

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.926 OF 2018**

Dr. Sanjeevkumar Manoharrao Jadhav )  
Working as Additional District Health Officer, )  
Zilla Parishad, Pune. )  
Residing at Medical Officer Quarters, )  
Type V Building Campus, Aundh, )  
Pune 411 027. )...**Applicant**

**Versus**

State of Maharashtra, )  
Through Principal Secretary, )  
Public Health Department, )  
Mantralaya, Mumbai. )...**Respondent**

**Shri D.B. Khaire, learned Advocate for the Applicant.**

**Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.**

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

**DATE : 04.01.2019.**

**J U D G M E N T**

1. In the present Original Application, the Applicant has challenged the suspension order dated 26.09.2018 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985, which disclose shocking state of affair of the governance.

2. Shortly stated facts giving rise to this Original Application are as follows :-

Applicant was appointed as Medical Officer in the year 2005 and in due course he was promoted to the post of District Health Officer (Group-A). At the time of impugned transfer order applicant was working as Additional District Health Officer, Zilla Parishad, Pune. By order dated 31.05.2018 he was transferred from Pune to Nagpur. However, he was not relieved by his Parent Department as well as by Zilla Parishad, Pune and therefore he could not join the transferred place at Nagpur within time. Besides he was also holding additional charge of the post of District Reproductive and Child Health Officer. He was relieved by the Director of Health Services, Mumbai, (Parent Department of the Applicant) on 18.09.2018.

3. On the basis of the letter of Director of Health Services referred to above the Chief Executive Officer, Zilla Parishad, Pune also relieved the Applicant on 24.09.2018. As such he was finally relieved from the post he was holding only on 24.09.2018. However, shockingly he came to be suspended by order dated 26.09.2018 under Rule 4(1)(a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 in contemplation of Departmental Enquiry. Though in suspension order no reasons for departmental enquiry is shown, it is admitted position that he came to be suspended for non joining at Nagpur in terms of transfer order dated 31.05.2018.

4. On the above pleadings the applicant contends that the impugned suspension order as ex-facie unsustainable in law and fact. Simultaneously, he has also filed another proceeding i.e. O.A.No.972/2018 challenging his transfer from Pune to Nagpur. Though he came to be suspended in contemplation of departmental enquiry no steps have been taken to initiate departmental enquiry and he is kept under prolonged suspension without any reasons much less valid ground. He therefore prayed to quash and set aside the suspension order.

5. Respondent tried to resist application by filing reply contending that applicant did not join the place of his posting at Nagpur and therefore he came to be suspended in terms of directions issued by the Government vide letter dated 05.09.2018. The Respondent contends that by letter dated 05.09.2018 instructions were given to direct all Medical Officers who were transferred on 31.05.2018 to join the new place of posting on 06.09.2018 else will be suspended and will be liable for departmental enquiry. On this ground Respondents sought to justify the suspension of the applicant.

6. Heard Shri D.B. Khaire, the learned Advocate for the Applicant and Smt. K.S. Gaikwad, the learned Presenting Officer for the Respondent.

7. At the very outset it needs to be stated that following facts are not disputed.

- (a) At the time by impugned suspension order applicant was working as Additional District Health, Zilla Parishad and was holding the charge of District Reproductive and Child Health Officer.
- (b) By transfer order dated 31.05.2018 he was transferred from Pune to Nagpur.
- (c) As the applicant was holding the additional charge due to scarcity of Medical Officers, the Applicant was relieved by the Parent Department only on 18.09.2018.
- (d) As the Applicant was attached to the Chief Executive Officer, Zilla Parishad, Pune he was relieved by the Chief Executive Officer, Zilla Parishad, Pune on 24.09.2018.
- (e) Non-joining of the applicant at Nagpur in terms of transfer order dated 31.05.2018 is only ground of the suspension of the applicant.

8. In the light of aforesaid admitted facts the learned Advocate Shri D.B. Khaire for the Applicant rightly pointed out that the suspension order is ex facie unsustainable rather it shows non application of mind. He has pointed out that the applicant was finally relieved on 24.09.2018 and therefore there was no question of asking him to join on 06.09.2018 in terms of letter dated 05.09.2018 issued by the Government. He has also pointed out that the service record of the applicant is excellent as seen from his achievement and Annual Confidential Reports of the year 2014-15 wherein rating is given outstanding and he is stated as asset to the department.

9. Learned P.O. Smt. K.S. Gaikwad for the Respondents made feeble attempt to justify the suspension order contending that because of failure of the applicant to join at Nagpur he came to be suspended. In fact she was at pain to support the impugned order of suspension.

10. Needless to mention that the object of placing the Government servant under suspension is mainly to ensure free and impartial enquiry about the alleged misconduct under Section 4(1)(a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Government servant can be placed under suspension where the departmental proceeding against him is contemplated. Undoubtedly, the power to institute the proceedings against erring employee on the charge of misconduct lying solely with the employee, but reasons of the charges needs to be borne in mind while issuing the suspension order. As such it is imperative to consider the nature of charges, surrounding circumstances, etc. before passing the suspension order. Where the suspension is arbitrary and unsustainable it is amenable to judicial review. The suspension order should not be issued routinely as it is stigmatic for the employee. The competent authority is under obligation to take into consideration seriousness of the alleged mis-conduct as well as necessity for placing the employee under suspension. This is fairly settled legal position.

11. Now turning to the facts of the present case, sole ground of the suspension is non joining of the applicant at Nagpur in view of the transfer order dated 31.05.2018. However, as stated above undisputedly

applicant was finally relieved on 24.09.2018. It is obvious that suspension order has been issued mechanically on the basis of the letter dated 05.09.2018 issued by the Government whereby it has been instructed that the Medical Officers who are transferred by order dated 31.05.2018 but failed to join by 06.09.2018, will be dealt with departmentally. It is on the basis of this letter dated 05.09.2018 the applicant was placed under suspension without application of mind.

12. The concerned authority did not bother to see that the applicant was in fact relieved on 24.09.2018 and therefore there was no question of his joining on 06.09.2018. It is thus obvious that without examining the file and attending the circumstances the concerned authority has blindly issued suspension order abruptly on 26.09.2018. This rather shows non application of mind and very casual approach of the concerned authority. It is nothing but arbitrary and misuse of powers. In fact it was not the case of warranting the suspension for non joining transfer to place of posting as there was no question of tampering of witnesses in general. Particularly, in the present case, when the applicant was not relieved and was asked to continue his duties on 24.09.2018, the question of any disciplinary action did not survive. In such situation, ex facie impugned order is arbitrary and totally illegal in law and facts and deserves to be quashed.

13. In fact, having noticed that the suspension order is ex facie illegal, this Tribunal in order dated 03.11.2018 observed that in such situation Respondents are expected to take remedial measures by recalling order

of suspension. However, Respondent did not bother to consider the same and on the contrary trying to support the suspension order which cannot be allowed to stand for a minute. This case deserves exemplary costs to be imposed on the part of Respondent as there is not only complete failure to adhere the principles of law, but arbitrary use of power, non application of mind as well as want of due care while discharging public duties and defiance for refusing to take remedial measure are clearly exhibited. Such arbitrary and totally unfounded action rather reflect sorry state of affairs and governance. However, I refrain myself from imposing cost and hope that this would not happen again. The concerned to take note of the same.

14. The necessary corollary of the above discussion leads me to sum up that the impugned order is illegal, arbitrary and unsustainable in law and facts. Hence, it deserves to be quashed and set aside.

#### **O R D E R**

- (a) Original Application is allowed.
- (b) Impugned order dated 26.09.2018 is quashed and set aside.
- (c) Respondent is directed to take steps for reinstatement of applicant within two weeks.
- (d) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**MEMBER(J)**