

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**CIVIL APPLICATION NO.313/2018**

**AND**

**ORIGINAL APPLICATION NO.599/2017. (S.B.)**

Gulam Sarwar s/o Faruq Khan,  
Aged about 42 years,  
Occ-Service,  
R/o At Post- Gangazari,  
Tahsil and Dist. Gondia.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Department of Food & Civil Supplies,  
Mantralaya Mumbai-400 032.
2. The Collector,  
Gondia.

**Respondents**

---

Shri M.R. Johrapurkar, the Ld. Advocate for the applicant.  
Shri S.A. Sainis, the Ld. P.O. for the respondents.

---

**Coram:-Shri J.D. Kulkarni,**  
**Vice-Chairman (J)**

---

**ORAL ORDER**

(Passed on this 26th day of November 2018.)

Heard Shri M.R. Joharapurkar, the learned counsel for the applicant and Shri S.A. Sainis, the learned P.O. for the respondents.

2. Alongwith the O.A., C.A. No. 313/2018 is also being disposed of by this order, since the O.A. is being heard on merits.

3. The applicant is a Godown Keeper and was working at Goregaon at the time of his suspension order dated 16.9.2016. He has been kept under suspension on the ground that, Crime No. 63/2016 has been registered against him for the offence punishable U/s 408 of I.P.C. read with section 3 and 7 Essential Commodities Act, 1955. The applicant was transferred prior to his order of suspension. However till today, the applicant has not been reinstated. The learned counsel for the applicant submits that even till today, no charge-sheet has been filed against the applicant in any Court of Law nor any departmental enquiry has been initiated against him. The respondents admitted the fact that, no charge-sheet has been filed against the applicant till today. In para 5 of the reply, it is stated that as per G.R. dated 14.10.2011, power is vested in the Departmental Review Committee to reinstate the suspended Government employee and the applicant is at liberty to approach the said Committee for his reinstatement or for revocation of suspension.

This is most unfortunate on the part of the respondents to say so, as it is the duty of the respondent authorities to re-consider the cases of employees under revocation periodically. Time and again, it has been held by the Hon'ble Apex Court that the suspension cannot be a mean to deal with the employee and suspension shall be in the rarest of the rare cases. In fact, when the applicant was already transferred prior to his suspension, the competent authority ought to have considered as to whether the suspension was necessary or not. But instead of doing so, the applicant has been kept under suspension from last more than two years. His case has not been re-considered for revocation *suo motu* and on the contrary, the respondents are saying that the applicant should have approached the Review Committee. Such attitude on the part of the respondent authorities is deprecated. The Hon'ble Apex Court has also observed in case of **Arun Kumar Choudhary V/s Union of India** that in any case, suspension period shall not exceed 90 days, when neither the charge-sheet was served nor the departmental enquiry has been initiated against the employee. This Tribunal has also considered this aspect at its Principal Bench at Mumbai in O.A. No. 35/2018.

on 11.9.2018 has taken a view that if the charge-sheet is not revoked within 90 days of the order of suspension, suspension order shall stand quashed. Even the Hon'ble Apex Court has observed in of **Arun Kumar Choudhari V/s Union of India in S.L.P. No. 3161/2013 in the order dated 16.2.2015** that the charge-sheet must be filed within 90 days of suspension. Considering all these aspects and particularly the fact that inspite of opportunities given to the respondents, they are not ready to revoke the order of suspension. I am of the opinion that the suspension cannot sustain in the eyes of law

4. From the aforesaid facts, it is clear that no charge-sheet is filed against the applicant in criminal case within 90 days of his suspension nor any criminal case is filed till today in any Court of Law. In view thereof, I pass the following order:-

#### **ORDER**

- (i) The impugned order of suspension dated 16.9.2016 stands quashed and set aside.
- (ii) The respondent No.2 is directed to reinstate the applicant with immediate effect.

- (iii) C.A. filed by the applicant for early hearing also stands disposed of.
- (iv) No order as to costs.

(J.D.Kulkarni)  
Vice-Chairman(J)

Dt. 26.11.2018.

pdg