

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.464 of 2019**

Shri Balasaheb W. Wankhede, )  
Occ : Govt. Service, Deputy Director of )  
Land Records, Pune Region Pune, O/at. )  
Pune, now under suspension. )...**Applicant**

**Versus**

1) The State of Maharashtra, )  
Through the Addl. Chief Secretary, )  
(Revenue), through Principal Secretary, )  
Revenue and Forest Department, )  
Mantralaya, Mumbai 32. )...**Respondents**

Shri A. V. Bandiwadekar, Advocate for the Applicant.

Smt. Archana B. K. , Presenting Officer for the Respondents.

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

DATE : 22.07.2019.

**ORDER**

1. In the present matter, the Applicant has challenged the suspension order dated 19.01.2019 invoking the jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985. 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.

2. Shortly stated facts giving rise to the O.A. are as under:-

The Applicant was serving as Deputy Director of Land Records, Pune. By order dated 11.01.2019 he was placed under suspension in view of registration of crime against him and his alleged agent namely Rohit Shende for accepting bribe. On complainant, offences were registered u/s 7A & 12 of the Prevention of Corruption Act, 1988 r/w 120B of I.P.C. The Applicant claims to be innocent

and filed representation for revocation of suspension and reinstatement in service but in vain. As a suspension continued for longer period without any progress in the investigation of crime registered against him and without initiating D.E., he has filed the present O.A.

3. Shri A. V. Bandiwadekar, learned Counsel for the Applicant restricted relief to the extent of direction to the Competent Authority to take review of suspension in accordance to rules. He submitted that though the period of more than six months is over, no step is taken for the revocation of suspension or reinstatement of the Applicant in service. He has also pointed out that there is no progress in the investigation of the crime registered against the Applicant and charge sheet is yet to be filed. He has further pointed out that no departmental action is initiated till date. He has also raised grievance for non payment of subsistence allowance. He, therefore, submits that in view of decision of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)** and in the light of G.R. dated 14.10.2011 as well as 09.07.2019, the Competent Authority is required to take review of the suspension in accordance to rules.

4. Per contra, learned P.O. for the Respondents sought to contend that the Applicant was arrested for serious charges of accepting bribe of huge amount through middle man and the investigation is in progress. She further submits that as the period of one year from the date of suspension is not over, the Application is premature. She submits that the Competent Authority will take review of the suspension at appropriate time.

5. Thus, what emerges from the record and on hearing of the learned Counsels that admittedly till date charge sheet is not filed in the criminal case. Furthermore, no D.E. is initiated against the Applicant for the alleged incident. The Applicant was suspended on 11.01.2019 and the period of more than six

months is already over. As such, the question would be, how long the Applicant can be subjected to suspension without taking review of the suspension.

6. 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.”*

7. 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.

8. As such, in view of law laid down by Hon'ble Supreme Court, the suspension should not exceed 90 days if no D.E. is initiated within 90 days and where 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.

9. 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.

10. However, in the present case, admittedly no charge sheet has been issued to the Applicant though the period of near about six 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.

11. However, in the present case, there is complete failure 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.

12. 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 two months 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.
- (e) Subsistence allowance be paid regularly.
- (f) No order as to costs.

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

