

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.105 OF 2021

**DISTRICT: RAIGAD
SUBJECT: SUSPENSION**

Shri Yuvraj Sitaram Patil,)
Aged 47 years, Working as Jail Guard)
(Under Suspension), Alibag Central Prison,)
Dist. Raigad, R/at. Ameya Building,)
Rohidas Nagar, Alibag, Dist. Raigad)
Address for Service of Notice)
Shri Arvind V. Bandiwadekar, Advocate)
Having office at 9, "Ram-Kripa",)
Lt. Dilip Gupte Marg, Mahim, Mumbai 400 016) **.....Applicant**

Versus

The Special Inspector General of Police (Prison))
And Deputy Inspector General of Prison,)
South Division, Byculla, Mumbai – 8.) **....Respondents**

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

Smt. Archana B.K., learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 18.03.2021.

JUDGMENT

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

2. The Applicant has challenged suspension order dated 01.07.2020, whereby he was kept under suspension under Rule 4 (1) (a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 invoking jurisdiction of this Tribunal under section 19 of the Administrative Tribunal Act, 1985.

3. The Applicant was working as peon at District Prison, Alibag. On 09.06.2020 in the evening he allegedly mis-behaved with his Senior Officers of Jail and abused and threaten to assault them. The Jail Superintendent, therefore, reported the matter to the Respondent – Special Inspector General of Police (Prison). Consequently, the Respondent by order dated 01.07.2020 suspended the Applicant in contemplation of D.E. The Applicant made representation to reinstate him in services, in view of prolonged suspension without taking any action in initiation of D.E. but in vain. Ultimately, he has approached this Tribunal by filing the present O.A.

4. Shri A.V. Bandiwadekar sought to assail impugned suspension order mainly on the ground that in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** suspension beyond 90 days is impermissible, and on expiration of 90 days the Applicant ought to have been reinstated in service, since no D.E. has been initiated against him. He has further pointed out that Government by G.R. dated 09.07.2019 have given instructions to all the Departments to

follow the mandate given by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary case (cited supra)*** but in vain. He therefore prayed for revocation of suspension of Applicant and reinstatement in service.

5. Per Contra, learned P.O. submits that Applicant had indulged in hurling abuses and threatening Senior Officers, and thereby, committed serious mis-conduct inviting disciplinary action. She therefore, sought to justify the suspension order. As regard initiation of D.E, she submits that preliminary enquiry is under way and in due course D.E. will be initiated. She has further pointed out that in past also the Applicant was subjected to various punishments for indiscipline and misconduct.

6. Needless to mention that adequacy of the material for suspension of Government servant cannot be subject matter of the scrutiny before the Tribunal, since it exclusively falls within domain of government, if *prima-facie* serious mis-conduct is made out.

7. The Applicant has challenged the suspension order not on the ground of inadequacy or alleged mis-conduct but on the ground of prolonged suspension of more than 90 days and failure of the Department to initiate the D.E.

8. The legal position in respect of prolonged suspension is no more *res-Integra*, in view of the judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary case (cited supra)*** para 11, 12 and 21 of the Judgment are material, which are as follows:-

“11. *Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.*

12. *Protracted period of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that – “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.*

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 case (cited supra)*** 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. At this juncture it would be apposite to note that Government had issued instructions from time to time by G.R. dated 14.10.2011, 31.01.2015 & 09.07.2019 to take review of the Suspension of the Government servant periodically so that they are not subjected to prolonged suspension. Indeed by G.R. dated 09.07.2019, Government had issued specific instructions to all Departments to initiate the D.E. within 90 days from the date of suspension, and failing which there will be no option, but to revoke the suspension. Government decision of 09.07.2016 is as follows:-

“शासन निर्णय:-

१. या अनुषंगाने शासकीय कर्मचा-याच्या 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 घेऊन निलंबन पुढे चालू ठेवावयचे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिका-याच्या स्तरावर घेण्यात यावा.

ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधील विभागीय चौकशी सुरु करून 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 करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता / खबरदारी घेण्यात यावी.

11. Thus, in view of mandate of Hon'ble Supreme Court initiation of D.E. within three months is must and after initiation of D.E. objective decision needs to be taken about the continuation of suspension.

12. In present case admittedly till date no D.E. is initiated. The Applicant has already undergone period of suspension of more than eight months and till date neither D.E. is initiated nor review is taken as mandated by Government Resolutions referred to above. This being the position, suspension is liable to revoked and the Applicant needs to be reinstated in service.

13. Since, the Applicant is suspended on the allegation of abusing and threatening Senior Jail Officer at Alibag in my considered opinion it would be inappropriate to reinstate him at Alibag. The Applicant is present before the Tribunal and his is ready for reinstatement at Navi Mumbai.

14. For the aforesaid discussion, O.A. deserves to be allowed.

ORDER

- i. Original Application is allowed.
- ii. Suspension of the Applicant stands revoked w.e.f. today.
- iii. The Applicant be re-posted at Central Prison, Taloja, Navi Mumbai within two weeks from today.
- iv. Respondent is further directed to ensure initiation as well as completion of D.E. within four months from today and in accordance to Rules.
- v. No order as to costs.

Sd/-
(A.P. Kurhekar)
Member (J)

Place: Mumbai
Date: 18.03.2021
Dictation taken by: N.M. Naik.