

**IN THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL,
AT BELAGAVI**

DATED: THIS THE 21st DAY OF SEPTEMBER 2024

PRESENT

HON'BLE Mr.R.B.SATHYANARAYANA SINGH, JUDICIAL MEMBER

APPLICATION NUMBER :10950 of 2024

BETWEEN:

Shri Bharat Hegde, S/o. Shripati,
Aged about 46 years, Executive Officer,
Taluk Panchayat, Haveri Haveri-581110 Dist:Haveri

R/o. C/o. Vishwanath Patil
1st Floor, Opp.The Park,
Beside Urdu School, Vidya Nagar West
Haveri-581110, Dist:Haveri,

... APPLICANT

(Sri Santosh M. Shahapur, Advocate for applicant)

AND:

1. The Principal Secretary,
Department of Rural Development
and Panchayat Raj, M.S. Building,
Ambedkar Veedhi, Bengaluru-560001.
2. The Chief Executive Officer,
Zilla Panchayat, Haveri-581110,
Tq & Dist:Haveri.

... RESPONDENTS

(Sri Praveena Y. Devareddiyavara, HCGP for R1;
Sri A.A. Pathan, Advocate for R2)

This application is filed under Section 19 of the Administrative
Tribunals Act, 1985, with a prayer to:

(i) Quash the impugned order of suspension bearing No.ಗ್ರಾಅಪ 160 ವಿಸೇಬಿ 2024, ಬೆಂಗಳೂರು, dated 03.08.2024 (Annexure-A11) passed by the 1st Respondent.

This application, coming up for HEARING, having been reserved for pronouncement of orders, this day, **Mr.R.B.SATHYANARAYANA SINGH,HON'BLE JUDICIAL MEMBER**, made the following:

O R D E R

The applicant has filed the present application under Section 19 of the Administrative Tribunals Act, 1985 and challenged the impugned suspension order dated 03.08.2024 passed by the 1st Respondent (Annexure-A11).

The brief facts of the applicant's case as pleaded in the application are:

2. The applicant belongs to the RDPR Department and presently working as Executive Officer, Taluk Panchayat, Haveri. During November 2023 the Government permitted the applicant to travel abroad from 20.11.2023 to 03.12.2023. In order to attend the work relating to VISA, the applicant applied for casual leave on 6th & 7th November as per email dated 03.10.2023 (Annexure-A1). The applicant was on leave on 6th & 7th November 2023 and in that regard produced the attendance register (Annexure-A2). After return from casual leave, the 2nd Respondent on 08.11.2023 issued a show cause notice dated

06.11.2023 alleging that the applicant remained absent for the KDP meeting (Annexure-A3). The applicant on the same day submitted his reply clearly informing that he was on casual leave by obtaining prior permission (Annexure-A4). The applicant on 18.11.2023 submitted one more detailed reply along with supporting documents to the 2nd Respondent by explaining under what circumstances the applicant remained absent for duty on 6th & 7th November 2023 (Annexure-A5). The applicant was prematurely transferred from Haveri to Dandeli vide order dated 29.07.2024. Aggrieved by the said order, the applicant approached this Hon'ble Tribunal by filing A.No.10908/2024. This Hon'ble Tribunal vide order dated 31.07.2024 granted interim order of stay. The applicant was on casual leave on 31.07.2024 and on 01.08.2024 and he submitted application along with copy of the stay order passed by this Tribunal and reported for duty on the same day. The applicant produced the attendance register for July 2024 and the copy of application dated 01.08.2024 (Annexure-A6 & A7). The interim order of stay granted is also communicated to 2nd Respondent by email on 31.07.2024 (Annexure-A8). The applicant sincerely discharged his duties by attending all regular works even during heavy rain in May & June

2024. In this regard, he has produced the attendance register for May & June 2024 (Annexure-A9 & A10). Things stood thus, the 1st Respondent without considering the above facts and the interim order of stay granted by this Hon'ble Tribunal which was brought to the notice of 2nd Respondent issued a show cause notice. The applicant submitted detailed reply but without considering the reply has recommended to place the applicant under suspension. The 1st Respondent merely based on the recommendation made by the 2nd Respondent has passed the impugned order dated 03.08.2024 and placed the applicant under suspension (Annexure-A11). Aggrieved by the impugned order, the applicant has filed the present application.

3. The learned Counsel for the applicant contended that the allegations made against the applicant is that without bringing to the notice regarding the interim order granted and though the applicant was relieved on 30.07.2024, the applicant has rejoined for duty on 01.08.2024. The allegation that the applicant was relieved on 30.07.2024 is false. The applicant worked on 30.07.2024 and has signed the attendance register. The applicant has applied for leave on 31.07.2024 and on that day, as this Hon'ble Tribunal granted an interim order, even before joining, he

submitted a letter along with the copy of the interim order granted to the 2nd Respondent vide his letter dated 01.08.2024. Further, the applicant has communicated the interim order granted to the 2nd Respondent by email on 31.7.2024 itself at 11.36 a.m, and later joined for duty on 01.08.2024. Hence, the contention of Respondents that vide Official Memorandum dated 30.07.2024 they relieved the applicant is without any basis. The applicant attended the duty on 30.07.2024 as per the attendance register produced. The contention of 2nd Respondent that after applicant was relieved one Sri.Naveen Prasad Kattimani has taken the charge of the applicant does not merit consideration for the reason that the said Sri Naveen Prasad Kattimani was not transferred to the place of applicant. Further in accordance with Rule 12 of KCSRs for handing over charge and taking over charge both the officers has to be present. Further in accordance with Rule 24 of KCSRs both officials to be communicated to be present for handing over and taking over of charge. Hence, the contention of the 2nd Respondent that the applicant was relieved and the said Sri Naveen Prasad Kattimani has taken charge is improper. The production of CTC, clearly shows that the applicant has not signed the same hence it is in clear violation of Rule 12 & 24 of KCSRs.

4. The learned Counsel contended that based on the letter dated 03.08.2024 addressed by the 2nd Respondent to the 1st Respondent, the impugned order of suspension is passed though in the said letter 14 letters and notices are referred, the 2nd Respondent reported that the applicant has not communicated the interim order granted by the Hon'ble Tribunal, but the applicant soon after the Hon'ble Tribunal granted interim order on 31.07.2024 has communicated the same to the 2nd Respondent through email and later vide letter dated 01.08.2024 has also produced the copy of the interim order granted. The letter submitted by the applicant as well as the email sent are not forwarded to the 1st Respondent. Further regarding the allegation of not attending the KDP meeting on 07.11.2023, the applicant on 06.11.2023 and 07.11.2023 has obtained casual leave by prior intimation. Regarding the casual leave obtained, the attendance register shows that on 06.11.2023 and 07.11.2023, the applicant was on casual leave, hence, the allegation that the applicant has not attended the K.D.P. meeting and on that basis passing the impugned order cannot be sustained. When the 2nd Respondent issued the show cause notice, the applicant submitted his reply on the same day and informed that as the RDPR department

permitted the applicant to go abroad and for the Visa purpose he has applied for leave. To the show cause notice issued on 06.11.2023, the applicant submitted his reply on 18.11.2023 but without taking any action for one year, now the impugned order passed only on the recommendation of the 2nd Respondent that the applicant was absent for duty on 29.07.2023, hence the impugned order cannot be sustained for the reason that the attendance register produced clearly shows that the applicant has attended the duty on 29.07.2023 and 30.07.2023 and has taken leave on 31.07.2024. The other allegation that on May and June 2024 though there was heavy rain, the applicant was absent for duty. In that regard the attendance register produced (Annexures-A9 & A10) clearly shows that the applicant has attended the duty during May and June 2024. The 2nd Respondent before recommending to the 1st Respondent to place the applicant under suspension has not submitted the reply filed by the applicant to the show cause notices as well as the supporting documents which shows that the applicant was on casual leave on 6 & 7 as well as he attended for duty in May and June 2024. Merely based on the recommendation made by the 2nd Respondent, the 1st Respondent has passed the impugned order, hence there is no

proper application of mind before passing the impugned order. 1st Respondent has passed the impugned order only on the ground that the applicant has not submitted suitable reply and has committed misconduct. The applicant though submitted two replies, the 2nd Respondent intentionally has avoided to forward the said replies, hence in the absence of considering the replies, the impugned order passed cannot be sustained.

5. The learned Counsel for the applicant relying on the reply statement and the circular dated 19.06.2004 issued by the DPAR contended that only under the circumstances on charges of corruption, loss caused to the Department or gross dereliction of duty by the Government employee, he can be suspended. In the case on hand, there are no allegations of any corruption or loss caused to the Government and even gross dereliction of duty committed by the applicant, hence the impugned suspension order passed merely based on the recommendation made by the 2nd Respondent cannot be sustained.

6. The learned Counsel for the applicant contended that as the applicant has obtained an interim order of stay at the hands of this Hon'ble Tribunal, the 2nd Respondent with a dishonest intention have grudge has recommended to place the applicant

under suspension. Though the 2nd Respondent forwarded a letter on 01.08.2024 and there was no necessity to send one more letter, again on 03.08.2024, the 2nd Respondent has sent one more recommendation by enclosing additional documents, showing that there are complaints against the applicant. The copies of the complaints which are enclosed from page-37 it perused, they not even disclose, the dates and seal of the office for having received the complaints which clearly shows that they are the created documents. Further the Annexure-R3 relieving order produced bears the date as 03.08.2024 and the 2nd Respondent contends that the applicant is relieved which cannot be accepted for the simple reason that after passing suspension order, the question of relieving does not arise.

7. The learned Counsel for the applicant contended that the impugned order is passed by the 1st Respondent which is under challenging this application. The 1st Respondent admittedly has not filed any reply, on the other hand the 2nd Respondent by filing Caveat Petition is contesting this application, which clearly proves that with an ill motive, the 2nd Respondent is contesting this matter, hence even on this ground the impugned order cannot be sustained.

8. In support of his contentions, he has relied on the judgments rendered by the Hon'ble Apex Court in the case of **State of Orissa V/s Bimal Kumar Mohanty** reported in AIR 1994 SCC 2296 as well as the order passed by this Hon'ble Tribunal in the case of **Odo Gangappa V/s State of Karnataka** in A.No.1001/2019 dated 20.03.2009 and the order passed by this Tribunal in A.No.1653/2023 disposed on 06.07.2020.

9. The learned HCGP has not filed any reply statement but orally contended that based on the letter addressed by the 2nd Respondent on 01.08.2024 that the applicant is already relieved on 30.07.2024 and the applicant though has obtained an interim order of stay has not brought to the notice of higher authority has attended the duty on 01.08.2024. Further during May & June 2024 due to heavy rain, though there were lots of casualties, the applicant remained absent for duty. Further he has not attended the K.D.P. meeting held on 07.11.2023, in that regard though show cause notices were served, the applicant has not submitted any reply and has shown dereliction towards duty. Based on the recommendation made by the 2nd Respondent, the 1st Respondent has passed the impugned order and placed the applicant under suspension which is in accordance with Rule 10 (1) (a) of

KCS(CCA) Rules, 1957 as such he sought for dismissing the application.

10. The 2nd Respondent by filing reply statement contended that there is no bar to file a Caveat Petition. The applicant's contention that he was on casual leave on 6 & 7 is false. The applicant was not granted casual leave. In view of heavy rains in Haveri District and due to floods as there were many casualties, the District In-Charge Minister held a K.D.P. meeting on 07.11.2023 and the applicant has not attended the K.D.P. meeting. The applicant's contention that he was on casual leave is false as no leave was sanctioned. The applicant was transferred from Haveri to Dandeli vide transfer order dated 29.07.2024 in Public interest and Administrative exigency. The applicant has challenged the said order and obtained interim order on 30.07.2024 by that time he was already relieved on 30.07.2024. The applicant without obtaining movement order, has reported on 01.08.2024. The 2nd Respondent has brought to the notice of 1st Respondent regarding the unauthorized absence of the applicant as well as the reporting for duty without obtaining the movement order. The 1st Respondent considering the recommendation made by the 2nd Respondent, after examining the same has passed the

impugned order. Hence the contention of learned Counsel for the applicant that there is violation of Rule 10(3) of KCS(CCA) Rules, does not merit consideration, accordingly sought for dismissing the application.

11. On considering the rival contentions the allegations against the applicant is that the applicant was unauthorizedly absent for duty on 6 & 7 of November 2023 and has not attended the K.D.P. meeting held on 07.11.2023. The contention of learned Counsel for the applicant is the applicant applied for casual leave on 03.10.2023 to attend the VISA work and the attendance register shows that the applicant was on casual leave on 6th and 7th, hence the contention of Respondents that the applicant absented for K.D.P. meeting on 07.11.2023 is without any basis. In this regard, the Annexure A1 produced, the email copy dated 03.10.2023 clearly shows that the applicant has applied for casual leave on 6 & 7 of November 2023 in advance on 31.07.2023. Even the attendance register produced for the month of November 2023, shows that the applicant was on casual leave on 6th & 7th of November 2023. Hence, the contention of the 2nd Respondent that the leave was not sanctioned lacks merits. When the applicant was on casual leave on 6th & 7th, the

question of attending the K.D.P. meeting held on 07.11.2023 does not arise. Hence, without considering these aspects issuing of show cause notice by the 2nd Respondent that the applicant has remained absent for K.D.P. meeting and thus shown dereliction towards duty is also a baseless allegation. The recommendation made by the 2nd Respondent is on the ground that when a show cause notice was issued, the applicant has not replied to the show cause notice. But the applicant immediately on service of show cause notice on 08.11.2023, on the very same day submitted his reply and denied the allegations (Annexure-A4). Even thereafter the applicant on 18.11.2023 by producing supporting documents has submitted a detailed reply and explained under what circumstances he remained absent on 06.11.2023 (Annexure-A5). The 2nd Respondent while recommending to the 1st Respondent has only stated that the applicant though received the show cause notice has not submitted any reply and has shown dereliction towards duty. The applicant though submitted the replies the 2nd Respondent intentionally has not forwarded the replies submitted to the 1st Respondent. Hence the impugned order passed needs our interference.

12. The other contention of the 2nd Respondent is the interim order obtained by the applicant on 31.07.2024 was not communicated to the 2nd Respondent and as the applicant was already relieved on 30.07.2024 without obtaining movement order he should not have reported for duty on 01.08.2024. In this regard, the applicant immediately after obtaining interim order on 31.07.2024 at 11.36 a.m., communicated the same to the 2nd Respondent through email and further on 01.08.2024 has produced the copy of the interim order to the 2nd Respondent, which bears the seal of the office of the 2nd Respondent (Annexure-A7). Hence, the 2nd Respondent cannot contend that the applicant has not communicated the interim order granted by this Tribunal. Further the applicant was not absented for duty on 30.07.2024 and the attendance register shows that he was on duty on 30.07.2024. Hence the contention of the 2nd Respondent that the applicant was relieved from duty on 30.07.2024 is a baseless allegation and on that allegation, he should not have recommended to the 1st Respondent to take action on the applicant.

13. The further contention of the 2nd Respondent is that during the months of May and June 2024 though there was heavy rain

and lot of causalities the applicant has not attended for duty and has shown negligence and dereliction towards duty. The attendance register produced by the applicant for the months of May and June 2024 clearly establishes the fact that the applicant was very much present for duty during May and June 2024 (Annexures-A9 & A10). Hence the allegation that the applicant has remained absent for duty during May and June 2024 and has shown dereliction towards duty is also is a baseless allegation.

14. The 2nd Respondent by making false and baseless allegations has sent his recommendation on 01.08.2024. Even thereafter sent one more recommendation on 03.08.2024 to the 1st Respondent by enclosing 14 annexures though there was no need to send a second recommendation. Even while sending the 2nd recommendation, the 2nd Respondent has not enclosed the reply submitted by the applicant to the show cause notice issued, which clearly establishes that the 2nd Respondent with an ill motive and having grudge over applicant by making baseless allegations has sent one more recommendation. If the 2nd Respondent has forwarded the replies submitted by the applicant and after considering the replies submitted by the applicant, then the 1st Respondent has passed the impugned order then it would

have been stated that there is compliance of Rule 10(3) of KCS(CCA) Rules. Hence it clearly establishes that the 1st Respondent has yielded to the dictates of the 2nd Respondent and has passed the impugned order of suspension.

15. The Hon'ble Apex Court in the case of **Bimal Kumar Mohanty** referred to supra has clearly held that "order not to be passed as an administrative routine or automatic order-Gravity of misconduct sought to be investigated/enquired and nature of evidence placed before appointing authority should be considered before passing the suspension order".

16. The circular dated 19.06.2004 clearly states that it's only on the allegations of corruption charges, loss caused to the department or gross dereliction shown towards duty, a Government employee can be placed under suspension. The 2nd Respondent while sending the recommendation has neither stated that the applicant has involved in a corruption charge nor has caused loss to the Government Exchequer. Even there is allegation of gross misconduct committed by the applicant, hence the impugned order passed is also in clear violation of the circular dated 19.06.2024.

17. This Tribunal asked a specific question to the learned Counsel who entered Caveat Petition on behalf of the 2nd Respondent, that why the reply submitted by the applicant though received was not forwarded along with the recommendations made on 01.08.2024 and 03.08.2024 but there is no answer from the learned Counsel for 2nd Respondent. Hence, as rightly contended by the learned Counsel for the applicant, the 2nd Respondent has intentionally avoided to send the replies filed by the applicant. Further when already the 2nd Respondent sent his report on 01.08.2024 there was no necessity to submit one recommendation on 03.08.2024 by enclosing 14 annexures. Even in the said recommendation there is no reference to the reply submitted by the applicant. The contention that against the applicant's there are complaints from several Grama Panchayats hence a recommendation was sent. On perusal of the said complaints from Page 37, onwards neither there is a date nor an inward seal for having received the said complaints, thus establishes that those documents are created and forwarded to the 1st Respondent with a sole intention to place the applicant under suspension.

In view of the discussions made above, I am of the considered opinion that the applicant has made out a strong case for interference. Accordingly,

(i) The application is allowed.

(ii) The impugned order of suspension bearing No.ಗ್ರಾಫಿಕ್ 160 ಎಸ್‌ಬಿ 2024, ಬೆಂಗಳೂರು, dated 03.08.2024 (Annexure-A11) passed by the 1st Respondent is quashed.

(iii) The Respondents are directed to reinstate the applicant into service forthwith and extend all the consequential benefits to which he is legally entitled to within a period of four months from the date of receipt of certified copy of this order.

Sd/-
(R.B.SATHYANARAYANA SINGH)
JUDICIAL MEMBER

Prj*