

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NOS. 244 & 245 OF 2020**

**DISTRICT : PUNE**

Shri Shrimant Manik Gaikwad. )  
Age : 56 Yrs., Working as Assistant )  
Conservator of Forest, Junnar Division, )  
Junnar, District : Pune and residing at )  
Varun, Flat No.F/105, D.S.K. Vishwa, )  
Sinhgad Road, Dhayari, Pune. )...**Applicant**

**Versus**

1. The Chief Conservator of Forest )  
[Territorial], Pune having office at )  
Van Bhavan, Gokhale Nagar, )  
Pune – 411 016. )  
2. The State of Maharashtra. )  
Through Principal Secretary, )  
Revenue & Forest Department )  
[Forest], Mantralaya, Mumbai – 32. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

**CORAM : SHRI A.P. KURHEKAR, MEMBER-J**

**DATE : 18.01.2021**

**JUDGMENT**

1. In Original Application No.244/2020, the challenge is to the suspension order dated 23.04.2020 issued by Respondent No.1 – Chief Conservator of Forest [Territorial], Pune and in O.A.245/2020, the

challenged is to the order dated 21.04.2020 issued by same authority (Respondent No.1) withdrawing the work of Applicant on the ground of contemplated departmental enquiry under Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). Since, both the orders are arising from common facts, these O.As are disposed of by common order.

2. Following are the undisputed facts :-

(i) Applicant is in the cadre of Assistant Conservator of Forest (Class-I) and while he was serving at Junnar Division, the Respondent No.1 by order dated 21.04.2020 has withdrawn his work in view of alleged irregularities and misconduct for which regular DE was contemplated under 'Rules of 1979'.

(ii) Immediately, on third day i.e. on 23.04.2020, the Respondent No.1 suspended the Applicant invoking Rule 4(1) of 'Rules of 1979' in contemplation of regular DE.

(iii) The regular DE has been initiated only on 17.06.2020 and it is pending without any substantial progress.

(iv) The Applicant is thus under suspension since 23.04.2020 without taking review of his suspension by the competent authority.

3. In so far as order dated 21.04.2020 (subject matter of O.A.245/20) is concerned, the learned Advocate for the Applicant sought to contend that the unilateral order of withdrawal of work without giving an opportunity of hearing amounts to transfer and the same being punitive, it is unsustainable in law. He further contends that the Applicant being Class-I Officer, the Government is the only competent authority for passing any such order of withdrawal of work or transfer, and therefore, the impugned order of withdrawal of work being passed by Respondent No.1 is without jurisdiction.

4. As regard impugned order of suspension dated 23.04.2020, the learned Advocate for the Applicant strenuously urge that Respondent No.1 is not at all competent authority for suspension of the Applicant, and therefore, the order passed by Respondent No.1 is *nonest* and unsustainable in law. In alternative, he submits that there is no compliance of proviso to Rule 4(1) of 'Rules of 1979' which *inter-alia* 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 the order was made. According to him, the declaration of Respondent No.1 as Head of the Department by Notification dated 18<sup>th</sup> April, 2017 does not vest Respondent No.1 with the power of suspension, which required to be exercised only by appointing authority or disciplinary authority or any other authority specially empowered by the Government by general or special order.

5. Per contra, Shri A.J. Chougule, learned Presenting Officer sought to justify both the impugned orders. He has pointed out that the first order dated 21.04.2020 is simple order of withdrawal of work in contemplation of DE and in view of second order dated 23.04.2020 about suspension of the Applicant, the first order impliedly merged in suspension order. He tried to canvass that as Respondent No.1 has been declared as Head of the Department by virtue of Notification dated 18<sup>th</sup> April, 2017, he can exercise powers of suspension by virtue of empowerment of Head of the Department to exercise powers of imposing minor penalty on Government servant of Group 'A' in terms of proviso to Rule 6(2) of 'Rules of 1979'. He has further pointed out that earlier by G.R. dated 31<sup>st</sup> December, 2016, the Respondent No.1 was declared competent authority as per Rule 9 of Maharashtra Civil Services (General Conditions of Service) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity), and therefore, there is no legal infirmity in the impugned orders.

6. As regard suspension order dated 23.04.2020, admittedly, the Respondent No.1 has invoked Rule 4(1)(a) of 'Rules of 1979' which reads as under :-

- “(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the 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 in 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) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-
- (a) with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
  - (b) With effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

7. Shri A.V. Bandiwadekar, learned Advocate for the Applicant referred note below the suspension order dated 23.04.2020 (Page Nos.21 and 22 of P.B.) whereby while forwarding copy of suspension order to the Government, the Respondent NO.1 made request to the Government that because of misconduct of Applicant, he had already recommended Additional Principal Chief Conservator of Forest (Personal), Nagpur by his letter dated 02.03.2020 to suspend or transfer the Applicant, but no orders are passed. According to the learned Advocate for the Applicant, this specific mention in the suspension report forwarded to the Government itself shows that Respondent No.1 was not competent or

authorized to suspend the Applicant. Whereas, the learned P.O. submits that Respondent NO.1 had sent letter dated 02.03.2020 to Additional Principal Chief Conservator of Forest (Personal), Nagpur under misinterpretation and realizing same, subsequently, by letter dated 31.03.2020 (Page No.55 of P.B.), he has written to Additional Principal Chief Conservator of Forest (Personal), Nagpur that in fact, he is duly empowered to suspend the Applicant in law, and therefore, the letter dated 02.03.2020 be filed without processing the same.

8. In view of submissions advanced at the Bar, the question posed for consideration is whether the Respondent No.1 was legally empowered and competent to suspend the Applicant. Only because Respondent No.1 by his letter dated 02.03.2020 made reference to Additional Principal Chief Conservator of Forest (Personal), Nagpur to suspend the Applicant that ipso facto cannot substitute the legal position. Therefore, one needs to find out that as to what is the legal position about the competency of Respondent No.1.

9. It is explicit from Rule 4 of 'Rules of 1979' that following are the authorities competent to suspend a Government servant :

- (a) Appointing Authority **OR,**
- (b) Any authority to which the Appointing Authority subordinate **OR,**
- (c) Disciplinary Authority **OR,**
- (d) Any other Authority empowered in the behalf of Governor by general or special order.

10. In so far as the facts of present case are concerned, admittedly, Applicant being Class-I Officer, the Appointing Authority is the Government. Furthermore, no special or general order empowering Respondent No.1 to suspend a Government servant is forthcoming. Therefore, the question comes whether Respondent No.1 can be termed as disciplinary authority which is one of the authority empowered to

suspend a Government servant under Rule 4(1) of 'Rules of 1979' as reproduced above.

11. Here, it would be apposite to see the definition of disciplinary authority as defined in Rule 2(c) of 'Rules of 1979' which reads as under:-

**“2(c)** “Disciplinary Authority” means the authority competent under these Rules to impose on a Government servant any of the penalties specified in Rule 5’.

12. Whereas Rule 6 of 'Rules of 1979' relied upon by learned P.O. for empowerment of power of suspension by Head of the Department reads as under :-

**“6. Disciplinary authorities.-** (1) The Governor may impose any of the penalties specified in Rule 5 on any Government servant.  
(2) Without prejudice to the provisions of sub-rule (1), Appointing Authorities may impose any of the penalties specified in Rule 5 upon members of [Group C] and [Group D] Services serving under them, whom they have power to appoint :

Provided that the Heads of Offices shall exercise the powers of imposing minor penalties on the [Group C] and [Group D] Government servant under their respective administrative controls.

Provided further that Heads of Departments and Regional Heads of Departments shall exercise the powers of imposing minor penalties only in relation to Government servants of State Service [Group B] under their respective administrative control.

[Provided also that, the Heads of Departments shall exercise the powers of imposing minor penalties only in relation to Government servants of State service (Group 'A') under their administrative control who draw Grade pay Rs.6600 or less, excluding those who were sanctioned a pay-scale of Rs.10,650-15,850 in the unrevised pay-scales.]”

13. Thus, the disciplinary authorities are defined in Rule 6 of 'Rules of 1979' as reproduced above and significant to note that as per 3<sup>rd</sup> proviso to Rule 6(2), the Heads of the Departments are empowered to impose minor penalties in relation to Government servant of Group 'A' under their administrative control.

14. There is no denying that by G.R. dated 31<sup>st</sup> December, 2016, the Government had declared Respondent No.1 as Head of the Department with reference to Rule 9 of 'Rules of 1981' which is definition clause. Under Rule 9(22), the Heads of the Departments is defined as under :-

**“9(22)** “Heads of the Departments” this term includes the Officers mentioned in the Appendix (ii) and any others whom Government may from time to time declare to be Heads of the Departments”.

15. Thus, by G.R. dated 31<sup>st</sup> December, 2016, the Respondent No.1 is declared as Head of the Department. Later, the Government had issued Notification on 18<sup>th</sup> April, 2017, thereby substituting Appendix (ii) and Head of the Department of several Departments of the Government have been declared as Head of the Department for the Maharashtra Civil Services Rules. All Chief Conservator of Forest, the Forest Department coming under Revenue and Forest Department amongst them are declared as Head of the Departments.

16. Here, reference of Notification dated 18.04.2017 (Page No.90 of P.B.) is material whereby the Heads of the Departments of various Departments for the purpose of various status of Maharashtra Civil Services Rules are declared. As per this Notification, all Chief Conservator of Forest (Personal) of Forest Departments are declared Heads of the Departments by way of amendment to 'Rules of 1981'. These amendments are made in exercise of powers conferred by proviso to Article 309 of Constitution of India. Thus, it is explicit that all Chief Conservator of Forest including Respondent No.1 viz. Chief Conservator of Forest, Thane is declared Head of the Department and if this position is considered in *juxta position* of 3<sup>rd</sup> proviso of Rule 6(2) of 'Rules of 1979', the Respondent No.1 has to be held empowered to impose minor penalties upon a Government servant of Class-I and as per definition of disciplinary authority, the disciplinary authority means the authority competent under these Rules to impose upon a Government servant any of the penalties specified in Rule 5. Thus, if these provisions are read

together, its plain meaning is that by virtue of declaration of Heads of the Departments, the Respondent No.1 steps in the shoes of authority empowered to impose minor penalty and by virtue of definition of disciplinary authority being empowered to impose minor penalty, it becomes disciplinary authority. As such, the Respondent No.1 derived its power as a disciplinary authority and becomes a disciplinary authority. In other words, the Respondent No.1 enters in the shoes of disciplinary authority by virtue of his power to impose minor punishment and this being the position, he gets the status of disciplinary authority which is one of the authority empowered for suspension as per Rule 4(1) of 'Rules of 1979'.

17. Shri Bandiwadekar, learned Advocate for the Applicant canvassed that in terms of proviso 3 of Rule 6(2) of 'Rules of 1979', the Respondent No.1 is only empowered to impose minor penalty and not major penalty, and therefore, he cannot be said disciplinary authority. In my considered opinion, this submission is fallacious. Once, Respondent No.1 is empowered to impose minor penalty, then by virtue of definition of disciplinary authority under Rule 2(c) of 'Rules of 1979', he becomes a disciplinary authority. As per definition of 'Disciplinary Authority' under Rule 2(c), the authority competent to impose any of the penalties specified in Rule 5 is disciplinary authority. It does not say that the authorities who are competent to impose major penalty is only disciplinary authority. What is stated in Rule 2(c) of 'Rules of 1979' is that the authority which is competent to impose any of the penalties (major or minor) specified in Rule 5 gets the status of disciplinary authority.

18. Suffice to say, by analogy and necessary implications, the status of Respondent No.1 is that of disciplinary authority and necessarily empowered to suspend the Applicant. In other words, the Respondent No.1 fits in the definition of 'disciplinary authority', and therefore,



challenge to the impugned order on the ground of competency of Respondent No.1 holds no water.

19. Shri Bandiwadekar's another contention that for want of compliance of reporting the matter forthwith to the appointing authority explaining the circumstances in which order was made is unsustainable in view of the decision of Full Bench of this Tribunal wherein reference to that effect was made and decided by order dated 05.01.2001 in O.A.No.07/2000, 169/2000, 125/2000, 321/2000, 230/2000, 444/2000 and 449/2000. In that case, the following issue was referred to the Full Bench.

“Whether the suspension order in respect of delinquent Government employee issued under Rule 4(1) of ‘Rules of 1979’ would become void and illegal on account of his failure to make a report to the appointing authority of the reasons for issuance of such suspension order. The Full Bench recorded the finding as under :-

“Presumably this issue is in the context of a Disciplinary Authority subordinate in rank to the appointing authority. I am of the view that order would not become void and illegal on account of failure to make a report to the appointing authority of the reasons for issuing such suspension order.”

20. Thus, the Full Bench held that non-forwarding of report to the appointing authority does not render suspension order illegal. In this behalf, in Para No.14, the Tribunal held as under :-

**“14** In this sense, a condition can be said to have been imposed on the disciplinary authority who is subordinate to the appointing authority, when he issued an order of suspension. However this is not pre-condition. Although the provision requires the subordinate authority to report “forthwith” to the appointing authority, neither is a time limit stipulated nor a consequence provided in the rule in the event of non-reporting by the authority. Since the person placed under suspension has an unquestioned right of appeal to the appointing authority, the stipulation of reporting imposed on the disciplinary authority can only be considered one meant to exercise disciplinary control by the appointing

authority over a subordinate authority and cannot vitiate the order of suspension. No serious prejudice can be said to have been caused to the person placed under suspension on account of the disciplinary authority not reporting the fact and circumstances forthwith to the reporting authority. It is, however, always open to the Tribunal to interfere, where it comes to the conclusion that the power has been used by the subordinate authority without adequate justification or where a prejudice has been caused to the affected persons.

21. Shri Bandiwadekar, learned Advocate for the Applicant sought to contend that in view of observation in above Para that it is, however, always open to the Tribunal to interfere when it comes to the conclusion that the power has been used by the subordinate authority without adequate justification or where prejudice has been caused to the affected persons, the Applicant can challenge the suspension order for non-compliance of proviso. So far the facts of present case are concerned, indeed, while suspending the Applicant, the Respondent No.1 simultaneously forwarded the copy of suspension order to the Government explaining the situation justifying immediate action of suspension since several major irregularities were noticed and charge-sheet was also served on 02.11.2018 for which enquiry was under progress. It is further informed that despite the said DE, there was no improvement in the conduct of the Applicant and he frequently remained absent without any intimation. The proposal was also forwarded to transfer the Applicant as seen from Page Nos.22 and 23 of P.B.

22. According to Shri Bandiwadekar, in fact, no such report was forwarded by Respondent No.1 and in absence of Outward Register or Postal Acknowledgment, it cannot be said that any such report was really made to the Government. True, no such Outward Register or Postal Acknowledgment is forthcoming. But once it is recorded that the report was forwarded to the Government, it has to be presumed that in due course, it was sent to the Government.

23. Apart, even assuming that there is no compliance of proviso in view of Full Bench Judgment (cited supra), it does not render suspension

order illegal. As such, it cannot be said that there was no justification before Respondent No.1 for suspension of the Applicant.

24. In view of above, I do not see any legal infirmity in suspension order dated 23.04.2020 on the ground of competency of Respondent No.1 or for non-compliance of proviso of Rule 4(1) of 'Rules of 1979'.

25. However, there is merit in the submission advanced by the learned Advocate for the Applicant that prolong suspension in contemplation of DE without taking review of suspension order is not sustainable, as mandated by Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. He has further pointed out non-compliance of G.Rs. dated 14.10.2011 and 09.07.2019.

26. Admittedly, Respondent No.1 did not bother to take review of suspension though the period of more than nine months are over. The DE is also pending without any substantial progress though the charge-sheet in DE was served on 17.06.2020. The Applicant was suspended by order dated 23.04.2020. As such, the DE was initiated within two months from the date of suspension order. In **Ajay Kumar Choudhary's** case, Hon'ble Supreme Court held that the suspension order should not extend beyond three months, if within this period, the charge-sheet is not served on the delinquent and if charge-sheet is served, a reasoned order must be passed for extension of suspension. Whereas, in the present case, no such order of extension of suspension has been passed. Para No.21 of Judgment in **Ajay Kumar Choudhary's** case is as follows :-

**"21.** *We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet 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 person concerned 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 prepared 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 the 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.”*

27. Furthermore, the Government had issued written instructions by G.Rs. dated 14.10.2011 and 09.07.2019 (which are based in terms of Judgment in **Ajay Kumar Choudhary's** case) to take review of suspension of the Government servant periodically so that they are not subjected to prolong suspension. As per G.R. dated 14.10.2011, the Review Committee or competent authority is under obligation to take periodical review after every three months. In the present case, as the Applicant was kept under suspension, it was obligatory on the part of Respondents to ensure completion of DE within six months from the date of issuance of charge-sheet as per G.R. dated 07.04.2008. In case it was not possible to complete the DE within six months, specific order of extension for completion of DE is required to be obtained from competent authority, which is admittedly not done in the present case. Admittedly, there is no substantial progress in DE and it is going with snail space thereby protracting suspension of the Applicant. Suffice to say, prolong suspension of the Applicant is not justified, as no useful purpose could be served by continuing him in suspension. It is not a case of Respondents that reinstatement of the Applicant would be threat for fair enquiry.

28. As such, in my considered opinion, prolong suspension of the Applicant is unsustainable and he deserves to be reinstated in service. There seems to be two D.Es against the Applicant which are prolonged for a long time.

29. In so far as challenge to the order dated 21.04.2020 about withdrawal of work is concerned, after passing the order of withdrawal of work immediately on 23.04.2020, the Respondent No.1 suspended the Applicant. As such, the order of withdrawal of work was by way of interim measure, and thereafter, immediately on third day, the Respondent No.1 suspended the Applicant. Thus, the order of withdrawal of work merged in the order of suspension. Therefore, challenge to the order of withdrawal of work on 21.04.2020 has become infructuous.

30. The totality of aforesaid discussion leads me to sum-up that there is no illegality on the point of competency of Respondent No.1 in passing the order of suspension. However, prolong suspension being unsustainable in law, the Applicant needs to be reinstated in service on any other non-executive or suitable post in terms of G.R. dated 14.10.2011 and direction for expeditious completion of DEs needs to be issued. Hence, I proceed to pass the following order.

### **ORDER**

- (A) Original Application No.245 of 2020 is dismissed.
- (B) Original Application No.244 of 2020 is allowed partly.
- (C) The suspension of the Applicant deemed to be revoked from today and Respondent No.1 is directed to reinstate the Applicant on any suitable post/non-executive post within a month from today.
- (D) Respondents are further directed to ensure completion of all DEs initiated against the Applicant by passing final order within three months from today.

- (E) Applicant shall cooperate for expeditious completion of DEs.
- (F) No order as to costs.

Sd/-  
**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 18.01.2021

Dictation taken by :

S.K. Wamanse.

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