

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.303 OF 2019

DISTRICT : PUNE

Shri Manik N. Thosare.)
Age : 55 Yrs., Occu. : Government Service)
as Deputy Director, Sports and Youth)
Services, Latur Division, Latur)
(now under suspension),)
R/o. 303, Shriram Chandrama CHS,)
Behind Renault Showroom, Mumbai)
Banglore Highway, Baner, Pune – 45.)...**Applicant**

Versus

The State of Maharashtra.)
Through Additional Chief Secretary,)
Sports & Youth Services Department,)
having office at Mantralaya,)
Mumbai 400 032.)...**Respondent**

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

Ms. S.P. Manchekar, Chief Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 30.08.2019

JUDGMENT

1. This is the second round of litigation wherein the challenge is to the suspension order dated 22.07.2017. In first round of litigation in O.A.No.691/2018 by Judgment dated 30.10.2018, directions were given to the Respondents to take review of the suspension of the Applicant and to pass appropriate order. Accordingly, the Respondent took review of suspension but decided to continue the suspension. The Applicant has, therefore, again approached this Tribunal by filing the present O.A.

2. In nutshell, the facts giving rise to this application are as follows :-

The Applicant was serving as Deputy Director, Sports and Youth Services, Latur Division, Latur at the time of suspension order. In the year 2013, while he was working as Deputy Director of Sports at Pune, he allegedly committed misconduct by receiving huge monetary gain illegally from the management of Hotel Courtyard Marriott, Hinjawadi and Hotel Holiday Inn, Balewadi, Pune in the context of Asian Athletics Championship Competition held at Pune. In respect of the said incident occurred in 2013, the FIR No.298/2017 was registered against him and others for the offences punishable under Section 13(1)(c), 13(1)(d) with Section 13(2) of Prevention of Corruption Act, 1988 and under Section 120(b), 467, 468, 471 read with 109 of Indian Penal Code on 7th June, 2017. The Applicant was arrested on 18th June, 2017 and was detained in Police Custody for more than 48 hours. Consequently, he was suspended invoking Rule 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity). He made representations dated 7th December, 2017, 26th August, 2018 and 5th July, 2018, but in vain.

3. The Applicant had, therefore, earlier filed O.A.No.691/2018 challenging the suspension contending that the prolong suspension without taking review is illegal. The said O.A. was disposed of by this Tribunal on 31.10.2018 thereby giving direction to take review of suspension. In pursuance of it, the Respondent took review of suspension but ultimately, decided to continue the suspension. The Applicant has, therefore, again approached this Tribunal by filing the present O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that despite the directions given by this Tribunal by Judgment dated 31.10.2018 to take review of suspension of the Applicant, the Respondent failed to pass reasoned order to justify the prolong suspension, and therefore, the order not to revoke suspension is unsustainable in law. He fairly concedes that after the decision of this Tribunal in earlier round of litigation i.e. O.A.No.691/2018, the Applicant is served with the charge-sheet in Departmental Enquiry (D.E.). However, he contends that the suspension order was passed in view of registration of Criminal Case against the Applicant invoking Rule 4(2)(a) of 'Rules of 1979', and therefore, initiation of D.E, which is indeed belated has no relevance. He submits that in so far as the Criminal Case is concerned, till date, no charge-sheet is filed. He, therefore, prayed to set aside the suspension and for direction for reinstatement in service.

5. Per contra, the learned C.P.O. submits that in view of serious charges as seen from FIR and from charge-sheet initiated in D.E, the suspension cannot be termed 'illegal' or 'unsustainable in law'. She further submits that in D.E, the Enquiry Officer is appointed on 02.04.2019 and D.E. will be expedited in stipulated time.

6. True, though the period of more than two years under suspension is over, admittedly, no charge-sheet is filed in Criminal

Case and the matter seems to be still under investigation. As regard D.E, the charge-sheet has been issued quite belatedly i.e. on 14.11.2018 and Enquiry Officer has been appointed on 02.04.2019. As such apparently, there is lethargy and want of due diligence on the part of Respondent to initiate and complete the D.E. Though the Respondent contends that the charges/accusations against the Applicant are serious and grave, there is failure on its part to show the seriousness and promptitude to initiate the D.E. and to take it to logical conclusion. It is because of sluggishness and lack of promptitude, it provides handle to the Applicant to assail the suspension order by approaching the Tribunal time and again. This aspect needs to be taken note of by the Respondent. Be that as it may, the question posed for consideration is whether the Applicant is entitled to the relief of revocation of suspension and reinstatement in service on account of prolong suspension.

7. The perusal of record reveals that after the directions issued by this Tribunal in earlier round of litigation i.e. O.A.No.691/2018, the matter was placed before the Review Committee thrice. Firstly, it was placed before the Review Committee on 17.11.2018. At that time, the Review Committee decided to take review after two months, as the investigation in Anti-Corruption case was in progress. Thereafter, the matter was placed before the Review Committee on 22.01.2019, but that time also, it was decided to take review after one month as the investigation of Criminal Case was at final stage. Lastly, the matter was again placed before the Review Committee on 27.03.2019. The Review Committee recommended to the Government for revocation of suspension and reinstatement of the Applicant in service in view of compliance of Clause 5(1)(2)(3) of G.R. dated 31.01.2015.

8. Now let us see, Clause 5 of G.R. dated 31.01.2015 which is as follows :

“शासन निर्णय, सामान्य प्रशासन विभाग, दिनांक १४/१०/२०११ मधील २ (i) अनुसार मुख्य सचिव यांच्या अध्यक्षतेखालील समितीपुढे विचारार्थ सादर करण्यात येणा-या प्रस्तावासंदर्भात सर्वसाधारणपणे खालीलप्रमाणे निकष विचारात घेण्यात येतात.

(१) संबंधित अधिकारी यांच्याविरुद्ध सक्षम न्यायालयात अभियोग चालविण्यास सक्षम प्राधिका-यांनी मंजूरी दिलेली असावी.

(२) संबंधित अधिकारी यांच्याविरुद्ध विभागीय चौकशी सुरु करण्यात येऊन दोषारोपत्र बजावण्यात आलेले असावे.

(३) संबंधित अधिकारी यांचा निलंबन कालावधी १ वर्षांहून अधिक झालेला असावा.

वरील निकषांची पूर्तता होत असल्यास अशा प्रकरणांमध्ये सकारात्मक विचार करण्यात येतो.”

Thus, in view of compliance of Clause 5 of G.R. dated 31.01.2015, the Review Committee made recommendation of revocation of suspension to the Government.

9. However, when the matter was placed before the Government (Hon'ble Minister), the Hon'ble Minister declined to revoke suspension on the ground that the charges are relating to corruption and moral turpitude are grave and serious. True, there is no reasoned order for not accepting the recommendation made by the Review Committee, but the fact remains that the Government declined to revoke the suspension having regard to serious charges.

10. True, in view of Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** as relied by the learned Advocate for the Applicant, the currency of suspension order should not extend more than 90 days. The Hon'ble Supreme Court held that the currency of suspension order should not extend beyond three months, if within this period Memorandum of Charges/Charge-sheet is not served on the delinquent and if the Memorandum of Charges is served, a reasoned order must be passed for the extension of suspension. In the present case, though initially the charge-sheet in D.E. was not filed within 90 days, the same was belatedly served on 14.11.2018. As per Clause 5(2) of G.R. dated 31.01.2015, one of the condition for revocation of suspension is that the charge-sheet in D.E. should have been served upon the delinquent/Applicant. As such, when the matter was placed before

the Hon'ble Minister, he declined to revoke the suspension stating that the charges are grave and serious.

11. The perusal of FIR registered against the Applicant for the offences punishable under Section 13(1)(c), 31(1)(d) with Section 13(2) of Prevention of Corruption Act, 1988 and under Section 120(b), 447, 468, 471 read with 109 of Indian Penal Code as well as the perusal of charge-sheet served upon the Applicant in D.E. on 14.11.2018 reveals that the accusation/charges against the Applicant are as follows :-

- (i) In 2013, while the Applicant was working as Deputy Director, Sports at Pune, the Asian Athletics Championship Competition was held at Pune and the arrangement of accommodation, etc. of the continental players was made in Hospital Holiday Inn and at Hotel Court Yard Marriott.
- (ii) Government made payment of Rs.1,14,12,000/- to Hotel Holiday Inn and Rs.48,64,210/- to Hotel Court Yard Marriott. The Applicant allegedly obtained commission of Rs.14,43,845/- from Hotel by Cheque in the name of Sau. Sheetal Suresh Kakad, who is wife of Suresh Kakad, Coach in Sports Complex who was working under the Applicant. However, the said amount was shown paid to Sau. Sheetal Kakad under the disguise of some civil work of Hotel done by Sau. Sheetal Kakad. The Applicant also allegedly took commission of Rs.1,72,260/- from Hotel Court Yard Marriott through Sau. Sheetal Kakad.
- (iii) Later, the Applicant allegedly obtained the amount of Rs.16 Lakh by Cheque in the name of Vilas Haribhau Paygude, Yogesh Vilas Paygude, Rajashree Lalgude and Snehal Pawar and remaining amount was allegedly obtained in cash and purchased land in the name of his father-in-law Mr. Babulal M. Gupta.

The applicant thus alleged to have committed misconduct and breach of Rule 3(1)(1) and (3) of M.C.S. (Conduct) Rules, 1979. In addition to above charge in D.E, there are two more charges viz. to malign the image of Government by making irresponsible statement to Media and failure to recover huge amount payable by the various authorities towards necessary charges for using Sports Complex.

12. Needless to mention that, normally, the adequacy of material before the Disciplinary Authority for suspension of the Government servant cannot be looked into by the Tribunal, it being within the province of Disciplinary Authority. The public interest is always guiding factor in deciding the issue of suspension of Government servant. The general principle would be that, ordinarily, the suspension should not be ordered unless the allegations made against the Government servant are of serious nature and on the basis of evidence available there is the prima-facie case for his dismissal or removal. Besides, the suspension can be resorted to where enquiry cannot be fairly and satisfactorily completed unless the delinquent Officer is kept away from his post.

13. As stated above, the Government declined to revoke the suspension of the Applicant having regard to the serious charges of corruption levelled against the Applicant. Even if no charge-sheet is filed in Criminal Case belatedly, the charge-sheet is issued in D.E. This being the position, in my considered opinion, having regard to the serious charges levelled against the Applicant, it would be appropriate to direct the Respondent to complete the D.E. within the stipulated period, so that the matter is taken to the logical conclusion.

14. True, that the suspension order was passed in view of registration of crime against the Applicant and he was not suspended in contemplation of D.E. However, later, the Applicant is served with the charge-sheet in D.E. The submission advanced by the learned

Advocate for the Applicant that the suspension being not in contemplation of D.E, now suspension cannot be prolonged on account of pendency of D.E. is misconceived. Needless to mention that, criminal prosecution as well as D.E. can proceed simultaneously and there is no such bar for initiation of D.E. during the pendency of Criminal Case. Indeed, in the present case, the charge-sheet in Criminal Case is yet to be filed, as the investigation is still incomplete.

15. In view of above, in my considered opinion, as the Enquiry Officer is already appointed, it would be appropriate to dispose of the present O.A. with suitable direction for expeditious completion of D.E. within stipulated period and if Government fail to do so, then only suspension will stand revoked. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent is directed to complete the D.E. initiated against the Applicant within three months by passing final order therein within three months from today.
- (C) The Applicant shall cooperate for the expeditious disposal of D.E.
- (D) If the D.E. is not finished within three months by passing final order therein as stated above, the suspension of the Applicant deemed to be revoked at the end of period of three months from today and he be reinstated in service.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai

Date : 30.08.2019

Dictation taken by : S.K. Wamanse.