

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.135/2023

DISTRICT:- BEED

Sheshrao s/o. Baburao Satpute,
Age : 50 years, Occu. : Service as Forester,
Beed, Tq. & Dist. Beed.
R/o. Dongarkinhi, Tq. & Dist. Beed. **...APPLICANT**

V E R S U S

- 1) The State of Maharashtra,
Through the Principal Secretary,
Forest Department,
Mantralaya, Mumbai-400 032.
- 2) The Chief Conservator of Forest (Regional),
Aurangabad Region, Aurangabad.
- 3) The Divisional Forest Officer,
Beed, Dist. Beed. **...RESPONDENTS**

APPEARANCE :Shri Mahendra Gandle, Counsel for
Applicant.

:Shri N.U.Yadav, Presenting Officer for
the respondents

CORAM : JUSTICE P.R.BORA, VICE CHAIRMAN

Decided on : 02-05-2023.

O R D E R :

1. Heard Shri Mahendra Gandle, learned Counsel for
the applicant and Shri N.U.Yadav, learned Presenting
Officer for the respondent authorities.

2. The applicant has preferred the present O.A. seeking quashment of the order dated 10-01-2023 issued by respondent no.3 whereby the applicant has been placed under suspension. Learned Counsel for the applicant invited my attention to the order of suspension which is at paper book page 11 of the O.A. and submitted that the impugned order carries some wrong averments which are factually incorrect. Learned Counsel submitted that in the impugned order in paragraph 1, it has been mentioned that the applicant was arrested in Crime No.287/2022 registered at Police Station, Beed for the offence punishable under section 7 of the Prevention of Corruption Act. Learned Counsel submitted that the applicant was never arrested in the aforesaid crime as has been mentioned in the impugned order. Learned Counsel submitted that the applicant had secured anticipatory bail from the Additional Sessions Court at Beed in Criminal Bail Application No.07/2023 and because of the said order in his favour, the applicant was not arrested in the aforesaid crime. In the circumstances, according the learned Counsel for the applicant the very basis on which the order of suspension has been passed is non-existent

and as such the order deserves to be set aside on that count alone.

3. The submissions so made on behalf of the applicants are resisted by the respondents. A joint affidavit in reply has been filed on behalf of the respondent nos.1 to 3. In the affidavit in reply, the respondents have supported the impugned order. Respondents have referred to G.R. dated 12-02-2013 and more particularly clause 9(c) thereof. According to the respondents, the aforesaid clause in the G.R. authorizes the respondents to place the applicant under suspension. Learned P.O. reiterated the contentions raised in the affidavit in reply in his arguments and also invited my attention to the concerned clause in the G.R. dated 12-02-2013. Learned P.O. has also referred to Rule 4(1) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and more particularly clause (c) thereof and has prayed for rejecting the application.

4. It is not in dispute that the offence under the Prevention of Corruption Act has been registered against the applicant at Police Station, Beed vide Crime No.287/2022 for the offence punishable under section 7 of the Prevention of Corruption Act. It appears that the

applicant had applied for the anticipatory bail by filing Criminal Bail Application No.07/2023 apprehending his arrest in the said crime i.e. C.R.No.287/2022 and the learned Additional Sessions Judge, Beed was pleased to grant pre-arrest bail in favour of the applicant vide order dated 13-01-2023.

5. After having considered the submissions advanced by the learned Counsel for the applicant and the learned P.O., the only question which falls for my consideration is whether the respondents were having any authority to place the applicant under suspension on registration of crime against him at Police Station, Beed for the offence punishable under section 7 of the Prevention of Corruption Act. In the order of suspension itself the reference is given of Rule 4(1) of the MCS (D & A) Rules, 1979, I deem it appropriate to reproduce the said Rule which reads thus:

“4. Suspension.-(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in that behalf by the Governor by general or special order may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending, or

(b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or

(c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.”

6. As I noted hereinabove, the fact of registration of crime at Police Station, Beed under C.R.No.287/2022 has not been denied or disputed by the applicant. It is only his contention that he was not arrested in the said crime and the impugned order of suspension has been passed assuming that he was arrested in the said crime. Having considered the provision under Rule 4(1)(c), arrest of the Government servant is not the criteria or pre-condition for placing the applicant under suspension. What is provided by Rule 4(1)(c) is the power and authority to the Government to place the Government servant under suspension in case any case is registered against such Government employee in respect of any criminal offence and which is under investigation, enquiry or trial.

7. In the instant matter, the offence was registered against the applicant vide C.R.No.287/2022 at Police

Station, Beed for the offence punishable under section 7 of the Prevention of Corruption Act. In the circumstances, prima facie, it does not appear that the respondents were not having any authority to place the applicant under suspension. The provision of deemed suspension is also there in sub rule 2 of Rule 4 of the MCS (D & A) Rules, 1979 which provides that the Government servant shall be deemed to be under suspension from the date of his arrest if he remained in police custody for more than 48 hours. Though in the impugned order the averment has been taken that the applicant was arrested in the aforesaid crime that the averment itself would not negate the impugned order when Rule 4(1)(c) empowers the Government to place the employee under suspension in case of registration of any crime against the said applicant. In the circumstances, merely because some wrong averments are taken in the order of suspension and the further fact that pre-arrest bail was granted in favour of the applicant, the order cannot be quashed or set aside on the said ground.

8. I reiterate that the applicant has not denied the fact of registration of crime vide C.R.No.287/2022 against him

in the Police Station, Beed. In the circumstances, I see no substance in the submission made on behalf of the applicant seeking quashment on the aforesaid ground. Application, therefore, deserves to be dismissed and is accordingly dismissed.

9. It is, however, clarified that the respondents shall be careful in taking review of the order of suspension passed against the applicant in view of the judgment delivered by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary V/S. Union of India (UOI) and Ors., (2015) 7 SCC 291 : AIR 2015 SC 2389**, and take decision in accordance with the guidelines which are laid down in the said judgment. No order as to costs.

VICE CHAIRMAN

Place : Aurangabad
Date : 02-05-2023.