

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.785 OF 2022**

**DISTRICT: MUMBAI  
SUBJECT: SUSPENSION**

Shri Bhushan Hanumant Ghorpade, )  
Aged 40 yrs, Working as Revenue Assistant )  
(under suspension) in the office of the )  
Additional Tahasildar, Mira Bhayander, )  
Dr. Hedgewar Building, Bhayander (W), )  
Dist. Thane, R/o. 2/278, Vahatuk Nagar, )  
Amboli, Andheri (W), Mumbai-58, )  
Mobile No.9137394434. )  
gbhushanrha@gmail.com )... **Applicant**

**Versus**

The District Collector and )  
District Magistrate, Thane, Having Office )  
at Opp. District and Sessions Court, Thane, )  
Court Naka, Thane (W). )... **Respondents**

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

**Shri Ashok J. Chougule, learned Presenting Officer for the Respondent.**

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

**DATE : 18.08.2022.**

**JUDGMENT**

1. The Applicant has challenged suspension order dated 24.08.2021 whereby he was suspended in view of his arrest and detention in custody for more than 48 hours.

2. The Applicant is serving as Revenue Assistant on the establishment of Collector, Thane. On 12.08.2021, Applicant came to be arrested under the provision of Prevention of Corruption Act, 1988

allegedly accepting bribe. He was in custody for more than 48 hours. Consequent to it, he was suspended by order dated 24.08.2021 invoking Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Applicant made representation for reinstatement, but in vain. Respondent had initiated D.E. in which enquiry officer has submitted enquiry report and copy of it is served upon the Applicant recently on 01.08.2022. The final order in D.E. is not yet passed. Thus, the fact remains that D.E. is already completed, and therefore, the question of tampering of witness in D.E. does not survive.

3. Insofar as criminal case is concerned, till date admittedly no chargesheet is filed in criminal case. Till date, the period of near about one year is over, but Applicant is subjected to prolong suspension.

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

5. Learned Advocate for the Applicant in reference to decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** submits that suspension beyond 90 days is impermissible. He has further pointed out that Respondent – Collector, Thane twice recommended for reinstatement of the Applicant in service but Review Committee recommended for continuation of suspension. On this line of submission, he submits that Applicant be reinstated in service.

6. Per contra, learned P.O. submits that review was taken twice but in view of the charges in Anti Corruption case, the Review Committee declined to reinstate the Applicant. As regard D.E, he submits that final order will be passed soon.

7. The legal position in respect of prolong suspension is no more *res-integra* in view of the Judgment of Hon'ble Supreme Court In **Ajay**

**Kumar Choudhary's** case (supra). It would be apposite to reproduce Para Nos.11, 12 and 21, which are 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.”*

8. Basically, **Ajay Kumar Choudhary’s** case is arising from suspension on account of D.E. Whereas in present case, Applicant is suspended in view of registration of crime under the provisions of Prevention of Corruption Act.

9. Be that as it may, the question is how long the Applicant can be subjected to prolong suspension.

10. Indeed, the Government had issued various G.Rs. from time to time for taking periodical review of suspension of the Government servants, who are suspended on account of registration of crime under the provisions of Prevention of Corruption Act or I.P.C. In this behalf, the 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. As per Clause 4(a) of the G.R, if chargesheet is filed in criminal case and it is not decided within a span of two years, in that event the Competent Authority is empowered to take review of suspension and to reinstate a Government servant on non-executive post. That apart, as per Para No.4(b) of G.R, where charge sheet itself is not filed in the Court of law for a longer period, in that event also, the Competent Authority is required to take conscious decision of revocation of suspension.

11. Now, turning to the facts of the present case, admittedly, till date, no chargesheet is filed in the Court of law, but the Applicant is subjected to prolong suspension for more than one year. Even till date, the Department has not received sanction for prosecution. One does not know how much time ACB will take for filing chargesheet. The Applicant is now getting 75% Subsistence Allowance without doing any work. The DE is already completed and only final order is to be passed. In such situation, in my considered opinion, no fruitful purpose would serve by continuing the Applicant in suspension. The Applicant can be posted at Non-Executive post or any other post as Respondent deems fit. Indeed, Respondent who is Appointing Authority had twice recommended to reinstate the Applicant, but it is declined only on the ground that chargesheet is not filed in criminal case. The Applicant cannot be blamed for delay on the part of ACB to file chargesheet. Needless to mention, expeditious disposal of D.E. and criminal case is regarded as fundamental right of a Government servant.

12. In this view of the matter, it would be appropriate to reinstate him in service on Non-Executive post or post, as Respondent deems fit. Hence, the following order.

**ORDER**

- A) Original Application is allowed partly.
- B) Respondent is directed to reinstate the Applicant within four weeks from today. Respondent is at liberty to post the Applicant on Non-Executive Post or any other post, as deems fit.
- C) No order as to costs.

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

Place: Mumbai  
Date: 18.08.2022  
Dictation taken by: N.M. Naik.

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