

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.168 OF 2023**

**DISTRICT: Mumbai  
SUBJECT : SUSPENSION**

Shri Ganesh Vishwanath Kulkarni )  
Age:- 53 yrs, Occ. Higher Grade Stenographer, )  
In the office of M.P.S.C. Mumbai. )  
R/at B-72, Kamalpushpa, Bandra (W), )  
Mumbai 50. )... **Applicant**

**Versus**

The Secretary, Maharashtra Public Service )  
Commission, (M.S.) Mumbai, O/at Cooperage )  
Telephone Nigam Building, Maharshi Karve Road )  
Cooperage, Mumbai 21. )... **Respondents**

Shri G. A. Bandiwadekar, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent.

**CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)**

**DATE : 03.03.2023.**

**ORDER**

1. The Applicant has challenged the suspension order dated 05.08.2022 whereby he is suspended under contemplation of D.E. on allegation of dereliction of duties while serving as Stenographer (H.G.) with M.P.S.C.

2. Heard Shri G. A. Bandiwadekar, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent.

3. The issue pertains to prolong suspension of the Applicant and non-compliance of directions given by the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. In Ajay Kumar Choudhary's case, the Hon'ble Supreme Court laid

down the outer limit of 90 days for suspension and also directed for reasoned order for extension of suspension where it is necessitated.

4. Thus, the legal position in respect of prolong suspension is no more *res-integra* in view of the Judgment of Hon'ble Supreme Court In **Ajay Kumar Choudhary's** case (supra). It would be apposite to reproduce Para Nos.11, 12 and 21, which are 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.”*

5. In view of above, the currency of suspension should not extend 3 months and where charge sheet is filed within the period of 3 months, the competent authority is required to take review of suspension while serving the charge sheet. It is the mandate of decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case.

6. However, in present case, till date the Applicant is subject to suspension though the period of 3 months is already over. He was suspended on 05.08.2022 and 3 months period was expired on 05.11.2022. However, admittedly no review was taken within the period of 3 months as mandated by the Hon'ble Supreme Court. True, he was served with D.E. on 02.11.2022. However, admittedly that time no review was taken by the M.P.S.C. Learned P.O. fairly concedes this position. However, she adds that review was taken on 18.11.2022 and it was decided to continue the suspension. No such order is forthcoming so as to find out what was the consideration of M.P.S.C. and to find out whether it was objective assessment of situation. The mechanical extension of suspension is not at all contemplated in law. That apart, such belated review on 18.11.2022 is in contravention of the decision of the Hon'ble Supreme Court since no such review was taken within 3 months. There is no substantial progress in D.E. except

appointment of Enquiry Officer and on the other hand Applicant is subjected to prolong suspension.

7. Indeed, the Government of Maharashtra had also issued G.R. dated 09.07.2019 for strict adherence of directions given by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. In G.R. dated 09.07.2019, it is clearly stated that suspension should not exceed 3 months and where charge sheet is served, speaking and reasoned order needs to be passed for extension of suspension. However, in present case, no such review was taken within the period of 3 months. This being the situation, further continuation of suspension is totally impermissible in law. The Applicant is, therefore, required to be reinstated in service. The Respondent is required to take further steps for expeditious completion of D.E. Hence, the following order:-

**ORDER**

- (1) Original Application is allowed partly.
- (2) The suspension of the Applicant stands revoked and he be reinstated in service within ten days from today.
- (3) The Respondent is further directed to expedite the D.E. and it be completed, preferably, within three months from today in accordance to Rules.
- (4) No order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**

*Place: Mumbai*  
*Date: 03.03.2023*  
*Dictation taken by: Vaishali Santosh Mane*

