

O.A. No.788 of 2015 –**Coram :- Hon'ble Shri S.S. Hingne,
Member (J).****Dated :- 22-09-2016.**

ORDER -

The applicant the District Special Auditor (Group-A) has challenged the order dated 10-11-2015 (A-1,P-19) by which he is placed under suspension consequent to the registration of the offence under section 354 (a) & (d) of IPC against him.

2. Heard Mr. S.P. Palshikar, Id. counsel for the applicant and Mr. M.I. Khan, Id. P.O. for the respondents. The O.A. is heard finally at the admission stage with consent of Id. counsel for parties.

3. The applicant on 17-10-2015 made some telephonic talk with the subordinate officer Mrs. Archana Malve. According to her, applicant frequently called her on phone and used the obscene language. He also tried to come in physical contact. In the telephonic talk he used the indecent language. Therefore, she lodged the report, on the basis of which the PSO, Yavatmal registered offence under section 354 (a) & (d) of IPC against the applicant (A-2,P-21). In effect the Government (R/1) passed the impugned order which is under challenge.

4. The applicant denied all the averments and in the alleged telephonic conversation and submitted that with a revengeful attitude he is falsely implicated, because the complainant who is working as Assistant Registrar, Co-operative Societies, Yavatmal was not happy as the staff in that office was apprehending that applicant will not allow to misappropriate the Govt. fund.

5. According to the respondents no other alternative remedies i.e. preferring the appeal under rule 17 of The Maharashtra Civil Services (Conduct) Rules, 1979 and taking recourse to place before review committee, are not availed. As the offence is registered against the applicant, the order of suspension is issued with a view to avoid interference by the applicant in the matter.

6. The learned counsel for the applicant strenuously submitted that the applicant was not even arrested, the offence is not of serious nature and the charge sheet, is filed in court and more than 10 months period is lapsed and no departmental inquiry is initiated and as such there is no point to continue the applicant under suspension.

7. As against this the learned P.O. submitted that the applicant has not taken the recourse of alternative remedies. However the learned counsel for the applicant placed the reliance on

a case of **State of Maharashtra Vs. Dr. Subhash D. Mane 2015 (4) Mh.L.J., 791** wherein Their Lordships of the Mumbai High Court held that non availing of alternative remedy is not an absolute embargo on powers of the Tribunal and in appropriate cases the application can be entertained. The applicant is under suspension for about 10 months and the O.A. is already filed in December, 2015. As such there is no point to oust the applicant on technical ground.

8. The learned counsel for the applicant also urged that when the inquiry is not initiated and the charge sheet is already filed and 10 months period is lapsed there is no point to continue the applicant under suspension particularly considering the nature of the offence. In support of submission the reliance is placed on a case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr., 2015 (2) SCALE, 432** wherein Their Lordships of the Apex Court of the land held that the period of suspension should not be protracted and should not be extended beyond three months if no charge sheet is served on the delinquent. Reliance is also placed on a case of **Dr. Narender Omprakash Bansal Vs. Additional Chief Secretary, Medical Education & Drugs Department Mumbai & Ors., 2016 (3) Mh.L.J., 490**, wherein Their Lordships of the Mumbai High Court revoked the suspension of Medical Professor. The learned counsel for the applicant also relied on a case of

Dr. Subhash D. Mane Vs. State of Maharashtra decided by the Principal Bench of this Tribunal at Mumbai vide order dated 13-10-2014 in O.A. 834 of 2014, wherein the suspension order came to be quashed.

9. As against this, the learned P.O. relied on a case of **State of Maharashtra Vs. Subhashchandra B. Patankar,2006 (4) Mh.L.J.,751** wherein Their Lordships of the Mumbai High Court held that if the investigation, inquiry or trial involves a serious act of misconduct relating to moral turpitude the suspension is not to be lightly revoked. The learned P.O. further submitted that the cases on which the applicant's counsel relied on are based on the departmental proceedings, whereas the applicant is involved in criminal offence and therefore the observations in **Subhashchandra** case (*cited supra*) are attracted. The offence registered against the applicant is punishable with 5 years imprisonment and fine. No doubt the alleged act of the applicant can fall in the category of misconduct relating to moral turpitude, however the allegations are not so serious or indulgence in such act is not averred. Apart from that the object of the suspension is that the presence of the erring officer should not disturb a trial investigation or process and now the chargesheet is already filed and the D.E. is not initiated. As such there appears to be substance in the submission of the learned counsel for the applicant that there is no

point to continue the applicant under suspension in the light of the observations made in the aforesaid cases.

10. In the light of foregoing reasons, the suspension of the applicant has to be revoked. Consequently, the O.A. is allowed. The respondents to revoke the suspension order of the applicant within week from the date of receipt of this order.

(S.S.Hingne)
Member (J).

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