

MAHARASHTRA ADMINISTRATIVE TRIBUNAL**NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION NO. 62/2023(S.B.)**

Shri Santosh Govindrao Kurode,
Aged about 47 years, Occu.: Service,
R/o. Kali (D.K.), Tah. : Mahagaon,
Dist. : Yavatmal.

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)
Yavatmal.

Respondents

Shri G.G.Bade, Ld. Counsel for the applicant.
Shri M.I.Khan, Ld. P.O. for the respondents.

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

Dated: - 28th March 2023.

JUDGMENT

Judgment is reserved on 23rd March, 2023.

Judgment is pronounced on 28th March, 2023.

Heard Shri G.G.Bade, learned counsel for the applicant and Shri M.I.Khan, learned P.O. for the respondents.

2. The applicant was working as Range Forest Officer. By order dated 09.01.2023 (Annexure A-1) respondent no.3 placed him under suspension in contemplation of initiation of departmental inquiry. This order is impugned in the instant O.A. on the ground that it violates proviso to Rule 4(1) of the M.C.S. (Discipline & Appeal) Rules, 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.

3. Stand of respondent no.3 is that the impugned order was passed by respondent no.3 in exercise of powers as head of the department invested in him by G.R. dated 01.01.2021 (Annexure R-22), as Disciplinary Authority of the applicant respondent no.3 was also invested with powers to impose minor penalty on the applicant, respondent no.3 forwarded copy of the impugned order (Annexure R-23) to respondent no.2 who, in turn, communicated it to respondent no.1 and thus, Rule 4(1) was fully complied with. According to respondent no.3, several serious lapses in the discharge of duties by the applicant were noticed and hence the impugned order was passed.

4. The main ground raised by the applicant is non-compliance of proviso to Rule 4(1). The impugned order was passed on 09.01.2023. From perusal of Annexure R-23 it can be gathered that its copy was received by respondent no.2 on 11.01.2023. Respondent no.2 forwarded copy of the impugned order to respondent no.1 with covering letter dated 02.02.2023 (Annexure R-24). In para 1 of Annexure R-24 para 1 of the impugned order is reproduced almost verbatim. It does not spell out the circumstances under which the impugned order was

passed. The proviso to Rule 4(1) mandates 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 it was made.

5. In the instant case report was sent to the Appointing Authority i.e. respondent no.1 on 02.02.2023 belatedly and the said report did not spell out the circumstances under which the impugned order was passed. Thus, proviso to Rule 4(1) was not adhered to.

6. The applicant has relied on judgment dated 16.12.1019 passed at Principal Seat in O.A.No.1007/2018 in which inter-alia on similar facts and grounds order of suspension was quashed and set aside. It was observed in para 15 of the judgment –

“15. In the present case, admittedly, the suspension order was passed by Respondent No.1 – Chief Conservator of Forest, Thane who is not appointing authority of the Applicant. In view of proviso referred to above, 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. As such, it is mandatory to forward report forthwith mentioning the circumstances in which the order of suspension was made. In the present case, the suspension order was passed on 14.09.2018. Material

to note that the Applicant has filed O.A. challenging the suspension order on 19.11.2018 raising the ground of non-compliance of proviso. It is only after filing of O.A., the Respondent No.1 seems to have realized the mistake and for the first time, forwarded letter to the appointing authority on 01.12.2018 (Page No.174 of P.B.). As such, it is quite belated. Apart, it is not at all in consonance with the mandate of law. All that, by letter dated 01.12.2018, the Respondent No.1 – Chief Conservator of Forest informed the appointing authority about the suspension of the Applicant. 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. There is absolutely no explanation or circumstances mentioned in letter dated 01.12.2018 as to why the suspension order was immediately warranted. At any rate, it is quite belated though law mandates that it should be sent forthwith.”

These observations fully support case of the applicant.

7. For the reasons discussed hereinabove I pass the following order.

ORDER

1. The O.A. is allowed.
2. The impugned order dated 09.01.2023 (Annexure A-1) being violative of proviso to Rule 4(1) of the M.C.S. (Discipline &

Appeal) Rules, 1979 is quashed and set aside. It would however, be open to the respondents to proceed against the applicant, if deemed necessary, in accordance with law. No order as to costs.

(M.A.Lovekar)
Member (J)

Dated – 28/03/2023
rsm.

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

Name of Steno : Raksha Shashikant Mankawde
Court Name : Court of Hon'ble Member (J) .
Judgment signed on : 28/03/2023.
and pronounced on