

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.413 of 2019**

Shri Nagnath Ishwara Patil )...**Applicant**  
Occ : Electrical Inspector at Energy Dept. )  
R/at. 502, Kanchanganga –G, Tejas Nagar, )  
Kothrud, Pune. )

**Versus**

1) The State of Maharashtra, )  
Through the Principal Secretary, )  
Industries, Energy & Labour Department, )  
Madam Cama Rd. Hutatma Rajguru Chowk, )  
Mantralaya, Mumbai 32. )...**Respondents**

Shri K. R. Jagdale, Advocate for the Applicant.

Ms S. P. Manchekar, Chief Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 15.07.2019.

**ORDER**

1. Heard Shri K. R. Jagdale, learned Advocate for the Applicant and Ms S. P. Manchekar, learned Presenting Officer for the Respondents.

2. In the present matter, the challenge is to the suspension order dated 15.11.2018 whereby the Applicant is kept under suspension in view of registration of crime invoking the Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

3. **Shortly facts giving rise to the O.A. is as under:-**

The Applicant is serving as Electrical Inspector at Energy Dept, Kothrud, Pune. On 07.11.2018, the offence was registered against the Applicant & Ors. u/s 376, 506, 507 r/w 34 of IPC vide FIR No.520/2018 with Islampur Police

Station, Dist. Sangali. The Applicant was arrested and detained in custody. It is on this background by order dated 15.11.2018, the Applicant was kept under suspension. He claims to be innocent. He had filed representation for revocation of suspension but the same was not responded. Though the period of eight months is over, the Respondents fail to take review of suspension in terms of the law laid down by the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)** as well as the instructions issued in G.R. dated 14.10.2011. Therefore, the Applicant has approached this Tribunal invoking the jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

4. Shri K.R. Jagdale, learned Counsel for the Applicant submits that though the period of near about eight months are over, the Respondents fail to take review of suspension and, therefore, the prolong suspension is unsustainable in view of the decision of Hon'ble Supreme Court in **Ajay Kumar Chowdhary's** case (cited supra). He also referred to G.R. dated 14.10.2011 as well as recent G.R. dated 09.07.2019.

5. Whereas, Ms S. P. Manchekar, learned Chief Presenting Officer for the Respondents sought to justify the suspension order and in alternate submission urged that the review of suspension will be taken during the course of time as permissible in law.

6. Shri K.R. Jagdale, learned Counsel for the Applicant fairly stated that the charge sheet is filed in Criminal court on 15.01.2019 but there is no further progress in the trial. As regards initiation of D.E., he has pointed out that till date no D.E. is initiated. Learned C.P.O. has not disputed this position of non initiation of D.E. till date.

7. Thus, what emerges from the record that neither criminal case is progressing nor D.E. is initiated by the Respondents. On the other hand, the Applicant is subjected to prolong suspension of more than eight months.

8. Needless to mention that the adequacy or sufficiency of material before the disciplinary authority for suspension of a Government employee, normally cannot be interfered with by the Tribunal in its limited jurisdiction. However, at the same time, it is well settled that the Government servant cannot be subjected to prolong or continued suspension indefinitely. Indeed, in terms of various G.Rs, the Government had issued instructions to complete the D.E. in six months were the Government servant is kept under suspension.

9. The Applicant was suspended in contemplation of D.E. but admittedly till date no charge sheet has been issued against the Applicant though the period of more than eight months are over. As such, neither D.E. is progressing nor there is possibility of conclusion of criminal case within reasonable time. The representations made by the Applicant for revocation of suspension and reinstatement in service are not responded. It is on this background, the Applicant has approached this Tribunal challenging the suspension order.

10. In so far as the period of suspension is concerned, the issue is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**, the Hon'ble Supreme Court in Para No.21 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.”*

11. The Judgment in **Ajay Kumar Choudhary's** case was also followed by Hon'ble Supreme Court in **State of Tamil Nadu Vs. Pramod Kumar and another (Civil Appeal No.2427-2428 of 2018) dated 21<sup>st</sup> August, 2018** wherein it has been held that, suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee for a longer period and reinstatement could not be threat for fair trial or departmental enquiry, the suspension should not continue further.

12. As such, in view of law laid down by Hon'ble Supreme Court, the suspension should not exceed 90 days and where charge-sheet in criminal case or in D.E. has been initiated within 90 days, then the concerned authority is required to take decision about extension or revocation of suspension. The concerned authority needs to take objective decision as to whether the continuation of suspension is warranted in the facts of the case. However, in the present case, admittedly, no such exercise has been undertaken by the disciplinary authority or Review Committee.

13. Here reference of G.R. dated 14.10.2011 is necessary whereby the Government has issued specific instructions for periodical review of the Government servant who are suspended in contemplation of D.E. or consequent to registration criminal offence against them. As per clause 7(a) of G.R., where the Government servant is kept under suspension on account of contemplated

D.E., the Disciplinary Authority needs to take review firstly after three months and secondly again after six months. It further provides that where the D.E. is not completed within six months then the Disciplinary Authority is under obligation to revoke the suspension and to reinstate the delinquent in service on non-executive post. Furthermore, the Government of Maharashtra has recently issued a G.R. dated 09.07.2019 consequent to the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's case** (cited supra) accepting that where the charge-sheet is not issued within three months, the suspension cannot be continued. The Government, therefore, issued directions that Competent Authority should ensure that charge sheet is issued within 90 days from the date of suspension.

14. However, in the present case, admittedly no charge sheet has been issued to the Applicant though the period of near about eight months is over. In fact, the Hon'ble Supreme Court held that currency of suspension should not extend beyond three months, if within this period the memorandum of charges/charge sheet is not served upon the delinquent officer/employee and if the memorandum of charges/charge sheet is served in that event, the Disciplinary Authority is under obligation to pass reasoned order for the extension of suspension.

15. However, in the present case, there is complete tenure on the part of Respondents to adhere to the G.R. dated 14.10.2011, recent G.R. dated 09.07.2019 as well as the law laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's case**. The Respondents are, therefore, required to take review of the suspension and to pass further appropriate order.

16. In view of above, the Original Application can be disposed of with suitable directions. Hence the following order.

**ORDER**

- (a) The O.A. is allowed partly.
- (b) Respondents are directed to take review of the suspension of the Applicant in terms of G.R. dated 14.10.2011 as well as G.R. dated 09.07.2019 in the light of observation made by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case and shall pass appropriate order within four weeks from today.
- (c) The decision, as the case may be, be communicated to the Applicant within two weeks thereafter.
- (d) If the Applicant felt aggrieved by the decision, he may avail further remedy in accordance to law.
- (f) No order as to costs.

**Sd/-**  
**(A.P. KURHEKAR)**  
**MEMBER (J)**