

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.198 of 2021**

**District : Mumbai**

Shri Roopkumar M. Belsare, )  
Aged 57 years, working as Deputy )  
Regional Transport Officer (under suspension) )  
Tardeo, Mumbai Central, Mumbai 34. )  
Address for service of Notice : )  
Shri A. V. Bandiwadekar, having office at 9, )  
“Ram-Kripa”, Lt.Dilip Gupte Marg, Mahim, )  
Mumbai 400 016. )...**Applicant**

**Versus**

The State of Maharashtra, through the )  
Additional Chief Secretary, Home (Transport), )  
Department, Mantralaya, Mumbai 400 032. ) ...**Respondent**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.  
Shri A. J. Chougule, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 08.07.2021

**J U D G M E N T**

In the present Original Application, the challenge is to the suspension order dated 02.03.2021 whereby the Applicant was kept under suspension in contemplation of Departmental Enquiry (D.E.) invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules 1979 (hereinafter referred to as 'Rules 1979).

2. Shortly stated facts giving rise to the Original Application are as under:-

The Applicant was serving as Deputy Regional Transport Officer at Tardeo, Mumbai Central, Mumbai. The Respondent No.1 – State of Maharashtra by order dated 02.03.2021 suspended the Applicant in

contemplation of regular D.E. invoking Rule 4(1)(a) of 'Rules 1979' further stating that offence under the provisions of Prevention of Corruption Act, 1988 vide offence No.26/2020 is registered against the Applicant and thereby he has committed breach of Rule 3 of Maharashtra Civil Services (Conduct) Rules, 1979. Since then the Applicant is under suspension. He has been served with the charge sheet dated 03.06.2021 but thereafter no steps are taken for expeditious conclusion of D.E. It is on this background, the Applicant has filed present O.A. *inter-alia* contending that the prolong suspension beyond 90 days without taking review of the suspension or without taking expeditious steps for conclusion of D.E. is impermissible in law.

3. Shri Arvind Bandiwadekar, learned Counsel for the Applicant submits that in view of the decision of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**, suspension beyond 90 days is not permissible and also relied upon the G.R. dated 09.07.2019 whereby directions given by the department to issue charge sheet within 90 days from the date of suspension where suspension is ordered in contemplation of D.E. He, therefore, submits that the Applicant cannot be subjected to prolong suspension indefinitely.

4. Per contra, Shri A. J. Chougule, learned Presenting Officer for the Respondents sought to justify the suspension order *inter-alia* contending that the Applicant had demanded bribe through one agent and on that count offence under the provisions of Prevention of Corruption Act came to be registered against him on 21.12.2020. As regard review, he fairly concedes that till date no review has taken in terms of G.R. dated 14.10.2011 and submits that directions be given to take review of suspension within stipulated period.

5. Needless to mention that an adequacy of material before the authority at the time of taking decision in suspension does not fall within the scope and ambit of judicial review. Whether the facts and circumstances of the case warrants suspension of a Government servant

in contemplation of D.E. is a matter of exclusive domain of the employer and the decision has to be taken having regard to the misconduct attributed to a Government servant.

6. Now turning to the facts of the present case, even if, it is stated in impugned suspension order that the suspension is in contemplation of D.E. invoking Rule 4(1)(a) of 'Rules 1979' it cannot be forgotten that it is preceded by registration of offence against the Applicant vide Crime No.26/2020 under the provisions of Prevention of Corruption Act for demand of bribe through agent while working as Deputy Regional Transport Officer. True, the F.I.R. seems to have been registered belatedly on 21.12.2020 though the complaint was lodged with ACB on 26.02.2020. Be that as it may, there is no denying that offence under Section 7 of Prevention of Corruption Act has been registered against the Applicant and it is on that background the Government had taken decision to initiate the departmental proceeding against the Applicant and suspended him in contemplation of D.E. Suffice to say, this is not a case where the Applicant is suspended only on account of contemplated D.E.

7. In so far as G.R. dated 09.07.2019 is concerned, the Government had issued direction to the department to serve the charge sheet upon delinquents within 90 days from the date of suspension in view of the ratio laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. True, in present case, the Applicant is served with the charge sheet belatedly after expiration of 90 days from the date of suspension. However as stated above, the suspension not being solely on account of contemplation of D.E., the Applicant cannot claim reinstatement in service automatically on the basis of G.R. dated 09.07.2019.

8. The legal position in respect of prolong suspension is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). It will be appropriate to reproduce Para Nos.11, 12 & 21 of the Judgment, which is 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 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 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. At this juncture, it would be apposite to note that in view of G.R. dated 14.10.2011 the review committee is under obligation to take periodical review after every three months. Whereas, in the present case, though the period of more than five months is over from the date of suspension, no review has been taken. Apart, in view of the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, the Government was under obligation to take review of the suspension after service of charge sheet upon the Applicant but the said exercise is admittedly not undertaken. Except service of charge sheet, no further steps are taken for completion of expeditious conclusion of D.E. and it is simply pending without any progress. The Applicant has already submitted his reply to the charge sheet but till today even Enquiry Office is not appointed.

10. Thus, what emerges that the Applicant is subjected prolong suspension of more than five months without taking review of the suspension which is contrary to law in view of the mandate of decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case.

11. In this view of the matter, Original Application deserves to be disposed of with suitable directions to Government to take review of the suspension of the Applicant within stipulated period and also to conclude D.E. within stipulated period so as to take the matter to the logical conclusion. Hence, the following order:-

**ORDER**

- (A) Original Application is allowed partly.
- (B) The Respondent is directed to place the matter before Review Committee to take the decision about continuation or revocation of suspension of the Applicant as the case may be and shall pass appropriate order within six weeks from today.

- (C) The decision as the case may be, shall be communicated to the Applicant within a week thereafter.
- (D) If the Applicant felt aggrieved by the decision, he may avail further legal remedy in accordance to law.
- (E) The Respondent No.1 is further directed to complete the D.E. including passing of final order therein within three months from today and the decision thereon shall be communicated to the Applicant within a week thereafter.
- (F) No order as to costs.

**Sd/-**  
**(A.P. KURHEKAR)**  
**MEMBER (J)**

Date : 08.07.2021  
Place : Mumbai  
Dictation taken by :  
Vaishali Santosh Mane

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