

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI  
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO.115/2017

DISTRICT: - AHMEDNAGAR

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Tulshiram S/o. Maruti Lande,  
Age : Major, Occu. : Service,  
R/o. Waghapur, Tq. Akole,  
District : Ahmednagar.

...APPLICANT

**V E R S U S**

- 1) The State of Maharashtra  
Through the Secretary,  
Revenue & Forest Department,  
Mantralaya, Mumbai-32.
- 2) The Collector, Ahmednagar,  
Tq. & Dist. Ahmednagar.
- 3) Sub Divisional Officer,  
Sangamner, Tq. Sangamner,  
District : Ahmednagar.
- 4) The Tahasildar, Akole,  
Tq. Akole, District : Ahmednagar. ...RESPONDENTS

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APPEARANCE :Shri Satyajeeet S. Dixit, learned Advocate  
for the Applicant.

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

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CORAM : Hon'ble Shri B.P.Patil, Member (J)

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DATE : 2<sup>nd</sup> August, 2017

**J U D G M E N T**  
**[Delivered on 2<sup>nd</sup> day of August 2017]**

The applicant has prayed to quash and set aside the order dated 09-12-2016 issued by the respondent no.4 Tahsildar, Akole thereby suspending him from the post of Kotwal of Bholewadi Circle, Tq. Akole, District Ahmednagar by filing the present Original Application (O.A.).

2. The applicant was selected for the post of Kotwal, and accordingly, he was appointed as Kotwal for Bholewadi Circle by the order of respondent no.4 Tahsildar, Akole dated 18-03-2005. Bholewadi Circle consists of four villages viz. Bori, Bholewadi, Nachanthav and Waghapur. Since the date of appointment, the applicant was discharging duties and his service was unblemished.

3. One Bhausaheb Patilba Barate was Sarpanch of village Waghapur for the period 2005 to 2015. Bhausaheb Patilba Barate and some other villagers filed complaint alleging that the applicant was involved in illegal excavation of sand by using his J.C.B. and tractor and he supplied incorrect information while preparing voters' list for the Gram Panchayat elections. Therefore, they prayed to

dismiss the applicant from the post of Kotwal. Additional Collector, Ahmednagar directed Tahsildar, Akole to conduct enquiry in the complaints. Tahsildar, Akole directed the Circle Officer, Brahmanwada to conduct enquiry and submit report. Respondent no.4 had also issued show cause notice to the applicant. The applicant had given reply to the show cause notice and rebutted the allegations levelled against him. On 09-12-2016, respondent no.4 Tahsildar passed the impugned order and suspended the applicant from the post of Kotwal. No reason had been recorded for his suspension. It is contention of the applicant that his entire service was unblemished and he never indulged in illegal activities but on the application filed by Bhausahab Patilba Barate, respondent no.4 passed the impugned order without assigning reasons. Therefore, he submitted that the order of his suspension is illegal. It is further contention of the applicant that he had not received honourarium from July 2015, therefore, he sought direction to the respondents to pay arrears of honourarium by filing the present O.A.

4. Respondent nos.2 to 4 have filed their affidavit in

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reply and resisted the contentions made by the applicant in the O.A. They have denied that the suspension order issued by the respondent no.4 is illegal and against the provisions of law. They have admitted the fact that the applicant was serving as Kotwal in Revenue Circle, Waghapur, Tq. Akole, District Ahmednagar. They have admitted the fact that the villagers of Village Waghapur have made complaint dated 10-09-2015 before the respondent nos.2 and 3 alleging that the applicant was involved in illegal excavation of sand with the help of J.C.B. and Tractor. They have also submitted that the villagers made complaint that the applicant that he had prepared a false voters' list for the election of Gram Panchayat. On the date of election i.e. on 04-08-2015, he was present in the election booth without permission of the Election Officer and he had also threatened the villagers. It is their contention that on receiving complaint, Additional Collector directed the respondent no.4 to conduct enquiry about the complaints made against the applicant. On receiving said directions from the respondent no.2, the respondent no.4 directed Circle Officer, Brahmanwada to conduct enquiry and submit his report. Circle Officer conducted the enquiry

and recorded statements of 18 villagers, and thereafter, on 09-03-2016 submitted his report to the Tahsildar, Akole i.e. respondent no.4.

5. It is contention of the respondents that on 10-02-2015, respondent no.4 Tahsildar Akole issued notice to the applicant to explain the allegations levelled against him. But the applicant had not responded to the notice. He disobeyed the notice and remained absent before the Tahsildar. This amounts misconduct on the part of the applicant. On considering the report of the Circle Officer, evidence and material on record, respondent no.4 Tahsildar Akole passed the impugned order and suspended the applicant from the post of Kotwal. It is their contention that there is no illegality in the order under challenge, and therefore, they prayed to reject the O.A.

6. I have heard Shri Satyajeet S. Dixit, learned Advocate for the Applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondents and perused documents placed on record by the parties.

7. Learned P.O. has submitted that the present O.A. is

not maintainable in view of the provisions of Section 20 of the Administrative Tribunals Act, 1985. He has submitted that the suspension order challenged in the O.A. is an appealable order and it can be challenged before the appellate authority in view of the provisions of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. He has submitted that the applicant has not exhausted alternate remedy available to him and approached the Tribunal without availing the alternate remedy. Therefore, the respondents have submitted that the O.A. is not maintainable in view of the provisions of Section 20(1) of the Administrative Tribunals Act, 1985. Therefore, they have prayed to dismiss the O.A. on that ground.

8. Learned Advocate for the applicant has submitted that the provision of Section 20(1) of the Administrative Tribunal Act, 1985 does not place an absolute embargo on the Tribunal to entertain an application, if alternate remedy is available. He has submitted that, provisions of said section provide that Tribunal shall not ordinarily entertain application unless Tribunal is satisfied that the applicant

has availed alternate remedy. He has submitted that in the instant case, the applicant approached the Tribunal directly without availing the remedy of appeal challenging the impugned order as the order of suspension has been passed by the respondent no.4 Tahsildar, Akole as per the direction given by the respondent no.2 Collector, Ahmednagar. He has submitted that the applicant had apprehension that as the impugned order has been passed by the respondent no.4 on the direction of respondent no.2, the applicant would not get justice at the hands of the respondent no.2, which is appellate authority, if he prefers the appeal before the respondent no.2. Therefore, the applicant has submitted that in these circumstances, O.A. filed by the applicant can be admitted in view of the provisions of Section 20(1) of the Administrative Tribunals Act, 1985. He has further submitted that the apprehension in the mind of the applicant is just and reasonable, and therefore, it would be proper to entertain the present O.A. as the applicant has made out reasonable grounds for entertaining the O.A. without filing appeal and without availing alternate remedy available to him.

9. In support of his submissions, the learned Advocate for the applicant has placed reliance on the judgment in case of **State of Maharashtra V/s. Dr. Subhash Dhondiram Mane** reported in [2015 (4) Mh.L.J. 791] wherein the applicant has approached the Tribunal without availing the remedy to appeal against the order of suspension. In that case, the Tribunal has entertained the application considering the peculiar facts and circumstances of the case holding that it will be futile to drive the applicant when alternate remedy is available as the impugned order of suspension has been passed in concurrence of the Chief Minister. It has been observed in the said decision as follows:

"9. .... 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."

10. Learned Advocate for the applicant has also placed reliance on the judgment in case of **D.B.Gohil V/s. Union of India and Others** reported in [(2010) 12 Supreme Court Cases 301] wherein it is observed as follows in paragraph 5:

"5. Section 20(1) of the Administrative Tribunals Act, 1985 ("the Act", for short) provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the appellant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The use of words "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" in Section 20(1) of the Act makes it evident that in

exceptional circumstances for reasons to be recorded the Tribunal can entertain applications filed without exhausting the remedy by way of appeal."

11. Admittedly, the applicant has approached this Tribunal without availing the alternate remedy to appeal available to him u/s. 20 of the Administrative Tribunal Act. Provisions of Section 20(1) of the Act are relevant in this regard. Section 20(1) of the Administrative Tribunals Act, 1985 reads as under:

**"20. Applications 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 redressal of grievances."

Keeping in view of the said provisions and legal principle laid down in the above cited decisions, I have to consider the facts in the matter.

12. I have gone through the above said decisions relied on by the learned Advocate for the applicant. I have no dispute regarding settled legal position laid down therein. In view of the settled legal principles laid down in the above said decisions, in exceptional circumstances, for the

reasons to be recorded, the Tribunal can entertain the applications filed without exhausting the alternate remedy by way of appeal. Section 20(1) of the Administrative Tribunals Act, 1985 provides that ordinarily it shall not admit an application unless it is satisfied that the applicant has availed all the remedies available to him under the relevant rules. It means, for exceptional circumstances and for the reasons recorded, Tribunal can entertain the application without exhausting remedy available to the applicant by way of appeal under the service rules. The applicant has to make out strong case by establishing exceptional circumstances and reasons that too to the satisfaction of the Tribunal, and establishing the same, the application can be entertained without exhausting remedy available under the service rules. There is nothing on the record to show that there is reasonable apprehension in the mind of the applicant that he will not get justice at the hands of respondent no.2, in case he prefers appeal against the impugned order. In the absence of exceptional circumstances and proper reasons for filing O.A. without availing remedy of appeal provided under service rules,

present O.A. cannot be entertained. As the applicant has failed to satisfy the Tribunal by making exceptional case and showing reasonable grounds to entertain the application as provided under Section 20(1) of the Administrative Tribunals Act, the present original application is not maintainable. Therefore, I do not find substance in the submissions advanced by the learned Advocate for the applicant.

13. As discussed above, the applicant has failed to make out a strong case for entertaining the present O.A. without availing alternate remedy. Therefore, present O.A. is not maintainable.

14. Learned Advocate for the applicant has submitted that the impugned order has been passed by the respondent no.4 without recording reasons, and therefore, it is illegal. He has submitted that no opportunity of being heard was given to the applicant before passing order by the respondent no.4. Therefore, it is illegal. He has further submitted that the order regarding subsistence allowance has not been passed while issuing the impugned order. Therefore, impugned order is not legal and proper. He has

submitted that the suspension order has been issued on 09-12-2016 and more than 7 months have been elapsed, and therefore, suspension cannot be continued for an indefinite period without giving subsistence allowance to the applicant. In support of his submissions, he placed reliance on the judgments in the cases of **Madanlal Sharma V/s. State of Maharashtra & Ors.** reported in [2004 (1) Mh.L.J. 581], **Ajay Kumar Choudhary V/s. Union of India through its Secretary and Anr.**, reported in [(2005) 7 Supreme Court Cases 291] and in the case of **P.L.Shah V/s Union of India and Another** reported in [(1989) 1 Supreme Court Cases 546].

15. Learned P.O. has submitted that the application cannot be entertained in view of the provisions of Section 20(1) of the Administrative Tribunals Act, 1985. Therefore, merit of the case cannot be considered in the O.A.

16. As discussed above, I have already held that the O.A. is not maintainable and the same cannot be admitted in view of the provisions of Section 20(1) of the Administrative Tribunals Act, 1985 as the applicant has not availed

remedy of appeal available to him under the service rules. Since the O.A. cannot be entertained no question of entering arena of merits of the case arises, and there is no need to entertain the merits of the case. Therefore, arguments of the learned Advocate for the applicant in that regard cannot be considered.

17. As discussed above, O.A. is not maintainable in view of the provisions of Section 20(1) of the Administrative Tribunals Act, 1985 and therefore, it cannot be admitted. Consequently, O.A. deserves to be dismissed. Hence, O.A. stands dismissed with no order as to costs.

**(B. P. Patil)**  
**MEMBER (J)**

**Place : Aurangabad**  
**Date : 02-08-2017.**