

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.255 OF 2020**

**DISTRICT : PUNE**

Smt. Arifa Riyaj Shaikh. )  
Age : 43 Yrs., Working as Staff Nurse, )  
Sassoon General Hospital, Pune – 1 and )  
residing at Shanti Prime Building, )  
Flat No.105, N.D.A. Road, Wrje Malwadi, )  
Pune – 411 058. )...**Applicant**

**Versus**

The Dean. )  
Sassoon General Hospital, J.N. Road, )  
Pune – 1. )...**Respondent**

**Mr. Arvind A. Bandiwadekar, Advocate for Applicant.**

**Mr. A.J. Chougule, Presenting Officer for Respondent.**

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

**DATE : 23.07.2020**

**JUDGMENT**

1. The Applicant has challenged the suspension order dated 31.03.2020 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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

The Applicant was serving as Staff Nurse, Sassoon General Hospital, Pune. In the wake of Covid-19 pandemic, the Applicant was deputed at Airport, Pune amongst others to check incoming passengers by order dated 08.03.2020. Accordingly, she was discharging her duties at Airport, Pune. She allegedly spread one news on social media complaining that there is lack of facilities including non-supply of Personal Protection Equipment to the staff attached at Airport duty. The said message (news) allegedly made viral by the Applicant has been considered serious misconduct by the Respondents. Therefore, the Medical Superintendent, Sassoon General Hospital, Pune forwarded proposal to the Respondent – Dean, Sassoon General Hospital, Pune for appropriate action against the Applicant. In pursuance of it, preliminary enquiry was conducted. In preliminary enquiry, it was opined that the Applicant is misusing Staff Nurses Association and causing obstruction in the fight of Covid-19 disease by spreading false news. It is on this background, the Respondent by order dated 31.03.2020 suspended the Applicant invoking Rule 4(1)(b) which *inter-alia* provides for suspension, if the employee indulged himself in activities pre-judicial to the interest of the security of the State. The Applicant made various representations for revocation of suspension and reinstatement in service but in vain. Ultimately, she filed the present O.A. challenging the legality of suspension order dated 31.03.2020 particularly on the ground of competency of Respondent amongst others.

3. The Respondents resisted the O.A. by filing Affidavit-in-reply *inter-alia* contending that the Applicant has committed serious misconduct by spreading false message on social media, and therefore, suspension by order dated 31.03.2020 is justified.

4. In so far as reply filed by Respondent is concerned, material to note that though the Applicant has raised the ground of competency of Respondent, the reply is totally silent as to how the Respondent in law competent to suspend the Applicant.

5. Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant assailed the impugned suspension order on the following grounds :-

(i) Applicant is Class 'C' employee and the appointing authority and disciplinary authority is Director of Medical Education and Research, Mumbai and Respondent – Dean, Sassoon General Hospital, Pune is not competent to exercise the powers of suspension.

(ii) Respondent has invoked Rule 4(1)(b) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979 for brevity) which *inter-alia* provides for suspension of the employee, if he indulged in activities pre-judicial to the security of the State and the same is not at all attracted in the facts and circumstances of the present matter.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer made feeble attempt to justify the suspension order merely stating that in view of misconduct attributed to the Applicant, the suspension of the Applicant was necessitated to maintain the discipline in the Department, particularly in view of Covid-19 pandemic situation.

7. In view of submissions advanced at the Bar, short issue posed for consideration is whether the Respondent/Dean, Sassoon General Hospital, Pune is competent to suspend the Applicant in law and the answer is in negative.

8. It would be apposite to reproduce Rule 4 of 'Discipline and Appeals Rules 1979' for ready reference, which is as follows :-

**“4. Suspension :**

(1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other authority empowered in the behalf by the Governor by general or special order may place a Government servant under suspension –

- (a) where a disciplinary proceeding against him is contemplated or is pending, or
- (b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or
- (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial ;

*Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.*

(2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority –

(a) with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forth-eight hours.

(b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

(3) ..... ”

(4) ..... ”

[underline is supplied]

9. Thus, it is explicit from Rule 4(1) of ‘Discipline & Appeal Rules 1979’ that the suspension order should be passed by appointing authority or any authority to which the appointing authority, is subordinate or disciplinary authority or any other authority empowered in this behalf by the Government by special or general order.

10. Now, turning to the facts of the present case, the suspension order has been passed by Dean, Sassoon General Hospital, Pune who is admittedly not appointing authority of the Applicant. There is absolutely nothing on record to point out that Dean, Sassoon General Hospital is empowered by the Governor by general or special order. Indeed, there is

clear admission in Para No.26 of reply that it is Director, Medical and Education Research, Mumbai who is Applicant's appointing authority as well as disciplinary authority. Para No.26 is as follows :-

**“26.** With reference to contents of Ground no.6.23, 6.24, I say and submit that, as per Maharashtra Civil Services Rules 1979 (Discipline and Appeal), copy of Applicant's suspension order dated 31.03.2020 is forwarded to the Applicant's appointing/disciplinary authority i.e. Director, Medical Education and Research, Mumbai.”

11. As such, there is no denying that the Respondent – Dean, Sassoon General Hospital, Pune is neither appointing authority nor disciplinary authority of the Applicant and on this ground itself, the impugned order being passed without jurisdiction is liable to be quashed.

12. Apart, there is no compliance of proviso to Rule 4(1) of 'D & A Rules 1979' which inter-alia provides that where the order of suspension is made by an authority lower than appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made. As such, even assuming for a moment that the Respondent is disciplinary authority, in that event also, there being no compliance of proviso to Rule 4(1) of 'D & A Rules 1979', the impugned order is liable to be quashed. Mere forwarding of suspension order to the appointing authority is not enough and law contemplates forwarding of report forthwith to the appointing authority explaining circumstances justifying suspension done by the said authority.

13. Furthermore, as rightly pointed out by the learned Advocate for the Applicant that Rule 4(1)(b) of 'D & A Rules 1979' which is invoked for the suspension of the Applicant is not at all attracted to the present case. It attracts where the employee engaged himself in activities pre-judicial to the security of the State. Whereas, in the present case, the Applicant has been suspended attributing certain misconduct of spreading wrong message of not providing PPE to the staff and these allegation *per-se* cannot be construed activities pre-judicial to the security of the State. At

the most, it could be the case attributing Rule 4(1)(a) of 'D & A Rules 1979' which provides for suspension of the employee where the disciplinary action is contemplated for misconduct. Thus, apparently, the Respondent acted in very cavalier manner.

14. Besides, there is nothing on record to point out that any disciplinary action by issuance of charge-sheet has been initiated by the Applicant though the period of more than three months is over and the Applicant is subjected to prolong suspension without taking review of suspension.

15. 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."*

16. 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.

17. 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.

18. 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.

19. Admittedly, till date, no charge-sheet in D.E. has been issued though period of three months is over neither review has been undertaken by the competent authority. 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 and if the memorandum of charges is served, in that event, the disciplinary authority is under obligation to pass reasoned order about the extension or revocation of suspension, as the case may be. Suffice to say, in the

present case, there is complete failure on the part of Respondent to adhere G.R. dated 09.07.2019.

20. The totality of aforesaid discussion leads me to sum-up that the impugned suspension order is liable to be quashed being passed by Respondent without competency/jurisdiction. The Original Application, therefore, deserves to be allowed. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned suspension order dated 31.03.2020 is quashed and set aside.
- (C) The Applicant be reinstated in service within two weeks with consequential service benefits.
- (D) No order as to cost.

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

Mumbai  
Date : 23.07.2020  
Dictation taken by :  
S.K. Wamanse.