

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.473 OF 2021

**DISTRICT: NASHIK
SUBJECT: SUSPENSION**

Shri Subhash Sukdev Pawar,)
Aged 43 years, working as Talathi)
(now under, suspension,)
A/P. Umrane, Tal. Deola, Dist. Nashik,)
R/o. Flat No.B-8, New Panchdeep Society,)
Vijay Nagar, Deolali Camp, Nashik.)**.Applicant**

Versus

The Sub Division Officer,)
Chandwad Sub-Division, Chandwad,)
Dist. Nashik.)**.Respondents**

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

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

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

DATE : 23.09.2021.

JUDGMENT

1. The Applicant has challenged suspension order dated 25.06.2021 whereby he is suspended in contemplation of Department Enquiry (D.E.), invoking the Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

2. The Applicant was working as Talathi on the establishment of Sub-Division Officer, Chandwad. By order dated 25.06.2021 Respondent suspended him on the allegation of his failure to prevent illegal excavation of sand and D.E. was contemplated.

Since then he is under suspension. Despite representation of reinstatement no steps were taken to take review of suspension order and to reinstate the Applicant in service. Ultimately the Applicant has filed the present O.A.

3. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

4. Admittedly the Applicant is suspended in contemplation of D.E. and no criminal case is registered against him. True, normally adequacy of material for suspension cannot be questioned before the Tribunal but the Government servant cannot be subjected to prolong suspension for undue time without taking any steps for completion of D.E. Admittedly till date no steps are taken to initiate D.E. against the Applicant but he is subjected to prolong suspension.

5. 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 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.”*

6. The Judgment in **Ajay Kumar Choudhary’s** case 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.

7. Furthermore, Government by G.R. dated 09.07.2021 cautioned the Department to initiate D.E. within 90 days from the date of suspension and if not done so the Government servant will be liable for reinstatement in service. Despite the G.R. dated 09.07.2021 the Applicant is subject to prolonged suspension and no further steps were taken to review suspension or to initiate D.E. The Applicant would be completing 90 days on 25.09.2021 i.e. after two days. Suffice to say prolonged suspension is not at all warranted in law and Respondent is required to take review of the suspension. Hence the following order.

ORDER

(A) O.A. is allowed partly.

(B) Respondent is directed to take the review of suspension of the Applicant in accordance to law within two weeks from today.

(C) The decision, as the case may be, shall be communicated to the Applicant.

(D) No order as to costs.

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

Place: Mumbai
Date: 23.09.2021
Dictation taken by: N.M. Naik.