

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION No. 09/ 2023 (S.B.)

Shri Mukteshwar Tukaram Gonnade,
Aged about 40 years, Occ. Service,
R/o Ghot, Tah. Chamorshi,
Dist. Gadchiroli.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Department of Forest & Revenue,
Mantralaya, Mumbai- 32.
- 2) The Principal Chief Conservator of Forest,
Maharashtra State,
Nagpur.
- 3) The Conservator of Forest (Territorial),
Gadchiroli.

Respondents

Shri G.G.Bade, Id. Advocate for the applicant.

Shri A.P.Potnis, Id. P.O. for the Respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGEMENT

Judgment is reserved on 03rd August, 2023.

Judgment is pronounced on 09th August, 2023.

Heard Shri G.G.Bade, ld. counsel for the applicant and Shri A.P.Potnis, ld. P.O. for the Respondents.

2. Case of the applicant is as follows. Since 24.08.2019 the applicant was working as Range Forest Officer. By order dated 28.12.2022 (A-1) respondent no. 3 placed him under suspension in contemplation of initiation of departmental enquiry into illegal extraction of Murum worth Rs. 5,44,000/- from forest land at Ghot, Tehsil Charmorshi, District Gadchiroli. Respondent no. 3 was neither the appointing authority nor the disciplinary authority. Hence, the impugned order of suspension could not have been passed by him in view of Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter "Rules of 1979")

3. Further case set up by the applicant is that the impugned order cannot be sustained for non compliance of proviso to Rule 4 of Rules of 1979 which reads as under:-

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 in 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.

(2) XXXX

(3) XXXX

(4) XXXX

(5) XXXX

4. Stand of the respondents is as follows. Respondent no. 3 being the disciplinary authority was competent to issue the impugned order of suspension. By G.R. dated 01.01.2021 issued by the Revenue and Forest Department Conservator of Forest (Territorial) is declared to be the head of the department/ disciplinary authority. The applicant could have filed an appeal against the impugned order under Rule 17 of Rules of 1979 instead of directly approaching this Tribunal.

5. By rejoinder dated 08.07.2023 the applicant has contended that the impugned order of suspension did not comply with the proviso to Rule 4 of Rules of 1979 and hence it cannot be sustained.

6. The impugned order shows that its copy was forwarded to respondent no. 1 who is the appointing authority of the applicant. It was submitted by Shri Bade, Id. Counsel for the applicant that mere forwarding of order of suspension cannot be said to be compliance of proviso to Rule 4 of Rules of 1979. In support of this submission reliance is placed on judgment of Principal Bench of this Tribunal in O.A. No. 1007/2018 dated 16.12.2019 wherein it is held:-

“What law requires is to mention the circumstances in which the order of suspension was made and mere forwarding letter along with copy of suspension order can hardly be treated compliance of proviso.”

The Judgment dated 16.12.2019 also refers to identical view taken by Principal Bench of this Tribunal in O.A. Nos. 300/2014 & 301/2014.

7. The respondents have also resisted the O.A. on the ground of failure of the applicant to avail alternative remedy under Rule 17 of Rules of 1979. It is true that under Rule 17 the impugned order could have been assailed. However, the contention of the respondents

regarding availability of alternative remedy being fatal to this O.A. cannot be accepted. Section 20 (1) of the Administrative Tribunals Act states:-

“20. Applications not to be admitted unless other remedies exhausted:-

(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.”

Instant O.A. was admitted on 20.06.2023.

Section 19 (3) of the Administrative Tribunals Act reads as under:-

“19. Applications to Tribunals:-

(1) XXXX

(2) XXXX

(3) On receipt of an application under sub-section (1), the Tribunal shall, if satisfied after such inquiry as it may deem necessary, that the application is a fit case for adjudication or trial by it, admit such application; but where the Tribunal is not so satisfied, it may summarily reject the application after recording its reasons.”

A conjoint consideration of Sections 20 (1) and 19 (3) of the Administrative Tribunals Act leads me to conclude that in the facts and

circumstances of the case failure to avail appellate remedy shall not be fatal.

8. In view of factual and legal position discussed hereinabove the impugned order of suspension of the applicant dated 28.12.2022 (A-1) being null and void cannot be sustained. It is accordingly quashed and set aside. **The O.A. is allowed in these terms with no order as to costs.**

(Shri M.A.Lovekar)
Member (J)

Dated :- 09/08/2023.
aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Member (J).

Judgment signed on : 09/08/2023.
and pronounced on

Uploaded on : 10/08/2023.