant has failed to prove malafides and gross of obvious nature. Moreover, view taken by this Tribunal in various judgments referred to in paragraph 17 alternate remedy of appeal exists and is available. It is not shown to be futile therefore applicant is not entitled for dispensation of alternate remedy.

(b) In view that the power exists and is exercised with reference to objective reasons, existence of malafides become insignificant. Moreover personal malafides are not pleaded against the decision making authority. Malafides though pleaded against the Dean, he is not arrayed as the party in individual capacity. The suspension order is not vitiated due to malafides.

Question 2 : Whether the power to order of suspension is exercised by the Respondent in a manner which is illegal or otherwise it is vitiated due to arbitrariness or due to breach of any binding precedent?

Findings : Considering that power to take action exists, it is exercised on the basis of material which is available on record, and adequacy thereof, need not be gone into the action of suspension which is legal and within power. It is not shown to be arbitrary and in breach of precedent.

49. In the result, this Tribunal holds that alternate remedy need not be dispensed with.

On facts, in view that the misconduct imputed against applicant being the suspension is justified and the O.A. does not warrant any indulgence.

50. When the case was re-listed for hearing on 28.09.2015, the learned Advocate for applicant had made a statement of fact as follows :-

Till date, the charge-sheet is not served on the applicant.

51. Learned C.P.O. Shri N.K. Rajpurohit appearing for the Respondents states after verification from the Respondent that the charge-sheet is not served so far.



52. The dates shown at page 14 reveals that from 08.06.2015, the applicant is before this Tribunal. Any order of stay either to the order of suspension or to the enquiry, investigation, etc. is not passed by this Tribunal. The period of 90 days has expired from the date of suspension way-back i.e. in the first week of September, 2015. It is thus obvious that though the decision to suspend the applicant was taken, further action such as framing the charge-sheet, serving it, appointing an enquiry officer, etc. have remained in limbo.

53. It is not the case of the Government that any letter or memorandum is issued by the State to the Applicant, thereby communicating him the facts and circumstances due to which, the action of preparation of charge-sheet could not be completed. Bare submissions that applicant or Kambala Hill Hospital people do not co-operate does not lead to any inference against the applicant or any special latitude in favour of the Respondents.

54. The fact that the suspension is certainly the matter of hardship. In the background that in present case though four months have passed to the suspension, charge-sheet is not served on the applicant and even review as regards continuation or revocation of suspension is not shown to have been taken.

55. Though suspension is not proved to be malafied the conduct of State is not shown or seen to be diligent.

56. It is evident that though power to suspend exists and material to reach a conclusion as to need of suspension exists, it is not adequate to draft the charge sheet since despite lapse of period more than four months has elapsed, charge sheet is issued. Therefore it can be safely said that Government did hurry in issuing the order of suspension and has inordinately withheld serving of charge-sheet.

57. Be it that the Government was satisfied as to need of suspension, but needed time to gather more evidence, it should have waited to collect entire and additional material and evidence required as a basis for a comprehensive charge sheet. The



Government ought to have waited for a month or two, employed appropriate devices, machinery, personnel, or agency for collecting any and entire factual data which according to the Government constitutes serious misconduct. After collecting any or all such evidence, Government should have moved forward for taking recourse of issue of order of suspension. Such a prudent step would have certainly proved the Government's action to be charged with sincerity. This hurry may not be per-se evidence of malafides, however is certainly evidence of the action of the Government lacking required degree of prudence. Prudence is always expected, though there are judicial limitations of enforcing it. It needs to be recorded as a word of caution that; prima facie, appears that the Government machinery down the line, does not seem to be involved and cooperating to implement the decision of the Government to suspend the applicant. Else, delay in action of preparing and serving the charge-sheet would not have occurred.

58. In the result, it is necessary to issue direction to the State to proceed or withdraw the suspension. It is necessary in the interest of justice that if charge-sheet is not served on the Applicant within 15 days from the date of receipt of this order, the suspension order shall stand automatically stayed and applicant be permitted to join duty. The Government would be free to proceed with the enquiry as and when it opts to serve the charge-sheet in due course and at its own leisure.

59. The discussion and observations in this order have become necessary in view of long drawn submissions, however, those be regarded as prima facie impressions for all purposes, and not the comments on merits of claim & contentions of both parties. The observations be contained in foregoing paragraph Nos.37 to 49 be treated as 'prima facie', and not a dictum on the question of fact or law involved in present case.

60. In view above circumstances, parties shall bear their own costs.

Sd/-

(A.H. Joshi, J)

Chairman