

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.204 OF 2020

DISTRICT : SOLAPUR

Shri Salim Chandsaheb Shaikh.)
Age : 49 Yrs., Now under suspension was)
Working as Clerk in the office of Special)
Land Acquisition Officer No.1, Solapur.)
R/o. A/P : Mandrup, Tal.: South Solapur,)
District : Solapur.)...**Applicant**

Versus

1. The District Collector.)
Solapur.)
2. The Divisional Commissioner.)
Pune Division, Pune having office)
at Vidhan Bhawan, Pune.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 12.11.2020

JUDGMENT

1. The Applicant has challenged the suspension order dated 20.02.2019 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.
2. Shortly stated facts giving rise to this application are as under :-

The Applicant was Clerk in Land Acquisition Office, Solapur. On 04.02.2019, he was caught in the trap of Anti-Corruption Bureau (ACB) while accepting bribe of Rs.500/- from complainant viz. Sanjay B. Rathod to release the compensation of the land acquired by the Government. In sequel, offence under Sections 7 and 12 of Prevention of Corruption Act, 1988 vide Crime No.103/2019 was registered against the Applicant. Later, he was produced before the learned Special Judge and thereafter, released on Bail. The Respondent No.1 – District Collector, Solapur by order dated 20.02.2019 suspended the Applicant invoking Rule 4(1)(c) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) with retrospective effect from 04.02.2019. Since then, the Applicant is under prolong suspension. He made representation for revocation of suspension and reinstatement in service, but in vain. Ultimately, he has filed the present O.A. challenging the suspension order.

3. The Respondent No.1 resisted the O.A. by filing Affidavit-in-reply *inter-alia* justifying invoking of Rule 4(1)(c) of 'Rules of 1979' contending that it is on receipt of report from ACB, in terms of G.R. dated 10.02.2013, he invoked Rule 4(1)(c) of 'Rules of 1979' and suspension with retrospective effect is legal and valid.

4. This O.A. was initially taken up for hearing on 06.10.2020 with connected O.A. In connected O.A, admittedly, the Applicant therein had spent more than 48 hours in custody. However, in so far as this O.A. is concerned, the Applicant has categorically pleaded that he was not in custody for 48 hours. Apart, the learned Advocate for the Applicant had challenged the impugned suspension order mainly on the ground that the suspension with retrospective effect in Rule 4(1)(c) of 'Rules of 1979' is not contemplated, and therefore, the suspension order dated 20.02.2019 thereby suspending the Applicant with retrospective effect i.e. from 04.02.2019 is unsustainable and bad in law. When this aspect was brought to the notice of Presenting Officer, the matter was adjourned

to facilitate the Respondent No.1 to take remedial measures by issuance of Corrigendum, if so advised.

5. It is on 29.10.2020, the learned P.O. had tendered Corrigendum Order dated 28.10.2020 (taken on record and marked by letter 'X') issued by Collector, Solapur thereby stating that the Applicant be treated as 'under suspension' with effect from the date of order i.e. 20.02.1979 instead of 04.02.2019. In view of this development, the matter was again heard for decision on merit.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the suspension of the Applicant on the following grounds :-

(i) The suspension order dated 20.02.2019 with retrospective effect from 04.02.2019 is bad in law and it deserves to be quashed. The Corrigendum Order dated 28.10.2020 would not rectify material legal defect in suspension order dated 20.02.2019.

(ii) The Applicant is subjected to prolong suspension for near about nineteen months, and therefore, such prolong suspension without taking any steps of review is illegal in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

7. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that in view of Corrigendum Order dated 28.10.2020, the defect has been rectified, and therefore, the suspension of the Applicant from the date of order in view of registration of crime against him in terms of Rule 4(1)(c) of 'Rules of 1979' is legal and valid. As regard prolong suspension, he submits that the competent authority will take review in terms of G.R. dated 14.10.2011. As regard initiation of D.E, he submits that the D.E. is already initiated on 13.01.2020 and it is in process. He fairly concedes that no charge-sheet is filed in Anti-Corruption case.

8. As stated above, the Applicant has been suspended invoking Rule 4(1)(c) of 'Rules of 1979' which *inter-alia* empowers the concerned authority to suspend a Government servant where criminal offence is under investigation, enquiry or trial. However, while suspending the Applicant, the Collector, Solapur suspended him with retrospective effect i.e. from the date of arrest, which is permissible only in case of deemed suspension contemplated under Rule 4(2)(a) of 'Rules of 1979'. The Applicant was arrested on 04.02.2019 and he was remanded to judicial custody. The Applicant had filed Bail Application No.166/2019 and was ordered to be released on Bail on furnishing surety of Rs.25,000/- by order dated 06.02.2019 by the learned Special Judge, Solapur. It is not clear as to whether the surety was furnished immediately on the same day and as to whether he was released from judicial custody before completion of 48 yours. The Tribunal has raised specific query in this behalf to the learned P.O, but no material has been produced to ascertain the factual aspect. Be that as it may, later, the Collector, Solapur had issued Corrigendum Order dated 28.10.2020 and thereby rectified the mistake of suspending the Applicant with retrospective effect. Apparently, it is on the basis of observation made by this Tribunal and much persuasion by learned P.O, the Collector, Solapur seems to have realized the mistake and later issued the Corrigendum Order dated 28.10.2020.

9. True, there could be no suspension with retrospective effect in case of suspension under Rule 4(1)(c) of 'Rules of 1979'. It is only equally true that initially, by Affidavit-in-reply, the Collector, Solapur sought to justify the legality of suspension order dated 20.02.2019. Indeed, at the time of filing reply itself, the remedial measure ought to have been taken and it should have been dealt with in appropriate manner instead attempting to defend the order which is unsustainable in law. Be that as it may, once the Collector, Solapur who is the appointing authority of the Applicant, corrected legal infirmity of retrospective effect of suspension by issuing Corrigendum Order, the suspension cannot be declared illegal.

Admittedly, the Applicant was caught raid-handed while accepting bribe and offence under Sections 7 and 12 of Prevention of Corruption Act, 1988 was registered against him. This being the position, the action of suspending the Applicant invoking Rule 4(1)(c) of 'Rules of 1979' cannot be termed illegal. The legal infirmity about the date from which suspension has come into force is already rectified in clarified. Such correction about the date of effectiveness of suspension period so as to bring it in consonance with law is permissible in fact situation of this case. I have, therefore, no hesitation to sum-up that in view of Corrigendum Order dated 28.10.2020, the suspension order dated 20.02.2019 cannot be termed illegal.

10. As regard prolong suspension, Shri Bandiwadekar, learned Advocate for the Applicant sought to contend that in view of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, the suspension beyond 90 days is unsustainable in law and suspension be treated revoked on expiry of period of 90 days. He referred Para No.21 of decision in **Ajay Kumar Choudhary's** case, which is 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."

11. True, in **Ajay Kumar Choudhary's** case, the suspension beyond 90 days is held impermissible. However, it needs to be noted that it was a matter of suspension arising from D.E. and not suspension on account of registration of crime under the provisions of Prevention of Corruption Act or IPC. There is essential distinction in between suspension in pursuance of D.E. and suspension in pursuance of registration of serious crime against a Government servant. Where employee is suspended in contemplation of D.E, all is within the control of disciplinary authority to ensure issuance of charge-sheet in D.E. Whereas in the matter of suspension in the criminal case, the filing of charge-sheet after completion of investigation is within the domain of investigation agency and depends upon various factors namely sanction for prosecution, etc. Be that as it may, the suspension in **Ajay Kumar Choudhary's** case was on account of contemplated D.E. which was prolonged.

12. Shri Bandiwadekar, learned Advocate for the Applicant further referred to the decision of this Tribunal in **O.A.611/2017 (Naresh Polani Vs. State of Maharashtra, decided on 23.10.2017** and **O.A.35/2018 (Dilip Ambilwade Vs. State of Maharashtra) decided on 05.08.2018** wherein the suspension order was quashed on account of prolong suspension beyond 90 days relying upon the decision in **Ajay Kumar Choudhary's** case. In both these matters also, the suspension was on account of contemplated D.E. Whereas, in the present case, the suspension is on account of registration of crime under the provisions of Prevention of Corruption Act, 1988.

13. In view of above, in the facts and circumstances of the present case, it is not possible to say that the expiry of 90 days' period, the suspension stands revoked. However, it cannot be forgotten that there could be no prolong suspension, if no useful purpose could be served by continuing the employee for longer period and where reinstatement could not be threat or fair trial or D.E. The Hon'ble Supreme Court in this behalf in **State of Tamil Nadu Vs. Pramod Kumar in (Civil Appeal**

No.2427-2428/2018) dated 21st August, 2018 held that the suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee for longer period and reinstatement could not be threat or fair trial or D.E, the suspension should not continue further.

14. The competent authority is, therefore, under obligation to review the suspension of the Government servant periodically and employee cannot be subjected to prolong suspension. Indeed, the Government of Maharashtra had issued G.R. dated 14.10.2011 which *inter-alia* provides for periodical review of suspension of a Government servant suspended on account of registration of serious criminal offence. The G.R. provides detailed instructions/guidelines about the matters to be considered while taking decision of review and reinstatement of a Government servant. In the present case, the period of about 19 months is over, but no charge-sheet is filed in the Criminal Case. The D.E. is also not progressing in which charge-sheet itself has been issued after 11 months and it is not progressing. As per Clause 3 of G.R, where suspension is on account of registration of serious crime, such matters are required to be placed before the Review Committee/Competent Authority after completion of one year from the date of suspension. However, in the present case, though the period of more than 19 months is over, no effort was made to ensure compliance of G.R. dated 14.10.2011. The Applicant is already getting 75% Subsistence Allowance without any work. Therefore, he can be reinstated in service on non-executive post. I am, therefore, inclined to issue direction to the Respondents to take review of suspension of the Applicant within stipulated period. Hence, I proceed to pass following order.

ORDER

(A) The Original Application is allowed partly.

(B) The Respondents are directed to take review of suspension of the Applicant within six weeks from today and shall pass appropriate order.

(C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 12.11.2020

Dictation taken by :

S.K. Wamanse.

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