

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NOS 989, 990 & 1031/2015**

**DISTRICT :**

**1) ORIGINAL APPLICATION NO 989 OF 2015**

(\*) shri. Dnyaneshwar Bhivsan Jawanjal.

Smt Ashwini Ganput Kharde )

Occ : Government service, )

Add : C/o: District Supply Office, )

Collectorate Compound, )

Nasik 422 002. )...**Applicant**

Registrar

18/4/16

Maharashtra Administrative Tribunal  
Mumbai.

**Versus**

1. The State of Maharashtra )

Through the Secretary, )

Food, Civil Supplies and )

Consumer Protection Dept, )

Mantralaya, Mumbai 400 032. )

2. Secretary, )

Revenue & Forest Department,) )

[Revenue], Mantralaya, )

Mumbai 400 032. )...**Respondents**

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**2) ORIGINAL APPLICATION NO 990 OF 2015**

Shri Ravindra Kashinath Sayankar, )  
Occ : Government service, )  
Add : Flat No. 15, )  
Ramtirth Park, Kulkarni Colony, )  
Sharanpur Road, )  
Nasik 422 002. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Food, Civil Supplies and )  
Consumer Protection Dept, )  
Mantralaya, Mumbai 400 032. )  
2. Secretary, )  
Revenue & Forest Department,)  
[Revenue], Mantralaya, )  
Mumbai 400 032. )...**Respondents**

**3) ORIGINAL APPLICATION NO 1031 OF 2015**

Smt Ashwini Ganput Kharde, )  
Occ : Government service, )  
Add : C/o: District Supply Office, )  
Collectorate Compound, )  
Nasik 422 002. )...**Applicant**

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**Versus**

1. The State of Maharashtra )  
Through the Secretary, )  
Food, Civil Supplies and )  
Consumer Protection Dept, )  
Mantralaya, Mumbai 400 032. )
2. Secretary, )  
Revenue & Forest Department,)  
[Revenue], Mantralaya, )  
Mumbai 400 032. )...**Respondents**

Shri C.T Chandratre, learned advocate for the Applicants.

Shri K.B. Bhise, learned Presenting Officer for the Respondents.

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

**DATE : 11.04.2016**

**ORDER**

1. Heard Shri C.T Chandratre, learned advocate for the Applicants and Shri K.B. Bhise, learned Presenting Officer for the Respondents.

2. These Original Applications were heard together and are being disposed of by a common order as

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the subject matter is the same and issues to be decided are similar.

3. The Applicant in O.A no 1031/2015 was working as Awal Karkoon in the office of the District Supply Officer (DSO) Nasik. She was supervised by Assistant Account Officer and Accounts Officer, who were deputed by the Finance Department.

4. The Applicant in O.A no 989/2015 was working as District Supply Officer, Nasik. The Applicant in O.A no 990/2015 is in the rank of Naib Tahsildar, working as Supply Inspecting Officer, holding additional charge of the post of Assistant District Supply Officer, Nasik. All the three Applicants have challenged their suspension by separate orders of the Respondent no. 1 all dated 13.4.2015.

5. Learned Counsel for the Applicant in O.A no 1031/2015 argued that the Applicant was working as Awal Karkoon (Senior Clerk) and was reporting to the Assistant Accounts Officer and Accounts Officer, in the office of D.S.O., Nasik, when she was placed under suspension by the Respondent no. 1. Learned Counsel for the Applicant stated that the appointing authority of the Applicant is Collector, Nasik and the Respondent no. 1 is the head of Food and Civil Supplies Department in the State. Her immediate superiors, viz Smt S.V Bhosale,

Accounts Officer and Shri S.K. Khairnar, Assistant Accounts Officer were placed under suspension by order dated 4.8.2015 by the Finance Department of the State Government. By order dated 28.10.2015, their suspension order were revoked as the Respondent no. 1 informed the Food and Civil Supplies Department that there was no involvement of these persons in the irregularities in Public Distribution System in Nasik. If the immediate superiors of the Applicant have been reinstated, as they were not found involved in the irregularities in Public Distribution System, there is no way, the Applicant can be held responsible for such irregularities. Learned Counsel for the Applicant argued that as per Government order dated 19.5.2015, a Committee headed by Divisional Commissioner, Nasik was appointed to inquire into the misappropriation of food grains in Godown at Surgana, Dist-Nasik. The Committee in its report dated 3.6.2016, had found that the Applicant was not involved in this matter. Learned Counsel for the Applicant argued that there is no justifiable ground to keep the Applicant under suspension, when she is not involved in the misappropriation of food grains from Government Godowns in Nasik district.

6. Learned Presenting Officer argued that there was a scam in the Government Godown at Surgana, District-Nasik and shortage of 43697 bags of wheat,

18286 bags of rice and 58 bags of sugar was noticed. The Applicant was working as Awal Karkoon in the office of the D.S.O, Nasik at the relevant time. An F.I.R has also been filed in this case at Surgana Police Station. To conduct free and fair enquiry, it is necessary to keep the Applicant under suspension. The Applicant has shown total negligence in discharge of her duties.

7. On perusal of the report of the Committee headed by Divisional Commissioner, Nasik, dated 3.6.2015, it is seen that the Committee has found on page 36 of the report that:

“ सुरगाणा धान्याचे अपहारामध्ये सहभाग उपलब्ध केलेल्या कागदपत्रावरून आढळून येत नाही.”

In the charge sheet filed by Sub Divisional Police Officer, Kalwan, in the Court of Judicial Magistrate First Class, Surgana (Dindori) on 12.5.2015, the name of the Applicant is not included. It is seen that in the case of Smt S.V Bhosale, Accounts Officer, identical finding is recorded by the aforesaid Committee on page 31 of the Report. Similarly, in the case of Shri S.K Khairnar, Assistant Accounts Officer, D.S.O, Nasik, no involvement was found by the Committee (p. 34 of the Report).

8. In para 6.5 of the Original Application, the Applicant has stated that:

“Applicant states that on 31.5.2012 she came to be posted as Awal Karkoon, in the office of District Supply Officer, Nasik District, Nasik. As an Awal Karkoon she was entrusted with the work of cash account and Godown accounts under the desk 9(2). Applicant states that here work was supervised and scrutinized by the Accounts Officer and Assistant Accounts Officer. Their immediate superiors are from Finance Department. It is pertinent to submit that the said Accounts Officer and Assistant Accounts Officer were suspended by order dated 4.8.2015 and were immediately reinstated by order dated 28.10.2015 stating that no misconduct on their part and the period of suspension was also treated as duty period.”

9. In para 8 of the affidavit in reply filed by the Respondent no. 1 on 23.2.2016, this is admitted. It is not understood as to why the Applicant has been kept under suspension while her immediate superiors have been reinstated in service. The Committee headed by Divisional Commissioner has given identical finding in the case of the Applicant and Accounts Officer and Assistant Accounts Officer that they were not involved in the misappropriation. The order dated 14.3.2015 therefore cannot be sustained on this ground alone.

10. As regards other Applicants in O.A no 989/2015 and 990/2015, the Committee has recorded the following finding in report dated 3.6.2015, viz: Shri A.K Sayankar, Incharge Assistant District Supply Officer:

“ सुरगाणा धान्याचे अपहारांमध्ये सहभाग उपलब्ध केलेल्या कागदपत्रावरून आढळून येत नाही. तथापि पर्यवेक्षीय हलगर्जीपणा दिसून येतो.”

Identical finding is given in respect of Shri D.B Jawanjil, District Supply Officer in O.A no 989/2015.

11. Learned Counsel for both the Applicants argued that there is no direct involvement of these Applicants in misappropriation. They are charged with supervisory negligence, which is not such a serious charge that will attract major penalty. Their continued suspension is, therefore, unjustified. Criminal case has already been filed against those who are directly involved. The Applicants can be transferred elsewhere to ensure that they have no opportunity to interfere with the witnesses or to tamper with the evidence. Learned Counsel for the Applicants argued that there is no material against the Applicants and they should be reinstated.

12. Learned Presenting Officer (P.O) argued that the Applicants were working as D.S.O and Incharge A.D.S.O and were responsible for maintenance of Public

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Distribution System in Nasik District. There was huge misappropriation of food grains from Surgana Government Godown and the Applicants cannot shirk responsibility by blaming others. The Committee headed by Divisional Commissioner has also found them prima facie guilty of slack supervision. It is, therefore, necessary to enquire into their conduct and to ascertain their role in the whole affair.

13. Learned Counsel for the Applicants had relied on the following judgments:-

(i) State of Orissa Vs. Bimal Kumar Mohanty, AIR 1994 S.C2296. It was held by Hon'ble Supreme Court that:

"It would not be an administrative routine or an automatic order to suspend an employee. It should be on consideration of gravity of the alleged misconduct or nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf.

(ii) State of Maharashtra & others Vs. S.S Sadavare-2001 (3) Mh.L.J 249.

Hon'ble Bombay High Court has held that a Government servant under suspension can file representation for revocation of suspension and order of suspension is subject to judicial review.

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(iii) *Martin Burn Ltd Vs. R.N Banerjee*, AIR 1958 SC 79.  
Hon'ble Supreme Court has held that a prima facie case does mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the case was believed.

(iv) *Tata Chemicals Ltd Vs. Commissioner of Customs (Prevention)* 2015 AIR SCW 3571.

It is held that "reason to believe" suggest that the belief must be that of an honest and reasonable person based upon reasonable ground and it should not be based on mere suspicion, gossip or rumor.

(v) *Capt. M Paul Anthony Vs. Bharat Gold Mines Ltd & Another* 1999 SCC (L & S) 810.

It is held that departmental proceedings should not be unduly delayed.

(vi) Order of this Tribunal dated 1.6.2015 in O.A nos 357 to 363 of 2015.

This Tribunal has held that whether an O.A can be entertained against the order of suspension without appeal being filed against that order will depend on the facts of each case.

From these judgments, it appears that Learned Counsel for the Applicant is trying to putforth the contention that there is no prima facie evidence against

the Applicants and there is no reason to believe that they were guilty of slack supervision. Such a conclusion has to be based on hard facts which can come out in the D.E only. It is also contended that this Tribunal can entertain these Original Applications, even if the Applicants have not appealed against the order of suspension, in view of the judgment of this Tribunal and Hon'ble Bombay High Court in Sadavarte's case (supra). Another argument is that the Applicants were suspended more than a year back, but no D.E have been yet initiated against them. The Applicants, therefore, deserve to be reinstated in service, if necessary by giving them posting elsewhere. The charge of slack supervision does not invite major penalty, so suspension is unjustified.

14. In the present case, it is a fact that huge quantities of food grains were misappropriated from Government Godown at Surgana. It is also a fact that District Supply Officer is responsible for smooth functioning of Public Distribution System in the District. Assistant D.S.O is his immediate subordinate. Maintenance of Public Distribution System will mean that there is no unauthorized diversion of the food grains from any of the Government Godowns. It is true that Committee headed by the Commissioner has not found any direct involvement of the Applicants in misappropriation of food grains. However, there is no doubt that under their watch, food grains were diverted

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unauthorizedly. To claim that this is based on 'reason to believe' or there is no prima facie evidence of wrong doing by them is difficult to accept. The Applicants are required to at least answer the charge that they did not exercise proper supervision

15. Hon'ble High Court has held that a Government servant under suspension has a right to make a representation of his suspension. Para 7A of G.R dated 14.10.2011 provides that those Government servants who have been placed under suspension due to pending or proposed D.E, their case should be reviewed by competent authority after 3 months from the date of suspension. If the D.E is not completed within 6 months their cases may be considered for reinstatement. In the present case, I am not inclined to interfere with the orders of suspension of the Applicants in O.A nos 989/2015 and 990/2015 for the reasons mentioned above. However, the Respondent no. 1 is directed to review their cases in the light of instructions contained in para 7A of G.R dated 14.10.2011, within a period of one month from the date of this order *independently without being influenced by any observations in this order.*

16. The Original Application no 1031/2015 is allowed, to the extent that the Applicant's continued suspension is unjustified. The Respondents are directed to reinstate her within one month from the date of this order.

(\*) correction is carried out as per orders dt - 13/11/2016

18/11/16  
Registrar

Maharashtra Administrative Tribunal  
Mumbai.

The O.A nos 989/2015 & 990/2015 are disposed of with the directions to the Respondent no. 1 as mentioned in para 15 above.

There will be no order in these Original Applications as regards costs.

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

**Place : Mumbai**  
**Date : 11.04.2016**  
**Dictation taken by : A.K. Nair.**