

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.583 of 2019

Shri Sagar V. Magar)
Occ : Range Forest Officer,)
R/at. Dattanagar, Post Khandali,)
Tal. Malshiras, Dist. Solapur.) **...Applicant**

Versus

- 1) The State of Maharashtra,)
Through the Secretary (Forest),)
Revenue & Forest Department,)
Mantralay, Mumbai- 400 032.)
- 2) Additional Principal Chief Conservator of)
Forest (Administration Subordinate -)
Services), Forest Force Head, Vanbhavan,)
3rd floor, 'A' wing, Ramgiri Road, near)
Police Gymkhana, Civil Lines,)
Nagpur 440001.)
- 3) The Chief Conservator Forest (Territory))
Vanvardhan, opp. Head Post Office,)
Tarabai Park, Kolhapur 416003.)

)...Respondents

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

Shri A.J. Chougule, learned 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 Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. In the present matter, the challenge is to the suspension order dated 19.11.2018 whereby the Applicant has been suspended in contemplation of D.E.

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

The Applicant is serving as Range Forest Officer at Vita, Dist. Sangali. On 12.11.2018 while he was driving the office vehicle TATA ZENA MH-12-PQ-0574, an accident took place due to collision with motorcycle No.MH-10-CE-8576 coming from opposite side. Accordingly, offence was registered u/s 279, 304(2), 337, 338, 427 of IPC and u/s 184, 2(1) and 177 of Motor Vehicle Act, 1988 against the Applicant in Vita Police Station. The Applicant was taken in custody. Consequently, he came to be suspended by impugned order dated 19.11.2018 in contemplation of D.E. invoking the Rule 4(1)(a) and 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. As it was the case of vehicular accident and it has nothing to do with official function and duties, the Applicant had submitted representations from time to time for revocation of suspension and reinstatement in service but in vain. Ultimately, 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 sought to assail the impugned suspension order contending that the Applicant has been subjected to prolong suspension of more than eight months without any effort to review the suspension and urged that the Applicant be reinstated in service. He further urged that criminal offence registered against the Applicant has nothing to do with the duties of Range Forest Officer. Though, the Applicant is kept under suspension in contemplation of D.E. till date no charge sheet is issued. He, therefore, submitted that prolong suspension of the Applicant in the facts and circumstance of the matter is not warranted.

5. Per contra, Shri A. J. Chougule, learned P.O. for the Respondents submitted that liberty be granted to the Respondents to take review of the suspension as may be permissible in law and directions be issued accordingly.

6. 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.

7. 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 is 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.

8. 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.”

9. 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 21st 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.

10. 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.

11. Here reference of G.R. dated 14.10.2011 is necessary whereby the Government has issued specific instructions for periodical review of the matters 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.

12. 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.

13. 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.

14. 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)