IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.253 OF 2017

DISTRICT : PUNE

Shri Dnyaneshwar Sitaram Shinde.)
Working as Subhedar, R/at. Flat No.9,)
Ananda Heights, Chirke Colony, Nirgudi)
Road, Lohegaon, Pune 411 047.)...**Applicant**

Versus

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

2. Addl. Chief Secretary.)
Home Department, Mantralaya,)
Mumbai 400 032.)

3. The Deputy Inspector General of)
Prison, West Division, Yerawada,)
Pune 411 006.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 03.05.2017

JUDGMENT

1. A suspended Jail Subhedar set to retire on superannuation on 31st May, 2017 (this month) calls into question the self-same order of suspension made by the 3rd Respondent – Deputy Inspector General of Prison, Pune. The 1st Respondent is the State of Maharashtra through the Chief Secretary and the 2nd Respondent is the Additional chief Secretary, Home.

2. I have perused the record and proceedings and heard Mrs. Punam Mahajan, the learned Advocate for the Applicant and Mrs. A.B. Kololgi, the learned Presenting Officer for the Respondents.

3. The events giving rise to the order of suspension dated 20th January, 2017 happened on 18.1.2017. In the impugned order, it was indicated that the disciplinary enquiry was contemplated, and therefore, under Rule 4 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 in exercise of power conferred by sub-rule 1 thereof, the Applicant was placed under suspension. The usual terms and conditions that were set out in such orders of suspension are set out therein.

4. It appears that, a review of the order of suspension was made before the Suspension Review Committee (Exh. 'O', Page 77 of the Paper Book (PB), Serial No.6) in the last but one column, it was mentioned that the suspension was vide the order of 20.1.2017 and it was further mentioned that an OA bearing No.4374/2017 is pending. For all one knows, that OA number is wrongly mentioned because it seems that, this is the only OA filed by the Applicant and in any case, the number of OAs registered so far has not crossed the mark of 4000. It, therefore, seems that, this was the very OA that was under reference. All that has been mentioned in the last column is that, his suspension should continue. This review was made on 21.4.2017 and it seems that the Committee was headed by the 3rd Respondent herself. Mrs. Mahajan, the learned Advocate for the Applicant invited my attention to the fact that the Review Committee itself is headed by the 3rd Respondent who has been impleaded hereto.

5. Now, according to the Applicant, there was some issue about treating his earlier leave. That was for the period from 2.12.2011 to 8.9.2012 totaling 273 days. That was treated as 'Extra Ordinary Leave Without Pay' by an order of the 3rd Respondent of 15.2.2016. That order was apparently made under Rule 63 (6) of the Maharashtra

Civil Services (Leave) Rules, 1981. That order is at Exh. 'A-2' (Page 17 of the PB). Aggrieved thereby, the Applicant preferred an appeal to the Additional Director General of Police and I.G.P. (Prisons), by the order of 14.12.2016, which is at Exh.'A-4'. That leave was treated partly as admissible Medical Leave, but he was given strict warning also for his behaviour.

6. According to the Applicant, the 3rd Respondent was peeved at the fact that the Applicant dared to prefer an appeal against her order. On 18.1.2017, the Applicant was called by the 3rd Respondent and was allegedly verbally abused for the appeal having been preferred by him. He was threatened that the DE would be initiated against him and he would be deprived of the pensionary benefits. These averments are made in Para 6.8 of the OA and in the Affidavit-in-reply filed by the 3rd Respondent – Mrs. Swati M. Sathe, these averments have been met with in Para 13. She has admitted to the fact as to how the absence of the Applicant was treated as 'Extra Ordinary Leave' and as to how the appeal of the Applicant was decided substantially in his favour. This is the crux of what has been pleaded though these specific words have not been used as such. It is further pleaded in Para 13 of the Affidavit-in-reply that she visited Yerwada Central Prison on 18.1.2017 to check

the security points, etc. She had discussion about the security aspect of the matter. On that day, the Applicant came to her and asked about one Mr. Jagdale Hawaldar. She told him as to whatever he wanted to say should be given in writing. The Applicant raised his voice saying that, "you senior officers can do anything and doing anything" and Applicant left the office. This according to the 3rd Respondent was an act of indiscipline. The same fact is mentioned in some kind of a Roznama extract of which is at Exh. 'J' made by the Senior Jailor. To repeat, two days thereafter, by the impugned order, the Applicant was suspended.

7. It is quite clear, therefore, that both the parties have their own version of whatever happened on 18.1.2017, but something did really happen is not something that can be gainsaid.

8. Mrs. A.B. Kololgi, the learned PO strongly urged that the Applicant was guilty of indiscipline, and therefore, some action was necessitated and the order of suspension at this stage should not be interfered with.

9. Mrs. Mahajan, the learned Advocate for the Applicant, on her part, bitterly assailed the manner in

which a most legitimate exercise of right of an employee has been allowed to escalate by the Respondents to such an extent.

10. In this behalf, it is pertinent to note that, on 18.1.2017 itself, the Applicant "immediately" addressed a communication to the Additional Director General and Inspector General of Prisons and therein he narrated the facts which have been summarized hereinabove, beginning from the leave aspect of the matter. He, then, mentioned that, on that very day (18.1.2017), he was informed that, he was summoned to Yerwada Jail and he went there at about 2.00 p.m. There the 3rd Respondent used strong language against him for whatever he had done in respect of the appeal, etc. She showed disrespect to the authority to whom, the said letter was addressed. She also mentioned that the Applicant was behaving in an arrogant manner because his son was in the office of the ADG. She would also take care of him once the present ADG left. Now, this was a letter which was routed through proper channel starting from the Superintendent and this was then handled by the office of the 3rd Respondent. A note was put up detailing as to what had happened according to the office of the 3rd Respondent. Her Personal Assistant made an endorsement in Marathi meaning thereby that the

language used in the letter by the Applicant was serious (in Marathi "gambhir"). Then, there is an endorsement in the hands of the 3rd Respondent herself in Marathi, saying that the matter was serious, indiscipline and baseless allegations were made. Such a conduct was unbecoming of an uniformed employee. The orders of suspension be issued immediately and Applicant's letter be forwarded to the higher authority to whom it was addressed.

11. There is one aspect of the matter which, in my opinion, has important bearing hereon. The 'complaint' made by the Applicant to the higher authority which became the cause for his suspension was, in fact, not addressed to the 3rd Respondent and she could have handled it only as an authority in the proper channel. During the debate at the Bar, it so appeared that, till date, the Inspector General of Prisons has not taken any action in the matter. One could have understood, if he had perused it and depending upon the view that he took, he could have told the 3rd Respondent to take action. That did not happen and the 3rd Respondent of her own has taken action which, in fact, the I.G. has not even ratified till date. I do not think, the whole thing can just be dismissed out of hand as of technical importance only. It has its own importance though I will complete the discussion. But I

must repeat that, I have taken due notice of this aspect of the matter and the validity of the impugned action becomes quite susceptible in this behalf.

12. Now, going by the case of the Respondents and the submissions of Mrs. A.B. Kololgi, the learned PO, the Applicant was guilty of gross indiscipline, I find that, so far, even a charge-sheet has not been served on him, so that the commencement of the DE is still a while away from now. Taking this case of the Respondents as it is, the Applicant is being punished and the concept of punitive suspension is unknown to our system of jurisprudence unless justification therefor could be sought from any valid source like law, rules, etc. I express no opinion on the merit of the matter. But as I mentioned just now, the fact that there was some incidence on 18.1.2017 is not disputed by either parties. The only fact is that they have their own set of narration. The enquiry is at the moment not even impending and one does not know, when it would go underway. The Applicant is set to retire on superannuation on 31.5.2017 i.e. this month end. It is the only factual background that, one has to examine the impugned order as to its ultimate worth.

13. The suspension, holding guilty in the DE, conviction or acquittal in the criminal trial are difficult concepts. Therefore, every aspect of the matter related to suspension has got to be approached with this clear distinction. Having said this much, I do not think, anything more is required of my own to be said. In a recently rendered Judgment in the matter of **OA 1096/2016 (Shri Anandkumar S. More Vs. State of Maharashtra and one Another, dated 21.4.2017)**, I decided the same issue of suspension and took guidance from a number of Judgments of the Hon'ble Supreme Court and Hon'ble Bombay High Court. I relied upon **Cap. Paul Anthony Vs. Bharat Gold Mines Limited : 1999 SCC (L & S) 810** wherein, Their Lordships of the Hon'ble Supreme Court were pleased to rely upon **O.P. Gupta Vs. Union of India : (1987) 4 SCC 328**. Para 8 of **More's** Judgment in which, these two Judgments of the Hon'ble Supreme Court have been relied upon, need to be reproduced.

> "**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."

14. I then relied upon a Judgment of a Division Bench of the Hon'ble Bombay High Court in **Madanlal**

Sharma Vs. The State of Maharashtra and Ors. : 2004(1) MLJ 581 and in Para 14, I relied upon another Division Bench Judgment of the Hon'ble Bombay High Court in **State of Maharashtra and Ors. Vs. Shivram S. Sadawarte : 2001 (3) MLJ 249**. Para 14 from **More's** Judgment may now be reproduced :

> "**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.
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> > "**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. The above Para would take care of another possible objection of the Respondents that this OA has been preferred without availing the appellate remedy. In Para 31 of **More's** Judgment, a Judgment of the Hon'ble Andhra Pradesh High Court was relied upon. I may reproduce the said Paragraph 31 as well.

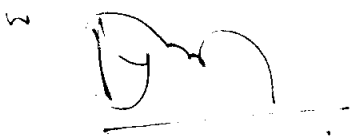
> "**31.** Mr. Chandratre relied upon a Judgment of the Division Bench of the Hon'ble Andhra Pradesh High Court in **P. Rajender Vs. Union of India and another : 2001 (3) SLR 740 (AP)**. In Para 8 of that Judgment, the Hon'ble Andhra

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."

16. I am deeply conscious of the legal position that, in the matters of suspension as perhaps in case of several other aspects of administrative law, the judicial forum has to act with circumscription. Whatever has to be done by the administrative authorities, should best be left to them and in the absence of compelling circumstances, the judicial forum should be slow in interfering with the action even in the matter of suspension. But then, exercising the jurisdiction with circumscription or may be some restraint, does not mean that action should never be taken. In my opinion, at the end of the day, the guiding light has got to be the interest of justice in accordance with law. Therefore, any and every administrative action need not necessarily be interfered with like an appellate court, but then, in deserving cases, interference is a must. Here, there had to be a compelling reason for keeping the Applicant under suspension, which I am unable to find.

17. For otherwise, as already quoted above from Cap. Paul Anthony (supra) which extracted a passage from O.P. Gupta (supra) that the instances are not unknown where the authorities are afflicted by a suspension syndrome. The Applicant may have been guilty of indiscipline or may not be. I for one, in this rendition, express not even a prima-facie view much less the final one, because should

the enquiry go underway, the enquiring authorities should be made to work independently and unaffected by any judicial expression. However, the issue has to be addressed as to what purpose, the order of suspension is going to serve. Normally, one of the causes advanced is the likelihood of the employee trying to influence the course of the pending enquiry. Here, the enquiry is still to commence. But most importantly, there is absolutely no possibility of an employee placed at the level of the Applicant to try and influence the authority that the 3rd Respondent holds. Therefore, as I mentioned above, on a mere ground of the Applicant being guilty of indiscipline, whatever may have happened in the enquiry, but he cannot be placed under suspension. Suspension after-all, has to be resorted to for good reasons. In my opinion, having kept him under suspension for four months or thereabout, no purpose has been achieved and now, none is going to be achieved. Therefore, I shall be failing in my judicial duties were I to stay my hands even in the facts and circumstances, such as they are. Having been fully conscious to my jurisdictional limitations, I am still clearly of the opinion that the impugned order needs to be interfered with.



18. I could still have considered of remitting the matter back to the 3rd Respondent, but then, for the reasons more than one, this course of action appears to be too theoretical to be real. In the first place, this is the last month of the career of the Applicant and I think, the Applicant could have wished it would have come in better circumstance. Secondly, one review has taken place just about a week or so before, and therefore, may be that Committee may not meet any time sooner. I express absolutely nothing against the 3rd Respondent personally either as to her impartiality or any such trait. But then, the apprehension of Mrs. Mahajan that in the context of the present facts, if the Committee is to be chaired by the 3rd Respondent herself, it would be something that might leave scope for something which is likely to put question-marks. I do not myself endorse this view, but then, possibility is there always and as they say, justice must not only be done but should be seen to have been done, and therefore, I am of the opinion that, in finally deciding this OA, at least in the present facts, I should give necessary directions.

19. The order herein impugned of suspension of the Applicant stands hereby quashed and set aside. The 3rd Respondent is directed to reinstate the Applicant within a

period of ten days from today and allow him to function till the date of his retirement this month end. The decision with regard to treating his suspension period be taken at an appropriate time. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik) 03.05.17
Member-J
03.05.2017

Mumbai
Date : 03.05.2017
Dictation taken by :
S.K. Wamanse.
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