

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1061 OF 2015

DISTRICT : SOLAPUR

Shri Uttam Dadarao Mhaske.)
Aged 47 yrs, Occ.: Talathi (suspended))
R/o. Yasraj Nivas, Natepute, Near)
Yashwant Housing Project, Tal. Malshiras,))
District : Solapur.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Addl. Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai - 400 032.)
2. The Collector, Solapur.)
3. The Deputy Collector, Dy. Sub-)
Divisional Officer, Malshiras Division)
Akluj, Tal. Malshiras, Dist : Solapur.)
4. The Tahasildar, Malshiras,)
Tal.: Malshiras, Dist : Solapur.)...**Respondents**

Shri J.N. Kamble, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

P.C. : RAJIV AGARWAL (VICE-CHAIRMAN)

DATE : 25.04.2016



ORDER


1. Heard Shri J.N. Kamble, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

2. In this Original Application, the Applicant is seeking relief that the suspension order dated 1.6.2015 may be quashed and the Applicant be reinstated in service pending completion of departmental enquiry against him.

3. Shri J.N. Kamble, learned Advocate for the Applicant argued that the charge-sheet was issued to the Applicant on 26.06.2015 as stated in Para 7 of the Affidavit-in-reply filed on behalf of the Respondents on 15th March, 2016. Shri Kamble stated that the Applicant has immediately filed an appeal on 3.6.2015 under Rule 17 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 before the Collector of Solapur against the order of suspension dated 1.6.2015. However, though a period of more than 10 months have elapsed, no decision has been taken on the appeal by the Collector. Shri Kamble also drew attention to letter dated 22.9.2015 (Exh. 'H', Page 48 of the paper book) wherein the Departmental Enquiry Officer has informed the Collector that Tahasildar,

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Malshiras who has been appointed as Presenting Officer of this case has not attended the proceedings on five occasions on 6.8.2015, 13.8.2015, 16.8.2015, 8.9.2015 and 22.9.2015. Shri Kamble contended that it shows that the Respondents are not at all serious in concluding the departmental enquiry against the Applicant expeditiously. As the enquiry is not being completed expeditiously, the Applicant is kept under suspension unnecessarily. He relied on the judgment of the Hon'ble High Court in the case of **KHUSHAL JANBAJI GAIDHANE Vs. STATE OF MAHARASHTRA & ORS. (Reported in 1986 Mah.L.J. Page 235)** wherein it was held that as per Circular of the State Government dated 18.9.1978, it was illegal to keep a Government servant under suspension for more than six months. In the present case, the Applicant has been under suspension for more than 10 months and he is, therefore, entitled to be reinstated in service. Learned Advocate Shri Kamble also relied on the Judgment of the Hon'ble Supreme Court in the case of **UNION OF INDIA AND ORS V/s DIPAK MALI, 2010 (1) SLR 293**, wherein it has been held that if review is not held within 90 days after suspension, the delinquent Government servant is entitled to be reinstated in service.



4. Shri Kamble argued that considering all these facts, a clear case is made out to revoke suspension of the Applicant.

5. Ms. Gohad, learned P.O. argued that the Applicant has to wait for the decision in the appeal which is pending before the Collector. She stated that the Applicant has been suspended on very serious charges which are mentioned in Para 4 of the Affidavit-in-reply filed on behalf of the Respondents. She submitted that the decisions cited by the learned Advocate Shri Kamble are not applicable in the present case for the following reasons.

- (i) The Hon'ble Supreme Court judgment is not applicable as there is no rule in Maharashtra Civil Services Rules, which requires review within three months from the date of order. There is a provision of appeal against the order of suspension. The judgment of Hon'ble Supreme Court is based on Central Civil Services Rules, 1965 which are not applicable to State Government employees;
- (ii) As regards the judgment of Hon'ble Bombay High Court, the learned P.O. Ms. Gohad

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stated that this issue has been settled by the Hon'ble Bombay High Court in the case of **State of Maharashtra Vs. Shivram Shambhajirao Sadavarte, 2001 (3) Mh. L.J.249.** Hon'ble Bombay High Court has held that a delinquent Government servant placed under suspension can file an appeal under Rule 17 of M.C.S (D & A) Rules, 1979. He can also make a representation under Rule 4 ibid against the suspension order;

- (iii) As per G.R. dated 14th October, 2011, suspension of a delinquent Government servant is required to be reviewed.

6. Learned P.O. stated that at the most, some time limit may be prescribed for disposal of the appeal filed by the Applicant against his suspension order.

7. It is a fact that the Applicant has been under suspension for more than 10 months. The appeal has also not been decided by the Collector, Solapur though more than six months have elapsed. There is nothing on record to suggest that his case was taken under for review as provided in Clause 7(a) of G.R. dated 14th October, 2011 which mandates that competent officer should review the

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suspension of a Government servant after three months when the departmental enquiry under M.C.S (Discipline & Appeal) Rules, 1979 is proposed or started against him.

8. In the present case, the enquiry has already been started and the Respondents were duty bound to review the suspension of the Applicant three months after he was placed under suspension. It is also not clarified by the Respondents as to what action has been taken by the Collector, Solapur on the report of the Departmental Enquiry Officer by the Presenting Officer about absence of the Presenting Officer in the D.E. proceedings against the Applicant.

9. Considering all these facts, the following orders are made.

- (a) The Collector, Solapur – Respondent No.2 shall decide the appeal dated 3.6.2015 filed by the Applicant against his suspension order dated 1.6.2015 within a period of one month from the date of this order.
- (b) The departmental enquiry has already progressed against the Applicant. If the Presenting Officer has extended cooperation, it probably would have been completed by now. It is, therefore, directed that the enquiry should be completed in all respects within three months from the date of this order.

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10. The Original Application is disposed of in these terms with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman
25.04.2016

Mumbai

Date : 25.04.2016

Dictation taken by :

S.K. Wamanse.

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