

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL,**

**NAGPUR BENCH, NAGPUR**

**ORIGINAL APPLICATION NO.699/2012.** (D.B.)

Udaykumar Rajaram Gupte,  
Aged about 56 years,  
Occ-Executive Engineer (under suspension),  
R/o Flat No.21, Narayan Apartment,  
Gitti Khadan Layout, Pratap Nagar,  
Nagpur-22.

**Applicant.**

**-Versus-**

1. The State of Maharashtra,  
Through its Secretary,  
Public Works Department,  
Mantralaya Mumbai-400 032.
2. The Secretary to the State of Maharashtra,  
Planning Department,  
Mantralaya Mumbai-400 032.
3. The Commissioner  
Nagpur Division, Nagpur.
4. The Collector,  
Nagpur.

**Respondents**

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Shri K.V. Kotwal, the Ld. Advocate for the applicant.  
Shri H.K. Pande, the Ld. P.O. for the respondents.

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**Coram:-Shri J.D. Kulkarni,**  
**Vice-Chairman (J) and**  
**Shri Shree Bhagwan, Member (A)**

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**JUDGMENT**

(Delivered on this 6<sup>th</sup> day of November 2018.)

**Per:Vice-Chairman (J)**

1. The applicant was appointed in Public Works Department as a Junior Engineer (Civil) on 24.8.1978 and was promoted as Executive Engineer on 28.8.2007 and was posted in the office of Collector, E.G.S. (Vigilance Squad), Nagpur. According to the applicant, he has rendered unblemished service from 1978 to 2007. But all of a sudden on 16.5.2011, the Divisional Commissioner, Nagpur Division, Nagpur (R.3) served suspension order on the applicant and in the meantime, the applicant was transferred as Executive Engineer, Works Bank Project Division, Nagpur on 31.5.2011. The applicant preferred an appeal against the order of suspension as per the provisions of Rule 4 (1) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (in short "D & A Rules") on 12.7.2011 and thereafter also gave a representation for cancellation of his suspension on 15.7.2011 and thereafter gave reminders on 4.10.2011 and 31.12.2011. But his suspension was not cancelled or revoked. The applicant has, therefore, filed this O.A.

2. In the O.A., the applicant claimed that the suspension order dated 16.5.2011 (Annexure A-1) issued by the Divisional Commissioner, Nagpur Division, Nagpur (R.3) and reference based letter dated 4.5.2011 issued by Collector, Nagpur (R.4) at Annexure A-2 be quashed and set aside and the applicant be reinstated with continuity in service. He has also claimed arrears of salary and allowances.

3. Due to subsequent development in the proceedings, the applicant amended the O.A., since the charge-sheet was served on him in the departmental enquiry. The applicant has, therefore, prayed that the charge-sheet (A-12) served on him be quashed and set aside, since it was not issued by a legally empowered officer and also claimed that the respondents be directed to reinstate him. A further direction was claimed that the respondents be directed to supply copies of the documents as per Annexure A-13 and rejection letter for supply of documents Annexure A-14 and 15) be quashed and set aside. The applicant also claimed advance of provident fund vide letter dated 27.7.2011 and it is requested that the respondents be directed to take a decision on such a request. It was further requested that the departmental enquiry against the applicant may be stayed.

4. In reply affidavit filed by respondent No.3, the respondents tried to justify the action taken against the applicant. It is stated that memorandum of charges dated 17.9.2012 has been served on the applicant and a departmental enquiry has been initiated by the competent authority. It is stated that the applicant is already getting subsistence allowance as per rules, since he is jointly and severally responsible for huge loss caused to the Government worth of Rs. 2,08,73,951/-, enquiry cannot be dropped.

5. Additional reply has been filed by respondent No.3, wherein it is stated that as per Rule 6 (3) of the D & A Rules, the respondent No.3 is the competent authority to quash the departmental enquiry.

6. Heard Shri K.V. Kotwal, the learned counsel for the applicant and Shri H.K. Pande, the learned P.O. for the respondents. We have also perused the notice of argument filed by the applicant.

7. From the facts on record, it is clear that the applicant has been kept under suspension vide order dated 16.5.2011 and till today he is under suspension. The applicant has filed an appeal against the order of suspension before the competent authority on 12.7.2011. But no decision was taken on the said appeal. Even though the applicant had filed reminders on 15.7.2011 and

13.12.2011. No departmental enquiry was contemplated against the applicant till the charge-sheet was served on him on 3.12.2012 and admittedly till today, no progress has been made in the departmental enquiry. In the meantime, the applicant has retired on superannuation on 31.8.2013.

8. So far as the suspension order is concerned, it is clear that the applicant has been kept under suspension on 16.5.2011 and a charge-sheet was served on him on 3.10.2012, i.e., almost after a period of 19 months. Even the appeal filed by the applicant against the order of suspension has not been decided. Even for argument sake, it is accepted that the charges against the applicant are serious in nature, no action has been taken against the applicant for initiating departmental enquiry within stipulated period of 90 days and on the contrary the applicant has been kept on prolonged suspension. The learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Apex Court in case of **Ajay Kumar Choudhary V/s Union of India through its Secretary and another reported in (2015) 7 SCC 291** and submitted that the continued suspension beyond the period of 90 days is contrary to law laid down by the Hon'ble Apex Court. He has also relied on number of judgments which includes the judgment in

**(2015) 3 SCALE 742 in case of Premnath Bali V/s Registrar, High Court of Delhi and others, judgment in O.A. No. 245/2016 and 455/2016 delivered by this Tribunal at Principal Seat at Mumbai on 5.12.2016 in case of Naresh Alwandar Polani V/s State of Maharashtra in O.A. No.35/2018 decided by this Tribunal in case of Dilip Jagannath Ambiwale V/s State of Maharashtra and others delivered on 11.9.2018, Judgment of the Hon'ble Apex Court in Union of India and others V/s B.V. Gopinath and others reported in Civil Appeal No. 7761, 7762, 7763,7764, 7765, 7766 and 7767 of 2013 delivered on 5.9.2013.** We have carefully gone through all these judgments. Time and again, it has been pronounced by the Hon'ble Apex Court that continuation of suspension beyond 90 days is disregarded. In O.A. No.35/2018 as already referred to above, this Tribunal has observed the same and directed that the applicant therein shall be deemed to have been reinstated after completion of 90 days of actual suspension with all consequential benefits thereof. To follow beyond that, suspension date would exist 90 days after the date of order of suspension. In the present case, the applicant was kept under suspension on 16.5.2011 and even an appeal against the suspension has not been decided and the suspension continued for a prolonged period. In such

circumstances, suspension should not have continued after 90 days from the date of suspension order and it can be presumed that the applicant stood reinstated after completion of 90 days of actual suspension and shall be held entitled to all consequential benefits.

9. The learned counsel for the applicant submits that the applicant has been kept under suspension w.e.f. 16.5.2011 and no decision was taken and even though the charge-sheet is served on the applicant as per Annexure A-12, page 90 on 3.10.2012, but till today no departmental enquiry has been completed. The learned counsel for the applicant placed reliance on the judgment delivered by the Hon'ble Apex Court in case of **Premnath Bali V/s Registrar, High court of Judicature at New Delhi** (supra). In the said case, in para No.33, the Hon'ble Apex Court observed as under:-

“Keeping these factors in mind, we are of considered opinion that every employer (whether State or private) must take sincere endeavour to conclude the departmental enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in the proceedings within the time frame then efforts

should be made to conclude within reasonably extended period depending upon the cause and the nature of enquiry but not more than a year.”

10. The learned P.O., during the pendency of the O.A. has placed on record the communication dated 20.11.2018 at page Nos. 135 to 137 (both inclusive). From the said letter, it seems that the department has to examine 11 witnesses in the joint enquiry of delinquents including the applicant. It is stated that, the applicant has been charged to have been involved in the financial loss to the tune of Rs. 2,08,73,951/-. It is requested for time to complete the enquiry. Exact contentions of the such communication are as under:-

“४. ज्या प्रकरणात श्री. उदयकुमार राजाराम गुप्ते यांना निलंबित करण्यात आले, त्या प्रकरणात रुपये २,०८,७३,९५१/- एवढ्या रकमेची अनियामितता श्री. एस. एस. सुपे, तत्कालीन लागवड अधिकारी, उमरेड, श्री एस. सी. गायकवाड, तत्कालीन लागवड अधिकारी, भिवापूर त्यांचे अधिनस्थ अधिकारी / कर्मचारी श्री. बी. एस. मित्रा, तत्कालीन उपसंचालक, सामाजिक वनीकरण विभाग, नागपूर व त्यांचे अधिनस्थ लिपिक श्री. सुनील बांडेबुचे व जिल्हाधिकारी कार्यालयातील उक्त श्री. गुप्ते, श्री. आगलावे, श्री. जरुलकर व इतर अधिकारी / कर्मचारी यांनी आपसात संगनमत करून व कट रचून केलेली आहे. त्यामुळे ह्या बाबीस ते सर्वही अधिकारी व कर्मचारी संयुक्तपणे व पृथकपणे जबाबदार ठरतात. अर्थात, या प्रकरणी उक्त श्री. गुप्ते हे संयुक्तपणे व पृथकपणे जबाबदार ठरतात. त्यांनी त्यांचे कर्तव्य बजावत असतांना सचोटी बाळगली नाही. तसेच अप्रामाणिकपणा करून शासनाची फसवणूक केलेली आहे. कर्तव्यपरायणता ठेवली नाही. त्यांचे हे कृत्य



महाराष्ट्र नागरी सेवा (वर्तणूक), नियम १९७९ च्या नियम ३ च्या तरतुदींचे उल्लंघन करणारे व गैरवर्तणूक ठरते. त्या अनुषंगाने आयुक्तांचे जापन क्रमांक रोहयो/अ.का.२/कावी/१९७२/२०१२ दि. १७.९.२०१२ त्यांचेवर बजावून त्यांचे विरुद्ध शिस्तभंग विषयक कार्यवाही सुरु केली आहे.

५. सदर प्रकरणी एकूण ११ अधिकारी / कर्मचारी यांचे विरुद्ध एकत्रितरीत्या विभागीय चौकशी सुरु सुरु करण्यात आली असून त्यांना शासकीय सेवेतून निलंबित करण्यात आले आहे. श्री. उदयकुमार राजाराम गुप्ते, कार्यकारी अभियंता त्यांचेवरील दोषारोप हे गंभीर स्वरूपाचे आहेत त्यामुळे दोषारोपाचे सखोल चौकशी करणे आवश्यक असल्याने विभागीय आयुक्त यांचे क्र. रोहयो/अ.का.२/कावी/विचौ २९/१३ दि. ३०.१.२०१३ च्या आदेशान्वये प्रादेशिक विभागीय चौकशी अधिकारी, नागपूर यांची चौकशी अधिकारी म्हणून व उप-जिल्हाधिकारी (रोहयो), जिल्हाधिकारी कार्यालय, नागपूर यांची सादरकर्ता अधिकारी म्हणून नियुक्ती केलेली आहे. या कार्यालयाचे निर्देशानुसार दि. १६.७.२०१८ पासून प्रकरण दर आठवड्यात विभागीय चौकशीच्या तारखेवर प्रादेशिक विभागीय चौकशी अधिकारी, नागपूर यांनी ठेवण्यात सुरुवात केली आहे. तसेच विभागीय चौकशी प्रकरणात १०५ सरकारी साक्षीदारांची सादरकर्ता अधिकारी यांचेकडून होणारी सरतपासणी आणि अपचारी द्वारा उलटतपासणी कार्यवाही पूर्ण झाल्यानंतरच सादरकर्ता अधिकारी यांचे टाचन आणि अपचारी यांचे टाचन प्राप्त झाल्यानंतरच चौकशी अहवाल शिस्तभंग विषयक प्राधिकारी यांचेकडे सादर करण्यात येऊन निश्चित किती कालावधी लागेल हे सांगता येत नाही असे प्रादेशिक विभागीय चौकशी अधिकारी, नागपूर यांनी त्यांचे पत्र दि. १९.१०.२०१८ अन्वये या कार्यालयास कळविले आहे.

६. प्रादेशिक विभागीय चौकशी अधिकारी, नागपूर यांनी कळविल्यानुसार निश्चित कालावधी सांगता येत नाही तरी सुद्धा पुनश्च: त्यांना या कार्यालयाद्वारे स्वतंत्र कळविण्यात येऊन ३ महिन्यांचे कालावधीत चौकशी पूर्ण करून निर्णय देण्यास कळविण्यात येईल. तसेच प्राप्त प्रादेशिक चौकशी अधिकारी

यांचे निर्णयानुसार शासन स्तरावरून अंतिम कार्यवाहीचे निर्णयाकरिता किमान ३ महिन्याचा कालावधी लागण्याची शक्यता आहे. तथापि एकूण ६ महिन्याचा कालावधी पूर्णतः लागण्याची शक्यता आहे. या प्रकरणामध्ये चौकशीची कार्यवाही ही नियमाला अनुसरून चौकशी अधिकाऱ्याकडे सुरु आहे. श्री. उदयकुमार राजाराम गुप्ते, कार्यकारी अभियंता यांचेवरील दोषारोपाची चौकशी पूर्ण होताच त्याप्रमाणे प्रकरणात निर्यय देण्याकरिता या कार्यालयास किमान ६ महिन्याचा कालावधी प्रदान करण्यास विनंती आहे. तसेच श्री. उदयकुमार राजाराम गुप्ते, कार्यकारी अभियंता यांचेवरील दोषारोप विचारात घेता व प्रकरणातील अपहाराची रक्कम दोन कोटी पेक्षा जास्त असल्याने त्यांचेवर करण्यात आलेली शिस्तभंग विषयक कार्यवाही ही योग्य व न्यायोचित असल्याने सदर याचिका निकाली काढण्यास विनंती आहे."

11. The learned P.O., therefore, requested that time may be granted to complete the enquiry as requested.

12. From the facts discussed in foregoing paras, it will be crystal clear that already the respondents have taken long time to initiate the enquiry. Even though charge-sheet has been served on the applicant on 3.12.2012, i.e. after about 17 months. No further progress has been made in the departmental enquiry. However, conserving the severe allegations against the applicant, we are of the opinion that it will be interest of justice and equity to direct the respondents to complete the enquiry within stipulated period at any cost and the applicant cannot be kept on waiting for the results thereof any more.

13. It seems that during the pendency of the enquiry, the applicant claimed certain documents as per Annexure A-13 and the same were rejected vide Annexure A-14 and Annexure A-15. We have perused the rejection letter. Vide letter dated 22.10.2012 (Annexure A-14), the respondents allowed the applicant to inspect the documents. Vide Annexure A-15, the communication dated 17.10.2012, the respondents also agreed to enhance the suspension allowance. But the suspension has been quashed, the applicant will be entitled to all financial reliefs claimed by him consequent upon reinstatement and, therefore, nothing remains in the prayer for quashing Annexure A-15.

14. Since the applicant's suspension is deemed to be revoked / cancelled, by the respondent authorities, the respondents may take necessary decision regarding applicant's request for advance taken of provident fund vide letter dated 27.7.2011. Necessary decision thereon shall be taken within two months from the date of this order.

15. On a conspectus of discussion in foregoing paras, we are of the view that the application needs to be partly allowed and hence, we proceed to pass the following order:-

**ORDER**

- (i) The O.A. is partly allowed.
- (ii) Suspension order of the applicant issued by respondent No.3 dated 16.5.2011 (Annexure A-1) and reference based letter dated 14.5.2011 issued by Collector, Nagpur (R.4) (Annexure A-2) are quashed and set aside after 90 days of the date of passing said order.
- (iii) It is hereby declared that the applicant shall be deemed to have been reinstated in service on completion of 90 days of suspension period for the date of order dated 16<sup>th</sup> May 2011.
- (iv) The applicant will be entitled to claim all admissible dues, due to revocation of such suspension.
- (v) The respondents are directed to take a decision on the applicant's request for advance taken from provident fund account vide letter dated 27.7.2011, within two months from the date of this order.

- (vi) Considering the fact that the applicant is under suspension from 16.5.2011 and a departmental enquiry has not yet been completed against the applicant, the respondents are directed to complete the enquiry in all respects within a period of six months from the date of this order in any circumstances.
- (vii) If the respondents failed to complete the departmental enquiry within six months from the date of passing of this order, the departmental enquiry shall stand quashed without reference to the order of this Tribunal.
- (viii) No order as to costs.

(Shree Bhagwan)  
Member (A)

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

**Dated:-** 6.11.2018.

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