

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.935 OF 2023

DISTRICT : PUNE

Shri Kailas B. Khedkar,)
Age:- 55 yrs, Occ. Assistant Project Officer (Under -)
Suspension), Tribal Development Department,)
Residing at Hadapsar, Pune.)...Applicant

Versus

1. The State of Maharashtra,)
Through Additional Chief Secretary,)
Tribal Development Department,)
Madam Kama Road, Hutatma Rajguru Chouk,)
Mantralaya, Mumbai-32)
2. The Commissioner, Commissionerate of Tribal)
Development, Adhivasi Vikas Bhavan, 1st floor,)
Gadkari Chaouk, Old Agra Road,)
Nasik 422 101)
3. The Additional Commissioner, Tribal -)
Development, Thane, Mahanagar Telephone)
Nigam Ltd. Mumbai, Wagle Estate Office)
Campus Road No.16, opp. Toyoto Show)
Room, Thane (E))
4. Project Officer, Tribal Development Project)
Ghodegaon, Ambegaon, Dist. Pune)...Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Smt. Archana B. K. – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 9th October, 2023

PRONOUNCED ON: 3rd November, 2023

J U D G M E N T

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. The Applicant serving as Assistant Project Officer in Tribal Development Department has challenged the suspension order dated 13.07.2023 issued by the Respondent No.1- Additional Chief Secretary, Tribal Development suspending the Applicant in contemplation of D.E. invoking Rule 4(1) (a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as MCS (D & A) Rules, 1979).

3. Ld. Advocate for the applicant refers to suspension order dated 13.7.2023 and states that it is an outcome of the 'suspension syndrome'.

4. The applicant was working as Assistant Project Officer, Integrated Tribal Development Project, Tribal Development Department, Ghodegaon, Pune. The Project Officer, Tribal Development Project, Ghodegaon was directed to carry out the detailed enquiry on the allegations made by Shri Mahesh Somnath Kolte against the applicant by letter dated 7.1.2022. The Commissioner, Tribal Development, Nasik had instructed the Assistant Commissioner, Tribal Development to submit a detailed report with respect to the complaints against the applicant. The said order dated

1.7.2022 has been submitted by the Commissioner, Tribal Development, Nashik to the Tribal Development Department along with letter dated 28.7.2022. The report dated 28.7.2022 as well as the report dated 1.7.2022 refers to an exhaustive list of complaints against the applicant. The complaints against the applicant are reproduced below:

| Sr. No. | Date of complaint | Complainant | Nature of complaint |
|---------|-------------------|------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | 15.2.2021 | Project Officer, Integrated Tribal Development Project, Pen | Disobeying the orders of the superiors, demanding allotment of specific work, arrogant behavior with female employees, dereliction of duty. |
| 2 | 11.10.2021 | Shri Namdev Shankar Pawar | Indecent behavior with women, demanding bribe from the beneficiaries of schemes |
| 3 | 17.2.2022 | Shri Nitin Naikade | Irregularities and misconduct in the implementation of schemes |
| 4 | 27.5.2022 | Shri Dattatray Kokate | Indecent behavior |
| 5 | 22.8.2022 | Adivasi Sangharsh Samiti, Pune | Bribery and derogatory treatment of women representatives |
| 6 | 3.10.2022 | Smt. B.M. Kale, Warden, Government Tribal Girls Hostel, Hadapsar | Mental harassment by the applicant, request to conduct inquiry through Vishaka Committee |

5. The report dated 1.7.2022 not only enumerates some of the complaints received against the applicant but also states the misconduct

of the applicant at every posting. The department has stated that the complaints mentioned above made a prima facie case for suspension and called for Departmental Enquiry into the matter.

6. Ld. Advocate for the applicant points out that an enquiry was made into the allegations made by Mahesh Somnath Kolte on 8.11.2021. However, the three letters sent to the person on his given address have been returned back. Ld. Advocate for the applicant pointed out that the applicant was a very good officer and speedily doing all the work allotted to him. Ld. Advocate therefore states that the suspension order is arbitrary, illegal and actuated with ulterior motive.

7. Learned Advocate submits that complaint regarding one Shri Mahesh Kolte has already been inquired into by the Project Officer Shri Balvant Gaikwad. This report has been submitted on 23.02.2022 to Respondent No.3. She submits that overall the complaint made against the Applicant by Shri Kolte was found to be bogus and futile because the complainant Shri Kolte was informed by Project Officer, Ghodegaon by sending three letters to attend the hearing but as the complainant was not residing at the given address, letters were send back to Project Office. Also Shri Kolte, complainant did not come to the hearing at Project Office, Ghodegaon.

8. Learned Advocate further pointed out that the statement in the suspension order dated 13.07.2023 regarding Applicant's inefficiency by not maintaining integrity is not reflected in the ACR's for the said period. The said ACRs of the Applicant is as under :-

| Sr. No. | Period/Year | Overall Gradation | Remarks |
|---------|--------------------------|-------------------|----------------------------|
| 1 | 04.10.2019 to 31.03.2020 | 8.9 (A+) | The Respondent No.3 is the |

| | | | |
|---|--------------------------|-----------|----------------------------------------------|
| | | | Reviewing Officer |
| 2 | 01.04.2020 to 15.09.2020 | 9.0 (A+) | The Respondent No.3 is the Reviewing Officer |
| 3 | 16.09.2020 to 31.03.2021 | 8.0 (A+) | The Respondent No.3 is the Reviewing Officer |
| 4 | 07.09.2021 to 31.03.2022 | 8.2. (A+) | The Respondent No.3 is the Reviewing Officer |

Learned Advocate states that the ACR for the period from 07.09.2021 to 31.03.2022 has been reviewed by Shri Mahendra Varbhuvan, Additional Commissioner, Tribal Development (Respondent No.3). Learned Advocate further points out that the same Additional Commissioner Shri Mahendra Varbhuvan (Respondent No.3) has submitted report to the Government recommending Applicant's suspension by letter dated 01.07.2022.

9. Per contra, Ld. PO refuted the submissions made by the Ld. Advocate for the applicant and relied on the affidavit in reply dated 22.8.2023 filed by Ravindra Pandurangrao Gote, Under Secretary, Tribal Development Department, Mantralaya, Mumbai. It is stated in the affidavit that order of suspension has been passed after due consideration of various complaints received against the applicant in spite of being given request transfer to three different postings, which suggests that there has been no improvement in the conduct of the applicant in spite of such transfers. She states that order of suspension is just and reasonable for the purpose of conducting an unhindered DE against the applicant. It was pointed out that the disciplinary proceedings against the applicant are contemplated and the applicant will be served with a charge sheet

within 90 days from suspension and his suspension will be reviewed as per GR dated 9.7.2019.

10. I have considered the submissions of both the sides. This is not a case of protracted suspension as covered under the case of **Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291**. It is to be noted that the applicant was suspended only on 13.7.2023. It is a fact that applicant has not exhausted the alternative remedy of appeal available to him as provided under Rule 4(5) of the MCS (Discipline & Appeal) Rules, 1979. It is a fact that Courts in number of judgments have laid down that challenge to the order of suspension should not be ordinarily entertained by the Tribunal/Courts directly unless the remedy of appeal is exhausted. However, there is no specific bar for them to approach this Tribunal. Ld. Advocate for the applicant is unable to prove the charge of malafide in the order of suspension issued by the respondents.

11. However, as it is seen that the period of three months is almost over from the date of suspension i.e. 13.7.2023, I pass the following order.

12. Original Application is partly allowed. Respondents are directed to place the matter before Review Committee to take decision about continuation or revocation of suspension of the Applicant and pass appropriate order within six weeks from today. The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter. No order as to costs.

Sd/-

(Medha Gadgil)

Member (A)

3.11.2023

Dictation taken by: S.G. Jawalkar.