

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO.938/2016

DISTRICT: AURANGABAD

Harishchandra s/o Ranganath Sonawane,
Age: 51 years, Occ : Service,
R/o : Plot No.14, Aditya Nagar,
Shiveshwar Colony, Harsul,
Tq. & Dist. Aurangabad.

...APPLICANT

V E R S U S

1. The State of Maharashtra,
Through its Principal Secretary,
Revenue and Forest Department,
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Aurangabad.
3. The Collector,
Aurangabad.
4. The Sub-Divisional Officer,
Aurangabad.
5. The Additional Tehsildar,
Aurangabad.

...RESPONDENTS

APPEARANCE :Shri S.B.Talekar, learned Advocate for
the applicant.

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

CORAM : Hon'ble Shri J.D.Kulkarni, Member (J)

DATE : 23rd January, 2017

J U D G M E N T
[Delivered on 23rd Day of January, 2017]

Applicant Harishchandra s/o. Ranganath Sonawane has challenged the impugned order of his suspension dated 15-12-2016 issued by the Collector, Aurangabad (respondent no.3). Applicant submits that at the time of suspension, he was serving on the post of Circle Officer at Kanchanwadi, Tq. & Dist. Aurangabad. By the impugned order of suspension dated 15-12-2016 the applicant has been kept under suspension on the ground that inspite of a specific direction that no mutation shall be recorded in the absence of order of use of land for Non-Agriculture purposes and unless the documents are annexed with sanctioned map. It is stated that Talathi Smt. Gulhane recorded wrong mutation entries in respect of Gut No.38, 43/2, 53, 54, 55 and 58 of Village Sahajapur and the said entries were certified by the applicant as a Circle Officer. It is also alleged that the applicant was already relieved from his post of Circle Officer on 05-01-2016 and he has challenged that order and it was sub-judice. It is

also alleged that though the applicant was not working on the post of Circle Officer at Kanchanwadi, he has certified the mutation entries recoded by Smt. Gulhane. In view of this misconduct the applicant has been kept under suspension.

2. Learned Advocate for the applicant submits that the very basis of the suspension is illegal and without substance as the applicant was very much working on the post of Circle Officer at Kanchanwadi on the date on which he certified the entries. It is further submitted that the Collector did not consider the fact that the applicant's posting at Kanchanwadi was confirmed by the Tribunal and not only that, the respondents were directed to pay salary to the applicant for such posting. It is, therefore, stated that the impugned order passed by the learned Collector is without application of mind.

3. Learned Advocate for the applicant further submits that the then Tahsildar, Aurangabad was having grudge against the applicant. Earlier that Tahsildar has sent number of proposals against the applicant for his suspension. The then Tahsildar, thereafter, was posted as Additional Tahsildar, Aurangabad i.e. respondent no.5 and on the basis of prejudiced reports of the Tahsildar, the impugned order

has been passed. The applicant has, therefore, claimed that the impugned of his suspension be quashed and set aside.

4. Respondent nos.3, 4 and 5 have filed their reply affidavit and tried to justify the order. It is admitted that the respondent no.5 has initially served as Tahsildar, Aurangabad and thereafter was posted as Additional Tahsildar at Aurangabad. It is stated that the applicant had illegally and without any legal sanctity sanctioned mutation entry in respect of Gut No.54 at Village Georai Tanda at belated stage and during the pendency of the appeal. He has not taken into consideration the fact that the appeal was pending before Deputy Director (General Administration), Aurangabad. Respondents have further stated that the applicant has taken wrong and illegal entries in Revenue record in respect of land Gut No. 38, 43/2, 53, 54, 55 and 58 of Village Sahajapur despite the fact that the said lands were not given permission for Non Agricultural use and no lay outs in respect of the plots were sanctioned by the Town Planning Department. It is stated that the applicant was already relieved from his post vide order dated 05-01-2016. The applicant has challenged the said order of relieving the applicant passed by the Tahsildar by filing O.A.No.44/2016. Some allegations are also made regarding entry in

respect of Gut No.140 of Village Tisgaon against the applicant but that is not the subject matter of this O.A. as the applicant has not been kept under suspension on the allegations of illegal mutation of Gut No.140 of Village Tisgaon.

5. Heard Shri S.B.Talekar, learned Advocate for the applicant and Shri M.S.Mahajan, learned Chief Presenting Officer for the respondents. Perused memo of O.A. affidavit/s in reply, affidavit in rejoinder and various documents placed on record by the parties.

6. From the arguments put forth by the respective parties, material points for consideration are; (1) whether respondents allegations that the applicant was not working as Circle Officer on the date of alleged mutation, and therefore, he was having no authority to make such mutation, are right ? and, (2) whether the applicant has sanctioned mutation entries without order of permission to use land for N.A. purpose and without sanction of the lay out map by the Town Planning Department ?

7. Learned Advocate for the applicant has invited my attention to the fact that vide order dated 05-01-2016, the applicant was relieved ex-parte by the Tahsildar, who is respondent no.5 in this case and such ex-parte

relieving of the applicant was challenged by him in O.A.No.44/2016. Order passed in O.A.No.44/2016 by this Tribunal on 19-01-2016 has been placed on record at paper book page 33-38 (both inclusive). In paragraph 4 and 5 of the said order, Tribunal has observed as under (page 35-36):

"4. Perusal of the impugned letter dated 5.1.2016, shows that it is a vague letter from which nothing can be gained. It is not known as to why the applicant has been relieved ex-party and what is the reason for such ex-party relieving the applicant. The Tahsildar is not appointing authority of the applicant nor he is transferring authority and, therefore, the very legality of the letter under which the action is taken, will have to be considered on merits.

5. The learned counsel for the applicant submits that, till today the applicant has not been relieved legally, though the copy of the notice has been served upon him through peon. In such circumstances, the respondents are directed to maintain status-quo as on today."

8. From the aforesaid observations, it will be clear that the Tahsildar, Aurangabad without having any authority and without there being any order of transfer of the applicant, relieved the applicant ex-parte, from his post of Circle Officer, Kanchanwadi. This Tribunal

was pleased to direct respondents to maintain status quo. Consequently, the applicant continued to work at Kanchanwadi.

9. The applicant filed M.A.No.172/2015 in O.A.No.44/2016 and claimed that he did not get salary for the post of Circle Officer. In the said M.A. this Tribunal was pleased to pass order on 12-08-2016. A copy of the said order has been placed on record at paper book page 39-44 (both pages inclusive). In M.A.No.172/2015, this Tribunal was pleased to make following observations/order (page 42-43):

"8. From the aforesaid reply, it seems that the applicant is still working might be illegal as stated by the respondents at Circle Office, there is nothing on record to show that he was relieved legally or that some officer has taken charge of his post.

9. The applicant has placed on record one document which is at paper book page no. 40 (Annexure A-3) from which it seems that the Tahsildar, Aurangabad, issued one order dated 11.2.2016 mentioning therein that the name of the officers who will be paid monthly salary. In the said list, the name of the applicant is at Sr. No. 4. This document also thus admits that the applicant was working on 11.02.2016.

10. In my opinion, whether the applicant is illegally doing work or

whether he has been relieved will be considered on merits. The respondents will be at liberty to take action for so-called illegal acts or misconduct committed by the applicant but there is no reason to deny his salary as claimed by them. Even for argument sake salary is paid to the applicant, the same can be recovered if it is found on merit that he is not entitled to salary as claimed. There is no reason to deny the salary on this ground. Hence, I pass following order.

O R D E R

- 1. The respondents are directed to release the salary of the applicant till final decision of the Original Application.*
- 2. Necessary action shall be done within one month from the date of this order.*
- 3. With these directions, the M.A. stands disposed of with no order as to costs."*

10. The Tribunal was also pleased to direct the respondents to release the salary of the applicant. From the aforesaid legal aspect of the case, it will be clear that the applicant was relieved ex-parte from the post of Circle Officer at Kanchanwadi without any reason, by the then Tahsildar, Aurangabad who is now Additional Tahsildar, Aurangabad i.e. respondent no.5. Prima facie, the action taken by the Tahsildar was found illegal, and therefore, the applicant was allowed

to work in his post of Circle Officer, Kanchanwadi, and not only that, respondents were directed to pay salary to the applicant. The fact remains that the applicant was continued to work as Circle Officer at Kanchanwadi. Therefore, the statement in the impugned order of suspension that, applicant was not holding charge of the post of Circle Officer of Kanchanwadi at relevant time, cannot be said to be correct. The Collector seems to have ignored the fact that the Tribunal continued the applicant as Circle Officer at Kanchanwadi, and not only that, respondents were also directed to pay him salary.

11. Further allegation against the applicant is that, though there were specific directions that no mutation shall be sanctioned unless there is specific order of use of a land for N.A. purpose and unless there is sanctioned lay out map. It is material to note that mutation entry was taken by Talathi Smt. Gulhane and not by the applicant. It is, however, true that the applicant has certified the mutation. It is also material to note that nobody has made any complaint against the applicant as regards mutation. Granting of mutation is quasi-judicial act for which appeal can be filed by the aggrieved party. There is nothing on the record to show that any complaint was there against the applicant for sanctioning the mutation entries. In

view of this, it is necessary to see as to what is the reason for placing the applicant under suspension.

12. Learned Advocate for the applicant submitted that respondent no.5 who was then Tahsildar, Aurangabad, prior to his posting as Additional Tahsildar, Aurangabad was bent upon to see that some action is taken against the applicant, and therefore, the applicant has been kept under suspension. Number of letters issued by the Tahsildar, Aurangabad in that regard, are placed on record. Those letters are issued by respondent no.5 in his capacity as Additional Tahsildar, Aurangabad. Those letters are dated 04-12-2016, 02-06-2016, 15-10-2016, two letters of 19-10-2016, 25-10-2016, 04-11-2016, copies which are at paper book page 45, 46, 47, 49, 52, 53 and 55.

13. Perusal of all these letters shows that respondent no.5 in his capacity as Tahsildar, and thereafter, as Additional Tahsildar, Aurangabad, has issued show cause notice to the applicant from time to time for taking action against the applicant on one count or the other. Respondent no.5 not only issued show cause notice to the applicant in his capacity of Tahsildar, and thereafter, as Additional Tahsildar, Aurangabad but also written letters to the Sub Divisional Officer, Aurangabad and Collector, Aurangabad dated

04-12-2015, 02-06-2016 and 15-10-2016. In all these letters, respondent no.5 has recommended suspension of the applicant.

14. Perusal of the letters as aforesaid shows that for the first time on 04-12-2015 (page 45), Tahsildar, Aurangabad requested Sub Divisional Officer, Aurangabad to place the applicant under suspension. Thereafter, vide letter dated 02-06-2016, the Tahsildar, Aurangabad requested District Collector, Aurangabad to place the applicant under suspension. Thereafter, on 15-10-2016, the respondent no.5 as Additional Tahsildar requested the Collector to keep the applicant under suspension. It seems that since no action was taken by the Collector, Additional Tahsildar has relieved the applicant ex-parte for no reason and without there being any order of transfer. The applicant was left without posting. Said action of the Tahsildar, Aurangabad was challenged by the applicant by filing O.A.No.44/2016. On 19-01-2016, this Tribunal directed respondent authorities to maintain status quo and thereafter on 12-08-2016, the Tribunal directed the respondents to pay salary of the applicants. But in the meantime impugned order of suspension dated 15-12-2016 has been passed by the Collector, Aurangabad. From the record, it seems that Collector, Aurangabad was influenced by the

recommendation made by the Tahsildar, Aurangabad on 02-06-2016 and Additional Tahsildar, Aurangabad on 15-10-2016. Admittedly, both these authorities are one and the same. There is possibility that respondent no.5 might have been aggrieved because his action of relieving the applicant was challenged. The Collector might have been influenced by continuous correspondence by the Tahsildar, Aurangabad for keeping the applicant under suspension. Issuance of repeated show cause notices shows that respondent no.5 must have some personal grudge against the applicant and he wanted that applicant be placed under suspension at any cost. Since Collector, Aurangabad did not take any action on repeated requests of the Tahsildar and Additional Tahsildar, for more than 6 months, the applicant was relieved ex-parte without any cause from the post of Circle Officer.

15. As already stated, the allegations that the applicant was already relieved and was not working on the date on which sanction was accorded for mutation done by Smt. Gulhane, are not true, since the applicant was holding that post. His ex-parte order of relieving from the post was stayed. So far as action taken by the applicant as regards sanction of the mutation is concerned, as already stated, there was no complaint against the applicant for such mutation, and it is a

quasi-judicial order. There was no reason for keeping the applicant under suspension for such quasi-judicial action. If respondents desire to initiate departmental enquiry against the applicant for such illegal mutation or for whatever reasons stated in the impugned order of suspension, the competent authority may take decision to transfer the applicant during the pendency of the enquiry but suspension cannot be a ground for such action, and particularly when suspension might be because of personal grudge against the applicant.

16. Learned P.O. submits that the suspension order should have been challenged under Rule 7 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. To counter this, learned Advocate for the applicant, however, submits that filing of appeal was not an efficacious remedy and no purpose would have served by filing appeal. He submits that the jurisdiction of the Tribunal is not barred only because appeal has not been preferred.

17. Learned Advocate has placed reliance on the judgment reported in [2015 (4) Mh.L.J. 791] in the case of **State of Maharashtra V/s. Dr. Subhash Dhondiram Mane**. In the said judgment, it has been held that the order of suspension is not immune from judicial scrutiny and it can be challenged by an

employee alleging that it has been actuated by *mala fides*, arbitrariness or that it is issued with ulterior purpose. It is further observed that suspension order should not be ordinarily passed without there being strong prima facie case against the delinquent, and if charges are proved, it would warrant major penalty. In paragraph 9 of the said judgment, Hon'ble High Court has observed as under:

"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 Tribunals 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."

18. From the discussion in the foregoing paragraphs, it will be thus crystal clear that in the present case the applicant was relieved from his post of Circle Officer of Kanchanwadi without any reason and the said order was challenged by the applicant and this Tribunal was pleased to direct the respondents to pay salary to the applicant. Very base of the suspension order that

applicant has sanctioned mutation entries, though he was not posted at Kanchanwadi at the relevant time, thus seems to be not legal. There is material on record, which creates doubt that the then Tahsildar, Aurangabad, who was subsequently posted as Additional Tahsildar, Aurangabad (respondent no.5), had issued number of notices to the applicant and was bent upon to see that the applicant was kept under suspension. Generally and normally, Tribunal will not interfere in the administrative action of suspension. However, from the discussion in the foregoing paragraphs, it will be improper not to interfere in the present case.

19. Learned Advocate for the applicant has also placed reliance on the judgment delivered by Hon'ble the Apex in the case of **Union of India and Another V/s. Ashok Kumar Aggarwal** reported in [(2013) 16 SCC 147]. In the said case, Hon'ble the Apex Court has observed that suspension order can be passed considering the gravity of the alleged misconduct and nature of evidence available and it cannot be actuated by mala fide, arbitrariness or for ulterior purpose.

20. Considering the facts and circumstances of the case as discussed above, I am satisfied that the act of the Collector, Aurangabad keeping the applicant under

suspension is without application of mind and seems to be with ulterior motive or mala fide, that may be on the part of the respondent no.5, who was also working as Tahsildar, Aurangabad at the relevant time. Hence, I pass following order:

ORDER

- (i) O.A. is allowed in terms of prayer clause IX-A.
- (ii) There shall be no order as to costs.

(J. D. Kulkarni)
MEMBER (J)

Place : Aurangabad
Date : 23-01-2017.