

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.989 OF 2023

DISTRICT : SATARA

Smt. Vinaya Dattatray Badami,)
Age 42 years, Occ. Service,)
R/at Flat No.1, Vasudha Apartment, 469 Somwar Peth,))
Taluka Karad, District Satara 415110)..Applicant

Versus

1. The State of Maharashtra,)
Through its Principal Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400032)
2. The State of Maharashtra,)
Through its Joint Secretary,)
Water Resources Department,)
Mantralaya, Mumbai 400032)
3. The Executive Director,)
Maharashtra Krishna Valley Development)
Corporation (MKVDC), Pune)
4. The Chief Engineer (Water Resources),)
Water Resources Department, Pune)
5. The Superintending Engineer,)
Kolhapur Irrigation Circle)
(Kolhapur Pathbandhare Mandal), Kolhapur)..Respondents

Shri A.A. Desai – Advocate for the Applicant

Shri M.D. Lonkar – Special Counsel with

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 11th October, 2023

PRONOUNCED ON: 21st November, 2023

J U D G M E N T

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 the present Original Application is filed challenging the impugned order of suspension of the applicant dated 31.7.2023 issued by respondent no.2 in contemplation of Departmental Enquiry (DE), invoking Rule 4(1)(a) of the MCS (Discipline & Appeal) Rules, 1979.

2. The applicant who was working as Executive Engineer, Dudhganga Canal Division No.1, Kolhapur was suspended on the basis of assurance given pursuant to a Calling Attention Motion in the Legislative Assembly on 28.7.2023.

3. Shri A.A. Desai, Ld. Advocate for the applicant pointed out that applicant was suspended because of alleged irregularities committed in the interstate project at Kolhapur District named Dudhganga Project consisting of left bank of canal 32 to 76 kms. with respect to its earth work, construction and lining. During the discussion in the Legislative Assembly in July, 2023 it was stated that the Running Bill issued for the project's earth work, construction and lining was against the rules and an amount of Rs.40 crores was disbursed to the contractor in the year 2022

prior to obtaining revised technical sanction. It was pointed out on the Floor of the House that this administrative irregularity was committed at the behest of the applicant and hence it was decided to suspend the applicant and take necessary disciplinary action. Pursuant to this discussion the Hon'ble Minister for the Department announced suspension of the applicant on 28.7.2023 and the formal order of suspension was issued by the Government on 31.7.2023.

4. Ld. Advocate for the applicant submits that the order of suspension is premature. He states that the entire suspension is merely based on discussions made on the Floor of the Legislative Assembly and not on the basis of an enquiry and needs to be quashed. He relied on the report dated 15.5.2023 of the Superintending Engineer stating that there has been no financial irregularities and there is no need to conduct a DE. He further pointed out that the Chief Engineer had concurred with the Superintending Engineer in this matter. He pointed out that the Executive Director is the sanctioning authority for an amount of Rs.40 crores and not the Executive Engineer. He further pointed out that there was no financial loss but merely a procedural delay in approving the revised technical sanction. The Ld. Advocate for the applicant further pointed out that at the initial stage the respondents themselves stated that there is no need to take any action against any of the officers as there was no financial irregularity/loss caused to the Government and it was only due to political pressure the applicant was targeted. Ld. Advocate for the applicant therefore prayed that the impugned order is arbitrary and should therefore be set aside.

5. Ld. Advocate for the applicant relied on the following judgments:

(1) Shri Sunil Mahadu Saundane Vs. The State of Maharashtra & Anr. OA No.29 of 2018 decided by this Tribunal on 13.9.2022. Para 17 of the judgment reads as under:

“17. It is thus manifest that without there being any such serious misconduct, the applicant was suspended only because of announcement made by the Hon’ble Minister in the Assembly, which is clearly untenable in law. Suffice to say, the suspension being abuse of law, arbitrary and colourable exercise of power is liable to be struck down.”

(2) Shri Sandip B. Aher & Ors. Vs. The State of Maharashtra & Anr. OAs No.357 to 363 of 2015 order passed by this Tribunal on 16.6.2015. para 5 of the judgment reads as under:

“5. By a detailed order running into 13 pages on 1st June, 2015, I held by putting an appropriate construction on the word, “ordinarily” in Section 20 of the Administrative Tribunals Act that there is no bar to the Tribunal entertaining the OAs even without the Applicants having not exhausted the appellate remedy and in that connection, I relied upon a judgment of a Division Bench of our Hon’ble High Court in Writ Petition No.9660/2014 (The State of Maharashtra Vs. Subhash B. Mane, dated 1st December, 2014.”

(3) Chokiba C. Thorat Vs. The State of Maharashtra & Ors. OA No.312 of 1996 decided by this Tribunal on 3.7.1997, wherein it was held that the suspension ordered merely on the basis of an assurance given in the Maharashtra Legislative Assembly suffered from non application of mind and was considered unsustainable on merits also.

6. Shri M.D. Lonkar, learned Special Counsel for the Respondents took preliminary objection regarding maintainability of the Original Application. He pointed out that applicant had failed to avail of the alternative and efficacious remedy of appeal available in view of the provisions of Rule 17 of the MCS (Discipline & Appeal) Rules, 1979. He therefore stated that OA is premature. He pointed out that applicant had committed an irregularity with respect to the disbursement of huge amount of Rs.40 crores without following due procedure and against the rules and conditions laid down by the authority. The payment of Rs.40 crores was disbursed by the applicant to the contractor without obtaining revised technical sanction which is against the mandatory condition No.8(iii) of the Approval letter of MKVDC. Ld. Special Counsel for the respondents relied on the following judgments:

(1) Government of Maharashtra & Anr. Vs. Govindraj V. Naik, 2018 SCC OnLine Bom 848 (W.P. No.1277 of 2018 decided by Hon'ble Bombay High Court on 14.3.2018).

(2) U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. Vs. Sanjiv Rajan, 1993 Supp (3) SCC 483.

7. Ld. Special Counsel for the respondents relied on the additional affidavit in reply dated 21.9.2023 filed by Dr. Sudin Gaikwad, Joint Secretary, Water Resources Department, Mantralaya, Mumbai. He pointed out that as per Public Works Manual the Executive Engineer should have taken revised technical sanction for 134 estimates. Relevant portion of para 5 of the reply reads as under:

*“The Maharashtra Public Works Accounts Code 4.1.1 states that the
‘The divisional officer, as the primary disbursing office of the division,
is responsible not only for the financial regularity of the transactions*

of the whole division but also for the maintenance of the accounts of the transactions correctly and in accordance with the rules in force'. Thus Executive Engineer is responsible for regularity of transactions in the division office."

8. Ld. Special Counsel submitted that on 27.9.2023 charge memo was issued to the applicant under Rule 8 of MCS (Discipline & Appeal) Rules, 1979. Applicant made representation dated 7.10.2023 for granting 10 days time. By letter dated 26.10.2023 10 days time was granted.

9. I have considered the submissions of both the sides. It is seen that applicant was suspended on the grounds of irregularity in sanctioning and disbursing an amount of Rs.40 crores to the contractor without obtaining the revised technical sanction as mandated by the Public Works Manual.

10. The preliminary objection is regarding maintainability of the OA without having exhausted the alternative remedy of appeal. Section 20(1) of the Administrative Tribunals Act, 1985 reads as under:

"20. Application 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 the redressal of grievances."

11. Thus, it is seen in Section 20 of the Administrative Tribunals Act, 1985 there is no bar to the Tribunal entertaining the OA even if the applicant has not exhausted the remedy of appeal the emphasis being on the word 'ordinarily'. In this connection I rely on the judgment and order

dated 1.12.2014 passed by the Hon'ble High Court in W.P. No.9660 of 2014 The State of Maharashtra Vs. Subhash B. Mane.

12. The powers of this Tribunal in matters of suspension are limited. I rely on the judgment in **Government of Maharashtra & Anr. Vs. Govindraj V. Naik, 2018 SCC OnLine Bom 848** (W.P. No.1277 of 2018 decided by Hon'ble Bombay High Court on 14.3.2018). Para 20 of the said judgment reads as under:

“20. In that context, the court can only exercise its powers of interference in a limited number of cases where it is shown that the decision to suspend is arbitrary and or is a mala fide exercise of power and or colourable exercise of power and/or the State or the authorities are not able to explain the reasons for suspension when it is for a unduly long period and adequate reasons are not forthcoming for the order of suspension. These must be the parameters on which every authority including M.A.T. must consider whilst dealing with an order of suspension more so in the cases of delinquent employees who hold the sensitive posts under Police services and such other services. It is not for the courts including the tribunal to interfere with exercise of discretion by the disciplinary authority otherwise than in circumstances set out.”

13. I also rely on the judgment of the Hon'ble Supreme Court in **U.P. Rajya Krishi Utpadan Mandi Parishad & Ors. Vs. Sanjiv Rajan, 1993 Supp (3) SCC 483**. Para 10 reads as under:

“10. Whether the employees should or should not continue in their office during the period of inquiry is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed malafide and without there being even a prima facie evidence on record connecting the employees with the misconduct in question.”

14. It is an undisputable fact that the applicant was suspended on 31.7.2023 on the basis of Assurance given on the Floor of the Legislative Assembly. Prima facie the charges leveled against the applicant appear to be serious. However, this will be looked into during the course of departmental enquiry. It is also important to note that DE against the applicant has been started and a charge memo was issued to the applicant under Rule 8 of the MCS (Discipline & Appeal) Rules, 1979 on 27.9.2023.

15. As it is seen that a period of three months is over from the date of suspension i.e. 31.7.2023 I rely on the ratio in the case of **Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291**. Para 14 of judgment reads as under:

“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.”

16. Hence, I pass the following order:

ORDER

- (1) Original Application is partly allowed.
- (2) 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 four weeks from today.

- (3) The decision, as the case may be, shall be communicated to the Applicant within one week thereafter.
- (4) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
21.11.2023

Dictation taken by: S.G. Jawalkar.

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