

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.771 OF 2021
(Subject:- Charge)**

DISTRICT: - Ahmednagar.

Sunil Achhyutrao Thete,)
Age: 57 years, Occu.; Govt. Service)
Working as Range Forest Officer)
R/o. Aishrya Nagari, Shriram Chowk,)
Ahmednagar.)
Cell No.8767730109.)...**APPLICANT**

V E R S U S

1. **The Secretary,**)
Revenue & Forest Department,)
Mantralaya, Mumbai-400 032.)
2. **Principal Chief Conservator of**)
Forest,)
Van Bhavan, Ram Giri Road,)
Civil Lines, Nagpur-440001.)
3. **Dy. Conservator of Forest,**)
Van Bhavan, Ahmednagar.)...**RESPONDENTS**

WITH

**ORIGINAL APPLICATION NO.800 OF 2021
(Subject:- Suspension)**

DISTRICT: - Ahmednagar.

Sunil Achhyutrao Thete,)
Age: 57 years, Occu.; Govt. Service)
Working as Range Forest Officer)
R/o. Aishrya Nagari, Shriram Chowk,)
Ahmednagar.)
Cell No.8767730109.)...**APPLICANT**

V E R S U S

1. **The State of Maharashtra**)
Through the Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai-400 032.)
2. **Principal Chief Conservator of**)
Forest,)
Van Bhavan, Ram Giri Road,)
Civil Lines, Nagpur-440001.)
3. **The Chief Conservator of Forest)**
Van Bhavan, Nashik.)
4. **Dy. Conservator of Forest,**)
Van Bhavan, Ahmednagar.)...**RESPONDENTS**

APPEARANCE : Shri M.B. Bharaswadkar, learned Advocate for the applicant in both these O.As.

: Shri M.S. Mahajan, learned Chief Presenting Officer for the respondents in O.A.No.771/2021 AND

: Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer for the respondents in O.A.No.800/2021.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **21.07.2022**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 both these Original Applications are filed by the one and the same

applicant namely Shri Sunil Achhyutrao Thete. The Original Application No.771 of 2021 is filed challenging the impugned order dated 25.11.2021 (Annex. 'A-1') and the said order was issued by the respondent No.3 i.e. the Deputy Conservator of Forests, Ahmednagar thereby directing the applicant to handover the charge of his post namely Range Forest Officer, Ahmednagar w.e.f. 25.11.2021 to Shri Pratap Balasaheb Jagtap, Range Forest Officer, Takli Dhoke and additional charge of the post of Range Forest Officer, Pathardi w.e.f. 25.11.2021 to one Shri Dadasaheb Takaji Waghulkar, Range Forest Officer, Tisgaon; whereas the Original Application No.800 of 2021 is filed challenging the impugned suspension order of the applicant dated 08.12.2021 (Annex. 'A-1') issued by the respondent No.1 i.e. the State of Maharashtra.

2. Both these Original Applications are arising out of the background of Crime No. 479/2021 under Section 7 of the Prevention of Corruption Act, 1988 registered against the applicant and one Shri S.R. Patil, Assistant Conservator of Forest, Ahmednagar.

3. In view of above, in order to avoid the repetition of the facts and law, both these Original Applications can be decided by common order conveniently.

4. The facts in brief giving rise to these Original Applications can be summarized as follows:-

- (i) The applicant was posted at Ahmednagar as Range Forest Officer on 14.08.2020. While working on the said post of Range Forest Officer, a person named Ghule filed a complaint alleging that on 16.11.2021 his truck carrying wood bearing No. MH-12-DG-2229 was intercepted by Assistant Conservator of Forest named Shri S.R. Patil and the applicant, which was going towards Mumbai. They allegedly took the said truck to the Forest Office, Ahmednagar. He came to know about the said incident from his driver. On receiving the said information, he went to Ahmednagar Forest Office and requested the officers not to take action and let the truck release. At that time, the A.C.F Patil and the applicant allegedly demanded Rs.70,000/- for not taking action.
- (ii) It is alleged that on 18.11.2021, A.C.F. Patil accepted the amount of Rs.30,000/- from the said complainant. In that respect F.I.R./Crime No.479/2021 (Annex. 'R-1') came to be registered under Section 7 of Prevention

of Corruption Act, 1988 against the said A.C.F Patil and the applicant.

- (iii) According to the applicant, all those allegations made against him and A.C.F. Patil are false and false FIR is registered out of grudge due to previous action being taken by them against the said complainant. The CCTV footage from Ahmednagar Forest Office would falsify the allegation that the truck was taken to the Forest office and that the complainant visited the said office on 16.11.2021. The applicant was arrested in the said crime on 19.11.2021 and was released on bail on 20.11.2021.
- (iv) It is further submitted that the respondent No.4 i.e. the Deputy Conservator of Forest after receipt of report from A.C.B. submitted a proposal to Chief Conservator of Forest i.e. the respondent No.3 (in O.A.No.800/2021) and which was ultimately forwarded to Government and Government i.e. the Respondent No.1 passed the suspension order of the applicant on 08.12.2021 (Annex. 'A-1'). It is submitted that as stated earlier false complaint was registered against the applicant out of

grudge as the saw-mill of the complainant was sealed in the past and the complainant broke the seal and tried to carry on the business and in that respect police complaint (Annex. 'A-4') was lodged against the complainant for having committed offence under Indian Forest Act.

- (v) It is further contended that apprehending some adverse action against the applicant, the applicant made representation dated 02.12.2021 (Annex. 'A-5') to the respondent No.1 to verify the abovesaid facts. However, no such verification of the facts was done.
- (vi) It is further submitted that before that the Deputy Conservator of Forest i.e. respondent No.3 in O.A.No.771/2021 and respondent No.4 in O.A.No.800/2021 without having any power by order dated 25.11.2021 (Annex. 'A-6' in O.A.No.800/2021 and Annex. 'A-1' in O.A.No.771/2021) directed other two Range Forest Officers to take charge of the post held by the applicant. The said order dated 25.11.2021 is impugned in O.A.No.771/2021. The said order is not in accordance with law and is liable to be quashed and set

aside. The impugned order of suspension of the applicant dated 08.12.2021 (Annex. 'A-1' in O.A.No.800/2021) is issued without considering the representation dated 02.12.2021 (Annex. 'A-5' in O.A.No.800/2021). In view of same, the said suspension order is not in accordance with law and is liable to be quashed and set aside.

5. Affidavit-in-reply is filed on behalf of the respondent Nos.1 to 3 in both these matters by one Smt. Suvarna Ravindra Mane working as the Deputy Conservator of Forests, Ahmednagar. Thereby she denied all the adverse contentions raised in both these Original Applications respectively and resisted it on following specific contentions:-

- (i) It is specifically submitted that the Deputy Conservator of Forest, who is the respondent No.3 in O.A.No.771 of 2021 and the respondent No.4 in O.A.No.800/2021 has power and authority to take appropriate decision regarding the handing over the charge of one Range Forest officer to another Range Forest Officer within its jurisdiction i.e in Ahmednagar Forest Division. According to the respondents, it was not appropriate to

continue the applicant as Range Forest Officer, Ahmednagar and therefore, the proposal dated 24.11.2021 (Annex. 'R-2') was sent to the Chief Conservator of Forest, who is the respondent No.3 in O.A.No.800/2021. Thereafter, the office of Deputy Conservator of Forest got oral instructions from the office of Principal Chief Conservator of Forest (respondent No.2 in both theses O.As.) and thereafter consequently issued impugned order dated 25.11.2021 (Annex. 'A-1' in O.A.No.771/2021) and (Annex. 'A-6' in O.A.No.800/2021). In view of the same, it is legal and proper.

- (ii) It is further submitted that so far as the issuance of impugned suspension order of the applicant dated 08.12.2021 (Annex. 'A-1' in O.A.No.800/2021) is concerned, the same is issued in the background of arrest of the applicant in crime registered against the applicant under Section 7 of Prevention of Corruption Act, 1988, which is relating to the demand and acceptance of bribe and in contemplation of the criminal proceeding thereof. It does not violate any of the provisions of law. In view of same, according to the

respondents both the Original Applications are having no merit and are liable to be dismissed.

6. I have heard at length the arguments advanced by Shri M.B. Bharaswadkar, learned Advocate for the applicant on one hand, Shri M.S. Mahajan, learned Chief Presenting Officer representing the respondent in O.A.No.771/2021 and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer representing the respondents in O.A.No.800/2021 on other hand.

7. The order of handing over the charge, which is impugned in O.A.No.771/2021 is dated 25.11.2021 (Annex. 'A-1'), whereas the order of suspension of the applicant which is impugned in the O.A.No.800/2021 is dated 08.12.2021 (Annex. 'A-1'). Both the actions arose in the background of the arrest of the applicant on 19.11.2021 in Crime No.497/2021 registered against the applicant and one Shri Patil under Section 7 of Prevention of Corruption Act, 1988 on 18.11.2021. The alleged trap of demanding and accepting bribe of Rs.30,000/- is dated 18.11.2021. The Original Application No.771/2021 is filed on or about

02.12.2021, whereas the Original Application No.800/2021 is filed on or about 13.12.2021.

8. The applicant has come out with the case that both the orders impugned in these two Original Applications are illegal. According to him, impugned order dated 25.11.2021 (Annex. 'A-1' in O.A.No.771/2021) is passed by the Deputy Conservator of Forest i.e. the respondent No.3 in O.A.No.771/2021 without authority. It appears that the applicant was working on the post of Range Forest Officer in the office of the said Deputy Conservator of Forest, Van Bhanvan, Ahmednagar. The said Deputy Conservator of Forest seems to have issued order dated 25.11.2021 (Annex. 'A-1' in O.A.No.770/2021) only after submitting the proposal by way of letter dated 24.11.2021 (Annex. 'R-2' in O.A.No.771/2021) to the office of Chief Conservator of Forest, Nashik.

9. In both the matters, the applicant has filed affidavit-in-rejoinder and has denied the adverse contentions raised by the respondents in the respective affidavit-in-replies, thereby contending that charge of the post held by the applicant was handed over to two other Range Forest Officers. The

applicant was not given any other posting till the order of suspension issued on 08.12.2021. Because of the said order dated 25.11.2021, he has not been paid salary for 17 days for the month of November and December, 2021 as reflected in pay bill Annex. 'C-1' annexed with the affidavit-in-rejoinder in O.A.No.771/2021.

10. In view of above, it is evident that by impugned order dated 25.11.2021 (Annex. 'A-1' in O.A.No.771/2021) though ex-parte charge was handed over from the applicant to two other Range Forest Officers, no further necessary order was passed in respect of post to be held by the applicant. Moreover, it is evident that the said impugned order dated 25.11.2021 is issued by the Deputy Conservator of Forest without any specific permission in writing of either higher authority namely Chief Conservator of Forest i.e. the respondent No.3 in O.A.No.800/2021 and/or Principal Chief conservator of Forest, Nashik i.e. the R-2 in both the O.As.

11. The applicant raised specific contention that so far as the Deputy Conservator of Forest, Ahmednagar allegedly having received oral instructions from Principal Chief Conservator of Forest, Nagpur orally does not inspire

confidence. No any provision of Rule and/or regulation is cited by respondents to justify issuing impugned order of handing over the charge dated 25.11.2021. From the contentions raised on behalf of the respondents, it is crystal clear that the Deputy Conservator of Forest i.e. the respondent No.3 in O.A.No.771/2021 and respondent No.4 in O.A.No.800/2021 is not a legal authority to issue the said order independently and the evidence of prior permission of the head of the department is not placed on record. There is no even mention in the impugned order dated 25.11.2021 that it was issued as per oral permission granted by the Principal Chief Conservator of Forest as contended in the affidavit-in-reply. In view of same, the said impugned order dated 25.11.2021 (Annex. 'A-1' in O.A.No.771/2021) being issued without authority cannot be said to be legal and proper and is liable to be quashed and set aside.

12. So far as the order of suspension dated 08.12.2021 (Annex. 'A-1') impugned in the O.A.No.800/2021 is concerned, it is evident that it is issued as a interim measure as per power vested in the respondent No.1 i.e. the Government under Rule 4(1) (c) of the M.C.S. (Discipline and Appeal) Rules, 1979. The said order also refers to the

provisions of clause 9 (c) of G.R. dated 12.02.2013 (Annex. 'R-5' in O.A.No.800/2021). The said provision is as follows:-

“क) लाचेचा सापळा प्रकरणी (मानीव निलंबन वगळता) लाचलुचपत प्रतिबंधक विभागाकडून अहवाल प्राप्त झाल्यानंतर अपचारी अधिकारी/कर्मचारी यांना तात्काळ निलंबित करण्याची कार्यवाही सक्षम प्राधिकाऱ्यांनी करावी.”

13. As per the facts of these cases, Crime No.479/2021 under Section 7 of Prevention of Corruption Act was registered against one Assistant Conservator of Forest Sunil Patil and the applicant on 18.11.2021. After successful trap it was held that on 18.11.2021 A.C.F. Patil accepted the amount of bribe of Rs.30,000/-. The applicant was arrested in the said Crime on 19.11.2021 and was released on bail on 20.11.2021. In view of the same, he did not remain in custody for more than 48 hours days. Otherwise also, it is not the case of deemed suspension. In such circumstances, impugned order of suspension dated 08.12.2021 (Annex. 'A-1' in O.A.N.800/2021) is issued prospective i.e. from 08.12.2021.

14. Handing over the charge of the applicant ex-parte and order of his suspension dated 08.12.2021 are being assailed contending that those are illegal being passed in the background of out of grudge against the applicant and ACF,

Patil as previously action was taken by them against the complainant to the effect of sealing his saw-mill in the past and the complainant broke the seal and tried to carry on the business and ultimately in that respect police complaint (Annex. 'A-4') was lodged against the complainant for having committed offence under Indian Forest Act.

15. The order of suspension is passed by way of interim measure, which is not the stage of weighing the evidentiary value of the rival contentions. This Tribunal has limited jurisdiction. It would not be permissible to go to that extent unless some glaring illegality is shown. From the pleadings of the applicant, documents and submission made on behalf of the applicant, I do not find any such glaring illegality in the order of suspension, which would enable this Tribunal to quash and set aside the suspension order.

16. However, the Original Application No.800/2021 is pending before this Tribunal since 13.12.2021. Impugned order of suspension is passed on 08.12.2021. Three months have passed thereafter and admittedly no any charge-sheet pursuant to crime registered under Prevention of Corruption Act against the applicant and one Shri Patil is filed before the

competent Criminal Court till date. There is nothing on record to show that in respect of the said very incident of demand and acceptance of bribe, any departmental enquiry is being initiated against the applicant within the period of three months from the date of suspension against the applicant by serving any charge-sheet upon him.

17. The learned Advocate for the applicant alternatively placed reliance on the citation of the Hon'ble Supreme Court of India reported in AIR 2015 SUPREME COURT page No.2389 in the matter of **Ajay Kumar Choudhary Vs. Union of India**. In the said citation in para No.14 it is observed as follows:-

“14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also

prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

18. He further placed reliance on requisite G.R. dated 09.07.2019 issued by the General Administration Department, Government of Maharashtra based on the said decision of the Hon'ble Supreme court of India. The relevant clause of the said G.R. which clause No.1(ii) is as follows:-

“ १. या अनुषंगाने शासकीय कर्मचाऱ्यांच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.

(i)

(ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणरी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी

मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरू करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकरेपणे केली जाईल याची दक्षता/खबरदारी घेण्यात यावी.”

19. Considering the abovesaid settled legal position, when no material is placed on record by the respondents that any steps being taken by the respondent to place the matter before the requisite review committee. It was incumbent upon the respondents that after expiry of 90 days when no any departmental enquiry or criminal proceeding is filed against the applicant to keep the matter before the requisite review committee. In view of same, in my considered opinion, Original Application No.800/2021 can be disposed of accordingly by giving necessary directions to the respondents. I therefore, proceed to pass the following order.

ORDER

The Original Application No.771/2021 is allowed in following term:-

- (A) Impugned order of handing over the charge dated 25.11.2021 (Annex. 'A-1') is quashed and set aside.

The Original Application No.800/2021 is disposed of by giving following direction to the respondents.

- (B) The respondents are directed to place the matter pertaining to suspension of the applicant before the requisite Review Committee to seek appropriate decision strictly as per law laid down in **Ajay Kumar Choudhary Vs. Union of India** cited (supra) and in G.R. dated 09.07.2019 issued by the General Administration Department (GAD), Government of Maharashtra at the earliest.
- (C) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place :- Aurangabad
Date :- 21.07.2022
SAS O.A.771 & 800/2021