

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

**ORIGINAL APPLICATION NO. 981 OF 2019  
(Subject–Suspension/Revocation of Suspension/Subsistence Allowances)  
DISTRICT : PARBHANI**

**Ravindra S/o Kishanrao Deshmukh,** )  
Age : 49 years, Occu. : Service as M.O., )  
R/o. Gangakhed, Tq. Gangakhed, )  
Dist. Parbhani. )  
.... **APPLICANT**

**V E R S U S**

1. **The State of Maharashtra,** )  
Through its Principal Secretary, )  
Department of Public Health, )  
Gokuldas Tejpal Hospital Building, )  
10<sup>th</sup> Floor, Mumbai – 400 001. )
2. **The Director,** )  
Public Health Department, 8<sup>th</sup> Floor, )  
Saint George Hospital Compound, )  
Arogya Bhavan, Mumbai – 01. )
3. **The Deputy Director,** )  
Public Health Services, Mahavir Chowk,)  
Near Baba Petrol Pump, Aurangabad )  
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**

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

: Shri D.R. Patil, Presenting Officer for  
Respondents.

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**CORAM** : **SHRI V.D. DONGRE, MEMBER (J).**  
**DATE** : **29.08.2022.**  
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**ORDER**

1. By invoking the 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 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.

2. The facts in brief giving rise to this 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.

3. The present 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.

4. 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.

5. I have heard the arguments advanced at length by Shri G.V. Mohekar, learned Advocate for the applicant on one hand and Shri D.R. Patil, learned Presenting Officer for the respondents on the other hand.

6. Perusal of the impugned order of the applicant dated 23.10.2018 (Annexure A-8) would show that the same is issued by the respondent No. 1 i.e. the competent transferring authority by invoking the 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.

7. 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.”*

8. 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.

9. 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 प्राधिकाऱ्याच्या 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.”

10. In view of above-said legal position, it was incumbent upon the respondent authorities to place the matter of suspension of the applicant before the requisite review committee, when it was noticed that the memorandum of charge-sheet in Departmental Enquiry was not served upon the applicant within a period of three months / 90 days from the date of suspension order. It was also incumbent upon the respondents to pay subsistence allowances to the applicant in accordance with law from time to

time. The respondents have failed in that regard. In view of the same, in my considered opinion, the present Original Application can be disposed of by giving appropriate directions to the respondents for placing the matter of suspension of the applicant before the requisite review committee for consideration of revocation of suspension in accordance with law within specified period and also to give directions to the respondents for payment of subsistence allowances to the applicant in accordance with law. I therefore, proceed to pass the following order :-

### **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.

**PLACE : AURANGABAD.**  
**DATE : 29.08.2022.**

**(V.D. DONGRE)**  
**MEMBER (J)**

**KPB S.B. O.A. No. 981 of 2021 VDD Suspension**