

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.710 OF 2022

**DISTRICT: SANGLI
SUBJECT : SUSPENSION**

Shri Vikas Tatoba Gurav,)
Age 54 years, Occ. Talathi,)
R/at Post Kameri, Shivpuri Road,)
Tal. Walwa, Dist. Sangli)
Email: vikasgurav346@gmail.com)
Mob: 8080324485.) ... **Applicant**

Versus

1) The Sub Division Officer,)
Walva Division, Islampur, Sangli.)
2) The District Collector,)
Vijay Nagar, Miraj Sangli Road, Sangli.)... **Respondents**

Shri Madhukar B. Kadam, learned Advocate for the Applicant.

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

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

DATE : 09.12.2022.

JUDGMENT

1. The Applicant has challenged order dated 25.04.2022 *inter-alia* contending that though he was not in custody for more than 48 hours but he is suspended with retrospective effect from the date of arrest and secondly kept under prolong suspension without initiation of D.E. or review of Suspension.

2. Heard Shri M.B. Kadam, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

3. The Applicant was serving as a Talathi on the establishment of Respondent No.1 – The Sub Division Officer (S.D.O.), Islampur, District Sangli. On 01.04.2022 he was arrested by Anti Corruption Bureau for the Offence u/s 7 of the Prevention of Corruption Act, 1988. Therefore, Respondent No.1 – S.D.O. by order dated 25.04.2022 suspended him with retrospective effect from 01.04.2022 (date of arrest). However, later Respondent No.1 issued corrigendum on 29.09.2022 clarifying that the Applicant suspension shall be w.e.f. date of order of suspension i.e. 25.04.2022. Thus, it appears that Respondent No.1 realized the mistake and issued corrigendum that suspension came into effect from 25.04.2022. In view of this corrigendum, the grievances of retrospective suspension does not survives.

4. Second grievance pertains to prolong suspension without initiation of D.E. or criminal prosecution. Learned Advocate for the Applicant has further pointed out that no review is taken in terms of the decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

5. Learned P.O. fairly concedes that neither D.E. is initiated nor criminal chargesheet is filed in A.C.B. case till date. Learned P.O. also concedes that no review is taken.

6. In Ajay Kumar Choudhary's case, Hon'ble Supreme Court held that currency of suspension order should not exceed beyond three months, if within this period the Memorandum of Charges/Charge-sheet is not served upon the delinquent and where the Memorandum of Charges/Charge-sheet are served, a reasoned order must be passed for extension of the suspension. It would be apposite to reproduce Para Nos.11, 12 and 21, which are as under :-

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.”*

7. True, the said decision is arising from suspension in contemplation of D.E. wherein directions have been given that currency

of suspension should not extend beyond three months. Whereas in present case, the Applicant is suspended in view of registration of crime under the provision of Prevention of Corruption Act.

8. Be that as it may, it is well settled that a Government servant should not be subjected to prolong suspension where no fruitful purpose would serve by continuing the suspension. Indeed, the Government had issued various G.Rs from time to time for taking periodical review of suspension of a Government servants, who are suspended on account of registration of crime under the provisions of Prevention of Corruption Act or IPC. Initially, the Government had issued G.R. dated 14.10.2011 thereby issuing directions to take periodical review of the suspension. In Para No.3 of G.R, it is specifically stated that where suspension is on account of registration of serious crime under the provisions of Prevention of Corruption Act or IPC, such matters are required to be placed before the Review Committee after one year from the date of suspension. Suffice to say, G.R. dated 14.10.2011 mandates periodical review of the suspension of a Government servant so that he is not subjected to prolong unjustified suspension.

9. True, the decision in **Ajay Kumar Choudhary's** case is basically arising from suspension in contemplation of DE and not on account of registration of crime under the provisions of I.P.C. or Prevention of Corruption Act. However, if suspension is continued unreasonably without objective assessment of the situation, particularly when Department has failed to initiate departmental proceeding or to file charge-sheet in Criminal Case, such prolong suspension is always frowned upon by the Courts. If reinstatement in service cannot be termed threat to Criminal Case which is still under investigation or to DE which has not seen the day of light, in such situation, no purpose would serve by continuing a Government servant under suspension. He can be posted on non-executive or any other post as Competent Authority deems fit. At any rate, such an inordinate delay in taking the

matter in logical conclusion either in DE or Criminal Case would certainly affect fundamental right to speedy trial of Criminal Case or expeditious completion of DE.

10. In this view of the matter, since admittedly review is not taken which was required to be taken. The O.A. deserves to be disposed of with suitable direction to take review and pass appropriate order. Hence, the order.

ORDER

- A) The Original Application is allowed partly.
- B) Respondents are directed to take review of the suspension of the Applicant within four weeks from today in the light of observation made in the Judgment.
- C) Decision to be communicated to the Applicant within one week thereafter.

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

Place: Mumbai
Date: 09.12.2022
Dictation taken by: N.M. Naik.

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