

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1202 OF 2019

DISTRICT : MUMBAI

Smt. Shubhangi Bhikaji Khalekar.)
Age : 49 Yrs., Head Clerk (presently under)
suspension, Residing at Flat No.F-1,)
B Wing, Tai Arcade, Pashan,)
Pune – 411 021.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Social Justice Department,)
Mantralaya, Mumbai – 400 032.)
2. The Commissioner.)
Social Welfare, M.S, Pune – 411 001.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

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

DATE : 22.10.2020

JUDGMENT

1. This is second round of litigation wherein challenge is to the suspension order dated 14.04.2017 as well as order dated 28.02.2019 whereby in review of suspension, the Respondents decided to continue the suspension of the Applicant.

2. Undisputed facts for the disposal of present O.A. can be summarized as under :-

(i) The Applicant was working as Head Clerk on the establishment of Respondent No.2 – Commissioner, Social Welfare, Pune.

(ii) By order dated 14.04.2017, the Applicant was suspended by Respondent No.2 invoking Rule 4(1) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) in contemplation of regular departmental enquiry on the allegation that the Applicant has committed serious illegalities and misconduct while procuring the material as well as in making payment to the suppliers.

(iii) After suspension, the Applicant made representations to Respondent No.2 claiming to be innocent and requested for reinstatement in service but in vain.

(iv) The Applicant, therefore, filed O.A.No.1075/2018 before this Tribunal challenging prolong suspension and because of failure of Respondent No.2 to take review of suspension in terms of G.R. dated 14.10.2011.

(v) O.A.No.1075/2018 was decided by this Tribunal on 30.01.2019 whereby directions were given to Respondent No.2 to take review of suspension of the Applicant as contemplated in G.R. dated 14.10.2011 which *inter-alia* empowers Respondent No.2 to take review of suspension on account of failure to complete D.E. within specified time.

(vi) As per direction of this Tribunal in O.A.No.1075/2018, the Respondent No.2 took review of suspension of the Applicant and rejected the same by order dated 28.02.2019 (Page No.90 of Paper Book) on the ground that as per instructions of Government, the employee should not be reinstated in service till the completion of D.E.

(vii) In the meantime, three D.Es have been initiated against the Applicant by issuance of charge-sheet on 12.07.2018, 16.07.2018 and 22.01.2019.

(viii) In D.Es, the Respondent No.2 has appointed Enquiry Officer on 26.12.2018 and 02.09.2020.

(ix) The D.Es are still incomplete without any substantial progress.

(x) Till date, the Applicant has completed the period of three years and six months in suspension.

3. It is on the above undisputed facts, the Applicant has again knocked the doors of this Tribunal challenging the order dated 28.02.2019 *inter-alia* contending that there is no objective assessment of the situation and Respondent No.2 mechanically continued the suspension which is in contravention of various Circulars and Government Resolutions which mandates the completion of D.E. of the suspended employee expeditiously and latest within a period of one year.

4. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the suspension order dated 14.04.2017 as well as order dated 28.02.2019 contending that the prolong suspension of the Applicant is in contravention of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** as well as various Government Circulars which mandates the completion of D.E. within a year. On this line of submission she submits that prolong suspension is illegal and there being no substantial progress in D.Es, the Applicant needs to be reinstated in service.

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer countered that the Applicant has committed serious financial illegalities in the matter of procurement of material and payment of crores of rupees to the suppliers. She submits that having regard to the serious charges levelled against the Applicant, the Respondent No.2's decision dated 28.02.2019 to continue the suspension is justified.

6. At this juncture, it would be apposite to refer guidelines, Circulars and G.R. issued by the Government in the matter of completion of D.E. where the Government servant is under suspension.

7. As per Clause 3.19 of Departmental Enquiry Manual, the D.Es need to be completed as expeditious as possible and in any case, it

should be completed within six months from the date of issuance of charge-sheet. Here, it would be material to refer Clause 3.19 of Manual, which is as follows :-

“३.१९ विभागीय चौकशी पूर्ण करण्यासाठी कालमर्यादा.-- (१) विभागीय चौकशी शक्य तितक्या लवकर पूर्ण करण्यात याव्यात आणि कोणत्याही परिस्थितीत हा कालावधी विभागीय चौकशी करण्याचा निर्णय घेतल्याचा तारखेपासून सहा महिन्यांपेक्षा अधिक नसावा. चौकशीच्या निष्कर्षासंबंधीचे अंतिम आदेश काढल्यानंतरच ती पूर्ण झाली आहे, असे मानले जाईल.

(२) तथापि, काही प्रकरणामध्ये उचित व पुरेशा कारणांसाठी सहा महिन्यांच्या विनिर्दिष्ट काळामध्ये विभागीय चौकशी पूर्ण करणे शक्य नसेल विभागीय चौकशा पूर्ण करण्यासाठी असलेली ही कालमर्यादा वाढवून देण्याचे अधिकार परिशिष्ट ८च्या स्तंभ ३ व ४ मध्ये नमूद केलेल्या प्राधिकाऱ्याला, त्या स्तंभाच्या शीर्षाखाली निर्देशलेल्या मर्यादित अधीन राहून द्यावेत असे शासनाने ठरविले आहे. विभागीय चौकशी मंजूर झाल्याच्या तारखेपासून ती पूर्ण करण्यासाठी एका वर्षांपेक्षा अधिक कालावधी वाढवून देण्यास मंत्रालयाच्या प्रशासकीय विभागाने सामान्य प्रशासन विभागाची विचारविनिमय करून अनुमती द्यावी.

(३) कालमर्यादेपेक्षा वाढीचा प्रस्ताव सादर करताना संबंधित चौकशी अधिकाऱ्याने आणि शिस्तभंगविषयक प्राधिकाऱ्याने सक्षम प्राधिकाऱ्यास परिशिष्ट ९ मध्ये अंतर्भूत असलेल्या प्रपत्रात माहिती द्यावी. कालमर्यादेची वाढ देण्यासाठी सक्षम असलेल्या प्राधिकाऱ्याने प्रस्तावाची काळजीपूर्वक तपासणी करावी आणि कमीत कमी आवश्यक असलेल्या कालावधीची वाढ द्यावी.”

8. Whereas following are the instructions issued by Circular dated 30th October, 2010.

“शासन असे आदेश देत आहे की, प्राथमिक चौकशीअंती तथ्य आढळलेल्या प्रकरणांत नजिकच्या सहा महिन्यांच्या काळात सेवानिवृत्त होणारा अधिकारी / कर्मचारी गुंतला असेल तर, अशा प्रकरणी एक विशेष बाब म्हणून प्राधान्याने संबंधित अधिकारी / कर्मचाऱ्याच्या सेवानिवृत्ती पूर्वी किमान ३ महिने अगोदर विभागीय चौकशी सुरू होईल व शासन सामान्य प्रशासन विभाग परिपत्रक क्रमांक : सीडीआर-१०९७/१५६/प्र.क्र.१४/९७/अकरा, दि.२४ फेब्रुवारी, १९९७ नुसार एकुण चौकशीची कार्यवाही एका वर्षात पूर्ण होईल अशा रितीने कार्यवाही करण्याची दक्षता घ्यावी. प्रकरणाच्या कोणत्याही टप्प्यावर विलंब झाल्याचे निदर्शनास आल्यास, अशा विलंबाला जबाबदार असणाऱ्या अधिकारी / कर्मचाऱ्यावर शिस्तभंगविषयक कारवाईचाही विचार करण्यात यावा.”

9. Then again, in Circular dated 21.02.2015, the following instructions have been issued :-

“मा. लोक आयुक्त आणि मा. उप लोक आयुक्त यांनी शासनास सादर केलेल्या ४० व्या वार्षिक अहवालात सेवानिवृत्त शासकीय कर्मचाऱ्यांच्या व निधन पावलेल्या शासकीय कर्मचाऱ्यांच्या प्रलंबित विभागीय चौकशाची आणि त्यांच्या निलंबन कालावधीच्या नियमनाविषयीची प्रकरणे त्वरेने निकाली काढावीत अशी शिफारस केली आहे.

त्या शिफारशीच्या अनुषंगाने वरील संदर्भाधीन आदेशातील सूचनाकडे पुन्हा लक्ष वेधण्यात येत आहे. याबाबत शासन असेही आदेशित करित आहे की, ज्या कर्मचाऱ्यांविरुद्ध ते सेवानिवृत्त होत असताना विभागीय चौकशी चालू आहे त्यांच्या विभागीय चौकशा प्राथम्याने आणि त्यांच्या सेवानिवृत्तीच्या दिनांकापासून कमाल ६ महिन्यात पूर्ण होतील याची दक्षता घ्यावी. ज्या कर्मचाऱ्यांविरुद्ध ते सेवानिवृत्त झाल्यावर चौकशी सुरू करण्यात आली आहे, त्यांच्या विभागीय चौकशा प्राथम्याने आणि चौकशी सुरू केल्याच्या दिनांकापासून कमाल ६ महिन्यात पूर्ण होतील याची दक्षता घ्यावी. याबाबतीत विहित कालावधीत निपटारा करण्यात आलेल्या प्रकरणांचा विचार करून आस्थापनविषयक कामे पाहणारे उप सचिव / सह सचिव तसेच विभागीय चौकशी अधिकारी यांच्या गोपनीय अहवालात विशेष अभिप्राय नोंदवावेत.”

10. By Circular dated 07.08.2008, it has been again reiterated that D.E. should be completed within a period of six months from the date of taking decision to initiate the D.E. and where for some justifiable reason, if D.E. could not be completed within six months, in that event, three months' extension can be given by Head of Department. Where D.E. is not completed within nine months, then extension is required to be sought up to one year from the Government.

11. Now turning to the facts of the present case, disgusting to note that all these Circulars and instructions given by the Government have been completely ignored rather defied with impunity. There is nothing on record to indicate that any such extension for completion of D.E. has been sought from the Government in terms of Circular dated 07.04.2008. The Applicant is subjected to prolong suspension of near about three years and six months which unerringly exhibits total inaction and lethargy on the part of Respondents, particularly Respondent No.2.

12. In so far as charges framed against the Applicant in D.E. are concerned, those are as under :-

Charge in first charge-sheet dated 12.07.2018 is as follows :-

“बाब १

मा.महालेखापाल, महाराष्ट्र राज्य यांनी केलेल्या लेखा परिक्षणा अंतर्गत खालील अनियमितता आढळून आलेल्या आहेत.

मे. एस. ब्रेन सिस्टीम अँड software प्रा.लि., पुणे यांनी ५३४३ उपकरणांपैकी ५०५० उपकरणे नोव्हेंबर २०१३ अखेर पुरवठा केली व या ५०५० उपकरणांपैकी केवळ ३३२१ उपकरणातील माहिती मध्यवर्ती सर्व्हर वर संकलित केली. वास्तविक पाहता मध्यवर्ती सर्व्हर वर माहिती संकलित केल्यानंतर २४ दिवसापर्यंत समाधानकारक कामा नंतर ९० टक्के रक्कम करारनाम्याप्रमाणे पुरवठादारास द्यावयाची होती. ३३२१ उपकरणातील माहिती मध्यवर्ती सर्व्हर वर संकलित केल्या नंतर रुपये ८.२३ कोटी रक्कम देत असताना, रुपये ११.३७ रक्कम पुरवठादारास माहे नोव्हेंबर २०११ ते जून २०१३ या दरम्यान संदर्भिय अ.क्र. १ ते ११ च्या आदेशान्वये आहरित करून वितरीत केली. म्हणजेच रुपये ३.१४ कोटी जादाची रक्कम पुरवठादारास अदा केली गेली. सदरची अनियमितता ही आपल्या कालावधीत झाली असून आपण दरकरार, पुरवठा आदेश शासन निर्णय आणि करारनाम्यातील अटी व शर्ती तसेच संयंत्रांचा पुरवठा होवून ती स्थापित होणे व त्याची सर्व्हर वर माहिती संकलित होणे आणि समाधानकारकपणे कार्यरत होणे याबाबतची खात्री करूनच देयक अदा करणे आवश्यक होते. तथापि याबाबतची खात्री व पडताळणी न केल्यामुळे शासनाचे रुपये ३.४४ कोटीचे नुकसान झालेले आहे.

वरील प्रमाणे आपणाकडून कर्तव्यात कसून झाल्याने महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ नियम - ३ (एक)(दोन) चे उल्लंघन झाले आहे.

Charge in second D.E. dated 16.07.2018 is as under :-

“श्रीमती एस.बी. खळेकर या प्रमुख लिपिक, शिक्षण शाखा, समाज कल्याण आयुक्तालय, पुणे येथे कार्यरत असताना त्यांच्याकडून झालेल्या अनियमिततेच्या अनुषंगाने ठेवण्यात आलेल्या दोषारोपांच्या गोषवारा.

- ई. शासन निर्णय क्र.बीसीएच:२०११/प्र.क्र.१२४/मावक-४ दि.२०.४.२०११ अन्वये सामाजिक न्याय विभागांतर्गत मागासवर्गीय शासकीय / अनुदानित वसतीगहातील विद्यार्थ्यांसाठी चादर, बेडशीट, ब्लॅकॅट या वस्तू खेरीदी करण्याबाबत मध्यवर्ती भांडार खरेदी संघटना यांचेकडून निश्चीत केलेल्या दराप्रमाणे एकूण रु.१५,७७,२८,४८०/- इतक्या रकमेची खरेदी करण्यास शासन मान्यता देण्यात आली.
३. शासन निर्णय क्र.बीसीएच:२०११/प्र.क्र.२६४/मावक-४ दि.३०.६.२०११ अन्वये सामाजिक न्याय विभागांतर्गत मागासवर्गीय शासकीय / अनुदानित वसतीगहातील विद्यार्थ्यांसाठी गादी, उशी व उशी कवर या वस्तू खेरीदी करण्याबाबत मध्यवर्ती भांडार खरेदी संघटना यांचेकडून निश्चीत केलेल्या दराप्रमाणे एकूण रु.१०,९६,५६,३५०/- इतक्या रकमेची खरेदी करण्यास शासन मान्यता देण्यात आली.
३. शासन निर्णय क्र.बीसीएच:२०११/प्र.क्र.२६१/मावक-४ दि.३०.६.२०११ अन्वये सामाजिक न्याय विभागांतर्गत ४४ शासकीय निवासी शाळेतील विद्यार्थ्यांसाठी चादर, बेडशीट, ब्लॅकॅट, गादी, उशी व उशी कवर या वस्तू खेरीदी करण्याबाबत मध्यवर्ती भांडार खरेदी संघटना यांचेकडून निश्चीत केलेल्या दराप्रमाणे एकूण रु.१,२३,७६,६३६/- इतक्या रकमेची खरेदी करण्यास शासन मान्यता देण्यात आली.

बाब -१ मध्ये नमूद केलेल्या वस्तूंची तपासणी न करता पुरवठा धारकास रकमेचे प्रदान झाले असल्याचे स्पष्ट होते.

वरील प्रमाणे आपणाकडून कर्तव्यात कसून झाल्याने महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ नियम - ३ (एक)(दोन) चे उल्लंघन झाले आहे.

Charge in third D.E. dated 22.01.2019 is as under :-

“बाब एक :-

श्रीमती एस.बी. खळेकर या प्रमुख लिपिक, समाज कल्याण आयुक्तालय, पुणे म्हणून सन २०१२-१३ मध्ये कार्यरत असताना त्यांनी इन्व्हर्टर संच बसवलेले नसताना पुरवठा धारकास रुपये ३.५३ कोटी रक्कम अदा

केली. या गैरवर्तणुकीमुळे त्यांनी कर्तव्याचे पालन करण्यात कसूर करून महाराष्ट्र नागरी सेवा (वर्तणूक) नियम, १९७९ च्या नियम ३ चा भंग केला आहे.”

13. True, the charges levelled against the Applicant are apparently very serious and having regard to it, the D.E. ought to have been expedited and completed without loss of time. The Applicant was suspended on 14.04.2017. However, charge-sheet in D.E. was issued after more than one year and Enquiry Officer has been also appointed belatedly. As such, the delay, lapses and inaction on the part of concerned at every stage is obvious. The Respondents thus themselves watered down seriousness of the matter on account of failure to complete D.Es swiftly. Thus, seriousness is more shown on record than acting upon it with seriousness. The guidelines, Circulars and G.Rs issued by the Government in this behalf are thrown to the wind rather defied with impunity. No action is taken by the Government for the failure of the concerned Government Official for delay in initiating D.E. or who are responsible for not getting D.E. completed within time limit.

14. It appears that Respondent No.2 by order dated 08.07.2019 asked Enquiry Officer to submit enquiry report within a month and stated that failing which Department may face legal implications. However, thereafter no such follow-up action was taken as to why D.Es inordinately delayed. No further follow-up was taken by Respondent No.2 and he remained complacent.

15. At the fag end of the matter, Shri Uday Keshav Lokpalli, Assistant Commissioner working in the office of Respondent No.2 has filed Affidavit stating that Respondents are trying to complete D.E. as early as possible. However, no such time limit is fixed. Affidavit is silent about the progress of D.E. and steps taken, if any, for completion. D.E. seems pending without any substantial progress and unlikely to be completed soon.

16. As a matter of record, the Respondent No.2 had recommended the Government for revocation of suspension, but later by its letter dated 30.10.2018 simply communicated to Respondent No.2 that suspension cannot be revoked till the completion of D.E. As such, suspension is continued because of pendency of D.E. without bothering to see that the Respondents themselves are responsible for the delay in completion of D.E. It is nowhere the contention of the Respondents that the Applicant is not cooperating in the matter or protracting the enquiries.

17. In such situation, the Applicant cannot be subjected to prolong suspension. He is getting 75% pay and allowances without doing any work which is waste of public money. The charges framed against the Applicant are basically arising from the documents which are in the custody of the Department, and therefore, the question of possibility of tampering the evidence or witnesses by the Applicant does not survive.

18. 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.”*

19. 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.

20. I, therefore, see no point or reason to continue the suspension of the Applicant which is already prolonged for three years and six months. No purpose would be served by continuing the suspension. There is

inordinate and unreasonable delay in completion of D.E. The possibility of tampering of evidence is ruled out, as the record is already seized and produced before the Enquiry Officer. In other words, there is no threat for D.E. The suspension, therefore, deserves to be revoked with liberty to Respondent No.2 to post the Applicant on any non-executive suitable post with clear instructions to the Applicant that he should not contact any person connected with enquiry.

21. The totality of aforesaid discussion leads me to sum-up that further prolong suspension of the Applicant is unsustainable in law and he deserves to be reinstated in service. Hence, I pass the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The suspension order dated 14.04.2017 stands revoked with effect from today.
- (C) The Respondent No.2 is directed to issue necessary order and Applicant should be reinstated in service within a week.
- (D) The Respondent No.2 is at liberty to repost the Applicant on any non-executive suitable post, as he deems fit.
- (E) The Applicant should cooperate for completion of D.Es and should not contact any person connected with D.E. so as to influence them.
- (F) The Respondent No.2 is directed to complete all D.Es pending against the Applicant including passing of final order according to Rules within three months from today and shall take necessary steps in this behalf.

- (G) The decision in D.Es should be communicated to the Applicant within two weeks thereafter.
- (H) No order as to costs.

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

Mumbai

Date : 22.10.2020

Dictation taken by :

S.K. Wamanse.

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