

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.111/2018

DISTRICT:- AURANGABAD

Prashant s/o. Kishanrao Padghan,
Age : 40 years, Occu. : Service
(as Tahsildar, Divisional Commissioner
Office [Supply Department]),
R/o : Grandkalyan, Paithan Road,
Kanchanwadi, Aurangabad.

...APPLICANT

V E R S U S

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

2) The Divisional Commissioner,
Aurangabad.

...RESPONDENTS

APPEARANCE :Shri A.S.Deshmukh Advocate for the
Applicant.

:Shri M.S.Mahajan Chief Presenting Officer
for the respondents.

CORAM : B. P. Patil, Member (J)

DATE : 28th August, 2018

J U D G M E N T
[Delivered on 28th day of August 2018]

1. The applicant has challenged the order dated 7th
February, 2018 issued by the respondent no.1 by which he
has been suspended by filing the present O.A.

2. The applicant has acquired qualification of B.A.M.S. He entered service of Government of Maharashtra in Revenue Department as directly recruited Tahsildar on 14-09-2007 on his due selection and recommendation by the Maharashtra Public Service Commission (MPSC) in the cadre of Tahsildar. In the year 2014, he was posted as Tahsildar at Vaijapur in Aurangabad District. On 11-09-2014 he was falsely implicated in offences punishable u/ss.7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act, 1988 and therefore a crime bearing CR.No.3040/2014 has been registered with Vaijapur (Rural) Police Station. He was subsequently arrested in the said crime on 22-01-2015 but he was released on bail on the same day by the learned Special Judge at Vaijapur. Thereafter, he continued to discharge his duties as Tahsildar at Vaijapur but on 09-12-2015 respondent no.2 issued order posting him as Assistant Divisional Supply Officer in the office of Divisional Commissioner, Aurangabad. Accordingly, he joined the said post on 10-12-2015 and started discharging his duties.

3. It is his contention that one more person, viz. Shri Dilipsinh Pawar working as Clerk in the Revenue

Department was also involved in the crime bearing CR.No.3040/2014 registered with Vaijapur Police Station. Since he was involved in the said offence, he (Dilipsinh Pawar) was placed under suspension vide order dated 29-10-2014 issued by the Collector, Aurangabad. However, similar action of suspension was not taken against the applicant and therefore he continued in the service.

4. The police made investigation in the crime bearing CR.No.3040/2014. On completion of investigation, chargesheet has been filed against the applicant and co-accused Shri Dilipsinh Pawar in the Special Court at Vaijapur on 09-08-2017. In view of the said fact Collector, Aurangabad issued the order reinstating Shri Pawar in the service. Thereafter, Shri Pawar joined his duty and started discharging the duty. Said order has been issued by the Collector, Aurangabad on the basis of recommendation of the Suspension Review Committee. In spite of this fact on 07-02-2018, respondent no.1 has issued an order of suspension under Rule 4(1)(c) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 ["M.C.S. (Discipline & Appeal) Rules, 1979" for short] and thereby placed him under suspension.

5. It is contention of the applicant that action taken by the respondents on the basis of crime registered against him before 3 years is unjust, unfair and not sustainable in the eyes of law. It is his contention that respondent no.1 initially moved a proposal not to suspend him but thereafter issued suspension order which is illegal, arbitrary and high handed. Therefore, he has filed the present O.A. and challenged the impugned order of suspension dated 07-02-2018.

6. It is contention of the applicant that in view of Rule 17(i) of the M.C.S. (Discipline & Appeal) Rules, 1979 order of suspension is made appealable but Rule 18 of the said Rules which prescribes appellate authority provides that order of penalties imposed against the Government employees can be challenged in appeal before the appellate authority. It is his contention that Rule 18 does not prescribe any authority as appellate authority for challenging the suspension order passed u/r. 4 of the M.C.S. (Discipline & Appeal) Rules, 1979 and therefore, the applicant has approached this Tribunal by challenging the impugned order. It is his contention that there is no embargo on the powers of the Tribunal to entertain the O.A.

challenging order of suspension and the Tribunal can entertain the O.A. Therefore, the applicant prayed to allow the O.A. and to quash and set aside the impugned order.

7. The respondent no.2 has filed affidavit in reply and resisted the contentions of the applicant. It is contention of the respondent no.2 that when the applicant was serving as Tahsildar at Vaijapur, Dist. Aurangabad a crime bearing CR.No.3040/2014 for the offences punishable u/ss.7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 has been registered against him with Vaijapur (Rural) Police Station, Dist. Aurangabad. The applicant was arrested on 22-01-2015, and thereafter, he was produced before Special Judge at Vaijapur but he was released on bail on the same day. The Government accorded sanction to prosecute the applicant in view of S.19 of the Prevention of Corruption Act, 1988 by order dated 07-07-2017. Since the criminal case is pending against the applicant, the applicant has been suspended by the respondent no.1 vide order dated 07-02-2018. Not only this but the departmental enquiry was also initiated against the applicant along with one more Government servant by order dated 17-04-2018 under Rule 8 and 12 of the M.C.S. (Discipline & Appeal) Rules, 1979. It

is his contention that the Suspension Review Committee, under the Chairmanship of Principal Secretary (Revenue), is constituted in Revenue & Forest Department vide G.R. dated 08-05-2015. The committee considers the cases of the suspended officers for reinstatement on the criteria that period of suspension must be more than 1 year, the decision to grant sanction to prosecute the accused must be taken and departmental enquiry must be initiated. It is his contention that the applicant does not fulfill the said criteria, however, his case was placed before the Suspension Review Committee in the meeting held on 18-04-2018. It is their contention that the impugned order has been issued in view of the provisions of Rule 4(1)(c) of the M.C.S. (Discipline & Appeal) Rules, 1979 and there is no illegality on the part of the respondents in issuing the same.

8. It is further contention of the respondents that the applicant has not preferred any appeal against the impugned order as provided under Rule 17(1) and 18(1)(B) of the M.C.S. (Discipline & Appeal) Rules, 1979. Therefore, the O.A. is not maintainable and it is liable to be dismissed. On these grounds, he has prayed to dismiss the O.A.

9. I have heard Shri A.S.Deshmukh Advocate for the applicant and Shri M.S.Mahajan Chief Presenting Officer for the respondents. Perused documents placed on record by the parties.

10. Admittedly, the applicant entered the service of the Government of Maharashtra in Revenue & Forest Department as directly recruited Tahsildar on 14-09-2007 upon his due selection and recommendation by the MPSC. In the year 2014, he was serving as Tahsildar in Vaijapur, Dist. Aurangabad. There is no dispute about the fact that on 11-09-2014 a crime bearing CR.No.3040/2014 for offences punishable u/ss.7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act was registered against him and another Government servant namely Shri Pawar, Clerk with the Vaijapur (Rural) Police Station, Dist. Aurangabad. The applicant was arrested on 22-01-2015 and he was released on bail on the same day by the Special Judge, Vaijapur. Thereafter, he came to be transferred in the office of Divisional Commissioner, Aurangabad by order 09-12-2015 on the post of Assistant Divisional Supply Officer and since then he was working there till issuance of the impugned order. Admittedly, respondent no.1 accorded

sanction to prosecute the applicant in view of the provisions of S.19 of the Prevention of Corruption Act by order dated 07-07-2017. Admittedly, the chargesheet against the applicant and Shri Dilipsinh Pawar in the above said crime has been filed in the Court of Special Judge, Vaijapur on 09-08-2017. Admittedly, Shri Dilipsinh Pawar, Clerk was suspended by order dated 29-10-2014 issued by the Collector, Aurangabad in view of the registration of crime against them. Admittedly, thereafter he was reinstated in the service in view of the order issued by the Collector, Aurangabad on the basis of recommendation of the Suspension Review Committee. Respondent no.1 issued impugned order dated 07-02-2018 and suspended the applicant in view of the provisions of Rule 4(1)(c) of M.C.S. (Discipline & Appeal) Rules, 1979.

11. Respondents have raised preliminary objections regarding maintainability of the O.A. on the ground that the O.A. is not maintainable in view of the provisions of S.20 of the Administrative Tribunals Act, 1985 as the applicant has not availed the alternate remedy of appeal as provided under Rule 17 of the M.C.S. (Discipline & Appeal) Rules, 1979.

12. Learned Advocate for the applicant has submitted that in view of the provisions of Rule 17, the impugned order of suspension is made appealable but no appellate authority has been provided for challenging the suspension order under Rule 18 of the M.C.S. (Discipline & Appeal) Rules, 1979. He has submitted that Rule 18(1)(a) and (b) provides regarding appellate authority before whom the appeal challenging the order imposing penalties have to be preferred. He has submitted that Rule 18 does not prescribe any authority as appellate authority for challenging the order of suspension issued under Rule 4(1)(c) of the M.C.S. (Discipline & Appeal) Rules, 1979. He has submitted that as no appellate authority has been provided in the M.C.S. (Discipline & Appeal) Rules, 1979 challenging the order of suspension issued under Rule 4, the applicant has approached this Tribunal. Therefore, the present O.A. is maintainable.

13. He has further submitted that there is no embargo on the powers of the Tribunal to entertain the O.A. challenging the order of suspension and this fact has been considered by the Hon'ble High Court of Judicature of Bombay Bench at Aurangabad in the case of **State of Maharashtra V/s.**

Subhash Dhondiram Mane reported in **2015 (4) Mh.L.J. 791**. He has submitted that no appellate authority has been provided in the M.C.S. (Discipline & Appeal) Rules, 1979 challenging the order of suspension issued under Rule 4 and therefore this Tribunal is competent to entertain the O.A.

14. Learned P.O. has submitted that in view of the Rule 17 of the M.C.S. (Discipline & Appeal) Rules, 1979 the order of suspension issued under Rule 4 is made appealable order. He has submitted that the applicant ought to have challenged the said order by preferring appeal before the competent authority but the applicant has not availed the said remedy. Therefore, the present O.A. is not maintainable in view of the provisions of S.20 of the Administrative Tribunals Act, 1985. He has submitted that the applicant has not availed the alternate statutory remedy available to him for challenging the impugned order, and therefore, the present O.A. cannot be admitted. Therefore, he has prayed to dismiss the O.A. on that ground.

15. I have gone through the provisions of the M.C.S. (Discipline & Appeal) Rules, 1979. Rule 4 thereof deals with the suspension of a Government servant. Rule 4(1)(c)

empowers 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 Governor by general or special order to place a Government servant under suspension where a disciplinary proceeding against him is contemplated or is pending or 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 where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Sub Rule 5 to Rule 4 provides that the said suspension order shall continue to remain in force until it is modified or revoked by the authority competent to do so. It also provides that such order made under this Rule 4 may at any time be modified or revoked by the authority, which made or is deemed to have made the order or by any authority to which that authority is subordinate. Provisions of Rule 4(5) of the M.C.S. (Discipline & Appeal) Rules, 1979 are relevant. Therefore, same are reproduced below:

"4. *Suspension-*

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.....

(5) (a) An order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by it in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority, which made or is deemed to have made the order or by any authority to which that authority is subordinate

[Provided that, where a criminal offence is registered against a Government servant, the recommendation of the Supervision Review Committee constituted by the Government in this behalf, shall be obtained by the authority which has made or deemed to have made the suspension order by or any authority to which that authority is subordinate, before revoking or modifying the order of suspension of such Government servant]."

16. On plain reading of the abovesaid provisions of Rule 4(5) (a), (b) & (c) it reveals that the order of suspension made under Rule 4 can be reviewed or revoked on the representation or appeal made under this Rule. Under Rule 17 order of suspension made under Rule 4, is made

appealable. On perusal of Rule 4(5) and Rule 17 it is crystal clear that the order of suspension issued under Rule 4 can be modified, reviewed or revoked on the representation/appeal made by the Government employee before the authority which passed the order of suspension or by any authority to which the authority is subordinate. Therefore, in my opinion, there is a provision regarding appeal or representation in the M.C.S. (Discipline & Appeal) Rules, 1979 and the applicant ought to have challenged the impugned order either before the authority which passed the order or by any authority to which the authority which issued the suspension order is subordinate. Therefore, I do not find any substance in the submissions advanced by the learned Advocate for the applicant that no appellate authority has been provided in the M.C.S. (Discipline & Appeal) Rules, 1979.

17. No doubt, under Rule 18 there is no specific mention regarding authority before which the order issued under Rule 4 can be challenged. Said Rule specifically provides regarding appellate authority who is competent to decide the appeal challenging the penalties imposed on the Government servant but there is specific provision in Rule

4(5) which envisages the Government servants to challenge the said order by way of representation or appeal before the authority mentioned therein. Therefore, in my opinion, the applicant ought to have challenged the impugned order of suspension issued under Rule 4 by making representation/appeal before the authority mentioned in Rule 4(5) of the M.C.S. (Discipline & Appeal) Rules, 1979.

18. I have gone through the decision referred to by the learned Advocate for the applicant in the case of **State of Maharashtra V/s. Subhash Dhondiram Mane** reported in [2015 (4) Mh.L.J. 791] wherein it is observed as follows:

"9. The first contention raised on behalf of the Petitioner State is that the Tribunal ought not to have entertained the Original Application in view of the alternate remedy available to the Respondent. Reliance was placed by Mr. Sakhare, on Section 20(1) and (2) of the [Administrative Tribunals Act, 1985](#). According to Mr. Sakhare, as per Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, a remedy of appeal against the order of suspension has been provided. Mr. Sakhare submitted that the reason given by the Respondent for not availing of this remedy that since the order is passed in concurrence of the Chief Minister and therefore no appellate authority will give a decision against him, is an untenable reason. He submitted therefore that the discretion used by the Tribunal in entertaining the application was improper and therefore the order be set aside. We do not find any merit in this submission. [Section 20\(1\)](#) of the

Administrative Tribunal Act does not place an absolute embargo on the Tribunal to entertain an application if alternate remedy is available. It only states that the Tribunal shall not ordinarily entertain application unless the Tribunal is satisfied that the applicant has availed the alternate remedy. This phraseology itself indicates that in a given case the Tribunal can entertain an application directly without relegating the applicant to the alternate remedy. In the present case, the Tribunal has found, on examination of various peculiar facts and circumstances, that, it will be futile to drive the Respondent to an alternate remedy. The Tribunal found that the order of suspension was based on the same grounds as the order of transfer, which was stayed and the order of suspension was an act of victimization. Having convinced that strong case for entertaining an application was made out, the Tribunal entertained the application. It was within the discretion of the Tribunal to do so. No absolute bar was shown, neither it exists. We are not inclined, at this stage, to accede to the submission of Mr. Sakhare, and set aside the impugned order on this ground alone."

19. I do agree with the principle laid down in the abovesaid case. In that matter, as the Tribunal has entertained the O.A. after being satisfied that the applicant was victimized and it would be futile to drive the applicant to alternate remedy considering the peculiar facts and circumstances in that case. In the instant case, there is nothing on record to show that the applicant has been victimized. Therefore, in my view, principle laid down in the abovesaid decision is not attracted in the instant case.

20. In view of the provision of S.20(1) of the Administrative Tribunals Act, 1985, Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed all the remedies available to him under the relevant service rules as to redressal of his grievance. In the instant case, the applicant has not availed the remedy of filing appeal/representation challenging the impugned order as provided under rule 4(5) of the M.C.S. (Discipline & Appeal) Rules, 1979. Therefore, the present O.A. cannot be entertained as the applicant has not availed the alternate remedy available to him. The O.A. filed by the applicant without availing the alternate remedy available to him is not maintainable in view of S.20 of the Administrative Tribunal Act, 1985. Therefore, it deserves to be dismissed.

21. Learned Advocate for the applicant has submitted that the applicant as well as the one Dilipsinh Pawar were involved in the crime bearing CR.No.3040/2014 registered in Vaijapur (Rural) Police Station for the offences punishable u/ss.7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act. Thereafter, Shri Pawar was suspended. After filing the chargesheet against Shri Pawar, he was

reinstated in service on the recommendation of Suspension Review Committee. He has submitted that the applicant has also been transferred from Vaijapur to Aurangabad on a non-executive post. In view thereof, respondent no.1 initially sent proposal not to suspend the applicant. The proposal was not accepted by Hon'ble the Minister and he came to be suspended. He has submitted that in fact investigation in the crime has been completed and question of tampering of evidence does not arise. Therefore, in these circumstances, respondent no.1 ought not to have issued the impugned order suspending the applicant. He has submitted that since the applicant has been transferred, no question of pressurizing witnesses in the criminal case arises but the respondent no.1 has not considered all these aspects and suspended the applicant, which is illegal. He has submitted that the respondents issued the suspension order as administrative routine order without considering the gravity of the charges and the seriousness of the misconduct. He has submitted that the impugned order has been issued after 3 years from the date of registration of crime, and therefore, it is illegal, arbitrary and it has been issued as a result of non-application of mind and in colourable exercise of power vested with the respondents.

He has submitted that no reasons have been assigned by the concerned Minister while suspending the applicant and rejecting the proposal of the department. Therefore, he has prayed to quash and set aside the impugned order.

22. In support of his submissions, he has placed reliance on the judgment in the case of the **State of Orissa V/s. Bimal Kumar Mohanty** reported in [1994 AIR (SC) 2296].

23. Learned P.O. has submitted that the appointing authority or competent authority is empowered to suspend the Government servant against whom case in respect of any criminal offence is under investigation, enquiry or trial as per the provisions of Rule 4(1)(c) of the M.C.S. (Discipline & Appeal) Rules, 1979. He has submitted that respondent no.1 exercised the power u/r. 4(1)(c) as criminal case for the offences punishable u/ss.7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act is pending against the applicant. He has submitted that serious allegations of corruption have been levelled against the applicant, and therefore, considering the gravity of the offences, impugned order of suspension has been issued. He has submitted that there is no illegality in the impugned order. Therefore,

he supported the impugned order and prayed to dismiss the O.A.

24. On perusal of record, it reveals that the applicant and Shri Pawar were involved in a criminal case for the offences punishable u/ss.7, 13(1)(d) r/w. 13(2) of the Prevention of Corruption Act for allegedly demanding bribe of Rs.60,000/- (Rs. Sixty thousand only) from the complainant. Allegations made against the applicant are of serious nature. After investigation, chargesheet has been filed against the applicant and Shri Pawar before the Special Court at Vaijapur. Not only this but a departmental enquiry has also been initiated against the applicant and chargesheet was issued to him. Rule 4(1)(c) of the M.C.S. (Discipline & Appeal) Rules, 1979 empowers the competent authority to place a Government servant under suspension if criminal case or departmental enquiry is pending against such Government servant. By exercising said powers the respondents have issued the impugned order and placed the applicant under suspension. Therefore, in my opinion, there is no illegality in the impugned order.

25. I have gone through the decision referred to by the learned Advocate for the applicant in the case of the **State**

of Orissa V/s. Bimal Kumar Mohanty reported in **1994 AIR (SC) 2296**. Hon'ble the Apex Court has discussed the powers of the employer to suspend the Government employee pending enquiry of the misconduct. Relevant portion of the judgment is reproduced below:

"7. A Constitution Bench of this Court three decades ago in [R.P. Kapur v. Union of India \(1964\) 5 SCR 431: \(AIR 1964 SC 787 at p.792\)](#)' laid the law that:

"The general principle therefore is that an employer can suspend an employee pending an inquiry into his conduct and the only question that can arise on such suspension will relate to the payment during the period of such suspension. If there is no express term in the contract relating to suspension and payment during such suspension or if there is no statutory provision in any law or rule, the employee is entitled to his full remuneration for the period of his interim suspension; on the other hand if there is a term in this respect in the contract or there is a provision in this statute or the rules framed thereunder providing for the scale of payment during suspension, the payment would be in accordance therewith. These general principles in our opinion apply with equal force in a case where the Government is the employer and a public servant is the employee with this modification that in view of the peculiar structural hierarchy of Government, the employer in the case of Government, must be held to be the authority which has the power to appoint a public servant. On general principles therefore the authority entitled to appoint a public servant would be entitled to suspend him pending a departmental inquiry into his conduct or pending a criminal proceeding, which may

eventually result in a departmental inquiry against him."

8. This Court reiterated the above view in *Balvantrai Ratilal Patel v. State of Maharashtra* (1968) 2 SCR 577: (AIR 1968 SC 800 at p.808) thus :

"The general principle is that an employer can suspend an employee pending an inquiry into his misconduct and the only question that can arise in such suspension will relate to payment during the period of such suspension. It is now well settled that the power to suspend, in the sense of a right to forbid as servant to work is not an implied term in an ordinary contract between master and servant, and that such a power can only be the creature either of a statute governing the contract, or of an express term in the contract itself. Ordinarily, therefore, the absence of such power either as an express term in the contract or in the rules framed under some statute would mean that the master would have no power to suspend a workman and even if he does so in the sense that he forbids the employee to work, he will have to pay wages during the period of suspension. Where, however, there is power to suspend either in the contract of employment or in the statute or the rules framed thereunder, the order of suspension has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay.

It is equally well settled that an order of interim suspension can be passed against the employee while an inquiry is pending into his conduct even though there is no such term in the contract of appointment or in the rules, but in such a case the employee would be entitled to his remuneration for the period of suspension if there is no statute or rule under which it could be withheld. In this connection it is important to

notice the distinction between suspending the contract of service of an officer and suspending an officer from performing the duties of his office on the basis that the contract is subsisting. The suspension in the latter sense is always an implied term in every contract of service. When an officer is suspended in this sense it means that the Government merely issues a direction to the officer that so long as the contract is subsisting and till the time the officer is legally dismissed he must not do anything in the discharge of the duties of his office. In other words, the employer is regarded as issuing an order to the employee which, because the contract is subsisting, the employee must obey."

9. *In V.P. Gidroniya v. State of Madhya Pradesh (1970) 3 SCR 448 : (AIR 1970 SC 1494), another Constitution Bench of this Court held that :*

"The general principle is that if the master has a power to suspend his servant pending an inquiry into his misconduct, either in the contract of service or in the statute or the rules framed thereunder governing the service, an order of suspension passed by the master has the effect of temporarily suspending the relationship of master and servant with the consequence that the servant is not bound to render service and the master is not bound to pay any wages during the period of suspension. Such a power to suspend the contract of service cannot be implied and therefore, if in the absence of such a power in the contract, statute or rules, an order of suspension is passed by the master it only forbids the servant to work without affecting the relationship of master and servant, and the master will have to pay the servant's wages."

It has been further observed by the Hon'ble Apex Court as follows:

"12. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the

action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

26. I have gone through the abovesaid principles laid down by the Hon'ble Apex Court. I have no dispute regarding the settled principle laid down therein. It is settled legal position that appointing authority or disciplinary authority can suspend a Government servant pending enquiry or criminal case. The appointing authority and disciplinary authority should consider the gravity of the misconduct, the nature of evidence placed before it before suspending the Government servant. If action of the disciplinary authority or appointing authority is actuated by mala fides, arbitrary or for ulterior purpose, then the same can be challenged. Keeping in view the above principle, I have to consider the order passed by the respondent no.1 and its legality or otherwise.

27. On perusal of the record, it reveals that the applicant was involved in criminal case wherein serious allegations of corruption were made against him. Offences registered against him are of serious nature. He is facing trial for

corruption charges which itself amounts misconduct. The departmental enquiry has been initiated against the applicant. Considering these aspects, the disciplinary authority thought it fit to suspend the applicant. Therefore, Hon'ble Minister while rejecting the proposal of the department has passed order suspending the applicant and suspended the applicant as criminal case under Prevention of Corruption Act is pending against the applicant. Said order is in accordance with the provisions of Rule 4(1)(c) of the M.C.S. (Discipline & Appeal) Rules, 1979. Therefore, I do not find any fault on the part of the disciplinary authority in issuing the impugned order. Hence, no interference in the impugned order is called for.

28. In view of the above facts and circumstances of the case, I do not find any illegality in the impugned order. There is no merit in the O.A. Consequently, it deserves to be dismissed.

29. In view of the above discussion, O.A. stands dismissed with no order as to costs.

(B. P. PATIL)
MEMBER (J)

Place : Aurangabad

Date : 28-08-2018.