

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

**ORIGINAL APPLICATION NO. 834 OF 2021
(Subject – Suspension)**

DISTRICT : JALNA

Syed Khaled Syed Khalil,)
Age : 38 years, Occu. : Service as Talathi,))
Sajja Pirsavangi, Tq. Badnapur, Dist. Jalna.))
R/o. Apsa Park, Bhavani Nagar Road,))
Old Jalna, Tq. and District – Jalna.))

.... **APPLICANT**

V E R S U S

1. **The District Collector,**)
Jalna, Survey No. 488, Administrative)
Building, Jalna, District Jalna-431203.)
2. **The Sub Divisional Officer,**)
Jalna, Kacheri Road, Old Jalna,)
District Jalna-431203.)

...**RESPONDENTS**

APPEARANCE : Shri V.B. Wagh, Advocate for the Applicant.

: Smt. Sanjivani K. Deshmukh-Ghate,
Presenting Officer for Respondents.

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

DATE : **26.07.2022.**

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 challenging the impugned order of suspension of the applicant dated 01.09.2021 (Annexure A-1) issued by the respondent No. 2 i.e. the Sub-Divisional Officer, Jalna and seeking direction to the respondents to revoke the said suspension order and to reinstate him on the post of Talathi or any other vacant post by giving him the posting forthwith, as the 90 days period is expired on 01.12.2021.

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

(a) The applicant was working on the post of Talathi, Sajja Pirsavangi, Tq. Badnapur, Dist. Jalna till issuance of the impugned suspension order dated 01.09.2021 (Annexure A-1). He was initially appointed by the order dated 28.03.2007 as Talathi, Sajja Vazar, Tq. Jalna, Dist. Jalna. Thereafter, he worked at various places. While working on the post of Talathi, Sajja Pirsavangi, Tq. Badnapur, Dist. Jalna, since 27.05.2020, he was also holding the additional charge of Devgaon Sajja till the issuance of the impugned order of suspension dated 01.09.2021 (Annexure A-1). During the period of his said posting and holding additional charge, it was alleged that

there was negligence on the part of the applicant, as he had failed to make ODC report nil in computer software and that he also did not obey the orders of the higher authority. In view of the same, he was placed under the suspension.

(ii) It is further submitted that immediately thereafter the applicant filed Departmental Appeal Memo dated 04.10.2021 (Annexure A-2) before the competent authority i.e. the respondent No. 2 seeking cancelation of suspension order. He also filed representation dated 01.12.2021 (Annexure A-3) to the respondent No. 2 seeking to review of suspension, as the 90 days period was completed quoting G.R. dated 09.07.2019 (Annexure A-4) issued by the General Administration Department, Government of Maharashtra in that regard.

(iii) It is further submitted that it was incumbent upon part of the respondents to take review the suspension of the applicant after every three months as stated in G.R. dated 09.07.2019. It is further submitted that no charge-sheet in the Departmental Enquiry was served upon the applicant in spite of expiry of 90 days on 01.12.2021. In the circumstances, it is contended that continuation of order of

suspension is not according to law and the applicant is entitled for the reliefs as prayed for.

(iv) Further short affidavit is filed by the applicant, which is at page No. 34 & 35 of the paper book, thereby stating that memorandum of charges in Departmental Enquiry dated 25.11.2021 (part of Annexure R-1 collectively) is served upon the applicant on 24.01.2022 and the Enquiry Officer viz. Tahasildar, Badnapur was appointed on 01.03.2022. The said enquiry Officer completed the enquiry on 10.03.2022. The Enquiry Officer submitted the enquiry report dated 22.03.2022 (part of Annexure R-1 collectively) to the office of respondent No. 1 i.e. the Sub-Divisional Officer, Jalna. However, no decision is taken on the said Enquiry Report till date nor the suspension is being revoked. Hence, the present Original Application.

3. The respondent Nos. 1 and 2 have resisted the Original Application by filing affidavit in reply of one Sandipan S/o Suryakantrao Sanap, working as the Sub-Divisional Officer (Revenue) and Sub-Divisional Magistrate, Jalna, thereby he denied all the adverse contentions raised in the O.A. and short affidavit. It is specifically contended that the impugned

suspension order is issued against the applicant in view of the report submitted by the Tahsildar, Badnapur on 17.08.2021, as there was sufficient material to issue such suspension order. The applicant immediately filed departmental appeal against the said suspension order. It is further submitted that as per the provisions of Rule 4(5)(C) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, the competent authority has to take review of suspension after every three months. In that regard, the respondent No. 2 by the order dated 30.11.2021 has extended the suspension order till further orders, as the Departmental Enquiry initiated against the applicant was pending. In view of the same, there is no merit in the present Original Application and the same is liable to be dismissed.

4. I have heard the arguments advanced at length by Shri V.B. Wagh, learned Advocate for the applicant on one hand and Smt. Sanjivani K. Deshmukh-Ghate, learned Presenting Officer on the other hand.

5. Upon perusal of the rival pleadings and documents on record, it is evident that the applicant was put under suspension by the order dated 01.09.2021 (Annexure A-1) in contemplation of disciplinary action against him on account of negligence in

performance of duties and remaining absent often not following the orders of superiors etc. The present Original Application is filed on or about 24.12.2021. It is the contention of the applicant that by that date of 24.12.2021, no memorandum of charge sheet was served upon him. By filing short affidavit subsequently during pendency of the present Original Application on or about 24.04.2022, the applicant contented that the memorandum of charge-sheet dated 25.11.2021 (part of Annexure R-1 collectively) is served upon him only on 24.01.2022, which is not disputed by the respondents.

6. Further it is a matter of record and undisputed fact that the Tahsildar, Badnapur was appointed as an Enquiry Officer on 01.03.2022 and upon completion of Departmental Enquiry against the applicant, he submitted his report dated 22.03.2022, which is at part of Annexure R-1 and at page No. 41 to 43 of the paper book. However, further requisite procedure for passing final order in respect of the said Departmental Enquiry is not completed.

7. Learned Advocate for the applicant strenuously urged before me that the impugned order of suspension of the applicant is liable to be revoked on the sole ground that memorandum of

charge in respect of the Departmental Enquiry was not served upon the applicant within a period of 3 months / 60 days from the date of order of suspension. To substantiate the same, he placed reliance on the case law of the Hon'ble Apex Court in the case 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 and more particularly the observations made in para No. 14 of the said judgment, 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. He further placed reliance on the G.R. dated 09.07.2019 (Annexure A-4) issued by the General Administration Department, State of Maharashtra based on the observations made in the said citation of **Ajay Kumar Choudhary's** case (cited supra). He relied upon the following portion of the said G.R. dated 09.07.2019 :-

“ 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 Presenting Officer for the respondents while resisting the contentions raised on behalf of the applicant submitted that the charge-sheet dated 25.11.2021 was served upon the applicant in respect of the Departmental Enquiry and the Departmental Enquiry is initiated and the Enquiry Report is filed by the Enquiry Officer. Moreover, the competent authority viz. the respondent No. 2 i.e. the Sub-Divisional Officer, Jalna by the order dated 30.11.2021 (Annexure R-2 page Nos. 50 & 51 of the paper book) has issued extension order of suspension till further orders in accordance with law, as the Departmental Enquiry initiated against the applicant was not completed then.

10. From the above-said rival submissions, it can be seen that within a period of 3 months / 90 days of the impugned order of

suspension dated 01.09.2021 (Annexure A-1), the memorandum of charge sheet in D.E. was not served upon the applicant and the same was served upon him only on 24.01.2022. Perusal of the extension order dated 30.11.2021 (Annexure R-2 page Nos. 50 & 51 of the paper book) issued by the respondent No. 2 i.e. the Sub-Divisional Officer, Jalna would show that there is no mention of decision of reviewing authority. In fact, it is a mandate of the Hon'ble Apex Court as reflected in the G.R. dated 09.07.2019 itself. It is evident that when the memorandum of charge sheet is not served within a period of 3 months / 90 days from the date of suspension, there is no other alternative, but to revoke the suspension. In view of the same, the extension order passed by the respondent No. 2 i.e. the Sub-Divisional Officer, Jalna is of much consequences. In such circumstances, the revocation of suspension seems to be a rule.

11. In the circumstances as above, the present O.A. can be disposed of by giving requisite directions to the respondents to place the case of the applicant before the requisite reviewing authority for taking appropriate decision / consideration in accordance with law strictly as per the mandate of the Hon'ble Apex Court in the matter of **Ajay Kumar Choudhary'** (cited supra) and requisite G.R. dated 09.07.2019 issued by the

General Administration Department, Maharashtra State
immediately. I therefore, proceed to pass following order :-

ORDER

The Original Application No. 834/2021 is disposed of in
following terms :-

- (A) The respondent No. 2 is directed to prepare and submit the detailed and complete proposal in respect of suspension of the applicant before the reviewing committee for taking appropriate decision / consideration in accordance with law strictly as per the mandate of the Hon'ble Apex Court in the matter of **Ajay Kumar Choudhary'** (cited supra) and requisite G.R. dated 09.07.2019 issued by the General Administration Department, Maharashtra State in accordance with law within a period of one month from the date of this order and communicate the decision therein to the applicant in writing.
- (B) With the above direction, the O.A. stands disposed of with no order as to costs.

PLACE : AURANGABAD.

DATE : 26.07.2022.

KPB S.B. O.A. No. 834 of 2021 VDD Suspension

(V.D. DONGRE)

MEMBER (J)