

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1104 OF 2022

**DISTRICT : SANGLI
SUBJECT : SUSPENSION**

Mr. Sandeep Vasant Patil,)
Age: 36 years, Occ. Service,)
Res./At – Atpadi, Tal-Atpadi,)
Dist.- Sangli.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
Through Secretary of Water Resources)
Department, Mantralaya, Mumbai.)
- 2) The Superintending Engineer,)
Water Resources Department,)
Irrigation Circle, Sangli.)...**Respondents**

Shri Rahul V. Shinde, learned Advocate for the Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER (J)

DATE : 25.01.2023.

JUDGMENT

1. The Applicant has challenged suspension order dated 31.12.2019 whereby Respondent No.2 - The Superintending Engineer, Water Resources Department, Irrigation Circle, Sangli suspended him invoking Rule 4(2) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 under Section 19 of the Administrative Tribunal Act, 1985.

2. The Applicant was serving as Canal Inspector on the establishment of Respondent No.2. On 23.12.2019 he was caught by Anti Corruption Bureau (A.C.B.) while accepting bribe of Rs.5,000/-

(Rupees Five Thousand Only) for renewal of Water permit. A.C.B. registered offence under Section 7 of Prevention of Corruption Act, 1988 against him of 24.12.2019 and arrested him on same day. He was produced before Learned Session Judge on 25.12.2019 and on the same day came to be released on bail. It is on this background the Applicant came to be suspended invoking Rule 4(2) of M.C.S. (Discipline & Appeal) Rules, 1979 which *inter-alia* provides for Deemed Suspension where the Government servant has undergone custody for 48 hours. Since then the Applicant is subjected to prolong suspension. A.C.B. has filed chargesheet in criminal case but it is not progressing. Insofar as D.E. is concerned, it is initiated quite belatedly by issuing chargesheet dated 28.11.2022. It is on this background the Applicant has challenged suspension *inter-alia* contending that he is subjected to prolong suspension without taking review of suspension or expeditious completion of D.E.

3. Heard Shri R.V. Shinde, learned Advocate for the Applicant and Smt. Archana B.K., learned Presenting Officer for the Respondents.

4. Learned Advocate for the Applicant has raised issue of illegality of Suspension order *inter-alia* contending that as per Suspension order the Applicant is suspended by way of Deemed Suspension but he was not in custody for more than 48 hours, and therefore suspension order dated 31.12.2019 is bad in law. He therefore submits that though period of more than three years is over for no reasons the Applicant is subjected to prolong suspension and it is in contravention of decision of Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**

5. Learned P.O. fairly concedes that D.E. was initiated quite belatedly on 28.11.2022 and further concedes that no review is taken till date. All that she submits that proposal has been forwarded to reinstate the Applicant but it is not materialized till now.

6. Insofar as legality of suspension order dated 31.12.2019 is concerned, it's perusal reveals that Offence under Prevention of Corruption Act, 1988 has been registered on 24.12.2019 and he came to be arrested. Record further reveals that the Applicant was produced before Learned Session Judge, Sangli on 25.12.2019 and he came to be released on same day. The Applicant has also produced copies of bail bonds to show that he was released on 25.12.2019 itself. Indeed as per suspension order the Applicant was apprehended while accepting bribe of Rs.5,000/- (Rupees Five Thousand Only) on 23.12.2019. But strange to note he is arrested on 24.12.2019 as seen from remand papers. It is really un-understandable why he was not arrested on 23.12.2019 itself when he was caught accepting bribe. Therefore the averment in Suspension order about Suspension of the applicant by way of Deemed Suspension needs to be considered from his detention by A.C.B. from 23.12.2019 though he is shown formally arrested on 24.12.2019 when Offence was registered but fact remain that he was already caught red handed on 23.12.2019 while accepting bribe of Rs.5,000/-. Thus there seems to be formal arrest on 24.12.2019 though he was under detention of A.C.B. from 23.12.2019. Thus period of detention has to be considered from 23.12.2019. He was released on 25.12.2019. This being the ultimate situation invoking of Rule 4 (2) by way of Deemed Suspension cannot be faulted with.

7. Next important question comes, how there can be such prolong Suspension. As stated above period of more than three years under Suspension is over and in this period admittedly no review is taken. Chargesheet has been issued quite belatedly on 28.11.2022. Indeed Government by G.R. dated 14.10.2011 issued specific instructions for periodical review of Suspension of Government servant where they are suspended in view of registration of Crime under the provision of Prevention of Corruption Act, 1988 or I.P.C. Thus, Respondents were in obligation to take periodical review in terms of G.R. dated 14.10.2011 but they failed to discharge their obligation. The G.R. dated 14.10.2011

as well as 31.01.2015 requires objective assessment of the situation by competent authority about continuation or revocation of Suspension having regard to the nature of stage of Criminal case, stage of Departmental proceeding etc. Clause No.4(a) of G.R. dated 14.10.2011 specifically provides where chargesheet is filed in Criminal case but it is not decided in two years the competent authority is required to take note of it to review the Suspension so that Government servant is not subjected to prolong Suspension. However, in present case Respondents abdicates their statutory duty.

8. It is well settled that Suspension should be short duration and if further continuation of Suspension is unnecessary and where it would not serve any purpose, Suspension has to be revoked. Competent authority is required to reinstate such Government servant by giving him Non-Executive Post or any other suitable post. In present case, because of inaction on the part of the Respondents, the Applicant's fundamental right of speedy decision in Criminal case and expeditious completion of D.E. is frustrated.

9. The totality of aforesaid discussion leads me to sum-up that Suspension is required to be revoked with immediate effect and the Applicant is required to be reinstated in service on any Non-Executive Post or suitable post as Respondents deem fit in terms of G.R. dated 14.10.2011. Hence, the order.

ORDER

- A) The Original Application is allowed partly.
- B) Suspension of the Applicant stands revoked with immediate effect and he be reinstated in service within 10 days from today on Non-Executive or suitable post as Respondents deem fit.

C) No order as to costs.

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

Place: Mumbai
Date: 25.01.2023
Dictation taken by: N.M. Naik.

Uploaded on: _____

G:\NAIK\2023\03-Judgment 23\01-Jan. 2023\O.A.1104 of 2022_J. 30.01.2023 (Suspension).doc