

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.127 OF 2019

Shri Suhas S. Jatkar.)
Age : 56 Yrs, Occu.: Director, Department of)
Sainik Welfare, Residing at Flat No.206,)
Nalini Apartment 2, Solapur Road, Camp,)
Pune – 411 001.)...**Applicant**

Versus

The State of Maharashtra.)
Through the Principal Secretary & Special)
Enquiry Officer, General Admn. Department,)
Mantralaya, Mumbai 400 032.)...**Respondent**

Mrs. Punam Mahajan, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 22.02.2019

JUDGMENT

1. In the present Original Application, the challenge is to the impugned order of suspension dated 16.07.2018 whereby the Applicant was kept under suspension in contemplation of Departmental Enquiry (D.E.) invoking Rule 4(1) of

Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979').

2. Being aggrieved by it, the Applicant has preferred an appeal, which is not yet decided. As the D.E. is not completed within six months and no decision is taken in the appeal, the Applicant has been constrained to approach this Tribunal for filing this O.A. which was filed on 12.02.2019.

3. When the matter was placed before this Tribunal for the first time on 14.02.2019 for admission, a speaking order has been passed inviting the attention of the Respondents as well as learned Presenting Officer to the settled legal position in this behalf.

4. Today, the learned P.O. submitted that the charge-sheet in D.E. has been issued on 27.06.2018 and Enquiry Officer has been appointed on 14.08.2018. Now, the D.E. is pending for recording evidence of witnesses.

5. The legal position in the matter of suspension is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **(2005) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. The Hon'ble Supreme Court capped the suspension period upto 90 days and laid down that the currency of suspension beyond 90 days is illegal. It has also held that where the charge-sheet and D.E. has been issued within the period of 90 days, then the disciplinary authority is under obligation to take decision about the extension of suspension. However, in the present case, no such decision has been taken by the disciplinary authority after issuance of charge-sheet in D.E. Suffice to say that the Applicant is kept under continuous suspension mechanically without making any objective decision.

6. Furthermore, in terms of G.R. dated 14th October, 2011, as per provided in Clause 7(a), the disciplinary authority is required to take review of suspension

after three months which has not been taken in the present matter. It further provides that where the D.E. is not completed within six months, then the disciplinary authority is required to take decision about revocation of suspension and to reinstate the delinquent on non-executive post. In the present case, there is no compliance of Clause 7(a) of G.R. dated 14.10.2011.

7. 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."*

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. 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.

10. In view of above, this application can be disposed of at this stage by giving suitable directions to the Respondents. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The Respondent is directed to take review of the suspension of the Applicant in terms of Clause 7(a) of G.R. dated 14.10.2011 and to pass appropriate order within one month from today.
- (C) The decision, as the case may be, be communicated to the Applicant within a week thereafter.
- (D) If the Applicant is aggrieved by the decision of disciplinary authority on the point of review of suspension, he is at liberty to take recourse of law as may be permissible.
- (E) D.E. initiated against the Applicant be completed within four months from today.
- (F) The Applicant is also directed to cooperate for expeditious disposal of D.E.
- (G) No order as to costs.

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

Mumbai

Date : 22.02.2019

Dictation taken by :

S.K. Wamanse.