

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.991 OF 2022

**DISTRICT : AHMEDNAGAR
SUBJECT : SUSPENSION**

Shri Sachin Bhimrao Ghodke,)
Age: 39 years, Occ. Dy. Registrar Class-I,)
Residing at post Khadaki,)
Tal. and Dist. Ahmednagar – 414006.)... **Applicant**

Versus

- 1) The State of Maharashtra,)
through the Secretary,)
co-operation and textile Department,)
Dalan No.353, 3rd Floor, Madam Cama Road,)
Hutatma Rajguru Chowk.,)
Mantralaya, Mumbai-32.)
- 2) The Commissioner for co-operation,)
M.S., Pune – 1.)...**Respondents**

Shri Rajesh M. Kolge, learned Advocate for the Applicant.

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

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

DATE : 06.10.2022.

JUDGMENT

1. Heard Shri R.M. Kolge, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The Applicant has challenged suspension order dated 11.04.2022 whereby he is suspended by Respondent in contemplation of D.E. invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

3. It appears that he was transferred by order dated 30.07.2021 but he did not join the place where he was transferred, and therefore treating it as misconduct the Applicant came to be suspended in contemplation of D.E. The Applicant challenged suspension order dated 11.04.2022 mainly on the ground of prolong suspension beyond 90 days.

4. Shri R.M. Kolge, learned Advocate for the Applicant submits that there is no such misconduct to warrant suspension and secondly suspension beyond 90 days without taking any review or initiation of D.E. is bad in law and the Applicant is liable to be reinstated in service.

5. Per contra, Shri A.J. Chougule submits that despite transfer order the Applicant did not joined, and therefore suspension is justified. As regard, review and initiation of D.E. he fairly concedes that neither review is taken nor D.E. is initiated against the Applicant.

6. Thus, undisputedly though the Applicant is suspended in contemplation of D.E. and period of more than 90 days is over, Respondents has neither taken review nor initiated D.E. against the Applicant as obliged to do so in view of the decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

7. Needles to mention the adequacy of material for suspension normally cannot be examined by the Tribunal since it is prerogative of the executive which depends on the gravity of misconduct. In present case, admittedly the Applicant was transferred by order dated 30.07.2021 from Mumbai to Malegaon, Dist. Nashik but he didn't join there and remain absent. Whether it was willful absence amounting to misconduct is to be determined in D.E. only. Therefore it would be appropriate to make any comments here. *Prima-facie* there was enough material for initiation of D.E. for suspension. However, there is merit in

the submission advanced by learned Advocate for the Applicant that suspension beyond 90 days is totally impermissible.

8. Hon'ble Supreme Court in **Ajay Kumar Choudhary's case (supra)** in Para 21 of the Judgment direct that the currency of a suspension order should not extend beyond 90 days if within this period the memorandum of charges is not served on the delinquent officer, and if the memorandum of charges is served, a reasoned order must be passed for the extension of the suspension. Suffice to say, disciplinary authority was required to take review or to initiate D.E. within period of 90 days and to pass reasoned order for extension as required. Indeed, the Government as also issued G.R. dated 09.07.2019 giving direction to the Department to adhere to law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's case (supra)** and acknowledged that were D.E. is not initiated within 90 days there would be no option but to revoke the suspension and to reinstate the Government servant.

9. Despite the aforesaid position the Applicant is subjected to prolong suspension from 11.04.2022 which shows total disregard rather contravention of the direction given by the Hon'ble Supreme Court. Suffice to say Suspension beyond 90 days is totally impermissible in law. Now period of six months is over. Resultantly, suspension of the Applicant is liable to be revoked with immediate effect. Hence, the order.

ORDER

- A) Suspension of the Applicant stands revoked with immediate effect.
- B) Respondents are directed to reinstate the Applicant on the post from which he was suspended within a week.
- C) The Applicant is also held entitled to full pay and allowances after expiration of 90 days from the date of his suspension and it be paid to him with a month.
- D) Respondents shall take further steps for initiation of D.E. and if decides to initiate D.E. then it should be completed

within three months from the issuance of charge-sheet in accordance to law.

E) No order as to costs.

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

Place: Mumbai
Date: 06.10.2022
Dictation taken by: N.M. Naik.

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