

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.478 OF 2021

**DISTRICT: PUNE
SUBJECT: SUSPENSION**

Shri Rushikesh Madhavrao Fulzalke,)
Aged 48 yrs., Working as Inspector of State Excise)
(now under suspension) posted in Nashik Division,)
R/o. Sylvenia, F-404, Magarpatta City, Hadapsar, Pune)..**Applicant**

Versus

The Commissioner, State Excise, (M.S.),)
Mumbai, Having Office at Old Custom House,)
2nd Floor, Fort, Mumbai-32.)..**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 : 21.10.2021.

JUDGMENT

1. The Applicant has challenged suspension order dated 24.06.2021 on the ground that he is subjected to prolong suspension in breach of the decision given by Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

2. The Applicant is serving in the cadre of Inspector of State Excise and was posted at Nashik Division in charge of Flying Squad (Division). Five districts namely Nashik, Ahmadnagar, Jalgaon, Dhule and Nandurbar come under his vigilance. By order dated 24.06.2021, Commissioner of State Excise suspended him in contemplation of D.E. invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 attributing lack of vigilance within the jurisdiction assigned to him since when Excise Inspector Flying Squad, Mumbai visited

Shirpur Taluka they noticed factory of country liquor in the premises of M/S. Padamvati Cotton Purchase Sale Centre, Tal. Shirpur, Dist. Dhule. Huge stock of country liquor, vehicles and goods worth Rs.84,39,089/- (Eighty Four Lakhs Thirty Nine Thousand and Eighty Nine Only) came to be seized by Flying Squad, Mumbai. Respondent - State Commissioner therefore attributed lack of vigilance and supervision to the Applicant for suspending him in contemplation of Departmental Enquiry (D.E.). Apart five Excise Inspector who were working at Dhule were also suspended for not keeping vigilance and to check production of country liquor.

3. The Applicant contended that he is subjected to prolong suspension beyond 90 days, and therefore, suspension is illegal in view of the decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

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

5. In view of submission, issue posed for consideration is whether prolong suspension beyond 90 days is permissible without taking any steps to review the suspension or to initiate D.E.

6. Admittedly, till date no D.E. has been initiated against the Applicant though the period of near about four months is over. The allegation against the Applicant was that he failed to keep vigilance as a Divisional Head of Flying Squad.

7. Normally, 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. Needless to mention that the question as to whether the facts 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 based on the objective satisfaction based on the record. Therefore, the question as to whether the suspension was justified cannot be gone into present set of facts. However, in the present set of facts, the important question is whether the suspension can be continued indefinitely without bothering to take follow-up action as mandated by G.R. dated 14.10. 2011, 31.01.2015 and 09.07.2019 as well as the law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

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 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'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.

10. In this behalf, it would be further apposite to refer G.R. dated 09.07.2019 issued by Government for compliance of the direction given by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). In said G.R. it is instructed to Departments that in case of suspension of Government servant if the charge-sheet is not issued within 90 days there is no option but to reinstate the Government servant and directions were issued to make sure that charge-sheet is issued within 90 days period as indicated by Hon'ble Supreme Court.

11. Thus, in terms of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra) suspension should not exceed beyond three months. If within this period D.E. is not initiated and

where D.E. is initiated within a period of 90 days reasoned order needs to be passed for extension of the suspension. However, in present case though period of all most four months is over neither D.E. is initiated nor review is taken which was required to be taken in view of the pronouncement of Hon'ble Supreme Court.

12. In view of this, O.A. is disposed of with following directions.

ORDER

- A) O.A. is disposed of with direction to take review of suspension of the Applicant within two weeks from today and the decision thereon as the case may be shall be communicated to the Applicant.
- B) No order as to costs.

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

Place: Mumbai
Date: 21.10.2021
Dictation taken by: N.M. Naik.