IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.214 OF 2017

DISTRICT : SANGLI

Shri Jahur Ahmed Tajuddin Pirjade.)
Working as Sectional Engineer,)
Age : 52 Yrs, Residing at 2131/B,)
Sanglives, Mujawar Galli, Miraj,)
Dist : Sangli – 416 410.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Chief Secretary,)
Mantralaya, Mumbai - 400 032.)

2. The Secretary.)
Water Resources Department and)
C.A.D.A, State of Maharashtra,)
Mantralaya, Mumbai 400 032.)

3. Chief Engineer (Water Resources),)
Water Resources Department,)
Sinchan Bhavan, Mangalwar Peth,)
Barne Road, Pune 411 011.)

4. The Superintending Engineer.)
Sangli Irrigation Circle, Warnali,)
Vishrambaug, Dist : Sangli.)

5. The Executive Engineer.)
Sangli Irrigation Division, Warnali,)

Vishrambaug, Dist : Sangli.)

6. The Sub-Divisional Officer.)
Irrigation Sub-Division Miraj,)
Near Miraj Railway Station,)
District : Sangli.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mr. N.K. Rajpurohit, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 27.04.2017

JUDGMENT

1. The Applicant, a Sectional Engineer (Sec. Engr.) in Irrigation Section, Mhaisal under Sangli Irrigation Division, Sangli was placed under suspension by the order dated 2.3.2017 made by the Assistant Chief Engineer, Project and Administration Water Resources Division, Pune (सहाय्यक मुख्य अभिंयता (प्रकल्प व प्रशासन) जलसंपदा विभाग, पुणे-११). That is at Annexure 'A-14' (Page 54 of the Paper Book (PB)). Stung thereby, the Applicant has come up before me with this Original Application (OA) for getting the impugned order quashed and set aside and as a consequence, he seeks reinstatement.

2. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the

Applicant and Mr. N.K. Rajpurohit, the learned Chief Presenting Officer (CPO) for the Respondents.

3. The 1st Respondent is the Chief Secretary, State of Maharashtra, the 2nd Respondent is the State of Maharashtra in Water Resources Department and CADA, the 3rd Respondent is the Chief Engineer, Water Resources Department, Pune, the 4th Respondent is Superintending Engineer, Sangli Irrigation Circle, District Sangli, the 5th Respondent is the Executive Engineer, Sangli Irrigation Division, District Sangli and the 6th Respondent is Sub-Divisional Officer, Irrigation Sub-Division, Miraj.

4. The Applicant took over at Mhaisal on 21.11.2016. But there is a short history. The Applicant came to be transferred to the concerned Department at Pune sometime in the year 2014 and by an order of 29th July, 2016, he came to be transferred to Mhaisal. He was not immediately relieved, and therefore, he brought **OA 1061/2016 (Shri Jahur Ahmed Tajuddin Pirjade Vs. Chief Secretary, State of Maharashtra and 2 others)**. Mr. N.K. Rajpurohit, the learned Chief Presenting Officer (CPO), however, told me that, nothing survives from out of that particular OA, and therefore, it is not necessary to refer thereto. At this stage, I may only mention that when this Tribunal scrutinizes the impugned order of transfer, there

are facts and circumstances that surround that order on all sides, and therefore, the discussion about that OA cannot just be dismissed out of hand.

5. It was alleged in that OA that though the transfer order came to be issued on 4.10.2016, it was not being implemented by Chief Engineer (Water Resources) – 3rd Respondent therein. The Applicant voiced a concerned that Respondent therein. The Applicant voiced a concern that some extraneous reasons and collateral purpose were at work and was sought to be achieved. He apprehended that, that order would either be stayed or cancelled for reasons which were not exactly straight. He had learned that some other Sectional Engineers were also eying for that particular post, and therefore, he moved the Tribunal seeking directions to the Respondents therein to implement the order of transfer forthwith and let the Applicant join at Mhaisal without any loss of time.

6. That OA came up before this Tribunal presided over by the Hon'ble Vice-Chairman on 11.11.2016 and a copy of the first order is at Annexure 'A-5' (Page 35 of the PB). A statement was made on behalf of the Respondents that urgent steps would be taken to effectuate that order of transfer. On 29th December, 2016, the matter again appeared before the Hon'ble Vice-Chairman. The learned

Advocate for the Applicant sought leave of the Tribunal to withdraw the aid OA, "as the transfer order which has not been implemented has since been implemented and Applicant had no grievance left". The OA was accordingly allowed to be withdrawn.

7. Now, in Para 6.7 of this OA, at Page 5, it is pleaded that the Respondents were never inclined to implement that transfer order for some extraneous reasons, which fact was mentioned in that particular OA also. In as much as the authorities had to perforce of the order in that OA, required to implement that order, they had become antagonized and when the Applicant went to the Office of the 2nd Respondent – Secretary, Water Resources Department to serve the Court Notice, it was mentioned to him that he would be placed under suspension.

8. Thus, according to the Applicant, the seeds of this particular litigation were sown right at that time on account of the scorn felt by the authorities for having had to forcibly comply with that order of transfer. Now, these averments in the OA have been traversed in the Affidavit-in-reply filed on behalf of all the Respondents by Shri Namdev S. Kare, the Executive Engineer, Sangli Irrigation Division, Sangli in Para 13 thereof and the same in fact needs to be fully reproduced to give an indication that on the manner in

which the most vital circumstance preceding the order herein impugned came to be dealt with.

> "**13.** With reference to para 6.7, I say and submit that a perusal of order dated 29/11/2016 passed by this Hon'ble Tribunal will reveal that the transfer order dated 4.10.2016 in respect of applicant was implemented and it was submitted on behalf of applicant that no grievance has been left and hence requested to allow to withdraw the said Original Application No.1061 of 2016. Hence, applicant's adverse contentions at the time of serving court notice are baseless and same are denied. I further say that the Executive Engineer, Sangli Irrigation Division, Sangli had reported about absenteeism, insubordination of the applicant while working at Narshinhwadi Section, he had recommended to transfer the applicant out of the division. Copies of letters dtd. 18.12.2015, 18.12.2015, 23.12.2015, 1.1.2016, 5.1.2016, 27.3.2016, 18.5.2016, 27.5.2016, 23.12.2016, 31.12.2016, 24.1.2017 issued to applicant are annexed hereto and marked as **Exhibit R-2 colly**. I further say that there is also a correspondence to either transfer the applicant or to conduct the disciplinary proceedings."

9. The manner in which the contents of Para 6.7 of the OA have been traversed in the Affidavit-in-reply as

quoted above will in my opinion make it quite clear that the Respondents have not categorically denied the precise allegation of the alleged threat, etc. I am quite conscious of the fact that a possible argument could be that even the Applicant had not particularized that particular allegation with regard to the identity of the person holding out the threat, etc. but then by not referring to do at all, the Respondents have not exactly served their cause. It could safely have been mentioned the difficulty that were experiencing in traversing with the case of the Applicant about the threat, etc. One cannot deny that the allegations of threat are quite serious and call for attention and the way in which they have been dealt with, in my view, should make it quite clear that this is a case of constructive admission or in any case, I can safely proceed on that basis.

10. Proceeding further, at Annexure 'A-7' (Page 38 of the PB), there is a communication to the Applicant dated 23.12.2016 from Sub-Divisional Officer, Irrigation, Miraj being the Respondent No.6. It would appear from the same that apart from the posting of the Applicant at Mhaisal, he had two other additional charges at Babunal and Madgyal. However, the establishment of Madgyal was with the sub-division (upvibhag) and in Madgyal Section, there was no work. Certain other reasons were mentioned and ultimately it was stated that the Sectional Engineer Shri Chougule of

Kuchi was on leave and his additional charge was given to the Applicant and the Applicant should inform about having taken the additional charge therein. On the same day, the 6th Respondent addressed a communication to Executive Engineer, Sangli Irrigation Division – Respondent No.5 informing him that the Applicant was informed to take the said additional charge was at Kuchi, but he has expressed his inability to do so, and therefore, the directions from higher sources should be issued.

11. At this stage, it needs to be noted quite clearly that it is an admitted position that the Applicant was given this additional charge at Kuchi and he did not accept that additional charge.

12. The 6th Respondent made a complaint to the 5th Respondent against the Applicant vide Annexure 'A-8', dated 24.1.2017. It was therein mentioned that the Applicant was posted at Mhaisal from 21.11.2016. The work of water conservation or planning draught affected area was assigned to that particular post. The Applicant was not complying with the directions of his superiors, which was a serious matter and he was liable to be proceeded against departmentally. He did not take the charge of Shri Chougule despite the directions.

13. The 3rd Respondent – Chief Engineer, Water Resources on the same day i.e. 24.1.2017 addressed a communication to the 3rd Respondent – Chief Engineer, Water Resources wherein he informed that in his earlier posting at Narsinghwadi, the Applicant was complained against by the Hon'ble M.L.A. Shri Ulhas S. Patil of Shirol. The Applicant was frequently remaining absent from duty. Some important work had remained pending for the last two years. Further, ever since his posting at Mhaisal, the Applicant was frequently remaining absent and it was being found difficult to get work done from him. He was not complying with the directions of the superiors. He had not taken over the charge of Mr. Chougule which fact has been discussed above, and therefore, he should be transferred elsewhere and should be proceeded against departmentally.

14. At this stage, I may usefully mention that I have in store the discussion of the Applicant's communications also which would be a short while from now. However, it should become very clear that during the time, these letters were being issued, the Applicant had been there at Mhaisal just for 2/3 months and I am completely at a loss to understand as to how anything pertaining to his earlier posting, could have all of a sudden got up at that stage and this must be understood in the context of the surrounding circumstances including the threat and the earlier OA. The

particularization of the number of days for which the Applicant remained absent is totally wanting and this is significant in view of the fact, that according to the Applicant except for a comparatively shorter period, when he was on leave all through out, he has attended the Office and if that was so, then in my opinion, it was all the more necessary for the authorities asking for action to be taken against the Applicant to particularize the so called absence of the Applicant.

15. At Page 43 (Annexure 'A-9'), there is a communication to the Chief Engineer – Respondent No.3 from the Assistant Superintending Engineer most probably from the office of Respondent No.4. There also, the correspondence was made with regard to the Applicant's alleged activities in Narsinhwadi in his earlier posting. A few details were given and the same fact about the Applicant having not taken over the charge of Mr. Chougule above referred to, was repeated. At Page 45, there is a communication to the Respondent No.2 – Secretary, Water Resources Department from the office of the 4th Respondent. There also, the complaint was made with regard to the earlier posting of the Applicant which has already figured in the above referred other correspondence and the Government was requested to transfer the

Applicant elsewhere and to take action against him. This communication is dated 27.1.2017.

16. At Page 47 (Annexure 'A-10') is a communication from the office of 3rd Respondent to the 2nd Respondent dated 30th January, 2017 complaining against the Applicant informing *inter-alia* that the Applicant was not working properly and here, I must repeat that at Mhaisal, the Applicant had put in hardly a few months when this correspondence was made. The next communication is at Annexure 'A-11' (Page 48 of the PB dated 1.2.2017) from the 6th Respondent to the 3rd Respondent. It was mentioned therein that, ever since the posting at Mhaisal was given to the Applicant, he was frequently remaining absent and it was increasingly found difficult to get work done from him. A request for his transfer elsewhere and initially of disciplinary proceedings was already made. The Applicant was bringing political pressure and was behaving in an arrogant manner and with indiscipline. In as much as he had joined at Mhaisal on the strength of a Court order. He was behaving in a manner as if nobody could do a thing to him. He was giving misinformation to the public representatives because of which the office was suffering and he was not obeying the directions of the superiors. It is quite clear from this letter that the fact that the Tribunal made an order which ultimately becaused the actual

posting of the Applicant was at least a fact which it was considered necessary to be mentioned. It will not be a ritualistic refrain to mention that the authorities were not particularly happy with the Applicant having taken recourse to his legal remedy.

17. At Annexure 'A-2' (Page 49 of the PB), there is a communication to the 2nd Respondent – Secretary, Water Resources Department by the Superintending Engineer himself. It was alleged therein that the Applicant was frequently remaining absent, that he was not obeying the directions of the superiors and that he was boasting of his proximity with political people. He had refused to accept the additional charge. Various difficulties were mentioned that according to the addresser of that letter, the administration was facing. The fact that he was boastful about he having taken charge with the aid of the Court order was also mentioned. Therefore, it was necessary to immediately suspend him and hold DE against him.

18. Mrs. Mahajan was considerably exercised by the fact that the subordinates were freely addressing communication to the superiors viz. the Government and even suggesting the course of action to be adopted. As to this submission of the learned Advocate, I find that, it cannot be gainsaid that it was a little unusual, more

particularly, when the allegations were capable of being fortified by supporting evidence, but was not done like that, and further, the issue of some kind of a demand for suspension of the Applicant was clearly made in the communication to the Government. That was a significant circumstance preceding the impugned order.

19. I now turn to the communication from the Applicant to the Government viz. the Respondent No.2 which is dated 4.2.2017. It is at Annexure 'A-13' (Page 51 of the PB). He stated therein that he was posted at Mhaisal in Miraj Taluka on 21.11.2016 and before that, he was at Narsinghwadi. He claimed therein that in his 33 years of service, he had never remained unauthorizedly absent, he had never flouted the orders of his superiors and had never caused delay in discharging his work although he was on medical leave from 22.12.2015 to 31.1.2016 which is a period of a little less than 40 days. He has been faithfully discharging duties of a Project at Rajapur which is detailed there and in the last 20 years, his Earned Leave had lapsed. No complaint was made against him either by the public representatives or agriculturist, etc. On the contrary, he had received a letter of commendation and his Confidential Record was excellent. It seems that he had annexed that record therewith. It was further mentioned by him that he was told to take additional charge at Kuchi, but at that

time, he already had the charge of Mhaisal, Bhugnal, Madgyal and geographically, Kuchi was not connected with Mhaisal and he was a patient of Diabetes and High Blood Pressure, aged 52, and therefore, he had requested that the additional charge of Kuchi should be given to some other Officer. But even then, as per the orders of the Executive Engineer and Sub-Divisional Officer, he had still gone there, made a survey and urgently prepared the budget for being submitted to the Collector, and thereafter, no complaint arose and public representatives or the agriculturists did not make any complaint to the superiors. He concluded by saying that he had been performing his work with full sincerity and honesty and he would continue to do so. He again invoked his health condition and family obligations and requested that no departmental proceedings be initiated against him.

20. Before I proceed further, it needs to be noted that, irrespective of whether, the Respondents had forwarded the so called material against the Applicant to the higher-ups or not, but when the matter ultimately came up before this Tribunal, it was in my opinion, necessary for the Respondents to place before me at least some material to justify the impugned order. The learned CPO contended that nothing has happened so far except the service of the impugned order and the proceedings will be initiated

against the Applicant sooner than later. According to him, the impugned order having been made on 2nd March, 2017, this OA was lodged on 14.3.2017, and therefore, there is no time for the Respondents to properly respond. In this behalf, it is worth noting that the matter came up before me first on 15.3.2017 for consideration of interim orders. I did not make any orders on that day. On 24.3.2017, the reply was filed and the hearing of the OA was expedited and ultimately, it was heard on 7.4.2017 and closed for orders on 18.4.2017.

21. In so far as the above referred submission of the learned CPO is concerned, in my opinion, there are undoubtedly jurisdictional constraints on the judicial forum exercising the power of judicial review of administrative action and the Tribunal shall surely bear that in mind. However, if the learned CPO is envisaging a situation where some duration of time must elapse before the matter is decided which will have produced the result that the suspension which is under judicial scrutiny must continue, that I am afraid, I cannot agree with him and in any case, not with the expanse of his submission. There are legal principles that govern the matters such as this one, which I shall presently deal with and discuss. But then, I must repeat that, keeping everything aside, the Tribunal cannot be told not to even consider the case of a suspended

employee for the cause assigned by the learned CPO. It will be somewhat of a paradox that if the employee moves early, he will be assailed for that and were he to be late, even then he would be assailed for being indolent. Therefore, the fact of the matter is that whenever the matter is placed before the Tribunal, the Tribunal will have to apply the well-recognized principles of law to the facts such as they are. If it is found that, in view of the shortage of time the Respondents were handicapped, the Tribunal will surely take into consideration that aspect of the matter. However, as of now, I do not think, there has been any such handicap because much before the order of suspension, the authorities most of whom are before me as Respondents had already stated all the facts which according to them should result in suspension of the Applicant and initiation of disciplinary proceedings.

22. If that was so, then the possibility of the Respondents having suffered in the manner canvassed by the learned CPO does not arise. I proceed further.

23. In the background of the above correspondence, the Assistant Chief Engineer, Project and Administration issued an Office Order No.42 of 2017, dated 2.3.2017 placing the Applicant under suspension. As some kind of a preface, it all about the repeated absence of the Applicant

from duty, non-performance of the assigned work, misusing or abusing the political connections resulting in difficulties for the administration, misinforming the public representatives, creating confusion and behaving in an arrogant manner came to be stated. Such information was received from the Superintending Engineer in the response therein mentioned at reference column numbers 2 and 4. A case was, therefore, made out for initiation of proceedings for violation of the provisions of Maharashtra Civil Services Conduct) Rules, 1979, Rule 3(1)(1)(2)(3) and under the provisions of Rule 4 of the D & A Rules, the said authority placed the Applicant under suspension immediately. There were other usual terms and conditions which are not highly relevant for my present purpose. It is this order which is challenged herein.

24. The Applicant responded to the impugned order almost immediately on 6.3.2017 by a reply running into five pages and for all one knows, it is sufficiently detailed. He has in substance defended himself and most of the facts that he had set out in his communication to the Government above referred to, were restated and reference was made as to how, he had to move this Tribunal earlier for the redressal. He has also mentioned therein as to how, he has not been guilty of taking leave as alleged on behalf of the Respondents.

25. At Page 63 of the PB, there are extracts of the monthly diary of the Applicant which give a clear picture of the manner in which he had discharged his functions. It is not necessary for me to set out in great detail the contents thereof. It is a part of the record, but one aspect of the matter is clear that this diary has got columns of the date, time, details of the journey, nature of the vehicle used, distance covered in kilometers and remarks. Left alone therewith, one cannot jump to a conclusion that the Applicant had been shirking his responsibility and/or remaining absent as alleged by and on behalf of the Respondents. Here it needs to be repeated that no material has been placed before this Tribunal to judge the case of the Respondents. The observations hereinabove made, in fact, need to be carefully perused in order to understand the significance of the point that I am making. Before proceeding further, I must deal with the submission made on behalf of the Applicant with regard to competence of the authority that made the impugned order of suspension. It is signed by Assistant Chief Engineer (Project & Administration) most probably from the office of the 3rd Respondent.

26. The Respondents have relied upon a G.R. of 4.12.2014 issued by the Department of Water Resources, which fact has been dealt with in Para 29 of the Affidavit-in-

reply. The said GR mentions *inter-alia* that except for the matters involving major punishment as far as the other disciplinary aspects are concerned, for them, the competent authority would be Superintending Engineer or Chief Engineer. For Group 'C' and Group 'D' employees, the disciplinary proceedings could be initiated as appointing authority by the above referred authorities. Then, there is a reference to the matters where the sanction under the relevant provisions of the Prevention of Corruption Act, 1988 arises for being dealt with. Rule 4 of the D & A Rules lays down *inter-alia* that the appointing authority or any other authority subordinate to him or the disciplinary authority or any other authority empowered in that behalf by a general or special order may place a Government servant under suspension. It is in fact not necessary for me to enter into the details of the said aspect of the matter and it would be suffice to mention that the challenge posed by the Applicant on the competence of the authority is something which will fail. I reject that aspect of the case of the Applicant and proceed further.

27. It must, however, be noted at this stage itself that Rule 4(5)(c) of the D & A Rules clearly lays down that order of suspension made under that Rule, "may at any time" be modified or revoked by the authorities that made that particular order or by authority to whom that authority was

subordinate. We are not concerned with the proviso thereof, and it must, therefore, be clearly understood that the validity of the order in dispute on the ground of competence of the authority has failed, but that does not by itself prevent this judicial forum from examining the present OA in its entirety to determine as to whether a case is made out for revocation or modification of the impugned order of suspension and if so to place it on record with requisite directions to the concerned authority.

28. It will be appropriate at this stage to make a recapitulation of the discussion thus far, so as to have a proper focus on the discussion to follow. The impugned order of suspension was made by an authority who was not incompetent to do so, but he nevertheless has got the power of revocation or modification of the said order of suspension. Naturally, for that, a deserving case must be made out and if this Tribunal relying upon binding superior judicial pronouncements lay down the guidelines, then of course, the concerned authority will be bound thereby, because it is the guideline issued by this Tribunal but most significantly, it will be based on binding judicial principles emanating from the Hon'ble Constitutional Courts. The circumstances surrounding the impugned order were such as to make it clear that several personnel above the present Applicant were so disposed as to make sure that he was

made to face music and was even placed under suspension. It can quite fairly be taken that the said authorities could not reconcile with the posting of the Applicant at Mhaisal. For why else, the earlier OA should have been brought by the Applicant. In the teeth of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 (Transfer Act), the tenure of the Applicant is a longish one, if counted from recent past. Therefore, Mrs. Mahajan's criticism that by way of suspension, a round about via-media was devised to get the Applicant out of harm's way cannot be dismissed out of hand. That possibility cannot be entirely discounted. I have already delineated in that behalf the jurisdictional limitations of this Tribunal in matters such as this one and have mentioned in effect that, circumscription of jurisdiction cannot be allowed to get degenerated into artificial non-exercise of jurisdiction even when merited.

29. The learned CPO then raised the issue of the competence of the very OA such as it is because the Applicant has made no recourse to the appellate remedy provided for in the relevant Rules. Rule 17 of the D & A Rules indeed lays down that an order of suspension is appealable. Very recently, I had an occasion to deal with and decide **OA 1096/2016 (Shri Anandkumar S. More Vs.**

The State of Maharashtra and one another, dated 21.4.2017). That was a matter relating to suspension and this issue was also raised therein. I dealt with the relevant case law also and in that connection, I think I had better reproduced the Paragraphs 12 to 15 from **Anandkumar More's** Judgment.

> "**12.** In this background, even before I proceed further into the facts, I need to discuss a point strongly urged on behalf of the Respondents. According to them, an order of suspension is appealable before the competent appellate authority. A conjoint reading of Rules 17 and 18 of the D & A Rules, would clearly show that an order of suspension under Rule 4 of the said Rules is one whereagainst appeal lies. However, Mr. Chandratre contended that under Rule 18, the appeal lies to the Governor or to the Government depending upon the authority making the first order whereby penalties were imposed and the order of suspension is not a penalty, and therefore, although the appeal must have been provided but a forum is not provided, and therefore, according to him, the failure on his part to have taken recourse to an appeal should not be held against him.

13. Another aspect of the matter is that, as already discussed above, almost soon after the service of the order of suspension, the Applicant made a representation on 19.9.2016 (Exh. 'A-3', Page 35 of the PB) requesting for annulling the order of suspension, and thereafter, he brought the present OA.

14. In my opinion, there is substance in the submission of Mr. Chandratre that the Applicant had no forum to go to, but even if I were to go along with the Respondents and hold and this I must say is an assumption that the remedy of appeal was available, the Applicant had made a representation and that ought to have been decided in good time for the Applicant to do the needful in the matter. The Hon'ble Bombay High Court held in **State of Maharashtra & Ors. Vs. Shivram S. Sadawarte : 2001 (3) Mh.L.J. 249** held as follows in Para 10.

> "**10.** There can be dispute that a Government servant cannot be kept under suspension indefinitely or for an unreasonably long period and the same is not contemplated under Rule 4 of the Rules as well. A provision is made empowering the Government to review or revoke

such an order of suspension in appropriate cases. If the employee approaches the State Government requesting to revoke the suspension order under Rule 4(5) of the Rules and the said request is declined or remains undecided beyond a reasonable period, undoubtedly the delinquent employee has the right to challenge the Government's decision before a competent Court and the Court will have the powers of judicial review of such an order. The scheme of the rules is clear and does not call to be restated time and again. The delinquent's approach can be at any time and the same is required to be considered by the competent authority within a reasonable period."

But most importantly, it needs to be noted that this precise issue came up for consideration before the Division Bench of the Hon'ble Bombay High Court in **Writ Petition No. 9660/2014 (The State of Maharshtra Vs. Dr. Subhash D. Mane (DB), dated 1st December, 2014**. In Para 9 thereof, Their Lordships were pleased to observe as follows :

"**9.** ..... Section 20(1) of the Administrative Tribunals Act does not place an absolute embargo on the Tribunal to entertain an application if alternative 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."

15. It is, therefore, very clear that the fact that the Applicant did not take recourse to the appellate remedy would not at all be fatal to entertaining and even deciding this OA."

Incidentally, **Subhash Mane's** case has been reported as **State of Maharashtra Vs. Dr. Subhash Mane : 2015 (4) Mh.L.J. 791**. Mrs. Mahajan also relied upon Ram and **Shyam Company Vs. State of Haryana and others : (1985) 3 SCC 267 (Para 9)**. The law is that the requirement of recourse to appeal is a rule of prudence rather than requirement of law. In other words, non-availing of appeallate remedy does not affect the legal action

of the proceeding like the OA far less does it render the OA illegal.

30. I have already indicated above that the time lag between the date of suspension and the filing of this OA has been very short. I have already mentioned as to how the learned CPO wanted this itself to be cited as a ground to throw this OA out of the window. I have already given indication of my point of view on that. It is a fact specific issue. It cannot be said that other factors remaining constant, the aggrieved must be made to suffer mandatorily for some duration of time. I must repeat that, if there was some material with the Respondents and that too, of the period, the Applicant was posted not at Mhaisal, but his previous posting, then depending upon the determination of its very relevance, then in that event, rather than making self-serving statements and self-drawn inferences, the Respondents should have produced those documents for the perusal of the Tribunal to judge as to whether their view was such as to be called plausible on that anvil and as to whether the said conclusion of the Respondents was immune from judicial or quasi-judicial scrutiny and even interference or at least intervention. That has not been done. There is no doubt that the period of time within which such a course of action must be adopted has got some relevance and to the extent necessary, I may have to

discuss that aspect of the matter presently. But one aspect of the matter is very clear that studied in isolation and left only with that single point, no short work of the Applicant's case could be made just because he moved the Tribunal when it was still early days post his suspension. It also needs to be noted that within four days of the said order, the Applicant made a representation protesting thereagainst and requesting for his reinstatement also making it clear that otherwise, he would have to seek redressal from the Court of law. That representation is Annexure 'A-15' (Pages 58 to 62 of the PB). He has raised clear dispute *inter-alia* about his absence as alleged as well as the other fact components of the case of the Respondents. For example, as far as the leave aspect of the matter is concerned, it could easily have been proved one way or the other, by production of documents. Those documents would be in the custody of the Respondents. Similarly, the other aspects of the matter which I have already summarized above in so far as the allegations are concerned, including for example the misuse or abuse of the political acquaintance or such other aspects, the documents could have been produced and that could only have been done by the Respondents. I can find no immunity capable of being claimed by the Respondents from the adversity in the form of drawing an adverse inference against them for having failed to produce it before the Tribunal. There is no reason

why, a presumption should not be raised, that had those documents existed, they would have been produced and/or further, had they been produced, they would have gone against the Respondents and hence, the non-production. As for principles in **Anandkumar More** (supra), Paras 7 and 8 need to be reproduced.

> "**7.** In the background of the above delineated factual parameter, this Tribunal is called upon to consider as to whether at this stage, it needs to interference or intervention of this Tribunal with the suspension of the Applicant. There is no doubt that there are jurisdictional limitations. They are too very well known to the recapitulated here and it would be suffice to mention that the principles of law appear to be that a certain leeway is surely there for the employer to take a decision about the suspension aspect of his employee. This aspect of the matter, however, is and has got to be fact specific. It needs always to be borne in mind that in public services, there are constitutional safe-guards and those safeguards cannot be in actual practice made illusory and with whatever jurisdictional limitations there are on the powers of the judicial forum, but by an artificial exercise of the powers, the

circumspection provided for the jurisdiction cannot be allowed to get degenerated into a state of no jurisdiction.

8. Mr. C.T. Chandratre, the learned Advocate for the Applicant in this behalf relied upon **Cap. Paul Anthony Vs. Bharat Gold Mines Limited : 1999 SCC (L & S) 810**. Although Their Lordships in that matter were dealing with the Civil Services Rules applicable to the Central Government employees, but it is very clear that the principles laid down therein are applicable to all such service matters where the issue was just as the present one which arises for determination. Their Lordships relied upon **O.P. Gupta Vs. Union of India : (1987) 4 SCC 328** in **Paul Anthony** (supra), Their Lordships denounced the tendency of some of the Officers to place their subordinates under suspension even over trivial lapses. The issue of simultaneous continuation of the DE as well as the Criminal Proceeding was also considered by Their Lordships in Paul Anthony (supra). Para 29 of **Paul Anthony** (supra) in fact needs to be fully reproduced wherein a passage from **O.P. Gupta** (supra) has also been quoted.

"**29.** Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of "subsistence allowance", so that the employee may sustain himself. This Court, in O.P. Gupta Vs. Union of India made the following observations with regard to subsistence allowance: (SCC p.340, para 15). "An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as

explained by this Court in Khem Chand Vs. Union of India is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance- generally called subsistence allowance - which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'subsist' as given in shorter Oxford English Dictionary, Vol. II at p.2171 is 'to remain alive as on food; to continue to exist'. 'Subsistence' means- means of supporting life, especially a minimum livelihood."

31. Mrs. Mahajan relied upon in this matter on **Madanlal Sharma Vs. State of Maharashtra and others : 2004 (1) Mh.L.J. 581**. That Judgment was relied upon by

me in **Anandkumar More** (supra). Paragraph 10 therefrom reads as under :

> "**10.** I am aware of a Judgment of the Hon'ble Bombay High Court (DB) in **Madanlal Sharma Vs. The State of Maharashtra and others, 2004(1) MLJ 581**, more particularly Paras 13 and 15 thereof. There Lordships were pleased to hold that indefinite continuation of suspension is not even valid for which there were a number of binding Judgments. It was also observed that it was a settled law by way of several Judgments of the Hon'ble Bombay High Court and the Hon'ble Apex Court that suspension is not to be resorted as a matter of rule. It is to be taken as a last resort, only if the enquiry could not be fairly and satisfactorily completed without the delinquent Officer being kept away from the post."

It is, therefore, clear that on the authority of **Madanlal Sharma** (supra), it can safely be stated as a principle that suspension may not be resorted to, if without suspending the delinquent, the enquiry can be fairly and satisfactorily completed. In this behalf, the above discussion including that in Paragraph 28, above needs to be reread.

32. In the matters like this one, where this judicial forum is required to exercise jurisdiction of judicial review of administrative action, a term "malafide" is very commonly used. The Applicants use it to assert the presence of malafides and the Respondents retort by pointing out the absence thereof. Paragraphs 33 and 34 of my Judgment of **Anandkumar More** (supra) was the one wherein, I had dealt with this issue and two Paragraphs need to be fully reproduced because therein, I have quoted a Judgment of the Hon'ble Supreme Court which is quite apt for guidance. I may now quote Paras 33 and 34 from **Anandkumar More's** case.

> "**33.** In such matters, the employees generally want to contend that the impugned orders are malafide, and therefore, the State turns around and tries to point out as to how such an allegation was unfounded inter-alia because malafides cannot be institutional, but they have to attributed to the human agency and unless those human beings were impleaded to answer the charge, the allegations of malafides cannot sustain. In **Dr. Mane** (supra), a Division Bench of the Hon'ble Bombay High Court in Para 12 was pleased to deal with this aspect of the matter and reliance was placed on a Judgment of the Hon'ble

Supreme Court in **Kalabharati Advertising Vs. Hemant Vimalnath Narichania & Ors. : AIR 2010 SC 3745**. The said Para 25 may now be reproduced.

> "**25.** The State is under obligation to act fairly without ill will or malice- in fact or in law. "Legal malice" or "malice in law" means something done without lawful without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Whether malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for purpose foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, which intent is manifested by its injurious acts."

34. Having reproduced from the Judgment of the Hon'ble Apex Court, I do not think, anything more needs to be added. However, as an essential fall-out of the above observations, it becomes clear that the issue of malice, malafide or such other jurisprudential terms have to be studied in context of a particular set of facts presented for consideration. It is always necessary to be proved that there was presence of such elements constituting malafides as probably would be in the realm of either branches of law including the criminal law. In Para 26 above quote, the Hon'ble Supreme Court clearly observed that, passing an order of an unauthorized purpose would itself constitute malice in law. Applying the same principles to the present facts, in my opinion, it should become very clear that, in the set of these facts, the order of suspension was thoroughly unwarranted and in that sense, the Respondents cannot be absolved from being malafide in their conduct and the word, "malafide" must be so construed as mandated by the Hon'ble Apex Court."

33. It is, therefore, very clear that the term 'malafide' has to be understood in the manner indicated in the above

quote. The Respondents, therefore, cannot carry the day by merely asserting the absence of malafides. It is not necessary for me to meander into the academics of the matter. In the present OA, there is a correspondence of contemporaneous vintage which clearly indicates as to who the addresser thereof was, and therefore, I do not think, it will be necessary for me to make a short work of the case of the Applicant on the basis of the argument of the learned CPO that the role of each and every person must be spelt out clearly. It has already been spelt out and even if the names are not there, in the correspondence itself, they can safely be identified.

34. I may now turn to the fact component relating to the additional charge which has already been touched upon. It so happened that the Sectional Engineer of Kochi one Shri Chougule apparently proceeded on leave. The Applicant was called upon to take additional charge and at that time, he already held the additional charges of two other posts and apart from that, he was already holding the post that he had been transferred to on the strength of this Tribunal's order which was Mhaisal. The learned CPO assailed the Applicant for having committee serious breach of discipline by not reporting for work for Kochi. He argued that it is the bounden duty of every public servant to obey

the directions of the superiors for otherwise the entire Government establishment would go haywire. Now, regardless of the ultimate order that will be made in this OA, on principles, there can be no doubt about the proposition stated by the learned CPO. Every employee has to be obedient and must do whatever he is told to do by his employer. Having said that, is it that the employer should not take into consideration at all, even the reasonable concerns of the employee. The Applicant did not take charge of Kochi because that would, according to him, was his 4th charge. The above discussion on facts needs to be recalled in this behalf. According to the Respondents, one of those charges was such where the work was not heavy and in fact, there was no work at all. I may only mention that this fact component will have to be considered in the backdrop of the events such as they were happening at that time including the earlier OA, which discussion has been extensively made already.

35. I am, however, prepared to proceed on assumption that the Applicant was wrong in not accepting Kochi's assignment and in the manner of speaking, there was even some guilt associated therewith. I am not giving any positive directions and my observations surely need not be distorted and with this abundant caution, I may mention that a case for DE may have been there, depending upon

the view that the Respondents take. However, the fact still remains as to whether for that suspension was necessary. The positions taken by the officials of the Respondents is so hard as to be totally immune from any influence capable of being brought by the Applicant. There is neither an averment to that effect nor an apprehension expressed, but granting all latitude to all concerned, the event of that charge having not taken over by the Applicant has already happened and for all one knows, Shri Chougule has resumed at that place. I have already discussed the legal principles emanating from a number of citations hereinabove. Apart from those Judgments, reference could usefully be made to a Division Bench Judgment of the Hon'ble Andhra Pradesh High Court. That Judgment was relied upon by me in **Anandkumar More** (supra) and Para 31 therefrom can safely be reproduced.

> "**31.** Mr. Chandratre relied upon a Judgment of the Division Bench of the Hon'ble Andhra Pradesh High Court in **P. Rajender Vs. Union of India and another : 2001 (3) SLR 740 (AP)**. In Para 8 of that Judgment, the Hon'ble Andhra Pradesh High Court was pleased to observe that, suspension pending investigation enquiry or trial was an interim measure and under the Rules relevant thereto, such an order of suspension was

not to be made only because it was lawful to do so. In Para 6 of that Judgment, the provision relevant therein was quoted and it is in essence and substance, the same as Rule 4 of D & A Rules. The Hon'ble High Court was pleased to observe in Para 8 itself that, there must be application of mind of the competent authority and that application of mind was a *sine-qua-non* for making such an order of suspension. Such an order can be made by bearing in mind not only the public interest, but also the relevant facts and attendant circumstances as to how far and to what extent, the public interest may suffer in the absence of the order of suspension. The facts have already been discussed above. It is not necessary for me to express any opinion about the merit of the matter itself, but it can safely be said that whatever else one might say about it if the Respondents were to claim that it was an open and shut case that might be an exaggerated claim."

36. In **Anandkumar More's** Judgment, I had also relied upon **O.P. Gupta's** case decided by the Hon'ble Supreme Court wherein it was held that there was no presumption that the Government always acted in the

manner which was just and fair, and therefore, on mere expression of apprehension, the judicial forum should not mechanically act and uphold the order of suspension.

37. The learned CPO on his part relied upon an unreported Judgment of a Division Bench of the Hon'ble Bombay High Court in **Writ Petition No.6313/2005 (The State of Maharashtra and another Vs. Shri Raghunath E. Mundhe, dated 30th September, 2005)**. That was a matter which went to the Hon'ble High Court from an order made by this Tribunal wherein the Tribunal directed the reinstatement of the Applicant and his posting in a non-executive post. Their Lordships were pleased to hold that the Courts and Tribunals in the matter of suspension should normally not lightly interfere in the jurisdiction of the disciplinary authorities. It may be recalled that this principle has already been applied hereinabove. The facts in that particular matter were grave in so far as the seriousness of the delinquency was concerned. It was held that the Court can exercise its powers of interference, if it was shown that the decision to suspend was arbitrary or was in a malafide exercise of power as well as colourable exercise. Now, these aspects of the matter have already been considered by me hereinabove with the guidance from case law. These facts and factors are necessarily fact specific, and therefore, no straight jacket formula can be

laid down and in fact, none is laid down even in **Raghunath Mundhe** (supra). The learned CPO laid emphasis on the observations in that matter wherein Their Lordships deplored the interference by this Tribunal into the jurisdiction of disciplinary authority in a number of OAs and expressed unhappiness. However, what the learned CPO apparently failed to appreciate was that, Their Lordships also criticized the Government, when it was stated that they failed to understand as to why disciplinary authority did not proceed to issue charge-sheet and commence DE in that set of circumstances. It is, therefore, very clear that Their Lordships held that it is not as if the Respondents have to stand as passive bystanders. They also have to act in the matter and act quickly. This aspect of the matter also is required to be borne in mind.

38. The learned CPO then relied upon **OA 224/2007 (Smt. Reshma K. Pamnani Vs. The Sub-Divisional Officer, Ulhasnagar, dated 4.1.2008)**. He also relied upon **OA 703/2011 (Dr. Ashok K. Bhise Vs. The State of Maharashtra and one another, dated 11th November, 2011)**. These two pronouncements were basically in relation to the OAs having been brought without taking recourse to the appellate remedy. That aspect of the matter as already discussed above, is now governed by the binding pronouncement of the Hon'ble Bombay High Court in Dr.

Subhash Mane's case and also of a Judgment of the Hon'ble Supreme Court in **Ram and Shyam Co.** (supra). The learned CPO lastly relied upon the Division Bench Judgment of the Hon'ble Bombay High Court in **State of Maharashtra and others Vs. Shivram S. Sadawarte : (2001) 1 L&J 1198**. This Judgment has already been discussed by me in Para 29 hereinabove and Para 10 from **Shivram Sadawarte's** Judgment has already been reproduced.

39. Now, Their Lordships were pleased to trace the history of the legal issue herein involved by relying upon a number of earlier judicial decisions. The relevant Rules including Rule 4 of D & A Rules were quoted. The learned CPO laid particular emphasis on Paras 12 and 14 of the Judgment in **Shivram Sadawarte's** matter. I may as well reproduce the said Paragraphs 12 and 14 from **Shivram Sadawarte's** Judgment.

> "**12.** On perusal of the provisions of Rule 4 it is clear that the State Government has the powers to place an employee under suspension in the cases set out therein and even in the cases of suspension falling under Clause (o) of Sub-rule 1 or sub-rule 2, the suspension can be continued till the completion of enquiry or trial as the case

may be depending upon the facts and circumstances of a given case. The suspension need not be continued till the completion of the trial or investigation in every case. The facts of each case will have to be considered on their own merits. If the suspension is continued for a reasonably longer period, may be beyond a period of one year or so, the delinquent employee has a legal right to approach the Government by way of a representation praying for revoking or withdrawing the suspension order and such a request will have to be considered by taking into consideration the progress in the investigation, the nature of the charges, the cause for delay in such investigation/trial and other attending circumstances. In a given case the employee may be justified in approaching under Sub-rule 5 of Rule 4 of the Rules immediately on receipt of the suspension order without waiting for six month or nine months, as the case may be. The representation of the delinquent employee, so made, should be heard and decided within a reasonable period and this reasonable period could be about two to three months. The delinquent employee's direct approach to the Tribunal or to a Court of law challenging the

suspension order should not be ordinarily entertained unless he has approached the competent authority by invoking the provisions of Rule 4(5) of the Rules. We may also state that the State Government or the competent authority is obliged to pass a speaking order while either allowing or rejecting the representation so made and such an order will be subject to a judicial review by the Tribunal or by this court. The learned A.G.P. is right in his submissions that when this Court decided the cases of Khushal Gaidhane and Namdeo kalwale, the law laid down by the earlier Division Bench in the case of Rambhau (supra) and Machindra Pandurang Chavan Vs. State of Maharashtra 1989-n-LLJ-353 (Bom-DB) was not refereed to and therefore, this Court had no occasion to discuss and decide the status of the Government circulars or the resolutions that were replied upon. Such circulars or resolutions are for the purpose of providing guidance to the departmental authorities and while considering the request for revoking the suspension order as made by the delinquent employee, these circulars may be taken into consideration by the competent authority. However, on the basis of the said

circulars, per se, the order of suspension cannot be set aside by the Tribunal.

14. In the premises, we hold as under :

(a) The order of suspension issued under Rule 4 of the rules can be sought to be reviewed or revoked by the suspended employee by way of representation under Sub-Rule 5 thereof,

(b) such a representation can be filed at any time and rejection of a representation may not operate as a bar in filing a subsequent representation for review/revocation,

(c) The representation so filed ought to be decided within a reasonable period of two to three months and by taking into consideration the nature of charge, progress in enquiry, investigations/trial as the case may be including the reasons for delay and other attending circumstances in each case as well as the policy decision of the State Government,

(d) Challenge to the order of suspension should not be ordinarily entertained by the Tribunal/ Court directly unless the remedy as provided

under Rule 4(5) is exhausted by the delinquent employee,

(e) if the representation filed by the delinquent employee under Rule 4(5) of the Rules is not decided within a period of two to three months or if the same is rejected, the employee has the right to approach the Tribunal and the order of the Government is subject to the judicial review,

(f) an order of suspension issued pending enquiry, investigation or trial, as the case may be, shall continue to operate till such enquiry, investigation and/or trial is completed and the suspension order cannot be quashed and set aside by the Tribunal on the basis of the circular dated September 18, 1974 or the resolutions dated December 14, 1995 and June 14, 1996. The order of suspension is subject to a judicial review by the Tribunal depending upon the facts and merits of each case,

(g) the State Government/ competent authority ought to review the pending suspension cases every quarter and take the requisite steps to

conclude the enquiry, investigation/ trial as early as possible."

40. As a matter of fact, in the above extract from **Shivram Sadawarte's** case, Their Lordships have been pleased to lay down the guidelines which are even applicable to the conduct of the matter by the Respondents and in that behalf, I must commend the learned CPO for having cited it to assist me in the matter, although on a proper understanding thereof, it talks more about the duty of the Respondents rather than anything else. Now, having reproduced those two Paragraphs, I do not think, I have to add anything of my own. Going by the guidelines in Para 14, I think, necessary directions need to be given to the Respondents.

41. The Applicant came to be placed under suspension on 2nd March, 2017 and on 2nd June, 2017, three months will have been completed. I must make it very clear that the facts hereof are such that it cannot readily be said that it is a good case for suspension. However, in the ultimate analysis, on a proper placement of the record before the concerned Authority Committee, the suspension must be reviewed at the earliest, but in any case, surely soon after 2nd June, 2017.

* correction is carried out as per order dt:-28/4/2017

29.4.17
DY. Registrar
Maharashtra Administrative Tribunal

42. The Respondents are directed to review the suspension of the Applicant in the manner set down in the preceding Paragraph within two weeks of 3rd June, 2017 although they are free to do it even before and convey the outcome thereof to the Applicant within four working days. This Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
27.04.2017

Mumbai
Date : 27.04.2017
Dictation taken by :
S.K. Wamanse.
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