

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.234 OF 2021

DISTRICT : THANE

Shri Vishwanath E. Mhatre.)
Age : 45 Yrs., Working as Junior Clerk)
[under suspension] in the office of)
Tahasildar, Kalyan, District : Thane and)
R/o. 601, Balaji Krupa-2, Gandhi Nagar,)
Dombivali (E), District : Thane.) **...Applicant**

Versus

The District Collector, Thane.) **...Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondent.

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

DATE : 28.10.2021

JUDGMENT

1. The Applicant has challenged the suspension order dated 08.01.2021 whereby he is suspended in view of registration of two crimes and detention in Police custody for more than 48 hours invoking Rule 4(2) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is serving as Revenue Assistant on the establishment of Respondent – District Collector, Thane. On 23.01.2020

on the report filed by Applicant's aunt viz. Smt. Indirabai B. Mhatre, offence vide Crime No.473/2020 under Sections 385, 384, 341, 420, 431 and 506 read with 34 of Indian Penal Code was registered on the allegation that though Applicant had no interest or title in the land, he created false title and threatened to demolish the constitution made by the complainant and extorted huge amount from her. On the same day, one more crime vide Crime No.474/2020 was registered against the Applicant for the offences punishable under Sections 385, 384, 341, 420, 504 and 506 read with 34 of Indian Penal Code on complainant of Mr. R.V. Rajaramsingh, Developer alleging that the Applicant has created false title in land Survey No.12/3/A and cheated him and also recovered huge amount under the threat of demolition of construction. In both these crimes, after investigation, the charge-sheet has been filed in the Court of law vide Criminal Case No.535/2021 and Criminal Case No.545/2021. Simultaneously, for the same charges, the departmental enquiry is also initiated by issuance of charge-sheet dated 14.03.2021. However, there is no progress in these proceedings. The Respondent did not take any steps to review the suspension and continued the Applicant under prolong suspension. It is on this background, the Applicant has challenged the suspension order dated 08.01.2021.

3. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Mrs. A.B. Kololgi, learned Presenting Officer for the Respondents.

4. True, normally the adequacy of material before the Department for suspension cannot be assessed by the Tribunal, since it falls exclusively within the domain of executive. In the present case, undeniably, the Applicant was in custody for more than 48 hours and came to be suspended by operation of law. However, the question is how long Applicant could be subjected to prolong suspension.

5. The legal position in respect of prolong suspension is no more res-integra in view of Judgment of Hon'ble Supreme Court in **(2015) 7 SCC**

291 (Ajay Kumar Choudhary Vs. Union of India & Anr.). 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 prepare 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.”

6. 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.

7. Shri G.A. Bandiwadekar, learned Counsel for the Applicant further referred to the decision of Hon'ble Madras High Court in **W.P. No.29881 of 2010 and M. P. No.2 of 2010 (V. Santhanagopalan V/s. The Commissioner/Director of Rural Development & Panchayat Raj), decided on 07.12.2017**. In the said case, the Petitioner was kept under suspension in view of the registration of crime under Prevention of Corruption Act as well as in contemplation of D.E. by suspension order dated 29.07.2009. However, he was subjected to prolong suspension. Hon'ble Madras High Court relying on the decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra), quashed the suspension order and directions were issued to post the Petitioner on non-sensitive post as the administration deems fit.

8. At this juncture, it would be material to note that the Government had issued instructions from time to time by G.R. dated 14.10.2011, 31.01.2015 and 09.07.2019 to take review of the suspension of the government servant so that they are not subjected to prolong suspension. As per, G.R. dated 14.10.2011, the Review Committee was under obligation to take periodical review after every three months. Clause 4 (a) of G.R. states that where the government servant is suspended in view of registration of serious crime against him and the Criminal Case is not decided within two years from the date of filing of

charge sheet then the Review Committee may recommend for reinstatement of the government servant on non- executive post. Whereas, as per Clause 4(b) of G.R., where the period of two years from filing of charge sheet is not over or where no charge sheet is filed, in that event also, the Review Committee can make recommendation for revocation of suspension and to reinstate the government servant having regard to the guidelines mentioned in G.R.

9. As such, as per the decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, the suspension should not extend beyond three months, if within this period, charge-sheet is not served upon the delinquent employee and where charge-sheet is served, a reasoned order must be passed for the extension of suspension. In the present case, the charge-sheet in Criminal Case is filed on 15.07.2021 and on 15.08.2021. In so far as DE is concerned, it is initiated within three months from the date of suspension order. However, material to note that the suspension was consequent to detention in Police custody in view of registration of crimes. Though charge-sheets in Criminal Case were filed long back and charge-sheet in DE is also served upon the Applicant, the Applicant is subjected to prolong suspension without taking any steps to review the suspension in terms of G.Rs. dated 14.10.2011, 31.01.2015 and 09.07.2019. Needless to mention that prolong suspension without taking any steps as to whether the continuation of suspension is necessary, a Government servant cannot be subjected to such prolong suspension. Now, a period of more than 10 months is over, but no such exercise is undertaken. All that, learned P.O. submits that review will be taken soon.

10. In view of above, the present O.A. is required to be disposed of by giving suitable directions to the Respondent to take review of suspension of the Applicant. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent is directed to take review of suspension of the Applicant and shall pass appropriate order within six weeks from today.
- (C) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (D) If Applicant felt aggrieved by the decision, he may avail further remedy in accordance to law.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 28.10.2021

Dictation taken by :

S.K. Wamanse.

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