

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 462 OF 2016**

**DISTRICT: LATUR**

Ishwar s/o Sitaram Kendre,  
Age: 53 years, Occu: Service  
(as Range Forest Officer),  
C/o : O/o Range Forest Officer,  
Special Duty, Latur.

.. **APPLICANT**

**V E R S U S**

- 1) The State of Maharashtra,  
Through its Secretary  
Revenue & Forest Department,  
M.S., Mantralaya, Mumbai-32.
- 2) The Divisional Commissioner,  
Aurangabad.

.. **RESPONDENTS**

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**APPEARANCE** : Shri A.S. Deshmukh, learned counsel  
for the Applicant.

: Smt. Priya R. Bharaswadkar, learned  
Presenting Officer for the Respondents.

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**CORAM : HON'BLE SHRI J.D. KULKARNI, MEMBER (J)**

**J U D G M E N T**

**(DELIVERED ON 21<sup>ST</sup> OCTOBER, 2016)**

The applicant was appointed as Assistant  
Plantation Officer vide order dated 20.02.1986 and was  
promoted as Plantation Officers/Range Forest Officer Class-II

by the respondent no. 1 vide order dated 28.11.2011. On promotion he was posted at Ambajogai and thereafter, vide order dated 24.06.2015 he was further posted as Range Forest Officer at Latur.

2. On 23.05.2016, the Divisional Commissioner, Aurangabad (respondent no. 2) issued impugned order dated 28.05.2016, whereby the applicant has been kept under suspension. The said order of suspension is subject matter of this Original Application. The applicant has claimed that the said suspension order dated 23.05.2016 (Annexure-A-1) issued by the Respondent no. 2 be quashed and set aside and respondents be directed to extend all consequential benefits (including permission to discharge duties attached to the post of Range Forest officer, Special Duty, Latur)

3. From perusal of the impugned order of suspension, it seems that the allegations against the applicant are in respect of the illegality committed by him when he was Plantation Officer at Ambajogai. The impugned suspension order is as under:-

“ ज्याअर्थी अंबाजोगाई तालुक्यातील सलग समपातळीचर, साकुड ता. अंबाजोगाई, जि. बीड या कामाची समितीने तपासणी/चौकशी केली असता

प्रत्यक्ष कामावर मोजमापे तपासली असता रू. ४१०४४/- चे खोदकाम कमी आढळून आले. एकही घायपात कंद जागेवर आढळून आला नाही. म्हणून रू. ७६०२/- वसूल पात्र आहे. तसेच ओघळीवर दगडचा एकही बांध निदर्शनास आला नाही. त्यामुळे रू. ५१५७६/- वसूल पात्र आहे. अशा प्रकारे कमी काम आढळून आलेल्या तिन्ही मुद्यांची एकूण रक्कम रू. १००२२२/- वसूल पात्र आहेत. यास श्री आय.एस.केंद्रे, लागडव अधिकारी, सामाजिक वनीकरण कार्यालय, अंबाजोगाई जि. बीड हे सकृतदर्शनी जबाबदार असल्याचे सकृत दर्शनी निदर्शनास आल्यामुळे त्यांना निलंबित करून त्यांचे विरूध्द विभागीय चौकशी करणे आवश्यक वाटते.

ज्याअर्थी श्री आय.एस. केंद्रे, लागडव अधिकारी, सामाजिक वनीकरण कार्यालय, अंबाजोगाई जि. बीड हे सुयुक्तरित्या जबाबदार असून त्यांचे विरूध्द विभागीय चौकशी सुरू करणेस्तव व त्यांनी चौकशी कामी हस्तक्षेप करू नये किंवा कार्यालयीन अभिलेखामध्ये फेरफार करू नये म्हणून महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम ६(३) अंतर्गत मा. विभागीय आयुक्त यांना प्रदान करण्यात आलेल्या अधिकारांतर्गत महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ चे नियम ४(१) नुसार त्यांना या आदेशाव्दारे शासन सेवेतून तात्काळ निलंबित करित आहे.”

4. According to the applicant, his Appointing authority is the Government i.e. respondent no. 1 and therefore, the impugned order of suspension has been passed by the authority which is subordinate to the Appointing authority and therefore, the respondent no. 2 has not followed the provisions of Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The impugned order of suspension is illegal, arbitrary, high-handed, irrational and illogical and has been issued in colorable exercise of powers, and therefore, is liable to be quashed.

5. The respondent no. 2 justified the impugned order of suspension. It is stated that after suspension of the applicant, the communication has been made to the Government and the Government has ratified the order. It is stated that the detailed enquiry was made as regards misconduct committed by the applicant and other officers involved therein and it was necessary to keep the applicant and other officers under suspension.

6. Heard Shri Avinash S. Deshmukh, learned Advocate for the Applicant and Smt. Priya R. Bharaswadkar, learned Presenting Officer for the respondents. I have also perused the affidavit, affidavit in reply and various documents placed on record by the respective parties.

7. The only material question is to be decided in this case is whether the impugned order of suspension is legal and proper?

8. The learned Presenting Officer has taken objection on the ground that the applicant has not exhausted the remedy of filing appeal against the order of suspension as required under Rule 17 of the Maharashtra Civil Services

(Discipline and Appeal) Rules, 1979 and therefore, the O.A. is not maintainable. To counter that argument, learned Advocate for the Applicant has placed reliance on the judgment delivered by this Tribunal in O.A. No. 444/2015 in the case of Dr. Narender Omprakash Bansal Vs. Dean, Grant Medical College and Sir J.J. Group of Hospital, Mumbai and others delivered by the Principal seat at Mumbai on 16.10.2015. In paragraph nos. 23 to 25 of said judgment, this Tribunal has made following observations as regards alternate remedy:-

*“23. This Tribunal has first to discuss the aspect of alternate remedy.*

*24. It is an admitted position that alternate remedy of appeal to Government under Rule 17 of the M.C.S. (D&A) Rules is available. Applicant’s prayer is for dispensation. Law as regards existence of alternate remedy and reasons and circumstances when the availment of alternate remedy may or can be dispensed with is well settled. Those principles may be recalled for quick reference as follows:-*

- (a) Blatant violation of principles of natural justice must be apparent writ large.*
- (b) Impugned action is vitiated due to obvious malafides.*

- (c) *Impugned action is so grossly arbitrary violative of law, lack of fairness, and action so shocking that sending a party to alternate remedy may amount to convincing at the violation of arbitrariness.*
- (d) *Impugned action is vitiated due to total want of power that relegation of a party to alternate remedy will either be an exercise in futility, and directing a party to appellate forum would amount to sending the party from one butcher to another.*
- (e) *Facts even considering that the imputations if misconduct even if admitted, do not constitute a misconduct which could attract major penalty. Hence, on this sole ground if the suspension order shown on its face grossly in excess of authority available in law, and hence being abuse of power, alternate remedy needs to be dispensed with.*

25. *In the background of settled position of law, this Tribunal has to examine the facts with reference to parameters as to dispensation of alternate remedy, and find out as to whether alternate remedy be disposed with.”*

In the present case, the question of alternate remedy will have to be seen on the touchstone of allegations of

mala-fides. It is therefore, necessary, to see as to whether the applicant has made out case of mala-fides for not exhausting alternative remedy.

9. Learned Advocate for the Applicant has invited my attention to paragraph no. 7 (IX) of the pleadings, wherein Rule and ratio laid down by the Hon'ble Apex Court in the case of **State of Orissa Vs Bimal Kumar Mohanty** reported in **AIR 1994 SC 2296** has been discussed. It is stated that in view there of the respondent no. 2 ought to have considered the facts and acts alleged the applicant were concerned only for period of more than one year but those were pertaining to his tenure of Plantation Officer at Ambajogai and the applicant was already transferred from that post.

10. In the present case, the respondent no. 2 seems to have acted upon detailed investigation made by the competent authority as regards misconduct of the applicant and other officers and it seems to be the reason as to why it has come to conclusion to keep the applicant under suspension. The said detailed report is placed on record at paper book page nos. 7 to 34 along with affidavit in reply (Annexure A-1)(both inclusive).

11. As per Rule 4 of the Maharashtra Civil Service (Discipline and Appeal) Rules, 1979, 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 Government, by general or special order, may place a Government servant under suspension, in the circumstances contemplated under sub-clause a, b and c of Rule (4).

12. Learned Advocate for the applicant submits that the respondent no. 2 has not followed the provision in proviso to Rule 4 (1). In this regard for the convenience Rule 4 and its proviso is reproduced 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 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 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.”*

13. Learned Advocate for the applicant submits that the respondent no. 2 has not forwarded the report to the competent authority stating circumstances in which the suspension order was made.

14. Learned Presenting Officer however, invited my attention to one letter dated 30.03.2016 issued by the Government of Maharashtra to the respondent no. 2. Perusal of the said letter shows that the Government authorized the respondent no. 2 to take steps in view of the preliminary report submitted as regards misconduct of the applicant and other officers. It seems that the said letter was issued in response to the letter written by the Divisional Commissioner, Aurangabad

to the Government of Maharashtra on 8.3.2016. Accordingly, the respondent no. 2 seems to have issued the impugned order of suspension. Copy of said suspension order has been forwarded to the Chief Secretary (EGS), Mantralaya, Mumbai and Chief Secretary, Rural Development Division, Mantralaya, Mumbai. The impugned order of suspension is dated 23.05.2016 and therefore, it is clear that all the facts and circumstances have been brought to the knowledge of the competent authority i.e. Government by the respondent no. 2 before issuing suspension order.

15. Rule 17 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 deals with the orders against which appeal lies and as per Rule 17(i) an order of suspension made or deemed to have been made under Rule 4 is appealable. Rule 8 provides the appellate authorities, to who appeal lies. The said rule reads as under:-

**“18. Appellate authorities.-** (1) *Subject to the provisions of any law for the time being in force,-*

*[(i) A member of [Group A or Group B] service (Group A or Group B service) (including a person who belonged to any of these Classes immediately before he ceased to be in service) , may appeal to,-*

- (a) *Government, against the orders passed by the authorities subordinate to Government imposing penalties on him; or*
- (b) *The Governor, against the orders passed by the Government or any authority not subordinate to Government imposing penalties on him].”*
- (ii) *a member of [Group C or Group D] service (including a person who belonged to any of those classes immediately before he ceased to be in service), may appeal to the immediate superior or the Officer imposing a penalty upon him under Rule 5 of these Rules , [“and no further appeal shall be admissible to him”];*
- (2) *Notwithstanding anything contained in sub-rule(1) of this rule,-*
- (i) *an appeal against an order in common proceeding held under Rule 12 of these rules shall lie to the authority to which the authority functioning as the disciplinary authority for the purpose of that proceeding is immediately sub-ordinate :*
- [Provided that where such authority is subordinate to the Governor in respect of a Government servant for whom Governor is the appellate authority in*

*terms of Clause (i) of sub-rule (1), the appeal shall lie to the Governor.]*

*(ii) Where the person who made the order appealed against becomes, by virtue of his subsequent appointment or otherwise the appellate authority in respect of such order, an appeal against such order shall lie to the authority to which such person is immediately subordinate.”*

16. From the aforesaid fact it is clear that there is a provision of appeal under Rule 17 and the employee can appeal before the appellate authority as per Rule 18 against the order of suspension. In the present case, the appellant has not filed appeal against the order of suspension.

17. Learned Advocate for the Applicant invited my attention to pleadings in paragraph no. 9, wherein it has been explained as to why no appeal is filed against the order of suspension. He has placed reliance on judgment of **State of Maharashtra Vs. Dr. Subhash Dhondiram Mane** reported in **2015 (4) Mh. L.J. 791** and submits that from the facts and circumstances of the present case it will be clear that the impugned order of suspension is patently bad and illegal being in violation of the statutory requirement under sub-rule (1) of

Rule (4) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

18. As already discussed, it is clear from the reply affidavit and the documents placed on record and particularly the preliminary enquiry report against the applicant and the letter dated 30.03.2016 (Annexure A-2) authorizing the respondent no. 2 to take appropriate action against the applicant and other employees issued by the Government, I am satisfied that there is no noncompliance of Rule 4(1) proviso of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and therefore, the applicant cannot avoid filing of appeal before the appellate authority as per Rule 17. The applicant has not placed on record any evidence to show that the respondent authorities were in any manner prejudiced against the applicant or that the suspension order has been issued with some ulterior motive and therefore, there is nothing on record to show that the order of suspension is penitently illegal as claimed by the applicant.

19. In view of aforesaid observations it will be clear that the judgments relied by the learned Advocate for the applicant i.e. judgment in O.A. No. 444/2015, AIR 1994 SC page-2296 in

the case of State of Orissa Vs. Bimal Kumar Mohanty and judgment in W.P. No.9660 of 2014 in the case of The State of Maharashtra Vs. Dr. Subhash Dhondiram Mane, are not applicable to the present set of facts.

20. Learned Advocate for the applicant submits that the applicant was working at Ambajogai, when the alleged incident had taken place. He has been transferred from Ambajogai to Latur and therefore, there was no point in keeping him under suspension and that the respondent no. 2 has passed the order of suspension without application of mind. I am of the opinion that whether to keep the employee under suspension or not during contemplated enquiry is the sole discretion of the competent authority and it is not necessary for the Tribunal to interfere in such discretion. The government has appointed competent authorities to review suspension of the employee from time to time. The Government has also issued Circular and guidelines for considering cases for revocation of suspension of employees periodically. The remedies are available to the applicant either to file representation for review of his suspension to the competent authorities or to exhaust remedy of filing appeal, which he did not exhaust and even for approaching Competent

Authorities considering revocation of suspension periodically. Admittedly, suspension is not a punishment. If after enquiry it is found that the charges against the applicant are not proved, the applicant will be at liberty to claim consequential reliefs and therefore, I am satisfied that it is not a fit case to interfere and hence, following order:-

**ORDER**

Original Application stands dismissed with no order as to costs.

**MEMBER (J)**  
**(J.D. KULKARNI)**

**Kpb**/S.B. O.A. No. 462 of 2016 JDK 2016