

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1015 OF 2021

**DISTRICT: NASHIK
SUBJECT : SUSPENSION**

Shri Prashant Bhaskar Ghodke,)
Aged 45 Yrs, Working as Circle Officer,)
(Now under Suspension),)
Office of Tahasildar, Nashik,)
R/o. Row House No.3, Yash Row House,)
Chehdishiv Tajanpure Mala, Nashik Road,)
Tal. & Dist. Nashik.)...**Applicant**

Versus

The District Collector, Nashik,)
Having Office at Old C.B.S., Old Agra Road, Nashik-2)...**Respondent**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.

Smt. Archana B. Kologi, learned Presenting Officer for the Respondent.

CORAM : M.A. Lovekar, Member (J)

RESERVED ON : 28.04.2022.

PRONOUNCED ON : 02.05.2022.

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondent.

2. In this Application order dated 12.07.2021 (Exhibit A) passed by the Respondent placing the Applicant under suspension under Rule 4(1)(a)(c) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979, w.e.f. 24.06.2021 is impugned.

3. Facts leading to this Application are as follows:-

The Applicant was working as Circle Officer in the office of Tahasildar, Tal & Dist. Nashik. On 24.06.2021 crime no.97/2021 was registered against him at Nashik Suburban Police Station under Section 7 of the Prevention of Corruption Act, 1988. He was produced before the Special Court and remanded to judicial custody. In this background the Respondent passed the impugned order. The impugned order was preceded by the communication dated 28.06.2021 (Exhibit B) received by the Respondent from Deputy Superintendent of Police, A.C.B., Nashik asking the Respondent, who was the disciplinary authority, to place the Applicant under suspension and inform the A.C.B. On 01.10.2021 the Applicant was served with a charge-sheet of Departmental Enquiry (Exhibit R-2). On the same day the Applicant submitted an application (Exhibit C) to the Respondent that on 23.09.2021 period of 90 days, since he was placed under suspension, had come to an end and he be paid subsistence allowance and other admissible allowances as per Rules. On 11.11.2021 the Applicant submitted an application (Exhibit E) to the Respondent that subsistence allowance be paid to him at the rate of 75% as against 52% directed to be paid by an earlier order. By order dated 14.01.2022 (Exhibit R-5) the Respondent rejected the application (Exhibit E). Request of the Applicant for change in his Head Quarter during the period of suspension was also rejected by the same order dated 14.01.2022. Hence, this application for revocation of the impugned order and granting of all the consequential service benefits.

4. Reply of the Respondent is at pages 24 to 34. According to the Respondent the impugned order which is based on Rule 4(1)(a) and (c) and Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 does not call for interference. While passing this order the Respondent had also taken into account communication dated 28.06.2021 (Exhibit B) received from Deputy Superintendent of Police,

A.C.B., Nashik and Para 9(c) of G.R. dated 12.02.2013 (Exhibit R-1) which empowers the competent authority to immediately place the concerned employee under suspension against whom report is received from A.C.B. about his involvement in a trap case. Order of payment of subsistence allowance to the Applicant was in consonance with Rule 68 of Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981. Departmental enquiry has been started against the Applicant by issuing a charge-sheet against him which he received on 26.10.2021. Rule 68 of aforesaid Rules provides for upper limit of subsistence allowance at 75%. It does not mandate payment of subsistence allowance at the maximum rate. Discretion lies with the disciplinary authority to pass an order for payment of subsistence allowance at a proper rate regard being had to the attendant circumstances. On 17.01.2022 Respondent No.1 submitted a proposal to the review committee (Exhibit R-4) to review the case of suspension of the Applicant. In this communication he opined that since sanction to prosecute the Applicant was awaited and charge-sheet was not filed, his suspension was required to be continued.

5. Rejoinder of the Applicant is at pages 64 to 66. In this Rejoinder the Applicant has contended that the impugned order did not expressly refer to Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 and hence the order of suspension could not relate back to the date of arrest i.e. 24.06.2021. The Applicant also assailed the order directing payment of subsistence allowance at the rate of 52%.

6. The Only question which remains to be determined is whether in the facts and circumstances of the case, suspension of the applicant beyond 90 days would be permissible under the law. This question will have to be answered in the negative in view of the following legal position which has been set out in GR dated 9.7.2019:

“ शासन निर्णय :-

निलंबित शासकीय अधिकारी/कर्मचा-यांच्या निलंबनाची कारणे व त्यांचे गांभीर्य यानुसार त्यांच्या प्रकरणांचा आढावा घेण्यासंदर्भात शासनाने वेळोवेळी वर संदर्भामध्ये

दर्शविल्यानुसार शासन निर्णय निर्गमित केले आहेत. श्री.अजयकुमार चौधरी विरुद्ध युनियन ऑफ इंडिया (सिव्हील अपिल क्र.१९१२/२०१५) मध्ये मा. सर्वोच्च न्यायालयाने दि.१६/०२/२०१५ रोजी दिलेल्या निर्णयाच्या परिच्छेद १४ मधील आदेश खालीलप्रमाणे आहेत.

We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/ Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 prepare 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 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 the 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.

२. मा.सर्वोच्च न्यायालयाने वरीलप्रमाणे दिलेल्या दि.१६/०२/२०१५ च्या निर्णयाने अनुषंगाने केंद्र सरकारचा दि.२३ ऑगस्ट, २०१६ रोजीचा कार्यालयीन आदेश सोबत जोडला आहे. मा. सर्वोच्च न्यायालयाचा निर्णय व केंद्र सरकारचा कार्यालयीन आदेश पाहता निलंबित शासकीय कर्मचा-यांना ९० दिवसांच्या मुदतीत दोषारोप पत्र बजावून त्यांच्या निलंबनाच्या आढाव्या संदर्भातील तरतुदी सुधारण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :-

१. या अनुषंगाने शासकीय कर्मचा-यांच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.

- i. निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेउन निलंबन पुढे चालू

ढेवावयाढे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिका-याच्या स्तरावर घेण्यात यावा.

- ii. निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करुन दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरु करुन दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता /खबरदारी घेण्यात यावी.
- iii. फौजदारी प्रकरणात विशेषतः लाचलुचपत प्रकरणी निलंबित शासकीय सेवकांवर विभागीय चौकशी सुरु करुन दोषारोप पत्र बजावणेबाबत आवश्यक तो अभिलेख लाचलुचपत प्रतिबंधक विभागाने संबंधीत प्रशासकीय विभागास उपलब्ध करुन देणे आवश्यक राहिल.”

7. In the instant case the impugned order placing the Applicant under suspension was passed on 12.07.2021. Charge-sheet of departmental enquiry is dated 01.10.2021. On that date the departmental enquiry can be said to have commenced. The Applicant has stated to have received copy of the charge-sheet on 26.10.2021. Under such circumstances clause (ii) of G.R. dated 09.07.2019 will not be attracted. However, clause (i) will be certainly attracted. On 17.01.2021 the Respondent forwarded the proposal (Exhibit R-4) to the Review committee. To this proposal a supplementary note is appended. There is nothing on record to show that the review committee has reviewed the matter and taken a decision deemed fit in the case. Clause (i) of G.R. dated 09.07.2019 mandates taking a review of order of suspension after 90 days and record clear reasons if it is decided to extend the period of suspension beyond 90 days. This has not been done in the instant case. Consequently, the impugned order placing the Applicant under suspension will have to be revoked.

8. The Applicant has also questioned correctness of the order whereby the Respondent directed to pay subsistence allowance at the rate of 52%. Since the order of suspension is being revoked, this aspect need not be gone into. Hence, the order.

ORDER

- A) Original Application is allowed.
- B) The impugned order dated 12.07.2021 (Exhibit A) is quashed and set aside. The Respondent shall pass consequential order within thirty days from the date of this order.
- C) No order as to costs.

Sd/-
(M.A. Lovekar)
Member (J)

Place: Mumbai
Date: 02.05.2022
Dictation taken by: N.M. Naik.

Uploaded on: _____