

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO.763/2015.

Sunil Nilkanth Bandekar,
Aged about 38 years,
Occ : Service, (presently under suspension),
R/o Plot No.36,
Bharat Mata Nagar, Hudkeshwar Naka,
Nagpur.

Applicant.

Versus

- 1) The State of Maharashtra
through its Secretary,
Department of Revenue & Forests,
Mantralaya, Mumbai-32.
- 2) The Principal Chief Conservator of Forests and
Director General, Social Forestry Division (M.S.),
Central Building, Pune-1.
- 3) The Chief Conservator of Forests and
Deputy Director General, Social Forestry Circle,
Advocate Padhye's Building,
Civil Lines, Nagpur.
- 4) The Deputy Director of Social Forestry,
Nagpur Division, New Administrative Bldg.No.2,
Wing-B, 7th floor, Near Zilla Parishad,
Civil Lines, Nagpur.
- 5) The Divisional Commissioner,
Nagpur Division, Old Secretariat Building,
Civil Lines, Nagpur.

Respondents

Shri D.T. Shinde, Advocate for the applicant.

Shri D.M. Kakani, special counsel for the respondent Nos. 1 to 4.

Shri A.P. Sadavarte, P.O. for respondent No.5.

Coram:- B. Majumdar, Vice-Chairman
Dated:- 8th June 2016.

Order

The applicant, a Forester in the Social Forestry Department was placed under suspension under Rule 4 (1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 alongwith others vide order dated 25.11.2010 issued by the Deputy Director of Social Forestry, Nagpur (R.4). The applicant has challenged this order in the O.A. The reliefs sought by him are as follow:

- (1) Issue order / direction to quash and set aside suspension order dated 25.11.2010 thereby directing the respondents to reinstate the applicant on his post of clerk immediately in the department alongwith all consequential and financial benefits arising therefrom
- (2) Quash and set aside the impugned order dated 23.9.2015 with regard to non payment of annual increments during the suspension period of the applicant and further be pleased to direct the respondents to release and pay all annual increments of the applicant during the suspension period w.e.f. 25.11.2010 and onwards.
- (3) Issue order / direction in favour of the applicant to pay an interest @ 18% p.a. on the delayed payment of arrears amount of the enhanced

subsistence allowance @ 75% as per order dated 6.6.2015 issued by respondent No.4 for the period of 3 years, 4 months and 13 days.”

2. Following a case of alleged misappropriation, the applicant was placed under suspension on 25.11.2010 by respondent No.4. The applicant has challenged this order in the O.A. On 14.5.2011, an F.I.R. U/s 409, 420, 468 and 471 r/w section 34 of I.P.C. was registered against the applicant and he was placed under arrest on 27.2.2012. On 17.9.2012, a chargesheet under rule 8 of Discipline and Appeal Rules was served on him by the Divisional Commissioner, Nagpur (R.5). On 2.6.2015, respondent No.5 took a review of the applicant's suspension and directed that as the applicant was placed under suspension alongwith other senior officers, in terms of para 3 (d) of the G.R. dated 14.10.2011 the concerned Department should consider the applicant's case alongwith these officers. On 6.6.2015, the Deputy Director of Social Forestry, Nagpur (R.4) issued an order under rule 68 (1) (a) of the M.C.S. (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981, vide which the applicant was granted 75% subsistence allowance w.e.f 25.2.2011. The applicant represented for grant of increments in pay during the period of suspension. On 23.9.2015, respondent No.4 informed him that as per the provisions of Rule 36 of M.C.S. (Pay)

Rules, 1981, he was not entitled to increments in pay during the period of suspension. The applicant has also challenged this communication in the present O.A.

3. The applicant submits that he has been kept under suspension for a period of over five years. Although an F.I.R. has been registered, no criminal case has been filed against him in the court. He has been served with a chargesheet under Rule 8, but no further departmental proceedings have taken place. The Tribunal on 25.8.2015 had disposed of the O.A. No.264/2015 filed by him with directions that his suspension should be reviewed in the forthcoming meeting of the Review Committee. However, no such review has actually been conducted so far. Respondent No.5 in his review meeting held on 26.2.2015 had merely directed the department to take action as per para 3 (d) of the G.R. dated 14.10.2011 and no further action in this regard was taken by the respondents. He further submits that under Rule 36 of the Pay Rules, an increment can be withheld only by way of a punishment. Since no punishment has been inflicted on him, the respondents could not have withheld his increments.

4. Respondent No.5, Divisional Commissioner, Nagpur in reply to the O.A. submits as follows:

Para 7. It is further submitted that as per the G.R. dated 14.10.2011 in case of employees of Class-III and IV have been suspended due to lodging of various offences against them, the Government has formed a Committee for their reinstatement under the chairmanship of Divisional Commissioner and the reinstatement proposals are presented before such committee for consideration. That accordingly in case of the present applicant, the proposal was put forth before the Review Committee in the meeting held on 2nd June 2015 and it has been decided as per clause 3 (d) of the G.R. dated 14.10.2011. Clause 3 (d) briefly speaks that if the officers and other employees of the same department are involved in the same matter then the appropriate review committee would be the committee who can take the decision for the senior officers and matter would be referred to that review committee so that it would be beneficial to take equal decision for all. The copy of the G.R. dated 14.10.2011 is hereby annexed and marked as Annexure R.3.

Para 8. In the present case, as there are several other senior officers involved in the above said misappropriation alongwith employees of class-III and IV who have been suspended due to lodging of various offences against them, the Govt. is the appropriate to take the decision as per clause 3 (d) of the G.R. dated 14.10.2011. That accordingly a reinstatement proposal of the officers and employees has been sent to the Govt. of Maharashtra which is still under consideration. It is not disputed that

the answering respondent has held a review committee meeting on 22.10.2015, but as the matter of the present applicant has already been taken care in the review committee held on 2.6.2015 and has already been sent to the Govt. of Maharashtra which is under consideration at their level, therefore, there is no requirement to reconsider the present applicant in the review committee meeting held on 20.10.2015. It is further submitted that the proposal of the present applicant is pending before the Govt. of Maharashtra alongwith the officers involved in the same matter."

5. No reply has been filed by any of the remaining respondents.

6. Shri D.T. Shinde, learned counsel for the applicant as also Shri D.M. Kakani, learned special counsel for respondent Nos. 1 to 4 reiterated the submissions of the respective sides.

7. I find that the applicant was placed under suspension in November 201⁰~~1~~, i.e., more than five years back. No criminal case has been filed in the court against him. Though he was served with the chargesheet under Rule 8 of the Discipline and Appeal Rules on 17.9.2012, no further progress in conducting a departmental enquiry has taken place since then.

8. In his order dated 2.6.2015, respondent No.5 has stated that the applicant's case of review should be considered alongwith that of similar officers who were also placed under suspension alongwith the applicant vide clause 3 (d) of the G.R. dated 14.10.2011. The said clause states as follows:

“ड . (i) एकाच प्रकरणात एकाच विभागातील एकापेक्षा अधिक अधिकारी व कर्मचारी गुंतलेले असून ते निलंबित असतील तर अशा प्रकरणात त्या सर्व अपचारयापैकी वरिष्ठतम अधिकारयांच्या निलंबनाचा आढावा घेण्यास सक्षम असलेल्या समिती समोर त्या प्रकरणातील सर्वच अधिकारी / कर्मचारी एकत्रीतपणे मांडण्यास यावा जेणेकरुन एकाच प्रकरणातील सर्वच अधिकारी / कर्मचारी यांच्या पुनःस्थापनेबाबत समान निर्णय घेणे निलंबन आढावा समितीस शक्य होईल .

(ii) एकाच प्रकरणात एकापेक्षा अधिक विभागातील अधिकारी व कर्मचारी गुंतलेले असून ते निलंबित असतील तर अशा प्रकरणात त्या सर्व अपचारयापैकी वरिष्ठतम अधिकारयांच्या निलंबनाचा आढावा घेण्यास सक्षम असलेल्या समिती समोर त्या प्रकरणातील सर्वच अधिकारी / कर्मचारी यांचा प्रस्ताव एकत्रीतपणे वरिष्ठतम अधिकारयांच्या निलंबनाचा आढावा घेण्यास सक्षम असलेल्या समिती समोर सादर करण्यात यावा जेणेकरुन एकाच प्रकरणातील सर्वच अधिकारी / कर्मचारी यांच्या पुनःस्थापनेबाबत समान निर्णय घेणे निलंबन आढावा समितीस शक्य होईल . ”

9. Respondent No.5 in his affidavit in reply has also stated that the applicant's case for reinstatement has been referred to the Government. However from the record, it appears that no action has been taken place by the Government with regard to the applicant's case.

10. Thus the factual situation is that the applicant has been placed under suspension for more than five years, no criminal

case has been filed in the court against him and there has been no further progress with regard to the departmental enquiry initiated against him in 2012. His case of suspension has also not been reviewed in terms of the G.R. dated 14.10.2011.

11. In **Ajay Kumar Choudhari V/s Union of India (2015 ALL SCR 1069)**, Hon'ble the Supreme Court had held that, if no chargesheet is served, the delinquent officer after he is placed under suspension, period of suspension should not extend beyond three months. If a memorandum of charges / chargesheet is served, reasoned order must be passed for extension of suspension. Their Lordships have further held as follows:

“As in the case in hand, the Government is free to transfer the concerned person to any department in any of its office within or outside the State so as to sever any local or personal contact and that he may have and he may misuse for obstructing investigation against him. The Government may also prohibit him from contacting any person for handling records and documents till the stage of his having to prepare his defence. We think this will obviously safeguard to universally recognized principle of human dignity and

right to speedy trial and shall also preserve interest of the Government in prosecution....”

In para 7 (a) of the G.R. dated .10.2011 containing guidelines for review of all cases of suspension, it is specified that if suspension is for initiating the departmental enquiry under Rule 8, the competent authority should review the cases in three months from the date of suspension. If on review a decision should be taken about reinstating the employee on a case-by-case basis. If the departmental enquiry is not completed within six months, the delinquent, in order to avoid interference with the departmental enquiry, should be posted to a non functional post on reinstatement. A decision in such a review should be made on merits of the case as per the provisions of Rule 4 (5) & (6) of the Discipline and Appeal Rules.

12. In the light of the above, I find that the respondents have no justification in keeping the applicant under suspension indefinitely.


13. With regard to the applicant's prayer for grant of increments in pay during the period of suspension, I find no merit in it as he was not entitled to pay and allowances during this period and only subsistence allowance was payable to him. Hence, Rule 38 (1) is required to be read accordingly. The case for grant of increments in

pay will arise only after the departmental enquiry against the applicant is concluded and the respondents have taken a decision with regard to treating the period of suspension.

14. In the light of my above observations, I dispose of the present O.A. in terms of these directions:

- (a) The respondents are directed to reinstate the applicant forthwith.
- (b) They are at liberty to post him on reinstatement at a place from where he will not be in a position to interfere or meddle with the ongoing enquiry.
- (c) The respondents will take a decision on the representation of the applicant for grant of interest on the delayed release of enhanced subsistence allowance.
- (e) There shall be no order as to costs.

True Copy


Assistant Registrar
Maharashtra Administrative Tribunal
Nagpur
15/6/2016