IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.24 OF 2019

DISTRICT : SOLAPUR

Shri Sanjeevkumar M. Bansode.)
Age : 47 Yrs., Occu.: Junior Clerk in the Office of)
District Commandant, Home Guards, Solapur.)**...Applicant**

Versus

The Commandant General.)
Home Guards, M.S, having office at Old)
Secretariat Extension, 3rd Floor, M.G. Road,)
Mumbai - 400 0032.)**…Respondent**

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

Ms. N.G. Gohad, Presenting Officer for Respondent.

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

DATE : 31.01.2019

JUDGMENT

1. This Original Application is being decided finally at the stage of admission wherein the challenge is to the suspension order dated 16th December, 2013 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to the application are as follows :

The Applicant was working as Head Clerk in the Office of District Commandant, Home Guard, Solapur. By impugned order dated 16th December, 2013, he was kept under suspension invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 in contemplation of Departmental Enquiry (D.E.). The Respondent alleged that, while the Applicant was working as Head Clerk, he misrepresented his superior Officers and has shown laxity and negligence in the work allotted to him. In preliminary enquiry, he was found guilty. It is on this allegation, the Applicant came to be suspended and his Head Quarter is kept at Amravati.

Thereafter, the Applicant made representation on 20.12.2013 contending that the suspension is punitive as well as his Head Quarter is kept at Amravati deliberately as it is far away from Solapur, and therefore, the action taken by the Respondent is vindictive. Accordingly, he made request for change of Head Quarter, but in vein. Ultimately, the Applicant has approached this Tribunal challenging the suspension order, which is continued for more than 5 years.

3. Following are the grounds relied to challenge the impugned transfer order.

(A) Since the date of suspension order dated 16.12.2013, the period of more than 5 years is over but no decision has been taken on his representation to change Head Quarter or to revoke suspension.

(B) Though the suspension is passed in contemplation of D.E, no charge-sheet in D.E. has been served in the span of 5 years.

(C) Non-compliance of instructions contained in G.R. dated 14th October, 2011 which mandates the completion of D.E. within six months.

(D) Non-compliance of instructions contained in G.R. dated 14th October, 2011 particularly Clause No.7(a) which mandates that, where the D.E. is not completed within six months, the disciplinary

authority may reinstate the delinquent in service by giving posting on non-executive post.

(E) In view of law laid down by Hon'ble Supreme Court in ***(2015) 7 SC 291 (Ajay Kumar Choudhary Vs. Union of India),*** the continued and prolong suspension is illegal and unsustainable.

(F) At the time of suspension, the Applicant was serving at Solapur and his Head Quarter has been kept at Amaravati which is far away from Solapur deliberately and he has been victimized.

4. On the above grounds, the Applicant contends that the impugned suspension order dated 16.12.2013 be quashed and set aside with reinstatement in service with all consequential service benefits.

5. The Respondent resisted the application by filing Affidavit-in-reply *inter-alia* denying the entitlement of the Applicant for the relief claimed. It is not in dispute that, by impugned order dated 16th December, 2013, the Applicant was kept under suspension in contemplation of D.E. In this behalf, the Respondent contends that the Applicant was found guilty for serious misconduct while discharging the public duties, and therefore, he was kept under suspension in contemplation of regular D.E. The Respondent further contends that subsequently, the FIR under Section 409 and 420 of Indian Penal Code was registered against the Applicant on 18.03.2014 on the allegation that the Applicant has misappropriated Government money and thereby committed an offence of cheating and criminal breach of trust. During investigation, the amount of Rs.1,42,915/- was recovered from the Applicant. Accordingly, in Criminal Case, the charge-sheet has been filed on 11.03.2005 in the Court of Judicial Magistrate 1st Class, Solapur. As regard non-initiation of D.E, the Respondent contends that the decision to initiate the D.E. will be taken after the decision of Criminal Case. In so far as non-compliance of instructions contained

in G.R. dated 14.10.2011 are concerned, the Respondent comes with a plea that the review of suspension will be taken soon. With these pleadings, the Respondent contends that the challenge to the suspension order is devoid of merit and prayed to dismiss the application.

6. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

7. At the very outset, the following facts are emerges as an admitted position.

(I) Though the period of more than 5 years is over from the date of suspension, no charge-sheet in D.E. has been issued.

(II) No steps are taken to take review of the suspension of the Applicant in terms of G.R. dated 14.10.2011.

8. Shri A.V. Bandiwadekar, learned Advocate for the Applicant strenuously urged that the prolong suspension of the Applicant which is for more than 5 years is unsustainable in law and there is complete failure on the part of Respondent to adhere the instructions contained in G.R. dated 14.10.2011. To drive home his point, he placed reliance on the Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case (cited supra) and also placed reliance on the Judgment of Hon'ble Bombay High Court in ***2004(1) Mh.LJ 581 (Madanlal Sharma Vs. State of Maharashtra & Ors.)***. He also referred the Judgment passed by this Tribunal in ***O.A.No.34 of 2018 (Dilip Ambilwade Vs. State of Maharashtra) decided on 11th September, 2018***.

9. Per contra, Ms. N.G. Gohad, learned P.O. perhaps realizing the inaction on the part of Respondent to take follow-up action tried to contend that the decision about the revocation of suspension in terms of G.R. dated 14.10.2011

will be taken soon. She further sought to contend that, in view of registration of FIR under Section 409 and 420 of I.P.C. against the Applicant, the Applicant was not reinstated in service.

10. Normally, the adequacy of material before that authority at the time of taking decision of suspension does not fall within the scope and ambit of judicial review. Needless to mention that the question as to whether the facts of the case warrants suspension of the Government servant in contemplation of D.E. is a matter of exclusive domain of the employer and the decision has to be based on the objective satisfaction of the concerned authority. Therefore, the question as to whether the suspension was justified cannot be gone into present set of facts. However, the important question crop-up as to whether the suspension can be continued indefinitely without bothering to take follow-up action as mandated by G.R. dated 14.10.2011 as well as law laid down by Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case (supra).

11. As stated above, the suspension order was issued in contemplation of D.E. However, admittedly, till date, the D.E. is not initiated. On the contrary, the Respondent come with a stand that the decision to initiate D.E. against the Applicant will be taken only after the decision of Criminal Case. Then, naturally, the question pose, whether the Applicant can be kept under prolong suspension only because the Criminal Case is not decided and the answer is in negative. It is well settled that the suspension of Government servant cannot be continued indefinitely. When the Respondent suspended the Applicant in contemplation of D.E, then he ought to have initiated D.E. on the basis of material which forms the basis for suspension of the Applicant. Having not done so, the Applicant cannot be continued under prolong suspension, so as to wait for the decision in Criminal Case indefinitely. As such, the stand taken by the Respondent that the decision

in D.E. will be initiated only after the decision of Criminal Case, is not tenable in law.

12. As regard registration of FIR against the Applicant on 18.03.2014 under Section 409 and 420 of IPC, this seems to be subsequent event. Apart, though the offence was registered on 18.03.2014, the charge-sheet has been filed on 11.03.2015 i.e. after about a period of one year. Besides, even from the date of registration of offence, the period of more than 4 years and 10 months is over. As per law laid down by Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case (supra), where the employee is kept under suspension, the charge-sheet in Criminal Case or D.E. should be served within three months. The Hon'ble Supreme Court further directed that the currency of suspension should not extend beyond three months and if the memorandum of charges or charge-sheet is served, the competent authority i.e. disciplinary authority is under obligation to pass a reasoned order for extension of suspension, depending upon the facts of the case. However, in the present case, neither D.E. has been initiated nor charge-sheet has been filed within 90 days. As such, the inaction and laxity on the part of Respondent to take follow-up action after suspension of the Applicant is explicit from the record.

13. Merely because subsequent to the suspension order, the crime under Section 409 and 420 of IPC was registered against the Applicant that itself cannot be the ground to continue suspension for a period of 5 years. The Respondent ought to have taken the objective decision about the revocation of continuation of suspension and having not done so, such prolong suspension becomes illegal and unsustainable.

14. Now, turning to G.R. dated 14.10.2011 as stated above, there is complete failure on the part of Respondent to follow the instructions contained therein. Whereas, the suspension is because of registration of crime against the

employee, then in that event, after one year from the date of suspension, the Review Committee needs to take decision about the revocation or continuation of the suspension. The decision should be objective and record based. As per Clause 4, where Criminal Case is not decided within two years, then the Review Committee needs to take decision about the revocation of suspension and to reinstate the employee on non-executive post. Whereas, as per Clause 7(a), where suspension is in contemplation of D.E, then the disciplinary authority is required to take review of such matter after three months from the date of suspension. It further mandates that, where the D.E. is not completed within six months, such Government employee can be reposted on non-executive post after revocation of suspension. As such, there are exhaustive and elaborate instructions in G.R. dated 14.10.2011 about the follow-up action to be taken by the Review Committee as well as disciplinary authority. However, in the present case, there is complete inaction as well as failure on the part of Respondent to abide instructions contained in G.R. dated 14.10.2011.

15. At this juncture, it would be apposite to refer the Judgment in ***Madanlal Sharma's*** case (cited supra) wherein Para No.15 is as follows :

> *"**15**. Indefinite continuation of suspension has always been declared invalid by a catena of decisions where it was demonstrated that for continuation of the suspension, the employee was not responsible. In addition, if the disciplinary authority did not proceed by issuing chargesheet and appointing the Enquiry Officer so as to initiate departmental proceedings within a reasonable period from the date of suspension, such suspension order continued for years together, get vitiated and, therefore, it is required to be declared as invalid as well as illegal. We may in this regard refer to the decision of the Apex Court in the case of K. Sukhendar Reddy vs. State of A.P. and another, (1999) 6 SCC 257."*

16. Furthermore, 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."*

17. 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.

18. As regard Head Quarter of the Applicant at Solapur, no reason for keeping Head Quarter, Solapur is forthcoming. At the time of suspension, the Applicant was serving at Solapur, but his Head Quarter has been kept at Amravati, which is more than 500 kms. from Solapur. There is absolutely no justification to keep his Head Quarter at such far place. The inference, therefore, emerges that deliberately his Head Quarter was kept at Amravati, so as to cause him severe hardship which is nothing but vindictive.

19. As such, in view of law laid down by Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case and by Hon'ble Bombay High Court in ***Madanlal Sharma's*** case (cited supra), there is no escape from the conclusion that the prolong suspension of the Applicant is illegal and unsustainable.

20. Now, question comes about deemed date of revocation of suspension. As per prayer Clause 9(b), the Applicant seeks declaration of revocation of suspension on completion of period of six months from the date of suspension i.e. 16.12.2013. This relief is sought in view of Clause 7(a) of G.R. dated 14th October, 2011 which mandates completion of D.E. within six months. However, in the present case, the stand taken by the Respondent is that, because of registration of crime on 18.03.2014 under Section 409 and 420 of I.P.C, he was not reinstated. As stated above, the suspension order was not in reference to

registration of crime, but it was in contemplation of D.E. and registration of offence seems to be subsequent event. Even assuming that the alleged misconduct for which suspension order was issued on 16.12.2013 was linked to the disclosure of criminal offence which was disclosed later on, in that event also, in terms of G.R. dated 14.10.2011, the Respondent was under obligation to take review of suspension after one year from the date of suspension. However, admittedly, no such exercise was undertaken. Therefore, it would be appropriate to revoke suspension after one year from the date of suspension and the Applicant needs to be declared entitled for deemed date of revocation accordingly.

21. As regard posting and reinstatement at the time of suspension, the Applicant was serving at Solapur. In view of the stand taken by the Respondent that, no D.E. will be initiated till the decision in Criminal Case, the question of apprehension of interference of the Applicant in D.E. if he is posted at the same place does not survive. Furthermore, the period of more than 5 years from the date of suspension is over, and therefore, there is no propriety now to post the Applicant on non-executive post.

22. The necessary corollary of aforesaid discussion leads me to sum up that the prolong suspension of the Applicant is illegal and it deemed to have been revoked on completion of one year from the date of suspension and entitled to reinstatement in service. Hence, the following order.

O R D E R

(A) The Original Application is allowed.

(B) The suspension order dated 16th December, 2013 is hereby quashed and set aside.

(C) The suspension of the Applicant shall be deemed to be revoked on completion of one year from the date of suspension and is entitled to consequential service benefits from such deemed date of revocation of suspension.

(D) The Applicant be reinstated in service and posting order be issued within two weeks.

(E) The Applicant shall not tamper evidence, which is the subject matter of Criminal Case subjudice against him.

(F) No order as to costs.

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

Mumbai
Date : 31.01.2019
Dictation taken by :
S.K. Wamanse.
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