

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH**

**ORIGINAL APPLICATION NO 881 OF 2015**

**DISTRICT : MUMBAI**

Dr Ajit Eknath Gawali, )  
Assistant Director, Health, )  
Now Assistant Director Health )  
Services, Rajeev Gandhi Jivandae )  
Yojana, Worli, Mumbai. )  
R/o: at Civil Surgeon Bungalow, )  
Civil Hospital Campus, Alibaug, )  
Dist- Raigad. )...**Applicant**

**Versus**

1. The State of Maharashtra )  
Through the Principal Secretary)  
Public Health Department, )  
Mantralaya, Mumbai 400 032. )...**Respondents**

Shri Gunratan Sadavarte, learned advocate for the Applicant.

Shri K.B. Bhise, learned Presenting Officer for the Respondent.

**CORAM : Shri Rajiv Agarwal (Vice-Chairman)**

**DATE : 11.07.2016**




**ORDER**

1. Heard Shri Gunratan Sadavarte, learned advocate for the Applicant and Shri K.B. Bhise, learned Presenting Officer for the Respondent.

2. This Original Application has been filed by the Applicant challenging the order dated 14.10.2015, placing the Applicant under suspension pending a Departmental Enquiry against him.


3. Learned Counsel for the applicant argued that the Applicant was placed under suspension by the aforesaid order in exercise of power under Rule 4(1)(a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Learned Counsel for the Applicant argued further that this order has been issued in colourable exercise of powers by the Respondent. The Applicant was transferred by order dated 28.2.2014 from Rural Hospital, Akola, Dist-Ahmednagar to the post of Civil Surgeon, Raigad, Alibaug. By order dated 2.7.2015, he was transferred as Assistant Director, Health Services, (Rajiv Gandhi Jeevandai Arogya Yojana, Mumbai). The Applicant challenged this order dated 2.7.2015 in O.A no 518/2015. By judgment dated 7.10.2015, the order dated 2.7.2015 was quashed and set aside and this Tribunal directed the Respondent to post the Applicant back as Civil Surgeon, Raigad, within 30 days of the

receipt of that order. The Respondent did not comply with the order of this Tribunal and placed the Applicant under suspension by order dated 14.10.2015. Learned Counsel for the Applicant argued that this Tribunal has found in O.A no 518/2015 that the Respondent had failed to give any reasons for prematurely transferring the Applicant. This Tribunal has adversely commented on the attitude of the Respondent in that Original Application. As a result, the Respondent chose not to follow the order of this Tribunal and placed the Applicant under suspension in colourable exercise of powers. Learned Counsel for the Applicant argued that the suspension order is passed under rule 4(1)(a) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, which makes it clear that it is issued pending institution of a Departmental Enquiry (D.E) against the Applicant. There is no criminal case pending against the Applicant. However, no charge sheet has yet been issued to the Applicant and Enquiry Officer has not been appointed. As such, D.E has not yet started. The case of the Applicant has not been placed before the Review Committee as contemplated under G.R dated 14.10.2011 for reviewing his suspension. Clause 7A of this G.R provides that such a review should be undertaken after 3 months from the date of suspension and if the D.E was not completed within 6 months, the delinquent Government servant may be reinstated and posted to a non-executive post elsewhere. However, no action has



been taken by the Respondent though almost 9 months have passed. Learned Counsel for the Applicant prayed that order dated 14.10.2015 may be quashed and set aside. He relied on the judgment of this Tribunal in O.A no 444/2015 in the case of Dr. N.O Bansal Vs. Dean, Grant Medical College & Others. He also relied on the judgment of this Tribunal in O.A nos 357 to 363/2015 decided on 16.6.2015.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent that a D.E under Rule 8 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 is contemplated against the applicant on the ground of rampant indiscipline, insubordination of standing orders and misconduct. The order of this Tribunal in O.A no 518/2015 dated 7.10.2015 cancelling transfer of the Applicant, is being challenged before Hon'ble Bombay High Court. Learned Presenting Officer stated that there is no truth in the claim of the Applicant that the impugned order of suspension is issued as the Applicant obtained judgment in O.A no 518/2015 cancelling his transfer order. Learned Presenting Officer stated that a Preliminary Enquiry was conducted against the Applicant by Assistant Director, Health Services. It was found that three Medical Officers, viz. Drs Badgire, Futane and Dhangre working in Civil Hospital, Alibaug were openly engaged in private Medical practice, though they were receiving 35% of pay as Non-Practicing



Allowance. On para medical staff was also indulging in similar activities. However, the Applicant never reported these facts to his superiors nor initiated action against these persons. While working as Assistant Director, Rajiv Gandhi Jeevandai Arogya Yojana, Mumbai, he was using his mobile for taking 'selfies' with official and staff. This was conduct unbecoming of a Government officer. He also used his official vehicles to visit Alibaug, Khopoli, Panvel, Nasik, Sangamner and Pune without taking permission of Chief Executive Officer, Rajiv Gandhi Jeevandai Arogya Yojana, Mumbai. Learned Presenting Officer stated that the Applicant did not file appeal under Rule 17 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 against the order of suspension. He has not exhausted all remedies and therefore, this Original Application is not maintainable.

5. It is seen that O.A no 444/2015, was decided by this Tribunal on 16.10.2015. It is observed that:-

"In the result, it is necessary to issue direction to the State to proceed or withdraw the suspension. It is necessary in the interest of justice that if charge sheet is not served on the Applicant within 15 days from the date of receipt of this order, the suspension order shall stand automatically stayed and the applicant be permitted to join duty. The Government would be free to proceed with the



enquiry as and when it opts to serve the charge sheet in due course and at its own leisure.”

In that case, order of suspension was passed four months back, but charge sheet was not served on the Applicant nor review regarding continuation or revocation of suspension was taken. In the present case, though a period of almost 9 months have passed, no charge sheet has been served on the Applicant. In the affidavit filed by the Respondents on 3.2.2016, there is no mention that any review as required by G.R dated 14.10.2011 was taken. In para 7(v) of the Original Application, the Applicant has referred to provision of para 7(b) of G.R dated 14.10.2011. The reply of the Respondent is in para 11 of the affidavit in reply dated 3.2.2016. It reads:-

“11. With reference to Para no 7(v), I say and submit that contentions made by the Applicant in respect of the Government Resolution dated 14.10.2011 are misleading because as per para 7(a) of the said G.R in case of a employee placed under suspension in view of departmental enquiry contemplated against him, a review of his suspension is to be taken after a period of three months and if it is not possible to complete the departmental enquiry within a period of six months, his suspension will be reviewed on merits and the said G.R has only stipulated the directive principle to be adopted while exercising




powers under Rule 4(5)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 service of charge sheet about his posting are correct but the same are not at all necessary to be considered at this stage.”

It is clear that the Respondent has not denied that there was no review of the suspension of the Applicant after three months from the date of the order as contemplated by G.R dated 14.10.2011. There was no review after 6 months, as the D.E was not completed within six months. It is stated that is it not at all necessary to be considered at this stage. It is very surprising, to say the least, that the Applicant is adopting such a casual, nay contemptuous attitude towards valuable right of a delinquent Government servant given to him under this G.R dated 14.10.2011. In fact, Hon'ble Bombay High Court in the case of State of Maharashtra Vs. S.S Sadavarte, 2001(3) Mh.L.J 249, has held that a delinquent Government servant can either file an appeal against the order of suspension or make representation against the same. In the present case, the Applicant had not filed any appeal against the order of suspension nor filed any representation. However, the Respondent was required to review his suspension order under Clause 7(a) and [not 7(b)] of the G.R dated 14.10.2011, three months after the Applicant was placed under suspension on 14.10.2015. This review was to be made regardless of



the fact, whether the Applicant had made a representation or not. The Respondent has failed to follow Government instruction in this regard. Further, the Applicant should have been considered for reinstatement after 6 months, but no review of his case was undertaken by the Respondent.

6. It is seen that in para 13 of the affidavit in reply, the Respondent has stated that: "Also a confidential report submitted by the Anti Corruption Bureau, Mumbai to the Respondent vide letter dated 29.8.2015 prima facie revealed that Medical Officers working under the Applicant in the Civil Hospital, Alibaug were found to have been indulging in private medical practice in their privately established clinics within the jurisdiction of Civil Hospital, Alibaug where Applicant was posted as Civil Surgeon, who is solely responsible for health administration and ensuring that services of Medical Officers are utilized for providing health services to patients in Civil Hospital and also ensure that no Medical Officer neglects his official duty and indulges in private medical practice thereby impeding provision of medical services to patients in Civil Hospital." The Respondent has not placed the report of A.C.B dated 29.8.2015 on record nor produced it for perusal of this Tribunal. It appears the report is against the Medical Officers who were indulging in private practice. Whether there is any allegation against the





Applicant in the aforesaid report is not clear. In any case, indulgence in private practice is not a very uncommon phenomenon and it is only hoped that similar action is taken by the Respondent against other Supervisory officers though during oral arguments, learned Presenting Officer could not give any information of any other such instance in the State. It is true that the Respondent can place the Applicant under suspension pending a D.E against him. From the affidavit in reply, it appears that a preliminary enquiry was conducted. The Respondent has report of A.C.B also. It should have been possible to frame charges in the period of about 9 months, when the charges against the Applicant are of the 'gross act of rampant indiscipline, insubordination of standing orders and misconduct'. Sadly, however, the charge sheet has not yet been issued. In fact, no action in furtherance of D.E against the Applicant has appeared to be taken as yet. Though the Respondent has denied that the Applicant has been placed under suspension as he approached this Tribunal in O.A no 518/2015 and this Tribunal cancelled his transfer order, it is seen that the order of this Tribunal is dated 7.10.2015 and the Applicant was ordered to be posted back as Civil Surgeon, Raigad within 30 days of receipt of that order. However, the Applicant was placed under suspension by order dated 14.10.2015. It is significant to note that in order dated 7.10.2015, this Tribunal has made the following observations:-

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“24. For effecting Mid-term/Mid-tenure transfer, the existence of reasons and those being borne on record is a sinequanon. In this background it was incumbent on the part of the respondent to be candid and open to concede that those were not borne on record. Existence of special reasons and exceptional circumstances have to be on record, i.e. in the file and not in the mind as knowledge or information. Those could be in the form or shape of news item / a complaint/ report. Existence of some record differentiates the case as is based on objective foundation, than barely on subjectivity, will or desire.”

26. This Tribunal gave to the Respondents an opportunity to come out of self styled satisfaction as regards special reasons or exceptional circumstances through orders which were passed on 9.7.2015 and 11.8.2015. Despite of these orders, the Respondents State has chosen to remain content with the contents of the affidavits, may be Government could not overcome the absence of reasons on record.....

32. Failure of Respondents to have the reasons on record, and failure to make amends despite multiple opportunities to purge shows rather prove some attitude which speaks for itself. This audacity shows

its strength in disguise. Whatever it may be thought or shows, it is for sure a departure from fairness, and the acts travel akin to arbitrariness.

33. Respondent has lost sight of settled law that when reasons are to be assigned or recorded, those cannot be supplanted.”

It is seen that this Tribunal has commented adversely regarding the manner in which the Applicant was transferred from the post of Civil Surgeon, Raigad before completion of his tenure. The fact that immediately after the order was passed on 7.10.2015, the Applicant was placed under suspension on 14.10.2015 speaks for itself. This fact if considered in conjunction with the facts that the Respondent has failed to issue charge sheet of the Applicant though 9 months period has elapsed and the Respondent has not reviewed the suspension order of the Applicant as required under G.R dated 14.10.2011, taken together show that there is some substance in the claim of the Applicant that impugned order has some oblique motive. The peculiar facts and circumstances of this case require judicial intervention.

7. The suspension order dated 14.10.2015 is hereby quashed and set aside. The Respondent will reinstate the Applicant within a period of two weeks from the date of this order. It is, however, made clear that the

order will not be construed to mean that the Respondent is precluded from holding a D.E against the Applicant. The Original Application is allowed accordingly with no order as to costs.

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**

**Place : Mumbai**

**Date : 11.07.2016**

**Dictation taken by : A.K. Nair.**