

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMABI
BENCH AT AURANGABAD.

DIST.OSMANABAD.

ORIGINAL APPLICATION NO.742/2016.

Amol s/o Sakharam Ranjankar,
Age 38 years, Occu.Service,
(as Awwal Karkoon – Presently
Under suspension), R/o 12/14,
B & C Quarters, Devgaon Road,
Paranda, Dist. Osmanabad.

-- **APPLICANT**

VERSUS

1. The State of Maharashtra
Through its Secretary,
Revenue & Forest Dept.,M.S.
Mantralaya, Mumbai-32.
2. The Divisional Commissioner,
Aurangabad.
3. The Collector,
Osmanabad.

-- **RESPONDENTS.**

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

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

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

DATE : 09.01.2017.

JUIDGMENT.

(Delivered on this 9th day of January, 2017)

1. Heard Shri A.S. Deshmukh, learned Advocate for the Applicant and Shri M.S. Mahajan, learned Chief Presenting Officer for the Respondents.

2. The applicant has challenged the impugned order dated 11.4.2016 issued by Respondent no.3 i.e. the Collector, Osmanabad and has requested that the said order be quashed and set aside and his suspension be revoked in view of the ratio laid down by the Hon'ble Apex Court in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary and another, reported in AIR 2015 SC 2389, and further that the applicant be reinstated in service on the post of Awwal Karkoon.

3. The applicant joined the service of the State Government in Revenue Department as a Peon in Group "D" Class-IV category on 2.1.2001. He was promoted in the cadre of Clerk on 1.11.2005 and thereafter as Awwal Karkoon on 29.7.2011. In April 2016 the applicant was working as Awwal Karkoon in Tahsil office, Paranda, District Osmanabad and was falsely implicated in one crime bearing

No.7/2016 under Sections 7, 8, 13 (1) (d) r/w 13 (2) of the Prevention of Corruption Act. He was kept under suspension because of registration of criminal case on 11.4.2016. The applicant preferred an appeal against the order of suspension of 26.7.2016 before Respondent no.2 i.e. Divisional Commissioner, Aurangabad. Vide order dated 10.8.2016 the Respondent no.2 disposed of the appeal on the ground that, power to reinstate the suspended employee is with the Committee called as Divisional Suspension Review Committee. The applicant therefore, approached before the Committee, however, he did not get any relief. The applicant submits that his order of suspension dated 11.4.2016 and continuation of his suspension beyond 11.4.2016 is illegal and hence this O.A.

4. The Respondents no.2 & 3 have filed reply affidavit and submitted that, as per the G. R. dated 14.10.2011 if a crime is registered against the Govt. servant and he is under suspension the proposal for revocation of suspension needs to be put before the suspension Review Committee after expiry of one year and therefore, the decision taken by the Respondents is legal.

5. The learned Advocate for the applicant Shri A.S. Deshmukh submits that, against the order of suspension, passed by the Collector the applicant has preferred an appeal before the Divisional Commissioner i.e. Respondent no.2, but instead of deciding the appeal on merits the Divisional Commissioner disposed of the same on the ground that the power to reinstate the suspended employee is with Divisional Review Committee and therefore, the applicant was again required to move the Committee. The impugned order passed by the Divisional Commissioner is dated 10.8.2016 and it is at Annexure A-3. Perusal of the said order clearly shows that, the Divisional Commissioner has not considered the points raised in the appeal memo against the order of suspension. He seems to have disposed of the appeal only on technical ground that, the power to reinstate is with particular Committee. In fact, the Divisional Commissioner has failed to consider the fact that the applicant has approached him not for revocation of suspension before the Committee, but by way of appeal against the order of suspension and therefore, the Commissioner ought to have considered the appeal filed by the applicant on merits. In my opinion, deciding statutory appeal against the suspension is a different action than consideration revocation of suspension by Divisional Committee.

6. In the appeal memo which is at paper book page nos.19 to 33 (both inclusive) the applicant has raised so many legal points and has also referred to the judgment of the Hon'ble Apex Court. The grounds of the appeal also shows that the applicant has raised the issues as to how the suspension order was illegal. Disposal of the appeal however, on the ground that, the applicant shall approach Divisional Committee for revocation of suspension is nothing but total non-application of mind by Respondent no.2.

7. The perusal of the Govt. Resolutions dated 12.2.2013 and 14.10.2011 referred by the Respondents are guidelines regarding action to be taken against the employees, who are under suspension, or in other orders, to consider revocation of cases under suspension periodically. The applicant however, has filed appeal against the order of suspension before Respondentno.2 and therefore, the said appeal ought to have been considered by the Respondent no.2 on merits.

8. It seems that, as per the order passed by Divisional Commissioner, Aurangabad the applicant had approached the Collector, Osmanabad and requested that his suspension be revoked, and on this application the impugned order has been

passed by Respondent no.2 i.e. Collector Osmanabad. The said impugned order is dated 11.4.2016, which is at Annexure A-1. From perusal of the order dated 11.4.2016 it seems that, the applicant has been kept under suspension since crime has been registered against him under prevention of corruption Act. Since the applicant has already filed against the said order, but the Appellate Authority has not applied mind on merits on the said suspension order, it may not be proper to consider the case of the applicant on merits by this Tribunal. It will be in the interest of justice to direct the Appellate Authority to consider the appeal filed by the Applicant on merits, instead of quashing and setting aside the impugned order dated 11.4.2016 even though there is no specific prayer in the prayer clause 16 of the O.A. that the order passed by the Appellate Authority i.e. Respondent no.2 be quashed and set aside. I am of the opinion that it will be in the interest of justice and equity to remand the case to the Appellate Authority as the applicant has prayed that any suitable and equitable relief may be granted in favour of clause no.16 (D). Hence the order.

ORDER.

- i) The O.A. is partly allowed.
- ii) The matter is remanded back to the Respondent no.2 i.e. Divisional Commissioner, Aurangabad.

- iii) The Divisional Commissioner shall consider the appeal dated 25.7.2016 filed by the applicant against the impugned order of suspension dated 11.4.2016 on merits and shall consider all the points raised by the applicant in his appeal memo including the citation on which the applicant has placed reliance and shall decide the appeal on merits according to Law. The decision on the appeal shall be taken within one month from the date of this order and same shall be communicated to the applicant in writing.
- iv) No order as to costs.

MEMBER (J)

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