

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 722/2016.

Kazi Gulam Mohimoddin kazi Karimoddin,
Aged about 57 years,
Occ- under suspension,
R/o Khariya Nagar, Paradise Colony,
Amravati.

Applicant.

Versus

- 1) The State of Maharashtra,
Through its Addl. Chief Secretary,
Department of Revenue,
Mantralaya, Mumbai-440 001.
- 2) The Director of Land Records/
Settlement Commissioner (M.S.)
Pune.
- 3) The Dy. Director of Land Records,
Amravati Division, Amravati.

Respondents

Shri G.K. Bhusari, Advocate for the applicant.
Shri S.A. Sainlis, learned P.O. for the respondents.

Coram:- Hon'ble Shri R.B. Malik, Member (J)

Dated: - 10th February 2017.

Oral order

The suspended Nimnatdar (Maintenance Surveyor)
hereby seeks relief of revocation of the said order of suspension.

2. The impugned order was made on 9.3.2016. The
applicant came to be arrested on 24.2.2016 upon a complaint made by

a lady. He was in police custody. On 27.2.2016, he came to be released on bail by the Court of Judicial Magistrate, First Class, Wani. Suspension has continued for the last eleven months. The revocation thereof is hereby sought.

3. I have perused the record and proceedings of the O.A. and heard Shri G.K. Bhusari, the learned Advocate for the applicant and Shri S.A. Sainis, learned P.O. for the respondents.

4. Right at the outset, I must deal with some kind of a preliminary objection raised by the learned P.O. According to him, the order of suspension is appellable by virtue of the provisions of Rule 17 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (to be herein referred to as D & A Rules). As far as this matter is concerned, the appeal in fact has been preferred on 11.7.2016. This O.A. was presented on 24.10.2016. It appears that the appeal has not been decided so far. Section 20 of the Administrative Tribunals Act, 1985 in fact in its opening line itself uses the words "A Tribunal shall not ordinarily admit an application.....". In my view it is therefore clear that depending upon facts, the Tribunal can even in the absence of the party adopting other remedies, entertain such O.As. This is a suspension related matter and I am informed at the bar that the applicant is set to retire on superannuation on 30.4.2017. Besides

there are other reasons which shall be presently set out because of which in my view, the impediment as envisaged by the learned P.O. would not be there. However, if avenues are provided of the appeal and the authority has been moved, then nobody can have any control over its early disposal. The need to cite the absence of having preferred an appeal is naturally felt by the authorities. But at the same time it should also be ensured that in matters such as this one, the appeals do not remain pending for long and, therefore, I am of the view that this O.A. can be entertained. Mr. Bhusari, the learned Advocate for the applicant in this connection invited reference to the judgment of the Bombay High Court in **State of Maharashtra V/s Subhash Mane W.P. No. 9660/2014 dated 1.12.2014 (DB)** in support of his contention that even without taking recourse to the appellate remedy, O.A. can be entertained. I proceed further. At the time the O.A. was debated here, learned P.O. in his customary fairness conceded that no review of the suspension of the applicant has so far been made. A recent judgment of the Hon^{ble} Supreme Court in **Ajay Kumar Choudhary V/s Union of India and another (2015) 2 SCC (L&S) 455 equivalent (2015) 7 SCC 291,** laid down the principles of law which are of great educational value in matters such as this one. As a matter of fact, Their Lordships have been pleased to hold that in such matters suspension should not continue beyond the period of three months.

No doubt, there are observations therein that the charge-sheet should not be delayed. Here as far as the criminal case is concerned, it will be pertinent to note that the Hon'ble High Court in Criminal Application (APL) No. 195/2016 by order dated 2nd May 2016, while issuing fresh notice observed quite significantly as follows:

+Taking into consideration the documents placed on record, it is directed no chargesheet be filed until further orders+

5. The said order was confirmed on 5.7.2016. Having reproduced the order of the Hon'ble High Court it will not be congruous on my part to add anything of my own, but the whole thing is quite clear and, therefore, but I do not think the respondents can gloat over the so-called strength of their case. I leave at that.

6. Insofar as the administrative enquiry is concerned, it is still in the realm of ~~under~~ under consideration+. As of today, it is common ground that no chargesheet has been issued and going by the contents of para 10 of affidavit in reply on behalf of respondent nos. 2 and 3 filed by Shri Balasaheb Dada Kale, Deputy Director of Land Records, they have come to the conclusion that the proposal for departmental enquiry is required to be made. Fact, however, remains that in the last about eleven months, neither departmental enquiry has been started nor is

there any concrete proposal as such. However, assuming such a concrete proposal be there, in my view, that *per se* and *ipso facto* is no ground to continue the suspension because Ajay Kumar Choudhary (supra) casts an obligation on the respondents to act in accordance therewith which they have not done. Further although under Rule 4 of the D & A Rules, an order of suspension can be made if the departmental enquiry is under contemplation, but it would be an exercise over an indefinite period of time.

7. This Tribunal presided over by the then Hon'ble Member (J) in **O.A. No. 532/2016 (Kiran Dnyandeo Salve V/s State of Maharashtra and one another, dt. 15.10.2016)** and in **O.A. No. 190/2017 (names of parties not there dated 22.9.2016)** basically relied on Ajay Kumar Choudhary (supra) and in fact in the set of facts where the applicants were accused of offences which were much more serious and graver than what the present applicant has been charged with, revoked the orders of suspension. Present facts are such where in my view the applicant is much better placed than those applicants and even under the principles of law of precedents, when such principles are applied hereto, I think I should do so. Therefore, relying on peculiar fact situation herein and applying the law laid down by the Hon'ble Supreme Court in Ajay Kumar Choudhary (supra),

I direct the respondents to revoke the suspension of the applicant by an appropriate order within four weeks from today. The decision with regard to the other aspects of the matter be taken within a further period of four weeks and if the applicant is required to make any application etc., he shall do so.

8. The O.A. is allowed in these terms with no order as to costs.

(R.B.Malik)
Member (J)

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