

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD****REVIEW APPLICATION NO. 05 OF 2022
IN
ORIGINAL APPLICATION NO. 981 OF 2019
DISTRICT : PARBHANI**

Dr. Ravindra S/o Kishanrao Deshmukh,)
Age : 49 years, Occu. : Service as Medical Officer)
PHC, Pimpaldari, Tq. Gangakhed, Dist. Parbhani.)
R/o. PHC, Pimpaldari, Tq. Gangakhed,)
Dist. Parbhani.)
.... **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Principal Secretary,)
Department of Public Health,)
Mantralaya, Mumbai – 32.)
2. **The Director,**)
Public Health Department, 8th Floor,)
Saint George Hospital Compound,)
Arogya Bhavan, Mumbai – 01.)
3. **The Deputy Director,**)
Public Health Services, Mahavir Chowk,)
Near Baba Petrol Pump, Aurangabad.)
4. **The Civil Surgeon,**)
District Civil Hospital, Parbhani,)
Tq. and Dist. Parbhani.)
5. **The Medical Superintendent,**)
Sub-District Hospital, Gangakhed,)
Tq. Gangakhed, Dist. Parbhani.)

...RESPONDENTS

APPEARANCE : Shri G.V. Mohekar, Advocate for the Applicant.

: Shri B.S. Deokar, Presenting Officer for
Respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J).**

DATE : **13.10.2022.**

ORDER

1. The Original Application No. 981/2019 was filed challenging the impugned order of suspension of the applicant dated 23.10.2018 (Annexure A-8) (wrongly mentioned in prayer clause as 23.11.2018) issued by the respondent No. 1 i.e. the State of Maharashtra. After completion of pleadings in the said O.A. and hearing of the parties, the said O.A. was disposed of by an order dated 29.08.2022 in following terms :-

ORDER

The Original Application No. 981/2019 is disposed of in following terms :-

(A) *The respondents are directed to place the matter of suspension of the applicant before the requisite review committee for consideration of revocation of suspension strictly in accordance with the law laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary and Another** reported in **(2015) 7 Supreme Court Cases 291** and also in view of the G.R. dated 09.07.2019 issued by the General Administration Department (GAD), State of*

Maharashtra within a period of one month from the date of this order.

(B) The respondents are further directed to pay the requisite subsistence allowance and arrears thereof to the applicant in accordance with law within a period of one month from the date of this order.

(C) There shall be no order as to costs.”

2. In Review Application it is pointed out that during pendency of the said O.A., the suspension order of the applicant under challenge was revoked and the said fact was brought on record by the applicant in his rejoinder affidavit by placing on record revocation order dated 31.03.2021 (Exhibit R-J-1). Inadvertently while deciding the O.A., the said fact could not be noticed. No amendment was sought by the applicant in the O.A. molding prayer in view of the subsequent development. In view of the same, this is a fit case to review the said order dated 29.08.2022, by which the O.A. No. 981/2019 was disposed of.

3. The facts in brief giving rise to the Original Application can be stated as follows :-

(a) The applicant is a Doctor possessing MBBS and DCH qualification. He had worked at various places in the State of Maharashtra as a Medical Officer. The applicant is

presently working as a Medical Officer with the respondent No. 5 i.e. the Medical Superintendent, Sub-District Hospital, Gangakhed, Dist. Parbhani since 2016.

(b) It is submitted that since 2016, there were no any genuine complaints against the applicant either from the patients, staff or any superior officers. Whatever the allegations of bald nature are made against the applicant are nothing but out of grudge. The respondent No. 5 issued memo / notice dated 02.06.2018 (Annexure A-1) to the applicant stating and alleging that when the respondent No. 5 visited the Hospital on 01.06.2018 at night, the applicant was absent from duty and during discussion some relatives of the patients made grievance against the applicant about non-availability of the applicant for checking the patients. It was also alleged that the applicant did not perform the duty of post mortem (PM) and on earlier occasions also, there was dereliction of the duties on the part of the applicant. The applicant submitted his reply dated 02.06.2018 (Annexure A-2) denying the allegations thereof. However, thereafter also the respondent No. 5 issued another such notice / memo dated 02.07.2018 (Annexure A-3) to the applicant, to which the

applicant submitted his reply dated 06.07.2018 supporting with documents (Annexure A-4 collectively).

(c) It is further submitted that in the background of the said allegations against the applicant, the respondent No. 5 conducted the preliminary enquiry against the applicant. The applicant appeared before the Enquiry Officer and gave statement dated 11.07.2018 (Annexure A-5). After that, the applicant deputed / transferred at Rural Hospital, Akhada Balapur, Tq. Kalamanuri, Dist. Hingoli by transfer order dated 16.07.2018 (part of annexure A-6 collectively) (wrongly mentioned as 16.07.2017) and was relieved on the same day i.e. on 16.07.2018 (part of annexure A-6 collectively). The applicant challenged his said transfer order dated 16.07.2018 (part of annexure A-6 collectively, page No. 39 of the paper book) by filing O.A. No. 523/2018 before this Tribunal. The said O.A. No. 523/2018 came to be disposed of by the order dated 23.01.2019 (Annexure A-7), thereby the said transfer order dated 16.07.2018 was quashed and set aside. While disposing of the said Original Application, this Tribunal observed that the transfer order of the applicant dated 16.07.2018 was illegal not being issued by the competent transferring authority and in view

of that fact, the said order was already cancelled by the respondents therein by the order dated 01.01.2019. It is submitted that being frustrated from the observations made in the order by disposing of the said O.A. No. 412/2018, the respondent No.1 issued the impugned suspension order of the applicant dated 23.10.2018 (Annexure A-8) in the contemplation of disciplinary action against the applicant for alleged misconduct. In fact, after preliminary enquiry in respect of the said allegations, punitive order of transfer was already issued against the applicant. In view of the same, the impugned order of suspension is illegal and not sustainable in eyes of law. After receipt of the said order, immediately the applicant submitted representation dated 06.11.2018 (Annexure A-9) seeking revocation of suspension contending that no any Departmental Enquiry is proposed against him and the suspension order is issued out of grudge and to harass him.

(d) It is further submitted that the impugned order of suspension is not legal and proper being issued in contravention of the provisions of G.Rs. dated 14.10.2011, 31.01.2015 & 09.07.2019, as well as, law laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary**

Vs. Union of India Through its Secretary and Another
reported in **(2015)7 Supreme Court Cases 291.**

(e) It is further submitted that after issuance of the impugned order of suspension dated 23.10.2018, memorandum of charge-sheet dated 22.02.2019 (Annexure A-10) is served upon the applicant only on 30.04.2019 and there is no further progress in the said Departmental Enquiry. The same is filed beyond the period of three months from the date of issuance of the suspension order. Hence, the suspension order is liable to be revoked on that count itself. Though, in the suspension order it is mentioned that the subsistence allowance in accordance with law would be paid to the applicant, the same is not paid to him regularly. In this regard, the applicant made various representations dated 07.01.2019, 14.01.2019, 08.02.2019, 08.05.2019, 17.06.2019, 16.08.2019 (Annexure A-11 collectively), but in vain. Hence, the present Original Application.

4. The Original Application is resisted by filing affidavit in reply on behalf of respondents by one Dr. Eknath Maloji Bhosale, working as Chief Administrative Officer in the office of Dy.

Director of Health Services, Aurangabad, thereby he denied all the adverse contentions raised in the Original Application and submitted that the impugned order of suspension is issued in contemplation of initiation of the Departmental Enquiry against the applicant in view of the various instances of misconduct and memorandum of charges is already served upon the applicant. It is denied that the impugned order suffers with any illegality. So far as grievance of subsistence allowances is concerned, the respondents are ready to pay the same to the applicant in accordance with law. Therefore, the present Original Application is liable to be dismissed.

5. The applicant filed his affidavit in rejoinder denying the adverse contentions raised in the affidavit in reply and reiterating his contentions raised in the Original Application. In addition to that, it is brought on record by the applicant that during pendency of the Original Application, the impugned order of suspension of the applicant dated 23.10.2018 (Annexure A-8) is revoked by the respondent No. 1 by issuing the order dated 31.03.2021 (Exhibit R-J-1) and after reinstatement, he has been posted at Trauma Care Unit, Bhusawal on the vacant post. The applicant joined on the said post as per joining report dated 04.05.2021 (Exhibit R-J-2). He specifically denied that after his

suspension by the order dated 23.10.2018, he did not join Headquarter i.e. Civil Hospital, Parbhani. He joined there on 05.11.2018 and submitted his joining report, which is at Exhibit R-J-3. Attendance Register is however, fabricated and there is overwriting as is seen from Exhibit R-J-4. He has already submitted requisite undertaking on 12.12.2019 (Exhibit R-J-5). The applicant, however, is not paid requisite subsistence allowances for the suspension period mentioning wrong reasons. As regards attendance at headquarter, the applicant has placed reliance on Government Circular dated 19.03.2018 (part of Exhibit R-J-6 collectively). The applicant is paid subsistence allowances only for January and February, 2019. For the rest of the period he has not been paid subsistence allowances. In view of the same, the applicant therefore, made application dated 17.06.2019 (part of Exhibit R-J-7 collectively) seeking requisite subsistence allowances.

6. I have heard the arguments advanced at length by Shri G.V. Mohekar, learned Advocate for the applicant on one hand and Shri B.S. Deokar, learned Presenting Officer for the respondents on the other hand.

7. In the background of the submissions made on behalf of both the sides and the rival pleadings if the impugned order of

suspension dated 23.10.2018 (Annexure A-8) is scrutinized, it is seen that the same was issued by the respondent No. 1 i.e. the competent authority by invoking provisions of Rule 4(1)(A) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 and more particularly in contemplation of disciplinary action for misconduct to be initiated against the applicant. It is a fact that before issuance of the said suspension order, the respondent No. 5 under whom the applicant is working issued the memo / notice dated 02.06.2018 (Annexure A-1), as well as, memo / notice dated 02.07.2018 (annexure A-3), to which the applicant submitted his written reply dated 02.06.2018 (Annexure A-2) and written reply dated 06.07.2018 (Annexure A-4) respectively. There are allegations of remaining absent from duties; not performing post mortem (PM), not attending the patients, etc. Sufficiency of material for putting the applicant under suspension cannot be gone into much by this Tribunal under its limited jurisdiction.

8. It is further a fact that during pendency of the O.A. No. 981/2019, the impugned suspension order of the applicant is revoked by the respondent No. 1 by issuing order dated 31.03.2021 (Exhibit R-J-1). In view of the same, the issue of revocation and reinstatement of the applicant is dealt with.

However, in the said revocation order dated 31.03.2021 (Exhibit R-J-1) there is no mention about treatment of suspension period as regards salary and allowances as contemplated under Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981.

9. However, in this regard, the learned Advocate for the applicant placed reliance on the judgment of the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary and Another** reported in **(2015)7 Supreme Court Cases 291**. It will be appropriate to reproduce the para Nos. 11, 12 and 21 of the said judgment, which is as under :-

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12. Protracted period of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged,

it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that – “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet 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 person concerned 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 prepared 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 the 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.”

10. In this regard, the learned Advocate for the applicant also placed reliance on the decision of the Co-ordinate Bench of this

Tribunal at Mumbai in **O.A. No. 505 of 2018 decided on 22.02.2019** in the matter of **Smt. Simantini G. Kadam Vs. The District Collector, Satara and Ors.** In the said case, the suspension order of the applicant therein was challenged which was issued in view of the registration of crime under Prevention of Corruption Act in view of contemplation of Departmental Enquiry in this regard. It was also alleged that there was no proper compliance of G.R. dated 14.10.2011 issued by the GAD dealing with periodical review for objective decision in continuation of suspension. There was also grievance of non-payment of regular subsistence allowances and though, Charge-sheet is filed in Criminal Case, but it is not progressing and D.E. was also kept in abeyance. During pendency of the said O.A., the applicant retired on superannuation. The said O.A. was allowed and it was held that the applicant's suspension deemed to have been revoked upon completion of three months, during which period, respondents failed even failed to file charge-sheet in departmental proceedings and charge-sheet in criminal case was also not filed and therefore, the service benefit with deemed date of revocation of suspension were granted.

11. In view of above-said case laws, if the facts of the present case are considered, it is seen that the memorandum of charge-

sheet dated 22.02.2019 (Annexure A-10) said to have been served upon the applicant by the respondents on 30.04.2019. The impugned suspension order is dated 23.10.2018 (Annexure A-8). In view of the same, the memorandum of charge-sheet dated 22.02.2019 itself is of the date beyond three months of the date of suspension of the applicant dated 23.10.2018 (Annexure A-10). Nothing is produced on behalf of the respondents that any requisite order is obtained by the applicant for seeking extension of the suspension period of applicant in accordance with law in view of the law laid down by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary and Another** (cited supra) and the requisite G.R. dated 09.07.2019. The provisions of G.R. dated 09.07.2019 are as under :-

“ शासन निर्णय:-

१. या अनुषंगाने शासकीय कर्मचाऱ्यांच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.

i) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेऊन निलंबन पुढे चालू ठेवावयाचे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिकाऱ्यांच्या स्तरावर घेण्यात यावा.

ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय

अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरू करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता/खबरदारी घेण्यात यावी.

iii) फौजदारी प्रकरणात विशेषतः लाचलुचपत प्रकरणी निलंबित शासकीय सेवकांवर विभागीय चौकशी सुरू करून दोषारोप पत्र बजावणेबाबत आवश्यक तो अभिलेख लाचलुचपत प्रतिबंधक विभागाने संबंधीत प्रशासकीय विभागास उपलब्ध करून देणे आवश्यक राहिल.

या आदेशातील तरतुदींमुळे या विषयावरील संदर्भ १ व २ येथील आदेशांतील तरतुदी या आदेशाच्या मर्यादित सुधारण्यात आल्या आहेत असे समजण्यात यावे.”

12. In view of above, the view taken in **O.A. No. 505 of 2018 decided on 22.02.2019** in the matter of **Smt. Simantini G. Kadam Vs. The District Collector, Satara and Ors.** would be applicable, as the facts of the present case are similar to the facts of the above-said cited case to the great extent and more particularly, so far as continuation of suspension period beyond the period of 90 days (3 months) is concerned and when no charge-sheet in respect of departmental action was filed within stipulated period of 90 days (3 months). In the circumstances, though the impugned suspension order of the applicant dated 23.10.2018 (Annexure A-8) is revoked by the respondent No. 1 vide order dated 31.03.2021 (Exhibit R-J-1), but without giving any consequential benefits, when charge-sheet was not filed within stipulated period. In terms of the law laid down by the

Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India Through its Secretary and Another** (cited supra) and more particularly in view of G.R. dated 09.07.2019 reproduced earlier continuation of suspension period beyond three months of date of suspension dated 23.10.2018 (Annexure A-8) is not sustainable and the applicant shall be entitled for requisite service benefits of salary and allowances in accordance with law in view of Rule 72 of the Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981. The respondents however, can deal with treatment of suspension period of 90 days (3 months) from the date of order of suspension dated 23.10.2018 can be decided later on at appropriate stage upon completion of Departmental Enquiry, if any initiated against the applicant. In view of the same, the present Review Application can be disposed of by giving appropriate directions to the respondents. I therefore, proceed to pass the following order :-

ORDER

The Review Application No. 05/2022 stands disposed of in following terms :-

- (A) The judgment and order dated 29.08.2022 passed by this Tribunal in O.A. No. 981/2019 is recalled and the

reviewed to the extent thereby directing the respondents as follows :-

(i) The respondents are directed to consider the period of deemed revocation of suspension of the applicant w.e.f. 23.01.2019 till it's revocation by order dated 31.03.2021 for entire service benefits in accordance with law and to grant such benefits within a period of two months from the date of this order.

(B) There shall be no order as to costs.

PLACE : AURANGABAD.
DATE : 13.10.2022.

(V.D. DONGRE)
MEMBER (J)