

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.1180 OF 2017**

**DISTRICT : PUNE**

Amina Khansaheb Shaikh. )  
D/o. Abdul Rahim Shaikh. )  
Age : 52, Occu.: Service, )  
R/at C-3/6, Samrat Garden Co-op. Hsg. Society, )  
Magarpatha, Hadpsar, Dist : Pune - 400 028. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Co-operative Department, Mantralaya, )  
Mumbai. )
2. The Commissioner. )  
Co-operative Department, Central )  
Building, Pune. )
3. Director. )  
Marketing, M.S, 3<sup>rd</sup> Floor, New )  
Administrative Building, Pune. )...**Respondents**

**Mr. D.V. Sutar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondents.**

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

**DATE : 01.02.2019**

## JUDGMENT

1. In the present Original Application, the challenge is to the suspension order dated 13<sup>th</sup> November, 2017 whereby the Applicant was kept under suspension in contemplation of departmental enquiry (D.E.).

2. The Applicant was working as Head Clerk in the office of Respondent No.2. On 10<sup>th</sup> November, 2017, the Applicant allegedly misbehaved and abused senior officers in the office and thereon non-cognizable offence under Section 185, 504 and 506 of Indian Penal Code was registered against the Applicant. It is on this background, by order dated 13<sup>th</sup> November, 2017, the Applicant was kept under suspension and the D.E. was proposed. Thereafter, charge-sheet has been issued on 29<sup>th</sup> November, 2017. The Applicant made representation on 14<sup>th</sup> December, 2017 for revocation of suspension and reinstatement in service, but it was not responded. The Applicant, therefore, challenged the suspension order contending that the prolong suspension is illegal, as neither D.E. is completed within stipulated period nor review has been taken in terms of G.R. dated 14<sup>th</sup> October, 2011.

3. The Respondents 1 to 3 filed Affidavit-in-reply *inter-alia* resisting the entitlement of the Applicant for the relief claimed. The Respondents sought to justify the suspension order contending that, in view of alleged misconduct of the Applicant, the suspension is legal and correct.

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

5. The suspension is challenged mainly on the following grounds :

- (A) Prolong suspension for more than one year is unsustainable, particularly when charge-sheet is already issued in D.E.
- (B) Non-compliance of instructions contained in G.R. dated 14<sup>th</sup> October, 2011, which mandates the review of suspension after three months and again after six months from the date of suspension, where the Government employee is kept under suspension in contemplation of D.E.

6. In the present case, though the charge-sheet in D.E. has been issued soon after suspension, admittedly the D.E. is not concluded. Furthermore, admittedly, no steps have been taken by the Respondents to take review of suspension by disciplinary authority.

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<sup>th</sup> October, 2011 as well as the law laid down by Hon'ble Supreme Court in **(2015) 7 SC 291 (Ajay Kumar Choudhary Vs. Union of India)**.

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 21<sup>st</sup> 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. At this juncture, a reference can also be made to the Judgment of Hon'ble Bombay High Court in **Dr. Narender O. Bansal Vs. The Additional Chief Secretary, Mumbai & Ors., reported in 2016 (4) ALL MR 168**. In that case, the public servant/Medical Officer was suspended in contemplation of departmental enquiry for a longer period and there was failure on the part of Department to place the matter before the Review Committee in terms of G.R. dated 14.10.2011. The Hon'ble Bombay High Court held that the suspension does not appear to be either legal or in public interest, as the people are deprived of getting medical service from Medical Officer, and therefore, further continuation of suspension could not be in public interest.

11. Now, turning to the facts of the present case. It is obvious from the record that, neither D.E. is progressing nor review of suspension has been taken by disciplinary authority. The G.R. dated 14<sup>th</sup> October, 2011 mandates that, where the Government servant is kept under suspension in contemplation of D.E, the disciplinary authority needs to take review within three months from the date of

suspension. It further provides, if the D.E. was not completed within six months, then considering the facts of the case, the Government servant can be reinstated in service by giving him posting on non-executive post, so that he should not interfere with the departmental proceedings. As per law laid down by Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case (cited supra), the suspension beyond 90 days is not permissible and where charge-sheet is filed before the completion of 90 days, the competent authority is required to take objective decision about the continuation or revocation of suspension. However, in the present case, admittedly, no such decision has been taken. Thus, inaction on the part of Respondent No.2 is obvious. Considering the nature of alleged misconduct, this case does not warrant continuation of suspension and in fact, the D.E. should have been completed much earlier.

12. This Original Application, therefore, can be disposed of by giving direction to Respondent No.2 to take decision of the continuation or revocation of suspension, as contemplated in G.R. dated 14<sup>th</sup> October, 2011 and to pass appropriate order in the light of legal position discussed above. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed.
- (B) The Respondent No.2 is directed to take decision about the revocation of suspension as contemplated in Clause 7(a) of G.R. dated 14<sup>th</sup> October, 2011 within one month from today and decision, as the case may be, be communicated to the Applicant.
- (C) If the Applicant is aggrieved by the decision, he may avail further remedy, if so advised, in accordance to law.

- (D) The Respondent No.2 is further directed to complete pending D.E. against the Applicant within three months from today. The Applicant should cooperate for completion of D.E.
- (E) No order as to costs.

Sd/-

**(A.P. KURHEKAR)**  
**Member-J**

Mumbai

Date : 01.02.2019

Dictation taken by :

S.K. Wamanse.

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