

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.808 of 2019

DISTRICT : SANGALI

Mrs. Vaishali Pravin Wale ,)
Age : 35 years, Occ : Talathi)
R/at. At Post Kasbe Digraj, Tal. Miraj, Dist. Sangali.)...**Applicant**

Versus

1. State of Maharashtra, through the Secretary,)
Revenue & Forest Department, Mantralaya,)
Mumbai 400 032.)
2. The District Collector, Sangli, Sangali-Miraj Road,)
Vijaynagar, Sangali, Maharashtra 416415.)
3. The Sub Divisional Officer, Miraj Sub Division,)
Tal. Miraj, Dist. Sanagli.)...**Respondents**

Shri K. R. Jagdale, Advocate for Applicant.

Ms S. P. Manchekar, Chief Presenting Officer for the Respondents.

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 14.10.2019

JUDGMENT

1. In the present O.A., the Applicant has challenged the suspension order dated 09.07.2019 issued by the Respondent No.3-S.D.O. suspending the Applicant in contemplation of D.E. invoking the Rule 4(1) (a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as MCS (D & A) Rules, 1979)

2. The Applicant was working as Talathi of Village Mhaisal, Tal. Miraj, Dist. Sangali. One Shri Dhanraj Shinde, resident of Village Mhaisal lodged complaint with Collector, Sangali on 18.03.2019 alleging illegal excavation from GAT Nos.1131, 1140, 1638, 1639 & 1640 of Village Mhaisal causing loss of revenue to government exchequer as excavation was without requisite

sanction. In complaint, he further stated that despite various complaints to Circle Officers, Talathi & S.D.O. no steps were taken therefore, he approached Collected, Sangali. In view of this complaint, the Applicant was placed under suspension by order dated 09.07.2019. The Applicant has challenged the suspension on the ground that Respondent No.3, S.D.O. himself is co-delinquent in the same enquiry, and therefore, suspension is unsustainable. She further contends that the period of 90 days is now over but no steps are taken to take review of suspension in terms of various Government Resolutions. She claims to be innocent and prayed to quash the suspension order.

3. Shri K. R. Jagdale, learned Counsel for the Applicant has pointed out that in the same enquiry, the charge sheet has been issued against Respondent No.3 i.e. S.D.O. under Rule 10 of MCS (D & A) Rules, 1979 and he had no authority to suspend the Applicant. He further pointed out that though the period of 90 days is over, Respondents have not taken review of the suspension in terms of G.R. dated 09.07.2019. He, therefore, urged to quash the suspension order.

4. Per contra, Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents submits that O.A. filed on 19.08.2019 is premature as the period of 90 days was not completed on the date of filing of O.A. She, further submits that now the charge sheet is already issued in the matter and Enquiry Officer is also appointed. As regards, revocation of suspension, she submits that review will be undertaken by the Competent Authority in due course.

5. It is rather surprising that the Respondent No.3-S.D.O. who himself is co-delinquent in the matter had issued suspension order of the Applicant in respect of co-delinquent in the same matter. Perusal of charge sheet reveals that the charge sheet has been issued against S.D.O. Shri Vikas Kharat as well as Shri Sharad Patil under Rule 10 of and the charge sheet under Rule 8 of MCS (D & A), Rules 1979 is also issued against Shri Raju Kadam as well Shri

Raju Jadhav, Circle Officers. Later, the charge sheet was issued against the Applicant on 11.09.2019 under Rule 8 of MCS (D & A) Rules, 1979. Enquiry Officer has been also appointed on 05.10.2019.

6. True, the Original Application has been also filed 19.08.2019 without waiting for 90 days period to take review of suspension. However, the period of 90 days is now over. This being the position, the present O.A. deserves to be disposed of with suitable directions.

7. Normally, an adequacy of material before the authority at the time of taking decision in suspension does not fall within the scope and ambit of judicial review as it exclusively falls within the domain of the Government. Therefore, the question as to whether the suspension was justified or not, need not be gone into present matter in fact situation.

8. However, the period of 90 days is now being over, the Respondent No.2 is under obligation to take review of suspension of the Applicant in terms of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** which *inter-alia* provides that suspension should not be exceed 90 days and where charge sheet in D.E. is filed within the period of 90 days, the reasoned order needs to be passed for extension of suspension, if the same is warranted in fact situation. Besides, as per G.R. dated 14.10.2011 as well as G.R. dated 09.07.2019, the Respondent No.2 is under obligation to take periodical review of the suspension. The Government of Maharashtra by recent G.R. dated 09.07.2019 acknowledged the mandate laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra) that suspension beyond 90 days would be impermissible. Suffice to say, in the present case, the charge sheet being already served upon the Applicant, the Respondent No.2 is required to take review of suspension by passing appropriate order.

9. In view of above, the present O.A. deserves to be disposed of by giving suitable directions to the Respondents to take review of the suspension of the Applicant within stipulated period. Charge sheet is issued by the Respondent No.2 i.e. Collector, and therefore, it would be appropriate that exercise of review shall be undertaken by the Collector particularly when Respondent No.3 is also one of the co-delinquent in the charge sheet. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent No.2 –District Collector, Sangali is directed to take review of continuation or revocation of the suspension of the Applicant and shall appropriate order within six weeks from today.
- (C) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (D) If the Applicant felt aggrieved by the decision, she may avail legal remedy, in accordance to law.
- (E) The Respondent No.2 shall ensure completion of D.E. within six months from today in accordance to rules.
- (F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Place : Mumbai
Date : 14.10.2019
Dictation taken by : V.S. Mane
E:\VSO\2019\Order and Judgments\Oct. 19\O.A.808 of 2019 -M(J) suspension.doc