

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.07 OF 2020

DISTRICT : SOLAPUR

Shri Kailash Digambar Masal.)
Occu.: Jr. Clerk, R/o. P.W.D. Quarter,)
B-Block, R.No.5, Kumtha Naka,)
Solapur – 413 003.) **...Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Industry, Energy & Labour Dept.,)
Mantralaya, Mumbai – 400 032.)
2. The Superintending Engineer.)
Pune Regional Electrical Inspection)
Circle, In the Compound of Govt.)
Milk Scheme, Khadaki,)
Pune – 411 003.)
3. The Commissioner for Revenue.)
Review Committee (Suspension),)
Vidhan Bhawan Council Hall,)
Administrative Building,)
Pune – 413 003.) **...Respondents**

Mr. Rajesh M. Kolge, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 05.03.2020

JUDGMENT

1. The Applicant has challenged the suspension order dated 20.06.2019 whereby he was kept under suspension invoking Rule 4(2)(a) of Maharashtra Civil Services (Disciplinary & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity).

2. The Applicant was serving on the post of Junior Clerk on the establishment of Electrical Inspector, Division Solapur which is under the control of Respondent No.2 – Superintending Engineer, Regional Electrical Inspection Circle, Pune. On 17.06.2019, he was arrested on the allegation of demand of bribe. In sequel, the offence under Section 7 of Prevention of Corruption Act was registered against him. He was produced before learned Special Judge on 18.06.2019 and on the same day, released on bail. The Respondent No.2 by order dated 20.06.2019 suspended the Applicant with deemed date of suspension w.e.f. 17.06.2019. This suspension order is challenged by the Applicant in the present O.A. contending that, the same is illegal and though the period of nine months is over, the review of suspension is not undertaken. In Criminal Case, no charge-sheet is filed till date. He, therefore, contends that in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**, his continuous suspension is illegal.

3. Shri R.M. Kolge, learned Advocate for the Applicant pointed out from the record that the Applicant was arrested on 17.06.2019 and released by Special Judge on 18.06.2019 and was not at all in Police or Judicial Custody for 48 hours, so as to attract Rule 4(2)(a) of 'Rules of 1979' and on that count itself, the order is liable to be quashed. He further submits that, though the period of nine months from the date of suspension is over, no review is taken in terms of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. On this line of submission, he prayed to allow the O.A.

4. Per contra, the learned P.O. submits that after filing of O.A, the charge-sheet has been issued in Departmental Enquiry. As regard review, she submits that it will be undertaken soon.

5. Undisputedly, till date, no charge-sheet is filed in Anti-Corruption case. However, departmental enquiry (D.E.) is initiated by issuance of Charge-sheet dated 30.01.2020. Besides, admittedly, no attempt is made to place the matter before the Review Committee.

6. As stated above, the Applicant was arrested on 17.06.2019 at 23:15 hours. He was produced before the learned Special Judge on 18.06.2019 and on the same day, he was released on furnishing surety of Rs.15,000/- as seen from Bail Order at Page No.18 of P.B. As such, he was not in Police or Judicial Custody for 48 hours, so as to invoke Section 4(2)(a) of 'Rules of 1979'. Surprisingly, the Respondent No.2 without verifying the record about the actual period of detention of the Applicant, suspended the Applicant with deemed date of suspension from 17.06.2019 which is obviously illegal.

7. Apart, no step is taken to take review of suspension after issuance of charge-sheet in D.E. Indeed, the review of suspension was required to be taken within first 90 days of suspension. In so far as the period of suspension is concerned, the issue is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors.)**, the Hon'ble Supreme Court in Para No.21 held as follows:-

“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. 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.

9. As such, in view of law laid down by Hon'ble Supreme Court, the suspension should not exceed 90 days and where charge-sheet in criminal case or in D.E. has been initiated within 90 days, then the concerned authority is required to take decision about extension or revocation of suspension. The concerned authority needs to take objective decision as to whether the continuation of suspension is warranted in the facts of the case. However, in the present case, admittedly, no such exercise has been undertaken by the disciplinary authority or Review Committee.

10. Apart, the suspension order dated 20.06.2019 with deemed date of suspension from 17.06.2019 invoking Rule 4(2)(a) is totally bad in law, as the Applicant was not in Police or Judicial Custody for 48 hours.

Therefore, the question of deemed date of suspension from the date of arrest as contemplated under Rule 4(2)(a) of 'Rules of 1979' does not survive.

11. In law, the deemed suspension is contemplated only in a situation covered under Rule 4(2)(a) and (b) of 'Rules of 1979'. Rule 4(2)(a) provides for deemed suspension from the date of arrest where the Government servant is kept in Police or Judicial Custody for 48 hours. Whereas Rule 4(2)(b) relates to deemed suspension in case of conviction for offence and sentence to imprisonment exceeding 48 hours. Whereas, in the present case, the Applicant was not at all in Police or Judicial Custody for 48 hours which is mandatory requirement for deemed suspension to invoke Rule 4(2)(a) of 'Rules of 1979'.

12. As such, the suspension order is totally unsustainable and bad in law.

13. The totality of aforesaid discussion leads me to conclude that the impugned suspension order dated 23.06.2019 is bad in law and liable to be set aside. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The suspension order dated 20.06.2019 being totally unsustainable in law is quashed and set aside.
- (C) The Applicant be reinstated within a week with consequential service benefits.
- (D) As regular D.E. is already initiated, the Applicant be re-posted on appropriate post as Respondent No.2 deem fit.

(E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 05.03.2020

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2020\March, 2020\O.A.07.20.w.3.2020.Suspension.doc