

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.264 of 2020

DISTRICT : SATARA

Mr. Shrikant Bharshingh Vasave,)
Age : 36 years, Occ. Forest Guard)
(suspended from Beat Bharatgaon Forest Range)
Satara, Round Satara.)
R/o. C/o. Shivam Classic, Flat No.202/A,)
Sector -23, Nerul (E), Navi Mumbai 706)

..Applicant

Versus

1. The Chief Conservator Forest (Territory),)
Vanvardhan, Opp. Head Post Office,)
Tarabai Park, Kolhapur 416 003)
2. The Deputy Conservator of Forest,)
Satara Forest Division, Vanbhavan,)
Godoli Nursery Premises, Satara 415 001.)

...Respondents

Smt. Vaishali Jagdale, learned Advocate holding for Shri K.R. Jagdale,
learned Advocate for the Applicant.

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

CORAM : SHRI A.P. KURHEKAR, MEMBER(J)

DATE : 08.09.2020.

J U D G M E N T

1. The applicant has challenged the suspension order dated 28.11.2019, whereby he was kept under suspension invoking Rule 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred as 'Rules 1979' for brevity) invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Heard Smt. Vaishali Jagdale, learned Advocate holding for Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

3. The issue posed for consideration in the present O.A. is whether the suspension order dated 28.11.2019 is sustainable in law without taking view of the suspension in terms of G.R. dated 14.10.2011.

4. The perusal of record reveals that the F.I.R. dated 21.11.2019 under Section 7 of the Prevention of Corruption Act, 1988 was registered against the applicant and other by Anti Corruption Bureau. The applicant secured anticipatory bail. Therefore by order dated 28.11.2019, Respondent No.1 Chief Conservator of Forest, Kolhapur, suspended the applicant in exercise of Rule 4(1)(c) of 'Rules 1979'. The applicant then made representation contending that the suspension beyond 90 days is impermissible and requested for reinstatement in services which was not responded. The applicant therefore filed the present O.A. After hearing learned Advocate and learned P.O., O.A. deserves to be disposed with suitable directions.

5. Needless to mention that normally the adequacy or sufficiency of material before disciplinary authority for suspension of Government servant cannot be examined and 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 suspension for indefinite period.

6. 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.”

7. 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.

8. As such in view of the law laid down by Hon’ble Supreme Court suspension could not exceed 90 days where charge-sheet is not filed and where charge-sheet is filed then concerned authority is required to take decision about extension or revocation of suspension. In present case, D.E. is already initiated against the applicant as seen from charge-sheet 12.06.2020. However, despite issuance of charge-sheet no further decision has been taken about continuation or revocation of suspension in terms of decision of Hon’ble Supreme Court in **Ajay Kumar Choudhary’s** case.

9 Indeed by the G.R. dated 14.10.2011 specific instructions are issued for periodical review of suspension of the Government servant who are suspended either in contemplation of D.E. or consequent to registration of Criminal Offence against them. As per Clause 3 of G.R. where Government servant is kept under suspension consequent to registration of Criminal Offence under Prevention of Corruption Act, 1988 or for serious offence under IPC review needs to be taken after one year from the date of suspension. Whereas as per Clause 3(a)(b)(c) of G.R. dated 14.10.2011 where the decision has been taken to initiate D.E. then also such matters are required to be placed before the Committee for review. As stated above, in the present case, charge-sheet is already issued in D.E., but no such review is taken in terms of instructions contained in G.R. dated 14.10.2011.

10. Indeed in reply in paragraph no.9 it is stated that necessary steps will be taken as early as possible for review of suspension in terms of G.R. dated 14.10.2011. Reply was filed on 13.07.2020 but till date no such review is taken. In view of the above, O.A. is disposed of with following directions :-

ORDER

- (A) The O.A. is allowed partly.
- (B) Respondents are directed to take review of the suspension of the Applicant in terms of G.R. dated 14.10.2011 and 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, 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 costs.

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