IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.210 of 2020

Shri Sukhdev Torappa Khandekar,)
Age 44 years, Agriculture Assistant (under suspension),)
Gokul Tarfe Helwak under Taluka Agriculture Officer,)
Patan, Dist. Satara, R/o. A/p. Mhaswad, Tal. Maan,)
Dist. Satara)

...Applicant

Address for service of Notice :
Shri Arvind V. Bandiwadekar, Advocate for the)
Applicant, having office at 9, "Ram-Kripa",)
Lt. Dilip Gupte Marg, Mahim, Mumbai 400 016)

Versus

The Divisional Joint Director of Agriculture,)
Kolhapur Division, Kolhapur,)
Having office at Kasaba Bawade, Kolhapur.)
)**...Respondent**

Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicant.
Shri A.J. Chogule, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 23.06.2020.

J U D G M E N T

1. Heard Shri Bhushan A. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chogule, learned Presenting Officer for the Respondents.

2. The Applicant has challenged the suspension order dated 13.02.2020 whereby he was kept under suspension in contemplation of Departmental Enquiry invoking Rule 4(1) (a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Discipline and Appeals Rules 1979' for brevity)

3. Shortly stated facts giving rise to the Original Application is as under:-

The Applicant was serving as Agriculture Assistant at Patan, District Satara. By order dated 13.02.2020 Respondent namely Divisional Joint Director of Agriculture suspended Applicant in contemplation of Departmental Enquiry invoking Rule 4(1)(a) of 'Discipline and Appeals Rules 1979'. Applicant made representation on 01.03.2020 for revoking of suspension and reinstatement in service on the ground that no enquiry is initiated and he is subjected to prolong suspension without any valid reasons. Respondent did not respond to the representation made by the Applicant. The Applicant, therefore, filed present O.A.

4. Learned Advocate for the Applicant submits that prolong suspension beyond 90 days is unsustainable in law in view of the decision of the Hon'ble Supreme Court in ***(2015) 7SCC 291 (Ajay Kumar Chowdhary V/s Union of India & Ors.)*** as well as in terms of G.R. dated 09.07.2019 issued by the Government which *inter alia* mandates issuance of charge-sheet within 90 days from the date of suspension. He further pointed out that though the period of more than 4 months is over, Respondents did not bother to initiate D.E. or to take review of suspension.

5. Par contra, learned P.O. for the Respondents submits that review of suspension would be undertaken in due course and sought to justify the impugned order.

6. Admittedly, till date no Departmental Enquiry is initiated by issuance of charge-sheet. Apart there is nothing on record to indicate nature of charges or alleged mis-conduct of the Applicant. Be that as it may, the fact remains that the Applicant was suspended in contemplation of the enquiry, but no D.E. is initiated though the period of more than 4 months is over.

7. Needless to mention that the adequacy or sufficiency of material before the disciplinary authority for suspension of a Government employee, normally cannot be interfered with by the Tribunal in its limited jurisdiction. However, at the same time, it is well settled that the Government servant cannot be subjected to prolong or continued suspension indefinitely. Indeed, in terms of various G.Rs, the Government had issued instructions to complete the D.E. in six months where the Government servant is kept under suspension.

8. The Applicant was suspended by order dated 13.02.2020 in contemplation of D.E. but admittedly till date no charge sheet has been served upon the Applicant though the period of more than four months is over. The representation made by the Applicant for revocation of suspension and reinstatement in service in terms of G.R. dated 09.07.2019 is not responded.

9. In so far as the period of suspension is concerned, the issue is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in ***(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors),*** the Hon'ble Supreme Court in para no.21 held 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."

10. 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.

11. As such, in view of law laid down by Hon'ble Supreme Court, the suspension should not exceed 90 days and where charge-sheet in criminal case or in D.E. has been initiated within 90 days, then the concerned authority is required to take decision about extension or revocation of suspension. The concerned authority needs to take objective decision as to whether the continuation of suspension is warranted in the facts of the case. However, in the present case, admittedly, no such exercise has been undertaken by the disciplinary authority or Review Committee.

12. Indeed, the Government of Maharashtra had issued G.R. dated 09.07.2019 consequent to the decision of the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's case*** (cited Supra) acknowledging the legal position that where charge sheet is not issued within three months, the suspension cannot be continued. The Government, therefore, issued direction that Competent Authority should ensure that the charge sheet is issued in D.E. within 90 days from the date of suspension.

13. However, in the present case, admittedly, no charge sheet in D.E. has been issued though the period of four months is over. Indeed, the Hon'ble Supreme Court made it clear that currency of suspension should not extend beyond three months if within this period the memorandum of charges/charge sheet is not served upon the delinquent officer/employee and if the memorandum of charges/charge sheet is served in that event, the disciplinary authority is under obligation to pass reasoned order about the extension or revocation of the suspension, as the case may be. In the present case, there is complete failure on the part of Respondent to adhere the G.R. dated 09.07.2019.

14. In view of above, Original Application can be disposed of with suitable directions. Hence, the following order :-

ORDER

(A) Original Application is allowed partly.

(B) The Respondent is directed to take review of the suspension of the Applicant in terms of G.R. dated 09.07.2019 in the light of observation made by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case and shall pass appropriate order within four weeks from today.

(C) The decision as the case may be, shall be communicated to the Applicant within two weeks thereafter.

(D) If the Applicant felt aggrieved by the decision, he may avail further remedy in accordance to law.

(E) No order as to cost.

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

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