

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 47 OF 2021

DIST. : NANDURBAR

Bhanudas s/o Fattasing Gavit,)
Age. 57 years, Occ. Naib Tahsildar)
(Revenue) (under suspension),)
In the office of Tahsildar,)
Tahsil Office, Navapur,)
Tq. Navapur, District Nandurbar.)

-- **APPLICANT**

V E R S U S

1. The Sub Divisional Officer,)
Through its Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai – 32.)

2. The Divisional Commissioner,)
Nashik Division, Central)
Administrative Building,)
Nashik Road, Nashik - 422 101.)

3. The Collector,)
Tokar Talav Road, Nandurbar,)
District Nandurbar.)

-- **RESPONDENT**

APPEARANCE :- Shri V.B. Wagh, learned Advocate for the
applicant.

: Shri S.K. Shirse, learned Presenting Officer
for the respondents.

CORAM : Hon'ble Shri V.D. Dongre, Member (J)

DATE : 08.10.2021

ORDER

1. This Original Application is filed challenging the impugned suspension order dated 1.1.2021 (Annex. A-1 page 21 of paper book) issued by the respondent no. 2 - the Divisional Commissioner, Nashik - placing the applicant under suspension from the post of Naib Tahsildar (Revenue), Tahsil Office, Navapur, Dist. Nandurbar..

2. The facts in brief relevant to dispose of this O.A. can be summarized as follows :-

(i) The applicant was initially appointed as a Small Saving Officer in the office of the Directorate of Small saving Control by the Finance Department and was initially appointed on 26.12.1989. Later on, he was declared surplus. Thereafter in view of the policy decision of the Government dated 6/6/2018 in view of the letter of the respondent no. 2 dated 11.2.2018, the applicant was absorbed in the Revenue Department on the post of Naib Tahsildar. The applicant joined on 24.9.2018 on the post of Naib Tahsildar (Revenue), Tahsil office, Navapur. Moreover, the Tahsildar, Navapur had directed the applicant to hold the charge of the post of

Resident Naib Tahsildar (RNT), Navapur w.e.f. 11.9.2020. He was discharging his duties very promptly and sincerely.

(ii) Thereafter the respondent no. 2 had formed a committee to enquire the allegations viz. (1) new terms land holding, (2) sale of tribal to non-tribal lands, (3) distribution of Government lands and (4) encroachment on Government land, against the applicant. Upon enquiry, the said Committee submitted its report to the respondent no. 2. On the basis of the said report of the Committee, the applicant is being placed under suspension.

3. It is the contention of the applicant that the allegations leveled against the applicant in the suspension order dated 1.1.2021 (Annex. A-4) to the effect that he has not discharged his functions according to the rules and regulations and that he usurped the powers of Tahsildar, Navapur, Dist. Nandurbar while passing the orders and that he did not enquire as to why the orders of the District Collector, Nandurbar received late and that he issued the orders to the Circle Officers and Talathis illegally, are not correct. The order of suspension is not sustainable in the eyes of law being issued hurriedly and without applying the mind objectively. The applicant has already placed the facts on record by the communication dated 11.1.2021 (Annex. A-6) to the

respondent no. 1. In fact, the applicant was discharging his duties promptly and in accordance with law. The charge of the post of Residence Naib Tahsildar (Revenue) was given to him by the Tahsildar, Navapur as an additional charge. In the circumstances, he has acted in accordance with law, and therefore, the impugned suspension order is liable to be quashed and set aside.

4. Affidavit in reply is filed on behalf of the respondent no. 3 i.e. the Collector by Shri Rajendra Shankar Chaudhari, Naib Tahsildar (Revenue), in the office of the District Collector, Nandurbar, thereby the adverse contentions raised by the applicant in the O.A. are denied. It is specifically stated that the respondent no. 3 during the inspection found certain serious irregularities being committed by the applicant while discharging his duties on his present post by using the powers of Tahsildar (Revenue), Navapur. The applicant also did not enquire as to how the orders of the then Collector, Nandurbar were received to him belatedly after one year and acted upon the same without verifying the same and without having any authority thereto and gave illegal instructions to the Circle Officers and Talathis to make entries in 7/12 extracts. Moreover the said matter has been duly enquired into on the report made by the respondent no. 3 i.e. the

Collector, Nandurbar to the respondent no. 2 the Divisional Commissioner, Nashik Division, Nashik. The respondent no. 2 the Divisional Commissioner, Nashik Division, Nashik directed the Additional Commissioner to conduct an enquiry about the illegal orders under section 257 of MLRC, 1966. As per the letter dated 18.12.2020 (Annex. R-3) and the Additional Commissioner, Nashik issued the notices to the concerned parties. He has also recorded the statements of the witnesses and the applicant in his statement has admitted the irregularities and illegalities substantially. In view of the same, the departmental enquiry is initiated against the applicant. Therefore, there is no substance in the contentions of the applicant raised in the O.A. and thus the O.A. is liable to be dismissed.

On the same footings affidavit in reply on behalf of respondent nos. 1 & 2 is filed by Shri Ulhas Bhaidas Deore, Tahsildar (Revenue) working in the office of the Collector, Nandurbar.

5. The applicant has filed rejoinder affidavit and has denied the contentions raised by the respondents in their affidavit in replies and stated that the respondents have not followed the guidelines issued by the Government vide G.R. dated 9.7.2019 (Annex. R-1) by extending the suspension period by passing reasoned order.

The applicant has preferred an appeal against the suspension order before the respondent no. 2, however, it is not decided. The applicant is going to retire on 30.9.2021. In further short affidavit the applicant has stated that the respondent no. 2 has issued article of memorandum of charges on 6.4.2021 and the applicant has given his reply thereto on 23.4.2021 denying the allegations leveled against him. The said memorandum of charges is filed after the prescribed period of 90 days and even the review of the suspension case of the applicant was also not taken by the respondents nor there is any extension order or continuation order regarding the impugned suspension of the applicant, as per the guidelines given by the Government in the G.R. dated 19.6.2019.

6. I have heard the arguments advanced by Shri V.B. Wagh, learned Advocate for the applicant and Shri S.K. Shirse, learned Presenting Officer for the respondents, at length.

7. Learned Advocate for the applicant strenuously urged before me that the impugned order of suspension is passed on the material which is not sufficient to pass such a harsh order of suspension when the applicant has already given his explanation about the alleged irregularities and illegalities. It is specific contention of the applicant that he has discharged his duties in

accordance with law while holding the additional charge of the post of Resident Tahsildar (Revenue). Only because the applicant did not make an enquiry as to why the orders of the then Collector, Nandurbar received belatedly and acted upon the same would not be sufficient to impose the punishment of suspension.

8. Second limb of his argument is that it is settled principle of law and more particularly as laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr. [(2015) 7 SCC 291]**, when the memorandum of charge sheet is not served upon the applicant within 90 days, it was incumbent upon the respondent authorities to review the suspension order and thereby either to revoke it or extend it for the reasons, however, that has not happened in the case of the applicant. In view of the same according to the applicant, the impugned order of suspension is not passed objectively. The memorandum of charge sheet is served upon the applicant only after expiry of 90 days, and therefore, there cannot be any impediment for ordering the review of the suspension case of the applicant.

9. During the course of hearing the learned Presenting Officer has placed on record communication dated 6.8.2021 (page 162 of paper book) from the office of the respondent no. 2 – the Divisional

Commissioner, Nashik Division, Nashik, whereby it is stated that the proposal for reinstatement of the applicant is received from the respondent no. 3 i.e. the Collector, Nandurbar and it is forwarded to the Government.

10. Learned Presenting Officer opposed the submissions made on behalf of the applicant and contended that the departmental enquiry is already initiated against the applicant by serving memorandum of charge sheet on 6.4.2021, and therefore, no case is made out by the applicant for revocation of suspension order or sending the matter for review.

11. In this background, in my considered opinion, the ratio laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr. [(2015) 7 SCC 291]** would be most relevant and applicable in the present case. In para 21 of the said judgment, the Hon'ble Supreme Court held as follows :-

“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.”

12. It is a matter of record that in view of the ratio laid down by the Hon'ble Supreme Court in the above said case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr.** (supra) a separate Government Resolution dated 9.7.2019 (Annex. R-1 of paper book) is issued by the Government of Maharashtra acknowledging the legal position that where the charge sheet is not issued within 3 months from the date of suspension order, the said suspension cannot be continued. The Government of Maharashtra, therefore, directed that the competent authority should ensure that charge sheet should be issued in the departmental enquiry within 90 days from the date of passing of suspension order.

13. After having considered the rival submissions made by both the parties, it is evident that 90 days were over after passing of the impugned suspension order dated 1.1.2021 on or about 1.4.2021, however, till then no memorandum of charge sheet was served upon the applicant. It is true that after submission of report of irregularities / illegalities against the applicant by the respondent no. 3 to the respondent no. 2, the matter was enquired into by the Additional Commissioner, Nashik. It is also true that in the suspension order there is mention of contemplation of disciplinary action against the applicant for various illegalities alleged against him. However, there is nothing on record to show that any steps are being taken for extending the suspension period for reasoned orders. The record also shows that the memorandum of charge is served on the applicant on 6.4.2021 i.e. after lapse of period of 90 days from the impugned suspension order.

14. In these circumstances and in view of the ratio laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr.** (supra), the present Original Application can be disposed of by giving directions to the respondents to send a proposal for reviewing the order of suspension of the applicant to the competent authority. Hence, I proceed to pass the following order :-

ORDER

- (i) Original Application is allowed partly.
- (ii) The Respondents are directed to take review of the suspension of the applicant in terms of G.R. dated 9.7.2019 (Annex. R-1) in the light of observation made by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr. [(2015) 7 SCC 291]** (supra) and shall pass appropriate order within 2 months from the date of this order and the decision as the case may be, shall be communicated to the applicant in writing within a month thereafter.
- (iii) If the applicant felts aggrieved by the said decision of the respondents, he may avail further remedy in accordance to law.

There shall be no order as to cost.

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad
Date : 08.10.2021