

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.849 OF 2024

DISTRICT : PUNE
Sub.:- Suspension

Shri Prashant Subhash Bedse.)
Age : 38 Yrs, Occu.: Tahsildar,)
(Revenue), Khed, R/o. Khed, Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Mantralaya, Mumbai.)

2. The Divisional Commissioner.)
Pune Division, Pune.)

3. The Collector, District Pune.)

4. Shri Dilip Dattatray Mohite.)
Vidhan Sabha Sadasya, 197 Khed-)
Alandi, Vidhan Sabha.)

5. Smt. Jyoti Deware.)
Tahsildar.)...**Respondents**

Shri S.B. Talekar a/w Madhavi Ayyappan, Advocates for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

Shri D.S. Kachare, Advocate for Respondent No.4.

Shri A.A. Desai, learned Advocate for Respondent No.5.

CORAM : Shri Debashish Chakrabarty, Member (A)

RESERVED ON : 12.08.2024

PRONOUNCED ON : 29.10.2024

JUDGMENT

1. The Applicant who was earlier serving on post of 'Tahsildar' at Khed, Pune District has invoked provisions of 'Section 19' of 'The Administrative Tribunals Act, 1985' to challenge (a) 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' about his 'Suspension' and (b) 'Government Order' dated 16.07.2024 of 'Revenue & Forest Department', about transfer of Respondent No. 5 to post of 'Tahsildar' at Khed, District Pune.

2. The learned Advocate of Applicant initially mentioned that Applicant had earlier served on post of 'Tahsildar' at Mohol, District Solapur and came to be transferred to post of 'Tahsildar' at Khed, District Pune by 'Government Order' dated 16.06.2023 of 'Revenue & Forest Department'.

3. The learned Advocate of Applicant then proceeded to elaborate about backdrop of events which resulted in 'Suspension' of Applicant by 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department'.

4. The learned Advocate for Applicant contended that from beginning of tenure of Applicant on post of 'Tahsildar', at Khed; District Pune; the 'MLA' from 'Khed-Alandi-197 LAC' of District Pune has been interfering directly in discharge of 'Official Duties' of Applicant including in respect of several 'Quasi-Judicial' functions assigned to Applicant. On refusal by Applicant to oblige 'MLA' from 'Khed-Alandi-197 LAC' of District Pune direct threats were conveyed to Applicant. The Applicant was repeatedly told that he would soon be booked by submitting complaints relating to corruption at work and thereupon would be placed under 'Suspension' to remove him from post of 'Tahsildar', at Khed District Pune.

5. The learned Advocate of Applicant emphasized that Applicant thereupon immediately informed Hon'ble Governor of Maharashtra;

Hon'ble Chief Minister of Maharashtra; Chief Secretary, Government of Maharashtra; Additional Chief Secretary, Revenue and Forest Department regarding such threats received from 'MLA' from 'Khed-Alandi-197 LAC' of District Pune. The Applicant had made these communications by letter dated 02.03.2024 and subsequently by 'email' dated 04.03.2024.

6. The learned Advocate for Applicant further contended that Applicant had received information that certain influential political figures particularly 'MLA' from 'Khed-Alandi-197 LAC' were bringing immense pressure on 'Hon'ble Minister In Charge' of 'Revenue & Forest Department' to transfer Applicant from post of 'Tahsildar' at Khed, District Pune with back dated order; as 'Model Code of Conduct' was about to be brought into effect for 'General Elections Lok Sabha 2024'. Therefore, Applicant immediately communicated the same to 'Chief Electoral Officer, Maharashtra State' by letter dated 17.03.2024, with copies endorsed to Chief Secretary; Government of Maharashtra; Additional Chief Secretary, Revenue and Forest Department and 'Hon'ble Minister In Charge' of 'Revenue & Forest Department'.

7. The learned Advocate for Applicant then mentioned that as Applicant had made this communication on 17.03.2024 with 'Chief Electoral Officer, Maharashtra State'; he was not transferred at that time from post of 'Tahsildar' at Khed, District Pune.

8. The learned Advocate for Applicant stressed that Applicant besides being directly threatened by 'MLA' from 'Khed-Alandi-197 LAC' District Pune was also constantly coerced by his henchmen to submit application for request transfer from post of 'Tahsildar' at Khed, District Pune failing which he would be placed under 'Suspension'.

9. The learned Advocate for Applicant then proceeded to narrate specific incident when Applicant had visited Mumbai for 'Official Work' i.e., to attend hearing of 'Writ Petition No. 5460 of 2023' in 'Hon'ble

Bombay High Court' on 11.07.2024. The Applicant had thereafter visited the office of 'Hon'ble Minister In Charge', of 'Revenue and Forest Department' at 'Vidhan Bhawan'. The 'Hon'ble Minister in Charge' of 'Revenue and Forest Department' had during this interaction with Applicant informed him that there was lot of 'Political Pressure' from 'MLA' from 'Khed-Alandi-197 LAC' of District Pune and there may be no option left but to place Applicant under 'Suspension'; in case he failed to immediately apply for request transfer from post of 'Tahsildar' at Khed, District Pune.

10. The learned Advocate for Applicant contended that Applicant earnestly informed 'Hon'ble Minister In Charge' of 'Revenue and Forest Department' about his inability to do so and agree to request transfer from post of 'Tahsildar' at Khed, District Pune as he had completed just about 'One Year' on the post, and much inconvenience has been caused to him all along due to frequent transfers; since he first joined on 31.05.2024 as 'Tahsildar' at Jiwati, District Chandrapur. The Applicant had even apprised 'Hon'ble Minister In Charge' for 'Revenue and Forest Department' that he was working as 'Tahsildar' at Khed, District Pune since 16.06.2023 whereas the 'Departmental Enquiry' was in respect of the some baseless allegations made against him when he was serving on post of 'Tahsildar' at Mohol, District Solapur. Thus, there was no possibility that proceedings in 'Departmental Enquiry' would be interfered with by Applicant. The Applicant thereupon had earnestly requested 'Hon'ble Minister in Charge' of Revenue and Forest Department to allow him to continue on post of 'Tahsildar' at Khed, District Pune.

11. The learned Advocate of Applicant then highlighted the pattern of fast paced developments which occurred on 11.7.2024 relating to conduct of 'Departmental Enquiry' against Applicant although it had been initiated much earlier on 22.08.2023. The Applicant was suddenly placed under 'Suspension' by 'Government Order' dated 11.07.2024 of Revenue & Forest Department. The Applicant also received intimation

dated 11.07.2024 about appointment of 'Regional Departmental Inquiry Officer, Pune' as 'Enquiry Officer' and 'Divisional Commissioner, Pune Division, Pune' being directed to appoint 'Presenting Officer' to expeditiously conduct 'Departmental Enquiry' against Applicant. Further the undue haste with which these decisions came to be implemented in respect of Applicant is clearly evident from the fact that 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' about 'Suspension' of Applicant came to be served upon him by 'Whats App Message'.

12. The learned Advocate for Applicant reiterated that Applicant could not have been transferred by 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' from post of 'Tahsildar' at Khed, District Pune as he was then working as 'AERO' and placed on 'Deemed Deputation' to Election Commission of India under 'Section 13CC' of 'The Representation of People Act 1950' for the '2nd Special Summary Revision' of 'Photo Electoral Rolls' with 'Qualifying Date' of 01.07.2024..

13. The learned Advocate for Applicant referred to decision about 'Suspension' of Applicant by 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' to vehemently argue that it was issued only due to immense 'Political Pressure' particularly brought about by 'MLA' from 'Khed-Alandi-197 LAC' of District Pune who was trying very hard to bring one Smt. Jyoti Devre on post of 'Tahsildar' at Khed, District Pune. Smt. Jyoti Devre had specifically sought to be transferred in place of Applicant and accordingly proposal to transfer Applicant out of post of 'Tahsildar', at Khed, District Pune and being Smt. Jyoti Devre in his place was moved during February-March, 2024 within 'Revenue & Forest Department'. However, this overt attempt by 'MLA' from 'Khed-Alandi-197 LAC' of District Pune to somehow dislodge Applicant from post of 'Tahsildar' at Khed, District Pune did not succeed due to letter dated 17.03.2024 submitted by Applicant to 'Chief Electoral Officer, Maharashtra State' regarding his likely transfer from post of 'Tahsildar' at Khed, District Pune during the period when he was working as 'AERO'.

Therefore attempts to transfer of Applicant from post of 'Tahsildar' at Khed, District Pune and bring Smt. Jyoti Devre as proposed by 'Revenue & Forest Department' did not materialize before 'General Elections Lok Sabha 2024'. However, strangely the same proposal to transfer of Respondent No. 5 in place of Applicant which could not be acted upon then, by 'Revenur and Forest Department' was hurriedly approved and Respondent No. 5 came to be appointed on 16.07.2024 in the place of Applicant on post of 'Tahsildar' Khed Distict Pune, soon after Applicant was arbitrarily and malafidely placed under 'Suspension' by 'Government Order' dated on 11.07.2024 by 'Revenue & Forest Department'.

14. The learned Advocate of Applicant referred to 'Affidavit-in-Rejoinder' filed on 06.08.2024 by Applicant to specifically draw attention to the fact that 'Departmental Enquiry' had been initiated even against Respondent No.5 by 'Memorandum' dated 27.02.2024 of 'Revenue & Forest Department', yet only on account of immense 'Political Pressure' she was transferred to post of 'Tahsildar' at 'Khed, District Pune' by 'Government Order' dated 16.07.2024 of 'Revenue & Forest Department'.

15. The learned Advocate for Applicant emphatically argued against the 'Suspension' of Applicant by 'Govenrment Order' dated 11.07.2024 of 'Revenue and Forest Department' by relying on the following 'Compilation of Judgments' of (a) 'Hon'ble Supreme Court of India' (b) 'Hon'ble Bombay High Court' and (c) 'Maharashtra Administrative Tribunal' :

- (A) **Kalabharati Advertising Versus Hemant Vimalnath Narichania, SCC Online 2010, 9 Supreme Court Cases 437.**
- (B) **Union of India and Anr. Versus Ashok Kumar Aggarwal, SCC Online 2013, 16 Supreme Court Cases 147**
- (C) **State of Maharashtra Versus Dr. Subhash Dhondiram Mane, SCC Online 2015**
- (D) **Bertha T.A. D'Mello e Daniel Versus Goa University, Represented by the Registrar, Goa, 2023 SCC Online Bom 1547**

- (E) **Harishchandra Versus State of Maharashtra, 2017 SCC Online MH SAT 288**
- (F) **Utkarsh Versus State of Maharashtra & Ors. 2022 SCC Online MH SAT 1078**
- (G) **Tanushree Basu and Ors. Versus Ishani Prasad Basu and Ors., (2008) 4 SCC Online 791**

16. The learned Advocate for Applicant assertively aligned the facts and circumstances of case of Applicant with those 'Government Servants' whose cases had been decided favourably by repeatedly referred to 'Compilation of Judgments'. Hence, it would be imperative to reproduce pertinent extracts of observations recorded by (a) 'Hon'ble Supreme Court of India' and (b) 'Hon'ble Bombay High Court'.

- (A) **The Hon'ble Supreme Court of India in the case of Kalabharati Advertising (supra) has observed as follows :**

"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 excuse. It is an act done wrongfully and wilfully 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. Where 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 "purposes 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. (Vide ADM, Jabalpur v. Shivakant Shukla, S.R. Venkataraman Vs. Union of India, State of A.P. Vs. Goverdhanlal Pitti, BPL Ltd. Vs. S.P. Gururaja and W.B. SEB Vs. Dilip Kumar Ray)

26. Passing an order for an unauthorised purpose constitutes malice in law. (Vide Punjab SEB Ltd. Vs. Zora Singh and Union of India v. V. Ramakrishnan.)"

- (B) The **Hon'ble Supreme Court of India in Ashok Kumar Aggarwal (supra)** has observed as under :

“21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc.”

- (C) The **Hon'ble Bombay High Court in Dr. Subhash Dhondiram Mane (supra)** has observed the following :

“9. The first contention raised on behalf of the petitioner State is that the Tribunal ought not to have entertained the Original Application in view of the alternate remedy available to the respondent. Reliance was placed by Mr. Sakhare, on section

20(1) and (2) of the Administrative Tribunals Act, 1985. According to Mr. Sakhare, as per Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, a remedy of appeal against the order of suspension has been provided. Mr. Sakhare submitted that the reason given by the respondent for not availing of this remedy that since the order is passed in concurrence of the Chief Minister and therefore no appellate authority will give a decision against him, is an untenable reason. He submitted therefore that the discretion used by the Tribunal in entertaining the application was improper and therefore the order be set aside. We do not find any merit in this submission. Section 20(1) of the Administrative Tribunals Act does not place an absolute embargo on the Tribunal to entertain an application if alternate 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. In the present case, the Tribunal has found, on examination of various peculiar facts and circumstances, that, it will be futile to drive the respondent to an alternate remedy. The Tribunal found that the order of suspension was based on the same grounds as the order of transfer, which was stayed and the order of suspension was an act of victimization. Having convinced that strong case for entertaining an application was made out, the Tribunal entertained the application. It was within the discretion of the Tribunal to do so. No absolute bar was shown, neither it exists. We are not inclined, at this stage, to accede to the submission of Mr. Sakhare, and set aside the impugned order on this ground alone.”

17. The learned PO per contra based on ‘Affidavit-in-Reply’ dated 07.08.2024 of Revenue & Forest Department stated that ‘Departmental Enquiry’ had already been initiated against Applicant under ‘Rule 8 of MCS (D & A) Rules, 1979’ with issue of ‘Charge Sheet’ by ‘Government Memorandum’ dated 22.08.2023 of ‘Revenue & Forest Department’ for several instances of serious misconduct on part of Applicant when he was serving on post of ‘Tahsildar’, at Mohol, District Solapur.

18. The learned PO submitted that Applicant in response to 'Charge Sheet' issued by 'Government Memorandum' dated 22.08.2023 of 'Revenue & Forest Department'; had submitted his 'Statement of Defence' on 19.10.2023. The 'Disciplinary Authority' thereafter considering the 'Statement of Defence' submitted by Applicant on has taken conscious decision to conduct 'Departmental Enquiry and thereupon placed Applicant under 'Suspension' under Rule 4(1)(a) of 'M.C.S (Discipline and Appeal) Rules, 1979'.

19. The learned PO emphasized that it was against this backdrop that by 'Government Order' dated 11/07/2024 of 'Revenue & Forest Department' has also appointed 'Regional Department Enquiry Officer, Pune' as 'Enquiry Officer' to conduct 'Departmental Enquiry' against Applicant.

20. The learned P.O. emphasized that as per provisions of 'Rule 17(i)' of 'M.C.S (Discipline & Appeal) Rules, 1979' and as contents of 'Para No. 8.1' of 'Manual of Departmental Enquiries 1991', the Applicant ought to have preferred 'Appeal' against his 'Suspension' by 'Government Order' dated 11.07.2024 of Revenue & Forest Department with the first 'Appellate Authority'. However, without availing of this efficacious remedy, the Applicant chose to directly invoke provisions of 'Section 19' of The Administrative Tribunals Act, 1985 to challenge the 'Government Order' dated 11.07.2024 of 'Revenue and Forest Department' by filing this O.A.No.849/2024. The O.A.No.849/2024 was thus not maintainable for Applicant not availing appropriate remedy available under Rule 17(i) of 'M.C.S (Discipline and Appeal) Rules 1979'.

21. The learned PO emphasized that 'Charge Sheet' issued by 'Government Memorandum' dated 22.08.2023 of Revenue & Forest Department against Applicant was for his utter failure to discharge of duties & responsibilities of 'Tahsildar', at Mohol, District. Solapur, as no less than 20 'Articles of Charges' have been framed against Applicant and

will now be enquired into by way of 'Departmental Enquiry' under 'Rule 8' of 'MCS (Discipline & Appeal) Rules, 1979'.

22. The learned PO justified the 'Suspension' of Applicant by 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' by clarifying that this action against Applicant was of interim nature; as even during the pendency of 'Departmental Enquiry' the decision about his suspension may even be reviewed under provisions 'Rule 4(5)(e)' of 'MCS (Discipline & Appeal) Rules, 1979' as per extant 'Policy Guidelines' in G.A.D. G.R. dated 09.07.2019.

23. The learned PO stressed that Applicant was placed under 'Suspension' by 'Disciplinary Authority' by 'Government Order' dated 11.07.2024 of 'Revenue and Forest Department' as it was necessary to do so in larger 'Public Interest' so as to avoid reoccurrence of similar instances of serious misconduct by Applicant committed when he was serving on post of 'Tahsildar' at 'Mohol', District Solapur even now when Applicant held post of 'Tahsildar', at Khed, District Pune.

24. The learned PO vehemently negated the contention of Applicant that he was placed under 'Suspension' on 11.07.2024 at the behest of 'MLA' from 'Khed-Alandi-197 LAC' of District Pune. The allegations of Applicant were completely baseless and false and so were claims of nature of interactions between Applicant and 'Hon'ble Minister In Charge' of 'Revenue and Forest Department' at 'Vidhan Bhavan' on 11.07.2024. Further, the Applicant being responsible 'Government Servant' in cadre of 'Tahsildar' 'Group A' ought to have restrained himself from making such unsubstantiated personal allegations about 'MLA' from 'Khed-Alandi-197 of LAC' District Pune without any proof or evidence and instead Applicant should have strictly adhered to provisions of 'MCS (Conduct) Rules, 1979'.

25. The learned PO then stressed that there was no legal bar on 'Appointing Authority' or 'Disciplinary Authority' from ordering

'Suspension' of any Government Servant as per provisions 'Rule 4(1)(a)' of 'M.C.S (Discipline and Appeal) Rules 1979' after commencement of and during pendency of 'Departmental Enquiry'. Further as per contents of 'Appendix 1' of 'Manual of Departmental Enquiries 1991' it was not necessary to assign any reasons when 'Suspension' of any Government Servant is required to be ordered by 'Appointing Authority' or 'Disciplinary Authority'.

26. The learned P.O re-emphasized that 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' was fully justiciable as it was issued only after it was decided to expeditiously proceed with 'Departmental Enquiry' against Applicant for which 'Disciplinary Authority' also immediately made appointments of 'Regional Departmental Enquiry Officer, Pune' on 11.07.2024. Hence it is strongly denied that action taken by 'Appointing Authority' or 'Disciplinary Authority' was stigmatic or vindictive as was alleged in cavalier manner by Applicant.

27. The learned Advocate for Respondent No.5 on the other hand referred to 'Affidavit-in-Reply' dated 03.08.2024 to emphasise that alternative and efficacious remedies available under 'Rule 17(i)' of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, have not been exhausted by Applicant. The failure of Applicant to avail of this statutory remedy before filing this OA No 849/2024 makes it premature and non-maintainable and hence it be dismissed at 'Admission Stage'.

28. The learned Advocate for Respondent No.5 strongly contended that Applicant has improperly conflated two distinct issues viz. 'Government Order' dated 11.7.2024 of 'Revenue & Forest Department' about his 'Suspension' and subsequent 'Government Order' dated 16.07.2024 about transfer of Respondent No.5 to post of 'Tahsildar' at Khed, District Pune, just to give these judicious decisions unwarranted political shades as Applicant has unnecessarily dragged in 'MLA' from Khed-Alandi-197 LAC' of District Pune in 'Service Matters'. These are not related at all

being separate administrative decisions; each governed by its own set of law, rules and procedures. The attempt by Applicant to intertwine these two distinct issues is deliberate effort to obfuscate the real matters at hand and thus should be viewed with skepticism while deciding this O.A No.849/2024.

29. The learned PO then relied on contents of 'Additional Affidavit-in-Reply' filed on 12.08.2024 which is in respect to 'Amendments' carried out by Applicant to O.A.No.849/2024.

30. The learned PO stated that initially Applicant had filed present OA No 849/2024 only against his 'Suspension' by 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' but subsequently Applicant has enlarged its scope by including altogether independent cause of action about transfer of 'Respondent No.5' to post of 'Tahsildar' at Khed, District Pune by 'Government Order' dated 16.07.2024 issued by 'Revenue and Forest Department' after Applicant had been placed under 'Suspension' on 11.07.2024.

31. The learned PO emphasized that Applicant for same cause of action has directly approached 'Hon'ble Bombay High Court' by filing 'Writ Petition No.9959 of 2024' which is now 'Sub-Judice'. Hence, for the same cause of action Applicant after filing O.A No. 849/2024 cannot simultaneously avail identical relief from 'Hon'ble Bombay High Court'. Hence, on this count alone this OA No 849/2024 is liable to be dismissed at 'Admission Stage'.

32. The learned PO further mentioned that it is not in dispute that 'Suspension' of Applicant by 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' along with appointment of 'Regional Departmental Enquiry Officer, Pune' as 'Enquiry Officer' have been issued on same date but these were separate decisions taken on 11.07.2024 by 'Revenue & Forest Department'. Further, 'Government Order' dated 16.07.2024 of 'Revenue & Forest Department' in respect of

Respondent No. 5 was altogether independent decision as she was transferred to post of 'Tahsildar' of Khed, District Pune after it had fallen vacant on account of 'Suspension' of Applicant on 11.07.2024.

33. The learned PO re-emphasized that 'Competent Transferring Authority' had infact approved transfers of both Applicant and Respondent No. 5 around 15th March 2024 itself but at that time neither Applicant nor Respondent No.5 came to be transferred as it was just on verge of announcement of 'General Elections Lok Sabha : 2024'. Further it is also not in dispute Respondent No.5 had submitted representation on 12.07.2024 for transfer on post of 'Tahsildar' at Khed, District Pune soon after 'Suspension' of Applicant on 11.07.2024. The 'Hon'ble Minister In Charge' of 'Revenue & Forest Department' after duly considering the fact that post of 'Tahsildar' at Khed, District Pune had falled vacant and it was necessary to fill it up immediately because of forthcoming General Elections 'Maharashtra Legislative Elections 2024' and as both 'Competent Transferring Authority' next 'Superior Transferring Authority' who is 'Hon'ble Chief Minister of Maharashtra' had already approved the transfers of Applicant and Respondent No.5 around 15th March, 2024, these were directed to be forthwith implemented and hence Respondent No. 5 came to be transferred to vacant post of 'Tahsildar', at Khed, District Pune on 16.07.2024.

34. The learned PO stressed that as Applicant was no longer serving on post of 'Tahsildar', at Khed, District Pune after his 'Suspension' on 11.07.2024, the Applicant cannot question transfer of Respondent No.5 to vacant post of 'Tahsildar' at Khed, District Pune. The transfer of Respondent No. 5 on vacant post of 'Tahsildar' at Khed, Distict Pune had been approved by 'Competent Transferring Authority' & next Superior Transferring Authority around 15th March, 2024 but was not brought into effect on due announcement of 'General Elections Lok Sabha : 2024'. However, now due to change of circumstances including Applicant having been placed under 'Suspension' on 11.07.2024; the Respondent No. 5 came to be transferred to vacant post of 'Tahsildar' at Khed,

District Pune on 16.07.2024. Hence, action to transfer Respondent No.5 on post of 'Tahsildar', at Khed District Pune was just, proper and legal. Further, Respondent No.5 was transferred to post of 'Tahsildar' at Khed, District Pune much prior to issue of Election Commission of India letter dated 31.07.2024 regarding 'General Elections Maharashtra Legislative Assembly : 2024'. Besides as Respondent No.5 was already serving in Pune District and had expressed willingness on 12.07.2024 to be transferred to vacant post of 'Tahsildar', at Khed, District Pune, the non-submission of new proposal to 'Civil Services Board' (C.S.B) was not fatal and does not vitiate transfer of Respondent No.5 to post of 'Tahsildar' at Khed, District Pune by 'Government Order' dated 16.07.2024 of 'Revenue and Forest Department'.

35. The challenge of Applicant initially was only to his 'Suspension' from post of 'Tahsildar' at Khed, District Pune by 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department', but subsequently Applicant has also challenged 'Government Order' dated 16.07.2024 of 'Revenue & Forest Department' by which Respondent No.5 came to be transferred to vacant post of 'Tahsildar', at Khed, District Pune.

36. The 'Suspension' of Applicant effected by 'Government Order' dated 11.07.2024 of Revenue & Forest Department is outcome of decision taken by 'Appointing Authority' or 'Disciplinary Authority' under 'Rule 4(1)(a)' of 'MCS (D & A) Rules, 1979', whereas 'Government Order' dated 16.07.2024 of 'Revenue & Forest Department' in respect of transfer of Respondent No. 5 to vacant post of 'Tahsildar' at Khed, District Pune is outcome of independent decision taken by 'Competent Transferring Authority' and next Superior Transferring Authority under 'Section 4(4)(ii)' and 'Section 4(5)' of 'Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties, Act 2005'.

37. The 'Competent Transferring Authority' and next 'Superior Transferring Authority' had around 15th March, 2024 approved the

proposal to transfer of both Applicant and Respondent No.5 from and to post of 'Tahsildar' at Khed, District Pune much before conscious decision came to be taken independently to place Applicant under 'Suspension' by 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' and much before coming into effect of directions in 'Election Commission of India' dated 31.07.2024.

38. The nexus as was strongly contended by Applicant between his 'Suspension' by 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' and transfer of Respondent No. 5 to vacant post of 'Tahsildar' at Khed District Pune by 'Government Order' dated 16.07.2024 of 'Revenue & Forest Department' does not get symbiotically established because 'Revenue & Forest Department' as 'Cadre Controlling Authority' could have transferred Respondent No. 5 in place of Applicant on post of 'Tahsildar' at Khed, District Pune ever much before 16.07.2024 and possibly soon after completion of 'General Elections Lok Sabha : 2024'. In fact had Applicant been transferred soon after completion of 'General Elections Lok Sabha : 2024', then Applicant may also have been saved from ignominy of being placed under 'Suspension' while serving on post of 'Tahsildar' at Khed, District Pune. The 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' regarding 'Suspension' of Applicant is in respect of 'Departmental Enquiry' initiated on 22.08.2023 having 20 'Articles of Charges' pertaining to his earlier tenure on post of 'Tahsildar' at Mohol, District Solapur and thus had no connection whatsoever with transfer of Respondent No.5 to post of 'Tahsildar' at Khed, District Pune by 'Government Order' dated 16.07.2024 of 'Revenue and Forest Department'.

39. The 'Government Order' dated 11.07.2024 of 'Revenue & Forst Department' to place Applicant under 'Suspension' undoubtedly came to be issued belately as 'Departmental Enquiry' had been initiated against Applicant much earlier with 'Charge Sheet' being served on on 22.08.2023. So what meets the eye as somewhat atypical is that

'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' for 'Suspension' of Applicant was concurrently issued with fast paced moves in chess board fashion together with appointment on 11.07.2024 itself of (a) 'Regional Departmental Enquiry Officer, Pune' and (b) Presenting Officer to expeditiously conduct 'Departmental Enquiry' against Applicant.

40. The provisions of 'Rule 4(1)(a)' of 'MCS (D & A) Rules, 1979' enable 'Suspension' of any Government Servants when 'Departmental Enquiry' is either contemplated or pending. Against this backdrop although 'Suspension' of 'Applicant' did not happen during period when 'Departmental Enquiry' was contemplated; but it came to be effected soon after 'Departmental Enquiry' commenced with appointments of (a) 'Regional Departmental Enquiry Officer, Pune' and (b) 'Presenting Officer' albeit all happening together on 11.07.2024. However, these decisions taken together by 'Revenue & Forest Department' do not vitiate their validity in eyes of law but question of law does arise as to till what stage soon after commencement of 'Departmental Enquiry' can 'Suspension' be ordered under 'Rule 4(1)(a)' of 'MCS (D & A) Rules, 1979' and what could then be an outer time limit by when such 'Statutory Powers' can be justicably exercised by 'Appointing Authority' or 'Disciplinary Authority'. Further if this outer time limit has to be considered as being reasonable; then could it be considered till appointments are made of both 'Enquiry Officer' and 'Presenting Officer', or could it be even be stretched upto submission of 'Enquiry Report' to 'Disciplinary Authority' or for that matter can it be overextended upto completion of 'Departmental Enquiry' and award of penalty if any; upon concerned 'Government Servant' as per 'Rule 6' of 'MCS (Discipline & Appeal) Rules, 1979'.

41. The 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' regarding 'Suspension' of Applicant was issued belatedly as 'Departmental Enquiry' had been initiated much earlier with serving of 'Charge Sheet' upon Applicant on 22.08.2023, thus making the case of Applicant deserving enough to be reviewed early by 'Appointing

Authority' or 'Disciplinary Authority' under provisions 'Rule 4(5)(c)' of the 'MCS (D & A) Rules, 1979'. Be that as it may, it is not really necessary to over emphasize that even otherwise 'Government Order' dated 11.7.2024 of 'Revenue & Forest Department' about 'Suspension' of Applicant is now required to be reviewed based on principles laid down in land mark judgment of **Hon'ble Supreme Court of India in Ajay Kumar Choudhari Vs. Union of India & Ors, AIR 2015 SC 2389.**

42. The case of Applicant came to be heard at length beyond the stage of 'Interim Relief' at the insistence of learned Advocate of Applicant who even furnished 'Compilation of Judgments' of (a) Hon'ble Supreme Court of India and (b) Hon'ble Bombay High Court. The learned Advocate for Applicant during course of hearing on 08.08.2024 and 12.08.2024 extensively relied on 'Compilation of Judgments' to argue at length on merits of the case of Applicant based on points of law instead of just limiting his arguments to grant of 'Interim Relief'. Further, as 'Affidavit in Reply' had been filed by Respondents No 1 to 3 on 07.08.2024 and 'Additional Affidavit in Reply' also came to be filed immediately thereafter on 12.08.2024; the O.A No. 849/2024 was finally heard and then closed for 'Judgment' on 12.08.2024.

43. The case of Applicant is unusual as 'Government Order' dated 11.07.2024 of 'Revenue & Forest Department' to place Applicant under 'Suspension' under 'Rule 4(1)(a)' of 'MCS (Discipline & Appeal) Rules, 1979' along with appointments of (a) Regional Departmental Enquiry Officer, Pune and (b) Presenting Officer made soon thereafter was also followed immediately by 'Government Order' dated 16.07.2024 of 'Revenue & Forest Department' to transfer of Respondent No.5 to vacant post of 'Tahsildar' at Khed, District Pune places the rival contentions at point of intersection when Government Servants are placed almost together under 'Suspension' and subjected to 'Transfer'. Hence, it is necessary against backdrop to reproduce some important Judgments Hon'ble Supreme Court of India and Hon'ble Bombay High Court.

44. The **Hon'ble Bombay High Court** in **Machhindra Pandurang Chavan Vs. State of Maharashtra & Ors, 1989(3) BOMCR 501**, has referred to **Judgment of Gujarat High Court in Solanki J.S Vs. Principal Chief Conservator of Forests and Anr, 1986 (1) Lab IC 1256**, wherein extracts of interplay between consecutive decisions for 'Suspension' and/ or 'Transfer' of Government Servants was lucidly analyzed is reproduced as under:-

“28.The question then is whether these two decisions lay down any absolute rule of law that the State Government has power either to suspend or to transfer, but it cannot resort to both, namely, suspension as well as transfer. The Rules as stated above do not contain anything to show that the Government cannot resort to suspension and transfer simultaneously. Even the Supreme Court in Tarak Nath Ghosh's case (1971) Lab I.c 487 has nowhere said that even if the facts of a given case so warrant, the State Government cannot exercise both the powers simultaneously or one after another. This does now, however, mean that the Government should exercise the powers to suspend and transfer in all the cases before it. This power to do both is neither limited by the Rules nor by the ratio of any decision of the Supreme Court. In the opinion of this Court the said power to do both is wide not because the Government should exercise it in all cases indiscriminately and without circumspection, but because in a fit and proper case it might not feel the want of power when the circumstances of a given case warrant it. The need to suspend a Government servant against whom serious allegations of misconduct are made cannot be doubted. The object of suspending the Government servant who is facing serious allegations/charges is to put him out of the field of his influence to enable a fair investigation into the chages. In a given case; it may be sufficient to transfer him to put him out of action and it may not be necessary to suspend him also. In another case, it may be sufficient to suspend him to remove him from the field of influence, but it may not be necessary to simultaneously change his headquarters. But cases are not difficult to conceive where it may become absolutely necessary for the Government to not only suspend him, but also change his headquarters. In cases where a delinquent is alleged to have accepted illegal gratification, it would be necessary to suspend him from service because transferring him to another place would not serve the purpose inasmuch as the

possibility of his incurring in similar activity elsewhere cannot be ruled out. Such a Government servant who is under suspension may be found to be interfering with the course of inquiry, namely, recording of statements of his erstwhile subordinates. Tampering with the evidence of witnesses other than civil servant etc. and hence it may become necessary for the State Government to change his headquarters even while under suspension to put him out of harms way. While it may be true to say that the exercise of such a power of suspension as well as transfer may become necessary in rare cases, it is not possible to agree with the view that the power does not exist. There is nothing in the rules which we have discussed earlier which places such a restriction on the Government's power to transfer and suspend a civil servant facing grave charges of misconduct....."

44 - A. The **Hon'ble Bombay High Court in State of Maharashtra & Ors Vs. Shivram S. Sadawarte, (2001) ILL J1198 BOM**, has laid emphasis about the course of action expected to be taken by Government Servants to request their 'Appointing Authority' and 'Disciplinary Authority' to revoke order of 'Suspension' under 'Rule 4(5)(e)' by making observations as under:-

"10. There can be no 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 approached 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 power of judicial review of such an order. The scheme of the rules is clear and does not call to be reinstated 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."

"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 causes 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 months 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.”

44-B The **Hon'ble Bombay High Court, in State of Maharashtra & Ors Vs. Shivram S. Sadawarte, (2001) ILL J1198 BOM** has also referred to the decision of the **Hon'ble Supreme Court in Capt. M. Paul Antony Vs. Bharat Gold Mines Ltd andn Ors, AIR 1999 SC 1416**, wherein it was pertinently observed as under:-

“29. Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "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 nick name of 'Subsistence Allowance', so that the employee may sustain himself."

45. **The Hon'ble Supreme Court of India in State of U.P. & Ors. Versus Gobardhan Lal reported in AIR 2004 Supreme Court 2165** has emphasized that Appellate Authorities including Courts and Tribunal should normally eschew challenge to orders of transfer of 'Competent Authorities' by observing as follows :

"It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.

A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as

though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”

The **Hon’ble Supreme Court of India in State of Orissa Vs. Bimal Kumar Mohanty 13 O.A. No. 536/2022 reported in AIR 1994 SC 2296** elaborately observed as under :-

“12. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and commission the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over

the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge. 13. On the facts in this case, we are of the considered view that since serious allegations of misconduct have been alleged against the respondent, the Tribunal was quite unjustified in interfering with the orders of suspension of the respondent pending inquiry. The Tribunal appears to have proceeded in haste in passing the impugned orders even before the ink is dried on the orders passed by the appointing authority. The contention of the respondent, therefore, that the discretion exercised by the Tribunal should not be interfered with and this Court would be loath to interfere with the exercise of such discretionary power cannot be given acceptance.”

46. The **Hon'ble Supreme Court of India in Ajay Kumar Choudhary Vs. Union of India & Ors, AIR 2015 SC 2389**, in respect of review of cases of 'Suspension' if it were to be extended beyond period 3 Months has affirmately observed as under:-

“14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the

universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

47. The peculiar facts and circumstances relating to case of ‘Suspension’ of Applicant by ‘Government Order’ dated 11.07.2024 of Revenue and Forest Department is that it stands intertwined with some ‘Personal Allegations’ made by Applicant against ‘MLA’ from ‘Khed-Alandi-197 LAC’ of Pune District. The copy of ‘Transcript of Conversation’ between Applicant and ‘MLA’ from ‘Khed-Alandi-197 LAC’ of Pune District has also been placed on record, which if deemed necessary may be enquired into by ‘Revenue and Forest Department’.

48. The case of Applicant has now become mature for review under ‘Rule 4(5)(c)’ of ‘MCS (Discipline & Appeal) Rules, 1979’ based on principles laid down by landmark Judgment of **Hon’ble Supreme Court of India in Ajay Kumar Choudhary’s case (supra)** as more than 3 Months has elapsed since ‘Suspension’ of Applicant was effected by Government Order dated 11.07.2024 of ‘Revenue and Forest Department’. The ‘Appointing Authority’ or ‘Disciplinary Authority’ must undertake this review with an ‘Open Hand’ by relying upon observations as reproduced above from applicable judgments of (a) ‘Hon’ble Supreme Court of India’ and of (b) ‘Hon’ble Bombay High Court’ including those included from ‘Compilation of Judgments’ relied upon on behalf of Applicant. The ‘Appointing Authority’ or ‘Disciplinary Authority’ thereupon must arrive at reasoned conclusion within ‘Two Weeks’ about further continuation or otherwise of ‘Suspension’ of Applicant effected by

'Government Order' dated 11.07.2024 of 'Revenue & Forest Department'. Hence, the following orders :

ORDER

- (i) The Original Application No.849/2024 is Partly Allowed.
- (ii) No Order as to Costs.

(DEBASHISH CHAKRABARTY)
MEMBER-A

Place : Mumbai
Date : 29.10.2024
Dictation taken by : A.K Nair