MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 483 / 2022 (S.B.)

Varsha Avinash Bansod @
Varsha Mangesh Thorat,
Aged about 32 years, Occ. Service,
R/o Jasapur, Post - Asara,
Tq. Bhatkuli, District Amravati.

Applicant.

Versus

1) The State of Maharashtra,
through its Secretary,
Department of Revenue and Forest,
Mantralaya, Mumbai- 32.

2) Sub Divisional Officer,
Bhatkuli-Tiosa,
Tq. and Dist. Amravati.

3) Tahsildar, Bhatkuli,
Tq. Bhatkuli, Dist. Amravati.

4) Ku. Namita Keram,
Talathi, Asra Bhag-II,
Tq. Bhatkuli, Dist. Amravati.

Respondents

Shri M.A.Vaishnav, ld. Advocate for the applicant.

Shri A.M.Khadatkar, ld. P.O. for the Respondents 1 to 3.

None for the R-4.

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

JUDGMENT

Judgment is reserved on 27th Mar., 2023.

Judgment is pronounced on 31st Mar., 2023.

Heard Shri M.A.Vaishnav, ld. counsel for the applicant and Shri A.M.Khadatkar, ld. P.O. for the Respondents 1 to 3. None for the R-4.

2. In this O.A. order dated 06.04.2022 passed by respondent no. 3 terminating services of the applicant who was working as Kotwal of Village Asara-II, and directing recovery of salary and allowances paid to her since January, 2016, on the ground of her prolonged and unauthorised absence on duty, is impugned.

3. It is the case of the applicant that on the basis of complaint of S.D.O. which was motivated, a show cause notice was issued to her, she gave reply to it, she had submitted documents which were sufficient to negative allegation of unauthorised absence and yet the impugned order came to be passed abruptly without giving an opportunity of hearing and in fact such order could not have been passed without conducting an enquiry as per relevant rules and circular dated 19.01.1970 (A-11). This circular states:-

> "कोतवालाची भरती व सेवा योजन या संबंधीच्या पूर्वीच्या नियम ५ च्या जागी शासकीय निर्णय क्रमांक के.ओ.टी.१०६७/१९९८५२-ल(१) दिनांक २२ मे १९६९ ने सुधारलेला नियम दाखल करण्यात आलेला आहे. सदरहू निर्णय अंमलात येण्यापूर्वी शासकीय परिपत्रक महसूल व वन विभागक्रमांक के.ओ.टी.१०६४/२१४०७७१ दिनांक ७ जानेवारी १९६५ ने आदेश देण्यात आलेले होते की, एकाद्या कोतवालाची गैरवर्तणूक अकार्यक्षमता इत्यादी कारणांमुळे समाप्त करावयाची असल्यास सरकारी कर्मचारी, परिचर अगर शिपाई यांच्या

बाबतीत जी चौकशीची पध्दत सर्वसाधारणपणे अंवलंबिली जाते त्याच पध्दतीने तहशीलदाराने नियमित चौकशी करावी.

शासनाच्या दृष्टीस आले आहे की, वरील स्पष्ट आदेश दिल्यानंतर सुध्दा कोतवालांची नियमित चौकशी न करता त्यांची नियुक्ती समाप्त करण्यात आलेली आहे. संबंधित कोतवालांने शासनाच्या विरुध्द दावा केल्यामुळे नियमित चौकशी न केल्यामुळे कोतवालाची नियुक्ती समाप्त करण्याचे तहशीलदाराने आदेश कोर्टाने एका प्रकरणात कायदेशीर नाहीत असे ठरविले."

4. Further submission of the applicant is that the Rules do not specifically provide remedy of appeal and hence instant O.A. can be entertained by this Tribunal. By making this submission it is implied that in these facts embargo placed on the powers of this Tribunal under Section 20 (1) of the Administrative Tribunals Act, 1985 not to entertain any matter unless available remedies are exhausted, will not be attracted.

5. Stand of respondents 2 & 3 is that the applicant is not appointed to any Civil Post nor is she a member of Civil Service and hence this matter cannot be said to be a service matter under Section 3 (q) of the Administrative Tribunals Act. There were serious allegations against the applicant, opportunity of hearing was given to her and thereafter the impugned order was passed. According to these respondents the impugned order does not suffer from any infirmity.

6. There is no substance in the contention of the ld. P.O. that the matter does not fall within the definition of service matter given in Section 3 (q) of the Administrative Tribunals Act.

7. However, there is another hurdle in the way of the applicant i.e. Section 20 (1) of the Administrative Tribunals Act. So far as this aspect of the matter is concerned, reference to following observations in judgment dated 02.08.2017 in O.A. No. 115/2017 (Aurangabad Bench) shall be apposite:-

> "*9 In support of his submissions, the learned Advocate for the applicant has placed reliance on the judgment in case of State of Maharashtra V/s. Dr. Subhash Dhondiram Mane reported in (2015 (4) Mh.LJ. 791) wherein the applicant has approached the Tribunal without availing the remedy to appeal against the order of suspension. In that case, the Tribunal has entertained the application considering the peculiar facts and circumstances of the case holding that it will be futile to drive the applicant when alternate remedy is available as the impugned order of suspension has been passed in concurrence of the Chief Minister. It has been observed in the said decision as follows:*

> *9……. Section 20(1) of the Administrative Tribunals Act does not place an absolute embargo on the Tribunal to entertain an application if alternate remedy is available. It only states that the Tribunal shall not ordinarily entertain application unless the Tribunal is satisfied that the applicant has availed the alternate remedy. This phraseology itself indicates that in a given case the Tribunal can entertain an application directly without relegating the applicant to the alternate remedy. In the present case, the Tribunal has found, on examination of various peculiar facts and circumstances, that, it will be futile to drive the Respondent to an alternate remedy. The Tribunal found that the order of suspension was based on the same grounds as the order of transfer, which was stayed and the order of suspension was an act of victimization. Having convinced that strong case for entertaining an application was made out, the Tribunal entertained the application. It was within the discretion of the Tribunal to do so. No absolute bar was shown, neither it exists. We are not inclined, at this stage, to accede to the submission of Mr.Sakhare, and set aside the impugned order on this ground alone.*

10. Learned Advocate for the applicant has also placed reliance on the judgment in case of D.B.Gohil V/s. Union of India and Others reported in [(2010) 12 Supreme Court Cases 301] wherein it is observed as follows in paragraph 5:

> *"5. Section 20(1) of the Administrative Tribunals Act, 1985 ("the Act", for short) provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the appellant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The use of words "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" in Section 20(1) of the Act makes it evident that in exceptional circumstances for reasons to be recorded the Tribunal can entertain applications filed without exhausting the remedy by way of appeal."*

11. Admittedly, the applicant has approached this Tribunal without availing the alternate remedy to appeal available to him u/s 20 of the Administrative Tribunals Act. Provisions of Section 20(1) of the Act are relevant in this regard. Section 20(1) of the Administrative Tribunals Act, 1985 reads as under:

> *"**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."*

Keeping in view the said provisions and legal principle laid down in the above cited decisions, I have to consider the facts in the matter."

In the above referred O.A., on facts, it was held that no exceptional ground to entertain the O.A. though alternate remedy was not availed, was not made out. In the instant case too no exceptional ground is made out. The only ground pleaded is that the rules do not specifically spell out where exactly appellate remedy lies. The answer to this contention is to be found in Rules 21 & 22 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Rule 21 of the Maharashtra Civil Services (Discipline and Appeal) Rules, says that every appeal shall be submitted to the authority which made the order appealed against. Rule 22 which deals with transmission of appeals, states that the authority which made the order appealed against shall, on receipt of a copy of the appeal, without any avoidable delay, and without waiting for any direction from the appellate authority, transmit to the appellate authority every appeal together with its comments thereon and the relevant records. A conjoint consideration of these two Rules shall suffice to negative aforesaid contention of the applicant that appellate forum before which the impugned order can be assailed has not been specified. The applicant has not availed alternate remedy of appeal. This being the factual and legal position, **the O.A. is dismissed with no order as to**

costs. It would be open to the applicant to avail remedy of appeal and claim benefit of Section 14 of Limitation Act to save the limitation.

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

Dated :-31/03/2023.
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 and pronounced on	:	31/03/2023.
Uploaded on	:	03/04/2023.