

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

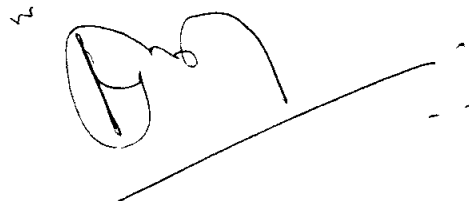
ORIGINAL APPLICATION NO.240 OF 2016

DISTRICT : SOLAPUR

Shri Shivraj R. Rathod.)
Age : 43 Yrs. Working as Circle Officer,)
Sub-Division No.2, (Now under suspension)
in the office of Tahasildar, South Solapur,))
Collector's Office Compound, Solapur &)
R/o. 23, Mantri Chandak Residency,)
Near Nutan High School, Vijapur Road,)
Solapur.)...**Applicant**

Versus

1. The District Collector.)
Solapur, Having Office at)
Siddheshwar Peth, Solapur.)
2. The Divisional Commissioner,)
Pune Division, Pune, having office)
at Old Council Hall, Pune -1.)
3. The State of Maharashtra.)
Through Principal Secretary)
(Revenue), Revenue & Forest Dept.,)
Mantralaya, Mumbai - 400 032.)...**Respondents**



Shri A.V. Bandiwadekar, Advocate for Applicant.

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

P.C. : R.B. MALIK (MEMBER-JUDICIAL)

DATE : 18.11.2016

JUDGMENT

1. This Original Application (OA) is brought by a suspended Circle Officer, Sub Division No.2 in the Office of Tahsildar, South Solapur disputing the order of suspension dated 21.1.2016 made by the District Collector, Solapur on the ground of the alleged dereliction of duty. It is an indisputable factual position that the impugned order is made under Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. However, so far, not only has no departmental enquiry (DE) started but even a charge-sheet has not been issued.

2. I have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer (PO) for the Respondents.



3. A perusal of the impugned order would show that there was a surprise check in the matter related to illegal excavation on 22.12.2015 at 10.00 in the night. The truck mentioned therein was seized and the Driver mentioned to the surprise check party that the sand therein was headed to Talegaon. When these proceedings were going on, an attempt was made to contact the Applicant on phone, but his phone was switched off. This illegal excavation was not checked by the Applicant who was working as Block Development Officer nor did he do anything to arrest the movement of the drugs. That had resulted in huge financial loss to the Government, and therefore, imposing certain conditions that are normally done while placing a Government servant under suspension, the Applicant was placed under suspension.

4. On 3.2.2016 which was within a few days of the impugned order, the Applicant carried the matter in departmental appeal which has remained pending till date and one of the issues quite vociferously raised by the Respondents is that till such time as the said appeal was decided, this OA is not maintainable and no orders should be made herein. I shall, to the extent necessary, deal with this issue presently.

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5. One other event that took place was that at the time of the suspension of the Applicant, he was posted at Vinchur in South Solapur. But in the impugned order, it was mentioned that during suspension, his Head Office would be in South Solapur at Karmala. The Applicant made a representation requesting his posting during suspension at Vinchur which was rejected by the order of 1st March, 2016 (Exh. 'R-3', Page 89 of the Paper Book (PB)).

6. As already indicated at the outset, even as a period of about 10 months has elapsed far from initiating the DE even a charge-sheet has not been issued in the matter and the Applicant remains under suspension as it was and as it is. In this behalf, useful reference could be made to the Judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India (2015) 2 SCC (L & S) 455 = (2015) 7 SCC 291**. In some other OAs, this Tribunal also dealt with a similar matter. I had an occasion recently to deal with a similar matter in **OA 405/2016 (Smt. Preeti H. Wig Vs. Government of Maharashtra and one another)** in which I extensively discussed **Ajay Choudhary** (supra). It will be most advantageous to fully reproduce from **Preeti Wig's** case Paras 12 & 13 which seek guidance from **Ajay Choudhary**.



“12. Mr. M.D. Lonkar, the learned Advocate for the Applicant relied upon a very apposite and pertinent Judgment of the Hon’ble Supreme Court in the matter of **Ajay Kumar Choudhary Vs. Union of India (2015) 2 SCC (L & S) 455 = (2015) 7 SCC 291**, Their Lordships discussed in extenso with the help of earlier decided cases the issue of suspension of an employee in the circumstances such as they are. I had an occasion to take guidance from **Ajay Choudhary** (supra) in a fasciculus of 4 OAs, the first one being **OA 167/2016 (Shri Anand B. Dalvi Vs. The Additional Commissioner of Police and one another and other OAs, decided on 15.10.2016.** In Para 10 of that common Judgment, I relied upon another Judgment rendered by me in **OA 26/2015 (Shri Anil R. Parab Vs. Government of Maharashtra and one another, dated 15.12.2015)** wherein also, I took guidance from **Ajay Choudhary** (supra) and also from **O.P. Gupta Vs. Union of India (1987) 4 SCC 328 and State of Andhra Pradesh Vs. N. Radhakrishna (1998) 4 SCC 154** and I reproduced Para 28 of my Judgment wherein I had reproduced the observations of the Hon’ble



Supreme Court. The said Para 28 in fact needs to be fully reproduced hereinbelow for the significance of **Ajay Choudhary**, which is mainly an authority on suspension preceding the framing of charge.

“28. In the above background Their Lordships were pleased to make observations which are of great moment and education to all students of law. In that connection para nos. 11 and 12 (pages 297 and 298 of S.CC. need to be fully reproduced.

“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 periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspension person



suffering 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 now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right 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 grounds 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 prosecution the accused shall enjoy the right to a speedy and public trial.”

13. The above discussion would, therefore, make it very clear that the employer cannot be allowed to place the employee under suspension and let the things remain static for an indefinite period of time. It must be clearly understood, however, that as per Rule 4 of the Maharashtra



Civil Services (D & A) Rules, 1979, the Government has undoubtedly powers to place the would be delinquent under suspension if a DE was under contemplation. However, that is a provision as per a Rule framed under the proviso to Article 309 of the Constitution, and therefore, if the Hon'ble Supreme Court has been pleased to lay down the law interpreting such a provision in **Ajay Choudhary** (supra), the judicial fora will have to apply those principles in interpreting the Rule like Rule 4 herein relevant. It is possible in certain cases that due to circumstances which cannot be exhaustively enumerated the finalization of the DE might take time. It is also possible that reinstatement of a suspended employee could bring about a situation where he would be in a position to influence the course of the enquiry by various ways and means which again is a fact specific matter and not capable of being enlisted exhaustively. Therefore, there can be circumstances requiring a proper approach to be adopted in such matters. However, by no stretch of imagination can the law laid down by the Hon'ble Supreme Court by virtue of Article 141 of the Constitution can be allowed to be

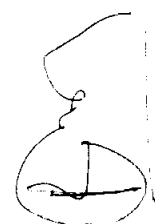


trifled with and no judicial fora can even think of doing so. The expeditious movement in the matter of suspension is absolutely imperative and as held by the Hon'ble Supreme Court in effect in **Ajay Choudhary** (supra) other than suspension, other measures could always be adopted post revocation of suspension. It is always possible and in fact, I may clearly mention here, it is possible here also that certain measures could be adopted including in the matter of posting post revocation of suspension, so as to ensure that there was no attempt to interfere with, influence or affect the enquiry if and when it gets underway. But then to keep the things hanging in limbo, despite the clear authority of the Hon'ble Supreme Court in **Ajay Choudhary** (supra) is unacceptable.”

7. It is pertinent to note that **Ajay Choudhary** is the law laid down by the Hon'ble Supreme Court and all the other judicial pronouncements by any Court below the Hon'ble Supreme Court will have to be read in the light of **Ajay Choudhary** (supra). It must have become quite clear that the principles laid down by the Hon'ble Supreme Court in **Ajay Choudhary** (supra) have been faithfully

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observed in its breach by the Respondents. The power to place a public servant under suspension under the provisions like Rule 4 of the MCS (D & A) Rules, 1979 has its own particular hue and object. It cannot be either directly or indirectly used as a tool to punish the public servant. I have already set out hereinabove the nature of the accusations against the Applicant. The simplest of the questions to ask would be as to whether the Applicant would be in any position to influence the course of the DE which in fact has not even been initiated so far for which the administration will have to be insulated from him. That does not appear to be so for the simple reason that the Collector himself had taken action and he himself is an important witness to the event. It is ridiculously simple that the Applicant will be in no position to influence the course of enquiry in which Collector himself would be the person who has initiated suspension proceedings. I express no opinion on the merit of the allegations. There are powers which can be invoked to make sure that post reinstatement even otherwise the facts relating to the enquiry are kept out of harmsway as far as delinquent is concerned. But that does not mean that he should be kept under suspension as if forever and I refuse to make light of the fact that even after 10 months, the charge has not even been framed. To still allow the suspension to continue



would be contrary to the principles laid down by the Hon'ble Supreme Court in **Ajay Choudhary** (supra), and therefore, I am very firmly of the view that although in the normal set of circumstances, there are jurisdictional restraints for a forum exercising jurisdiction of judicial review of administrative action but no such restraint would apply for the simple reason that there is no option other than to apply the law laid down by the Hon'ble Supreme Court in **Ajay Choudhary** (supra).

8. I have already indicated hereinabove that the main stay of Respondents' case is that the Applicant himself has preferred an appeal on the administrative side and it was pending, and therefore, under the provisions of Section 20 of the Administrative Tribunals Act, this OA will not be maintainable at all and no orders be made here on.

9. I had an occasion to deal with this argument even in **Preeti Wig's** case and instead of adding something of my own, I think I had better reproduced Paras 9, 10 and 11 therefrom.

“9. Smt. K.S. Gaikwad, the learned Presenting Officer (PO) in stoutly opposing the OA told me that now that the appeal is pending, the

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Applicant could not have asked for any relief in this OA. It appears to be her case that unless the said departmental appeal above referred to was decided, this OA is a still born judicial proceeding, and therefore, no relief can be granted to the Applicant. Mr. Lonkar, the learned Advocate countered these submissions. I presume that the learned PO is relying upon the provision of Section 20 of the Administrative Tribunals Act, 1985. For the sake of facility, the said provision to the extent hereto relevant needs to be reproduced.

“20. Applications not to be admitted unless other remedies exhausted.-

- (1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.
- (2) For the purposes of sub-section (1) a person shall be deemed to have availed of all the remedies available to him under the



relevant service rules as to redressal of grievances,-

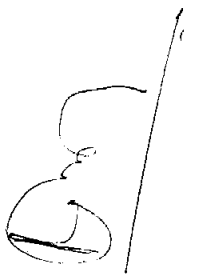
(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.”

10. Having reproduced the said provision, I find that it will have to be read as whole and each and every word thereof will have to be taken as a live expression of legislative mandate and if that be so, the word, “ordinarily” has its own

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connotation. While it is no doubt true that the Tribunal would normally insist on the exhaustion of, "other remedies" before invoking its jurisdiction by a party concerned, but it is not an absolute bar. That is in my view, the exemplification of the word, "ordinarily". The facts are bound to be myriad and incapable of being enumerated exhaustively. But then, the Tribunal ultimately has to take into consideration the interest of justice rather than by an artificial interpretative proves to shackle its hands for good. Therefore, in a certain set of facts, it is possible that the Tribunal would like to await the ultimate outcome of the administrative avenues. While in some other cases, depending upon the facts, the Tribunal may entertain the OA proceedings. Had it not been so, the legislature would not have employed the word, "ordinarily". The manner of exercise of jurisdiction is a factor that should not be confused with total absence thereof. In the set of the above facts and circumstances, I am so disposed as to hold that this OA can safely be entertained and decided on its own merit. Ultimately, whenever the pending appeal is



decided and if this OA will have been decided by then, all of us know as to what would prevail. Quite clearly, this Tribunal has no power or jurisdiction to regulate the said appeal proceedings, and therefore, especially in the context of the facts that even draft charge-sheet has not been framed and six months have elapsed, I do not think, the consideration of the request of the Applicant should be deferred endlessly.

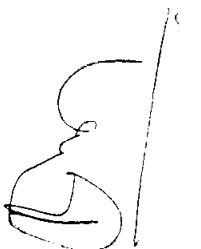
11. A suspended employee's case is required to be reviewed periodically. But herein a charge-sheet itself has not even been framed. It is a far cry to expect that there would be any review as such. That being the state of affairs, I am clearly of the view that a case is made out by the Applicant for consideration of the issue of her suspension and a case is made out, even to allow her OA."

10. Having reproduced the above referred Paragraphs, it is not necessary in my view to add anything more of my own herein. In **OA 112/2011 (Shri Prakash S. Salvi Vs. State of Maharashtra and one another,**




dated 14.10.2011) although the facts were different, but the issue of the OA being pre-mature for the same reasons as herein was discussed and no inhibition was found therein. In **OA 598/2015 (Shri Lalbahadur R. Katare Vs. Additional Chief Secretary, Finance, dated 3.2.2016)** although on facts, the OA was dismissed but not for the reason herein relevant. In **OA 444/2015 (Dr. Narender O. Bansal Vs. Dean, Grant Medical College and Sir J.J. Group of Hospital and 2 others, dated 28.9.2015)**, a Single Bench of the Hon'ble Chairman gave directions that if the charge-sheet was not filed within 15 days thereof, the suspension would stand revoked. I have already indicated hereinabove that as far as this issue is concerned, it will now have to be read in the light of the law laid down by the Hon'ble Supreme Court in **Ajay Chouduary** (supra).

11. The perusal of the order dated 21.7.2016 in this OA made by the Hon'ble Chairman read along side, the Affidavit-in-reply filed by the Respondent No.2 on 31st August, 2016 (Page 100 of the PB) would make it clear that the appeal was preferred by the Applicant and it was pending. It appears to be the case of the Respondents that since this OA was pending, the appeal was not decided and this appears to be absolutely unacceptable. It is somewhat



surprising that on one hand, the plea is raised that the OA is not maintainable pending appeal and then not deciding the appeal because the OA is pending. Such actions can only be described by employing a soft equivalent of the word, "chicanery" and accordingly denounced. It was always open to the concerned authority to decide the appeal one way or the other. If he has not done it and if it is found that there is no illegality in entertaining this OA for the reasons set out hereinabove, the order considered appropriate in the circumstances will have to be made herein. I am, therefore, so disposed as to hold that the impugned order of suspension in the set of facts and circumstances herein is absolutely unsustainable. It will have to be quashed and set aside and the Applicant will have to be reinstated to the said post at Vinchur which he held at the time of his suspension.

12. The order herein impugned stands hereby quashed and set aside. The suspension of the Applicant is revoked with immediate effect. He is directed to be reinstated and posted at the place he was working at when he was suspended by virtue of the impugned order within one week from today. The Respondents shall take an appropriate decision about treating the period of suspension in accordance with the Rules as expeditiously



as possible and preferably within a period of three months from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

(R.B. Malik)
Member-J
18.11.2016

18-11-16

Mumbai

Date : 18.11.2016

Dictation taken by :

S.K. Wamanse.

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