

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 702 OF 2015**

**DISTRICT : PUNE**

Shri Vijay Dattatray Sawant, )  
Flat No. D-14, Rohan Garden, )  
Near Eklavya College, Kothrud, )  
Pune 411 038. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through Chief Secretary, )  
Mantralaya, Mumbai 400 032. )
2. Principal Secretary, )  
[Cooperation and Marketing], )  
Cooperation, Marketing and )  
Textile Department, Mantralaya, )  
Mumbai 400 032. )

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3. The Additional Director General of )  
Police, Anti Corruption Bureau, )  
M.S, Mumbai. )
4. Joint Secretary, )  
Home Department, Mantralaya, )  
Mumbai 400 032. )
5. Joint Secretary, )  
Cooperation Department, )  
Mantralaya, Mumbai 400 032. )...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant.  
Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 10.03.2016**

**ORDER**

1. Heard Smt Punam Mahajan, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.
2. This Original Application has been filed by the Applicant, who is seeking quashing of his suspension

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order dated 2.4.2014 and also challenges order dated 10.8.2015 rejecting his representation dated 27.5.2015 for review of his suspension by the Suspension Review Committee.

3. Learned Counsel for the Applicant argued that the Applicant was placed under suspension by order dated 2.4.2014 when a criminal case was registered against him on 28.1.2014 under the Prevention of Corruption Act. Learned Counsel for the Applicant argued that the Anti Corruption Bureau (A.C.B) put pressure on the Government to place Applicant under suspension, by writing on 5.2.2014, 3.3.2014, 18.3.2014 and 4.4.2014. Learned Counsel for the Applicant contended that the Applicant had brought to light massive fraud in the Ganesh Cooperative Bank, Nasik. As a result, false allegations of bribe taking were made against the Applicant by interested persons.. Learned Counsel for the Applicant stated that Shri N.K. Suryavanshi and Shri Shivshanr Vithal Patil, have been reinstated and posted on non-executive posts, though criminal cases are pending against them under the Prevention of Corruption Act. The Applicant is put to discrimination and his representation is rejected.

4. Learned Counsel for the Applicant contended that Government has issued a Resolution (G.R) on 14.10.2011 which provides guidelines regarding

continuation of suspension of the Government employees against whom criminal cases /departmental enquiries (D.E) are pending. Another G.R dated 31.1.2015 has been issued which lay down guidelines to be followed when considering the case of revocation of suspension by the Review Committee constituted under G.R dated 14.10.2011. Sanction to prosecute the Applicant was granted by Government on 31.12.2014. Charge sheet in Special Case No. 12/2015 has been filed against him on 12.2.2015. He is under suspension for more than one year and D.E is started against him. The Applicant fulfils all the conditions as per G.R dated 31.1.2015 and also G.R dated 24.4.2015 issued by Cooperation and Textiles Department. The Applicant had earlier filed O.A no 1066/2014, before this Tribunal. By order dated 5.5.2015, this Tribunal had directed the Respondent no. 2 to place the case of the Applicant before the Review Committee and pass orders, within three months from the date of the order.

5. Learned Counsel for the Applicant argued that a Departmental Enquiry has also been initiated against the Applicant. The Respondent no. 2 had put up a noting on 9.7.2015, stating that the Applicant fulfils conditions laid down in G.Rs dated 31.1.2015 and 24.4.2015, for reinstatement. However, the Review Committee which met on 21.7.2015 and then on 1.8.2015, rejected the representation of the Applicant. Learned Counsel for the



Applicant stated that Review Committee has ostensibly rejected the case of the Applicant for reinstatement, as some sections under IPC are invoked against him as stated in the affidavit in reply of the Respondents. However, in FIR against him, no sections of I.P.C have been invoked. Learned Counsel for the Applicant relied on various judgment of Hon. Supreme Court in **M.S Gill's** case **1978 AIR 851**, that no reasons not mentioned in the order can be cited later to justify the order of the Review Committee.

6. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant has raised the issue that other Government employees, who are facing prosecution have been reinstated and there is discrimination against the Applicant. Learned Presenting Officer argued that facts and circumstances in each case of suspension are different. The other persons mentioned by the Applicant are not before this Tribunal. Unless it can be demonstrated that facts and circumstances are identical, or the other persons were co-delinquents/co-accused, it cannot be said that the Applicant is put to any discrimination. Learned Presenting Officer argued that if the argument of the Applicant is accepted, it would lead to chaotic situation. Even reinstatement of one person facing criminal charges, will result in reinstatement of all persons facing criminal charges. Learned Presenting Officer argued that each case has to

be examined in the light of facts and circumstances of that case and no case of discrimination is made out by the Applicant.

7. Learned Presenting Officer stated that there was no pressure by A.C.B on the Government to place the Applicant under suspension. A.C.B is within its powers to make recommendations in this regard, considering the gravity of charges against a Government servant, to the Government. In the present case, it was the decision of the Government to place the Applicant under suspension.

8. Learned Presenting Officer argued that just because sanction for prosecution is granted and charge sheet is filed, it is not mandatory for the Review Committee to reinstate a Government servant. If that was the case, there was no need to have a Review Committee at all. Such a Committee has to exercise powers considering totality of all circumstances. In the present case, the Committee in its meeting held on 1.8.2015 has considered all the facts and circumstances and has decided not to recommend the Applicant's reinstatement.

9. Learned Presenting Officer stated that the charge sheet filed against the Applicant before Special Judge, Nasik, clearly mentions that it is filed under


sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act and under sections 167, 478 and 471 of the Indian Penal Code. Learned Presenting Officer argued that G.R dated 14.10.2011 and other G.Rs have not modified the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Disciplinary Authority has to consider the recommendations of the Review Committee and take its own decision under Rule 4 ibid. Learned Presenting Officer also cited judgment of this Tribunal dated 21.4.2015 in O.A no 668/2014 in support of her arguments.

10. Let us first examine the issue of discrimination. The Applicant has enclosed copies of file notings and order of reinstatement of Shri Jivane Deputy Secretary, Shri Chavan, Section Officer and Shri More, Clerk-Typist in Urban Development Department. It is stated that the conditions mentioned in G.Rs dated 12.2.2013 and 31.1.2015 are fulfilled in their cases, and the Review Committee has recommended their reinstatement and posting in non-executive posts. Similarly Shri Mahesh Narayan Salunke-Patil, Deputy Registrar of Co-operative Societies was reinstated, though he was caught red handed while accepting bribe. Some other cases are mentioned. Rule 4 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 deals with suspension. Rule 4(5) reads:-

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- “5(a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.
- (b) Where a Government servant is suspended or is deemed to be suspension (whether in connection with any disciplinary proceedings or otherwise), and any other disciplinary proceedings is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by it in writing, direct that the Government servant shall continue to be under suspension till the termination of all or any of such proceedings.
- (c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

Provided that where a criminal offence is registered against a Government servant, the





recommendation of the Suspension Review Committee constituted by the Government in this behalf, shall be obtained by the authority which has made or is deemed to have made the suspension order or by any authority to which that authority is subordinate before revoking or modifying the order of suspension of such Government servant.”

From this, it is clear that the Authority which has powers to revoke suspension has to obtain and consider the recommendations of the Review Committee. Such a Review Committee is envisaged under G.R dated 14.10.2011. However, rule does state that the recommendation of the Review Committee are binding on the authority. G.R dated 31.1.2015 deals with the cases where criminal cases under the Prevention of Corruption Act have been filed against Group ‘A’ and Group ‘B’ Government servants. Instead of Chief Secretary, Review Committee is headed by the departmental Secretary  
Para 5 of this G.R reads:-

“ शासन निर्णय, सामान्य प्रशासन विभाग, दिनांक १४/१०/२०११ मधील २(१) अनुसार मुख्य सचिव यांच्या अध्यक्षतेखालील समितीपुढे विचारार्थ सादर करण्यात येणाऱ्या प्रस्तावांसंदर्भात सर्वसाधारणपणे खालीलप्रमाणे निकष विचारात घेण्यात येतात.  
(१) संबंधित अधिकारी यांच्याविरुद्ध सक्षम न्यायालयात अभियोग चालविण्यास सक्षम प्राधिकार्यांनी मंजूरी दिलेली असावी.



(२) संबंधित अधिकारी प्रत्याविरुद्ध विभागीय चौकशी सुरु करण्यात येऊन दोषारोपपत्र बजावण्यात आलेले असावे

(३) संबंधित अधिकारी यांना निलंबन कालावधी १ वर्षांहून अधिक आलेला असावा. वरील निकषांची पूर्तता होत असल्यास अशा प्रकरणांमध्ये सकारात्मक विचार करण्यात येतो.”

it is clear that if the three conditions are fulfilled such cases are considered positively for reinstatement. The claim of the Applicant appears to be that if these conditions are fulfilled, the Review Committee has no choice but to recommend reinstatement of a suspended Government servant. However, such an interpretation is difficult to accept. If that was the case, Rule 4(5) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 could have stated that a suspended Government servant will be reinstated once these three conditions are fulfilled. However, if a Review Committee has to give its recommendations, its hands cannot be tied before hand and it has to have discretion to make recommendations considering all facts and circumstances. Similarly, the Disciplinary Authority (or Authority competent to revoke suspension) has to apply its mind on the recommendations of the Review Committee and take decision. Otherwise, the Review Committee would exercise powers of revocation of suspension, which is not provided in the Rules.

11. The Respondents have explained the material difference in the case of the Applicant and the cases of Shri Suryavanshi and Shri Patil, who were reinstated though criminal cases were pending against them under the Prevention of Corruption Act. It is mentioned that additional sections of I.P.C 167, 468 and 471 have been invoked against the Applicant and his case is materially different from other cases. This is stated in para 28 of the affidavit in reply dated 17.11.2015. In his rejoinder, the Applicant has not denied that charge sheet against him contains charges under the above mentioned sections of the Indian Penal Code. This in my view confirms the contention of learned Presenting Officer, that in suspension cases, no two cases can be identical, unless the persons are co-delinquents or co-accused. In such cases also, there may be material differences. The person whose cases have been cited by the Applicant are not before this Tribunal. Considering all these facts, the claim of the Applicant that he is being discriminated has to be rejected.

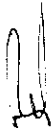
12. The claim of the Applicant that he fulfils the conditions in G.R dated 31.1.2015, and therefore, the Review Committee was bound to recommend his reinstatement has been examined and it cannot be accepted. The Review Committee is not governed by rigid guidelines and has powers to exercise discretion depending upon facts and circumstances of the case.



Otherwise, there is no need to have a Committee at all and the provisions can be incorporated in the rules. The Review Committee in its meeting held on 1.8.2015 has considered facts and circumstances of the case in great detail. The Applicant was heard by the Respondent no. 2. No case has been made out to interfere with the recommendations of the Review Committee. This Tribunal cannot replace its view with that of the Review Committee

13. Learned Counsel for the Applicant argued that charges of I.P.C under section 167, 468 and 471 are not made out against the Applicant as the report submitted by him against the office bearers of Ganesh Cooperative Bank cannot be called a forgery. Learned Counsel for the Applicant stated that the anticipatory bail application of all the accused in Ganesh Cooperative Bank, Nasik were refused by Hon'ble Bombay High Court in Anticipatory Bail Application no 567/2014 in Criminal Application no. 368/2014. In fact, on the basis of the report of the Applicant, the office bearers have been criminally proceeded with. I do not think that Tribunal can have any view in this issue. It has to be decided by the learned Special Judge, Nasik, before whom the charge sheet has been filed against the Applicant.

14. Learned Counsel for the Applicant relied on the following judgments:-



(i) **Fateh Singh Meena Vs. Chairman & M.D, J.V.V.N Ltd and another, Civil Writ Petition no 3247/2013, Rajasthan High Court.** It is observed that:

“The F.I.R in the present matter was registered in the month of April, 2012, however, order of suspension was not passed immediately thereafter. rather it was passed when it was commended by the A.C.B vide its letter dated 21.9.2012 at annexure-7. The direction to place the Petitioner under suspension should not have been given by the A.C.B. Again the A.C.B should understand its limited role of investigation and not to enter into administrative work or to command the respondents /departments concerned, for suspension. The order of suspension was passed on 26.9.2012, i.e. immediately after receipt of letter of the A.C.B dated 21.9.2012. It was at the stage when even the prosecution sanction was not granted and fact finding enquiry was favourable to the petitioner.”

In the present case, in para 18 of the affidavit in reply of the Respondent dated 17.11.2015, the Respondents have stated that:

“18. With reference to Para 6.16, I say the petitioner state that as per letter dated 3.3.14 and 18.3.14 send by Anti Corruption Bureau to

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respondent no. 2. ACB has been pressurizing the Respondent no. 2 to suspend the petitioner, but this is not true because as per letter dated 3.3.14 and 18.3.14 sent by anti corruption bureau to respondent no. 2, ACB has informed to Respondent no. 2 as Competent Authority, about case against petitioner and requested to suspend him, because the petitioner had been trapped red handed in corruption case, which has very serious criminal charges and so offence is registered against the Petitioner. So absolutely there was no undue pressure by ACB and decision taken by Government to suspend petitioner is on total merit and with application of mind. So petitioner has not been given any arbitrary and discriminatory treatment.”

It is clear that the Government was not pressurized in the present case, but decided to place the Applicant under suspension after considering the facts before it. The case is clearly distinguishable.


(ii) **Ajay Kumar Choudhary Vs. Union of India & Another Civil Appeal no 1912 of 2015. S.C.** It is held by Hon. Supreme Court that:-

“We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of

charges/charge-sheet is not served on delinquent officer/employees, if the Memorandum of charges/Charge sheet is served, a reasons order must be passed for extension of suspension.”

In the present case, charge sheet in the criminal case against the Applicant has been filed. In addition, Memorandum of Charges has been served upon him in the Departmental Enquiry. His suspension has been extended by rejecting his request for reinstatement by impugned order dated 10.8.2015, based on the recommendations of the Review Committee, which has examined his case in great detail. The case is clearly distinguishable.

(iii) **M.S Gill Vs. Chief Election Commissioner, New Delhi, 1978 AIR 851.** Learned Counsel for the Applicant argued that the decision of the Review Committee not to reinstate the Applicant, did not disclose that the Committee has distinguished his case as charges under various sections of I.P.C were levelled against him, in addition to the charges under Prevention of Corruption Act. The claim of the Government that the Applicant's case is different from other employees, who were reinstated pending criminal cases under Prevention of Corruption Act cannot be accepted. It is seen that Review Committee has given detailed reasoning for its recommendations, which have been accepted by the



Government. It is a fact that various charges under I.P.C are invoked against the Applicant. His case is definitely different from other cases. The judgment is not applicable in the present case as the decision of the Review Committee as it is, cannot be faulted.

(iv) **Shailendra Vasant Panpatil Vs. State of Maharashtra & others, Writ Petition no. 5498 of 2012**, Bombay High Court. In this case, Hon'ble High Court has observed that:-

“That apart, this Court is anxious, to find that the petitioner is being paid 75 per cent of his salary as subsistence allowance, which is nothing but payment from the public exchequer, without getting any work done from him. For the last five years, he is being paid 75 per cent of his salary sitting at home. The question is about wasteful expenditure of public money for the last five years.”

The Hon'ble High Court directed that the Review Committee to consider all the relevant aspects in proper perspective. In that case, the suspended employee was under suspension for 5 years. The incident in respect of which offence was registered was prior to his employment. All these facts were not considered by the Committee in proper perspective. Facts are entirely





different in the present case, and the case is distinguishable.

(v) Supreme Court judgment in **Kalabharti Advertising Vs. Hemand Vimalnath Narichania & others arising out of SLP no 25043-25045 of 2008.**

Learned Counsel for the Applicant argued that passing an order for an unauthorized purpose constitute malice in law. Where malice is attributed to State, it can never be case of personal ill-will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for "purposes foreign to those for which it is in law intended."

In the present case, I am unable to hold that either the order of suspension dated 2.4.2014 or the impugned order dated 10.8.2015 has been passed for any purpose which is foreign to the law. Both the orders have been passed in exercise of powers under the rules (order dated 2.4.2014) and as per provisions of relevant G.Rs and the relevant rules (order dated 10.8.2015). I do not think that it is a case of legal malice.

(vi) **Judgment of Nagpur Bench of this Tribunal dated 18.11.2015 in O.A no 424/2015.** This judgment is based on Ajay Kumar Choudhary's case (supra)

judgment of Hon'ble Supreme Court, which has already been discussed above.

15. The Applicant has not been able to make out a case for judicial intervention in the matter of his suspension. Having regard to the facts and circumstances of the case, this Original Application is dismissed with no order as to costs. This order will not come in the way of the Applicant to seek review again for his reinstatement.

Sd/-  
**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**  
**Date : 10.03.2016**  
**Dictation taken by : A.K. Nair.**