

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO. 287 OF 2022
(Subject – Suspension / Revocation of Suspension)**

DISTRICT : JALGAON

Pratibha D/o Machindra Lohar,)
Age : 42 years, Occu. : Service as Head Clerk,))
R/o. at present Head Office, Tahsil Office,))
Bodwad, Tq. Bodwad, Dist. Jalgaon.) **APPLICANT**

V E R S U S

1. **The State of Maharashtra,**)
Through its Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai-32.)
2. **The Divisional Commissioner,**)
President, Suspension Review Committee,))
Divisional Officer, Nashik Division,))
Nashik.)
3. **The District Collector,**)
Collector Office, Jalgaon,)
Tq. & Dist. Jalgaon.) **...RESPONDENTS**

APPEARANCE : Shri H.P. Jadhav, Advocate for the Applicant.

: Smt. M.S. Patni, Presenting Officer for Respondents.

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

DATE : **22.08.2022.**

O R D E R

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, the present Original

Application is filed seeking to challenge the impugned order of suspension of the applicant dated 26.10.2021 (Annexure A-4) issued by the respondent No. 3 i.e. the District Collector, Jalgaon and seeking reinstatement of the applicant subject to final decision in D.E. and criminal proceeding as per the provisions of G.R. dated 09.07.2019 (part of Annexure A-7 collectively) and further seeking direction to place the matter before Review Committee for appropriate decision about revocation / review of suspension of the applicant and his reinstatement.

2. The facts in brief giving rise to this application can be summarized as follows :-

(a) The applicant was initially appointed on 01.03.2008 as Clerk in the office of respondent No. 3 i.e. the District Collector, Jalgaon. In the year 2012, he was transferred to Bhusawal on promotion. In the year 2016, he was transferred at Collector Office, Jalgaon and again was retransferred in August, 2021 in the office of SDO, Bhusawal. He took charge as Head Clerk in the office of SDO, Bhusawal on 10.08.2021. The service record of the applicant is unblemished and no Departmental Enquiry was pending against him till 05.10.2021.

(b) It is submitted that FIR / Crime No. 188/2021 was registered against the applicant with Police Station Bhusawal City on 05.10.2021, under Section 7 of Anti-Corruption Act on the complaint given by one Shri Vitthal Punjo Patil. The applicant was arrested in the said crime on 06.10.2021 and was released on bail on 08.10.2021. According to the applicant, she was falsely implicated in the said crime. The Police Inspector, Anti-Corruption Officer, Jalgaon vide communication dated 14.10.2021 submitted report in respect of Crime No. 188/2021 to the respondent No. 3 i.e. the District Collector, Jalgaon. In view of the same, the respondent No. 3 issued the suspension order of the applicant dated 26.10.2021 (Annexure A-4) under Rule 4(1)(C) and 4(2)(A) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 with retrospective effect of 05.10.2021 being a deemed suspension order.

(c) It is further contended that the applicant received memorandum of charge-sheet on 06.01.2022 (part of Annexure A-5 collectively) in Departmental Enquiry in connection with the said suspension with the allegation of demand of bribe of Rs. 10000/- and that the applicant tried

to accept the same. The applicant submitted her reply dated 12.01.2022 (part of Annexure A-5 collectively at page Nos. 53 & 54 of the paper book). The respondent No. 3 vide letter dated 21.01.2022 (part of Annexure A-5 collectively at page No. 56 of the paper book) appointed Shri A.U. Borse as an Enquiry Officer to conduct the Departmental Enquiry against the applicant.

(d) It is further submitted that the applicant thereafter, made representation dated 17.01.2022 (Annexure A-6) to the Divisional Commissioner, Nashik i.e. the respondent No. 2 seeking her reinstatement stating that she has been falsely implicated in the said case. Even after completion of three months from issuance of the suspension order, no any decision is taken on her suspension. The applicant is facing many economic problems. The meeting of suspension Review Committee was held in the office of respondent No. 2 i.e. the Divisional Commissioner, Nashik on 24.03.2022, but no any decision is taken in respect of the applicant. In view of the same, the action on the part of the respondent Nos. 2 and 3 is totally violative of the G.Rs. dated 31.01.2015 and 09.07.2019 (Annexure A-7

collectively). Hence, the present Original Application is filed seeking reliefs as narrated in the beginning.

3. The present Original Application is resisted by filing affidavit in reply on behalf of respondent Nos. 1 to 3 by one Shri Ramsing S/p Hiralal Sulane, working as Sub-Divisional Officer, Bhusawal, Tal. Bhusawal, Dist. Jalgaon, thereby he denied all the adverse contentions raised in the Original Application. It is contended that the impugned order of suspension of the applicant dated 26.10.2021 is rightly issued by relying upon the G.Rs. dated 03.04.2000 and 12.02.2013. The applicant being paid subsistence allowances during the suspension period in accordance with law. The Departmental Enquiry is already initiated against the applicant. The allegations and nature of FIR against the applicant are serious in nature. The Departmental Enquiry is expected to be completed within reasonable time. In the meeting held on 24.03.2022, the proposal of the applicant was under consideration and it has been decided by considering the submissions and report submitted by the department and seriousness of the offence under Anti-Corruption Act, the suspension period is extended and reinstatement is rejected vide communication dated 06.04.2022. In view of the same, the

present Original Application is devoid of merits and the same is liable to be rejected.

4. I have heard the arguments advanced by Shri H.P. Jadhav, learned Advocate for the applicant on one hand and Smt. M.S. Patni, learned Presenting Officer for the respondents on the other hand.

5. In view of the contentions raised in the Original Application supported by documentary evidence, learned Advocate for the applicant submitted that this is a fit case for placing it before the appropriate Review Committee for review of suspension of the applicant in accordance with the G.Rs. dated 31.01.2015 and 09.07.2019 (Annexure A-7 collectively). In this regard he placed reliance on the decision of the co-ordinate Bench of this Tribunal at Mumbai in O.A. Nos. 946, 947 & 948 all of 2019 decided by the common judgment and order dated 04.10.2019 (part of Annexure A-8 collectively). He has also placed reliance on the decision of the Hon'ble Bombay High Court in the matter of **State of Maharashtra and Ors. Vs. Shivram Sambhajirao Sadavarte**, dated 16.12.2000, reported in **(2001) ILLJ 1198 Bom**, as well as, the decision of the Hon'ble Supreme Court of India in the matter of **Ajay Kumar Choudhary Vs. Union of**

India Through Its Secretary and Anr. in Civil Appeal No. 1912/2015 (Arising Out of SLP No. 31761 of 2013) decided on 16.02.2015, as well as, decision of Hon'ble Supreme Court of India in the matter of **State of Tamil Nadu Rep. by Secretary to Govt. (Home) Vs. Pramod Kumar IPS and Anr. in Civil Appeal No. 8427-8428 of 2018 (Arising Out of S.L.P. (Civil) No. 12112-12113 of 2017)** decided on 21.08.2018.

6. On the other hand, learned Presenting Officer strenuously urged before me that the charge-sheet is already served upon the applicant within a period of three months from the date of deemed suspension and the Enquiry Officer is also appointed and the Departmental Enquiry is expected to be completed within reasonable time. She further submitted that even the case of the applicant was placed before the requisite Review Committee and extension order dated 06.04.2022 (Exhibit R-1) issued by the respondent No. 2 i.e. Review Committee. Hence, this is not a fit case to grant any relief in favour of the applicant.

7. In the facts and circumstances of this case, it would be relevant to reproduce the ratio laid down in para No. 14 of the Hon'ble Apex Court in the matter of **Ajay Kumar Choudhary Vs.**

Union of India Through Its Secretary and Anr. (cited supra),

which is as follows :-

“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.”

8. In view of above-said citation, the G.R. dated 09.07.2019 (part of Annexure A-7 collectively) is issued by the General Administration Department, State of Maharashtra. Relevant portion of the said G.R. is as follows :-

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

9. Learned Advocate for the applicant has also placed reliance on the decision of the co-ordinate Bench of this Tribunal at Mumbai in O.A. Nos. 946, 947 & 948 all of 2019 decided by the common judgment and order dated 04.10.2019 (part of Annexure A-8 collectively). In the said O.As., the crime was registered against the applicants under Section 408, 409, 420, 467, 468, 471 and 34 of IPC r/w 31(c) of Prevention of Corruption Act and u/s 3(2)(5) and 3(2)(7) of The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989. The Departmental Enquiry was also initiated against the applicants in two cases thereof. In such circumstances, in the said decision, the respondents were directed to place the matter before the Review Committee to take decision about continuation or revocation of suspension of the applicants.

10. The applicant has also placed reliance on the G.R. dated 31.01.2015 (part of Annexure A-7 collectively). The said G.R. in respect of granting sanction for prosecution under Prevention of Corruption Act within specific period and to constitute Review Committee for taking review of suspension of Group-A and

Group-B employees. The said G.R. also refers to earlier G.Rs. dated 14.10.2011 and 12.02.2013 issued by the General Administration Department, State of Maharashtra.

11. It is a fact that the Government had issued instructions from time to time by G.Rs. dated 14.10.2011, 31.01.2015 and 09.07.2019 to take review of the suspension of the Government servant so that they are not subjected to prolonged suspension. As per the G.R. dated 14.10.2011, the Review Committee was under obligation to take periodical review after every three months. Clause 4(a) of G.R. states that where the Government servant is suspended in view of registration of serious crime against him and the Criminal Case is not decided within two years from the date of filing of charge sheet then the Review Committee may recommend for reinstatement of the Government servant on non-executive post. Whereas, as per Clause 4(b) of the said G.R., where the period of two years from filing of charge sheet is not over or where no charge sheet is filed, in that event also, the Review Committee can make recommendation for revocation of suspension and to reinstate the government servant having regard to the guidelines mentioned in G.R. By G.R. dated 31.01.2015, the Government issued clarification which inter-alia empowers the Review Committee to revoke the suspension where

D.E. is already initiated, the period of one year of suspension is over and sanction for prosecution is already granted.

12. In view of above, if the facts of the present case are considered, it is seen that the impugned order of suspension of the applicant issued by the respondent No. 3 is dated 26.10.2021 (Annexure A-4) having retrospective effect of 05.10.2021 being deemed suspension. Charge-sheet in Departmental Enquiry is served upon the applicant within a period of three months from the date of suspension, as it is served on 06.01.2022 (part of Annexure A-5 collectively). The Enquiry Officer is also being appointed to conduct the Departmental Enquiry in that regard against the applicant. The respondents have placed on record communication dated 06.04.2022 (Exhibit R-1) addressed by the Review Committee, Nashik to the respondent No. 3 i.e. the District Collector, Jalgaon extending the period of suspension as resolved in the meeting dated 24.03.2022 with a rider that in case of changed circumstances or progress, to place the matter of suspension of the applicant before the said Review Committee in the next meeting. Hence, it cannot be said that the respondents have committed any blatant breach of any guidelines.

13. So far as the criminal prosecution is concerned, it is a fact that the charge sheet is not yet filed. So far as initiation of

Departmental Enquiry is concerned, it is at the stage where the Enquiry Officer is appointed and there is no further progress in the matter. In view of the same, in my considered opinion, the present Original Application can be disposed of by giving suitable directions to the respondents to take review of suspension of the applicant within a stipulated period. Hence, I proceed to pass following order :-

ORDER

The Original Application No. 287/2022 is partly allowed in following terms :-

- (A) The Respondents are directed to place the matter of suspension before Review Committee to take decision about continuation or revocation of suspension of the applicant and to pass the appropriate order within a period of two months from the date of this order in accordance with law.
- (B) The decision, as the case may be, shall be communicated to the Applicant within a period of two weeks thereafter.
- (C) No order as to costs.

PLACE : AURANGABAD.
DATE : 22.08.2022.

(V.D. DONGRE)
MEMBER (J)