

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.305 OF 2021**

**DISTRICT : PUNE**

Shri Rajesh Balwant Wagh. )  
Age : 56 Yrs., Office Superintendent, )  
Residing at A-703, Dhanashree, )  
Ashiyana Nyati Estate Road, Hadapsar, )  
Handewadi, Pune. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Social Justice and Special )  
Assistance Department, Mantralaya, )  
Mumbai 400 032. )  
2. The Commissioner. )  
Social Welfare, M.S, Yashwantnagar, )  
Shanti Nagar, Yerwada, )  
Pune – 411 006. )...**Respondents**

**Mrs. Punam Mahajan, Advocate for Applicant.**

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

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

**DATE : 10.08.2021**

**JUDGMENT**

1. This is the second round of litigation challenging suspension order dated 14.04.2017 whereby Applicant was suspended in contemplation of departmental enquiry invoking Rule 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

2. Initially, the Applicant along with two others viz. Smt. Shubhangi Khalekar and Shri Rajendra Shendge have filed O.A.No.1085/2018, O.A.No.1075/2018 and O.A.No.1076/2018 challenging their suspension order dated 14.04.2017. The Applicant was working as Office Superintendent in the office of Respondent No.2. Whereas, Smt. Shubhangi Khalekar was working as Head Clerk. By suspension order dated 14.04.2017, both were suspended on the allegation that they have committed various irregularities and illegalities while making payment to the suppliers. The D.Es were initiated against them, but there was no substantial progress and they were subjected to prolong suspension. It is on this background, the Applicant along with Smt. Shubhangi Khalekar and Shri Rajendra Shendge have approached this Tribunal in first round of litigation by filing O.As which were heard and decided by order dated 30.01.2019. The Tribunal observed that there is inordinate and unreasonable delay in completion of D.Es and prolong suspension is not permissible in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. Accordingly, directions were given to Respondent No.2 to take decision about the continuation or revocation of suspension of the Applicants in terms of Circular dated 14.10.2011 which inter-alia provides for taking periodical review of suspension where Government servant is suspended in contemplation of DE as well as because of registration of criminal offence against him.

3. In pursuance of directions given by the Tribunal, the Respondent No.2 has taken review but decided to continue the suspension till completion of D.E. on the ground that the charges are serious. The Applicant has challenged the said order by filing appeal which came to be rejected by order dated 20.01.2020. The Applicant has, therefore, again approached this Tribunal by filing this O.A. challenging prolong suspension.

4. Material to note that, in the meantime, co-delinquent Smt. Shubhangi Khalekar has filed O.A.No.1202.2019 since in her matter also, a decision was taken to continue the suspension. The Tribunal decided O.A. on merit by order dated 22.10.2020 whereby suspension order dated 14.04.2007 was revoked. Besides, directions were given to the Respondents to complete all pending D.Es within three months from the date of order.

5. Smt. Punam Mahajan, learned Advocate for the Applicant sought to contend that Applicant is subjected to prolong suspension of more than 4 years and despite directions given by the Tribunal, the enquiries are not completed. She, therefore, submits that since in the matter of co-delinquent Smt. Shubhangi Khalekar, her suspension is already revoked, on the ground of parity, the Applicant's suspension be revoked. In this behalf, reliance is placed on the decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

6. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that in view of serious charges levelled against the Applicant, the suspension is justified and the decision taken by Respondent No.2 for continuation cannot be faulted with. As regard D.Es, the learned P.O. submits that two D.Es are already completed and at the verge of passing final order. Whereas, third D.E. is pending. On this line of submission, the learned P.O. submits that having regard to the serious charges levelled against the Applicant, it is not desirable to revoke his suspension and prayed to dismiss the O.A.

7. While deciding earlier O.As, this Tribunal has dealt with all the relevant provisions and circulars to be borne in mind while deciding the issue of continuation of suspension. The Applicant has been suspended by order dated 14.04.2017 in contemplation of D.E. However, for long period, no D.E. was initiated. The charge-sheets were issued only on 12.07.2018, 16.07.2018 and 22.01.2019. In charge-sheet issued on

14.03.2019, an Enquiry Officer was appointed on 19.10.2020. In charge-sheet issued on 16.07.2018, Enquiry Officer had appointed on 27.12.2018. Whereas, in charge-sheet issued on 22.01.2019, the Enquiry Officer was appointed on 14.05.2019. As such, there was an inordinate delay even for appointment of Enquiry Officer. True, normally, the Tribunal should not interfere in the matter of suspension, particularly, where a Government servant is suspended on account of serious charges. However, whereas suspension is continued for prolong time and there is no compliance of the provisions contained in Departmental Enquiry Manual as well as in the G.R./Circulars issued from time to time, interference by the Tribunal is inevitable.

8. At this juncture, it would be apposite to refer guidelines, Circulars and G.R. issued by the Government in the matter of completion of D.E. where the Government servant is under suspension.

9. As per Clause 3.19 of Departmental Enquiry Manual, the D.Es need to be completed as expeditious as possible and in any case, it should be completed within six months from the date of issuance of charge-sheet. Here, it would be material to refer Clause 3.19 of Manual, which is as follows :-

“३.१९ विभागीय चौकशी पूर्ण करण्यासाठी कालमर्यादा.-- (१) विभागीय चौकशी शक्य तितक्या लवकर पूर्ण करण्यात याव्यात आणि कोणत्याही परिस्थितीत हा कालावधी विभागीय चौकशी करण्याचा निर्णय घेतल्याचा तारखेपासून सहा महिन्यांपेक्षा अधिक नसावा. चौकशीच्या निष्कर्षासंबंधीचे अंतिम आदेश काढल्यानंतरच ती पूर्ण झाली आहे, असे मानले जाईल.

(२) तथापि, काही प्रकरणामध्ये उचित व पुरेशा कारणांसाठी सहा महिन्यांच्या विनिर्दिष्ट काळामध्ये विभागीय चौकशी पूर्ण करणे शक्य नसेल विभागीय चौकशा पूर्ण करण्यासाठी असलेली ही कालमर्यादा वाढवून देण्याचे अधिकार परिशिष्ट ८च्या स्तंभ ३ व ४ मध्ये नमूद केलेल्या प्राधिकाऱ्याला, त्या स्तंभाच्या शीर्षाखाली निर्देशलेल्या मर्यादित अधीन राहून दयावेत असे शासनाने ठरविले आहे. विभागीय चौकशी मंजूर झाल्याच्या तारखेपासून ती पूर्ण करण्यासाठी एका वर्षापेक्षा अधिक कालावधी वाढवून देण्यास मंत्रालयाच्या प्रशासकीय विभागाने सामान्य प्रशासन विभागाची विचारविनिमय करून अनुमती द्यावी.

(३) कालमर्यादेपेक्षा वाढीचा प्रस्ताव सादर करताना संबंधित चौकशी अधिकाऱ्याने आणि शिस्तभंगविषयक प्राधिकाऱ्याने सक्षम प्राधिकाऱ्यास परिशिष्ट ९ मध्ये अंतर्भूत असलेल्या

प्रपत्रात माहिती द्यावी. कालमर्यादेची वाढ देण्यासाठी सक्षम असलेल्या प्राधिकाऱ्याने प्रस्तावाची काळजीपूर्वक तपासणी करावी आणि कमीत कमी आवश्यक असलेल्या कालावधीची वाढ द्यावी.”

10. Whereas following are the instructions issued by Circular dated 30<sup>th</sup> October, 2010.

“शासन असे आदेश देत आहे की, प्राथमिक चौकशीअंती तथ्य आढळलेल्या प्रकरणांत नजिकच्या सहा महिन्यांच्या काळात सेवानिवृत्त होणारा अधिकारी / कर्मचारी गुंतला असेल तर, अशा प्रकरणी एक विशेष बाब म्हणून प्राधान्याने संबंधित अधिकारी / कर्मचाऱ्याच्या सेवानिवृत्ती पूर्वी किमान ३ महिने अगोदर विभागीय चौकशी सुरु होईल व शासन सामान्य प्रशासन विभाग परिपत्रक क्रमांक : सीडीआर-१०९७/१५६/प्र.क्र.१४/९७/अकरा, दि.२४ फेब्रुवारी, १९९७ नुसार एकुण चौकशीची कार्यवाही एका वर्षात पूर्ण होईल अशा रितीने कार्यवाही करण्याची दक्षता घ्यावी. प्रकरणाच्या कोणत्याही टप्प्यावर विलंब झाल्याचे निदर्शनास आल्यास, अशा विलंबाला जबाबदार असणाऱ्या अधिकारी / कर्मचाऱ्यावर शिस्तभंगविषयक कारवाईचाही विचार करण्यात यावा.”

11. Then again, in Circular dated 21.02.2015, the following instructions have been issued :-

“मा. लोक आयुक्त आणि मा. उप लोक आयुक्त यांनी शासनास सादर केलेल्या ४० व्या वार्षिक अहवालात सेवानिवृत्त शासकीय कर्मचाऱ्यांच्या व निधन पावलेल्या शासकीय कर्मचाऱ्यांच्या प्रलंबित विभागीय चौकशाची आणि त्यांच्या निलंबन कालावधीच्या नियमनाविषयीची प्रकरणे त्वरेने निकाली काढावीत अशी शिफारस केली आहे.

त्या शिफारशीच्या अनुषंगाने वरील संदर्भाधीन आदेशातील सूचनाकडे पुन्हा लक्ष वेधण्यात येत आहे. याबाबत शासन असेही आदेशित करित आहे की, ज्या कर्मचाऱ्यांविरुद्ध ते सेवानिवृत्त होत असताना विभागीय चौकशी चालू आहे त्यांच्या विभागीय चौकशा प्राथम्याने आणि त्यांच्या सेवानिवृत्तीच्या दिनांकापासून कमाल ६ महिन्यात पूर्ण होतील याची दक्षता घ्यावी. ज्या कर्मचाऱ्यांविरुद्ध ते सेवानिवृत्त झाल्यावर चौकशी सुरु करण्यात आली आहे, त्यांच्या विभागीय चौकशा प्राथम्याने आणि चौकशी सुरु केल्याच्या दिनांकापासून कमाल ६ महिन्यात पूर्ण होतील याची दक्षता घ्यावी. याबाबतीत विहित कालावधीत निपटारा करण्यात आलेल्या प्रकरणांचा विचार करून आस्थापनविषयक कामे पाहणारे उप सचिव / सह सचिव तसेच विभागीय चौकशी अधिकारी यांच्या गोपनीय अहवालात विशेष अभिप्राय नोंदवावेत.”

12. By Circular dated 07.08.2008, it has been again reiterated that D.E. should be completed within a period of six months from the date of taking decision to initiate the D.E. and where for some justifiable reason, if D.E. could not be completed within six months, in that event, three

months' extension can be given by Head of Department. Where D.E. is not completed within nine months, then extension is required to be sought up to one year from the Government.

13. The legal position in respect of prolong suspension is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). It will be appropriate to reproduce Para Nos.11, 12 & 21 of the Judgment, which is 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.”*

14. As such, in view of mandate of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, the currency of suspension should not exceed beyond three months, if charge-sheet is not served upon the delinquent and where the charge-sheet is served, the obligation is cast upon the Competent Authority to pass reasoned order for extension of suspension. In the present case, charge-sheets were served after the delay of 1 to 2 years and thereafter also, no further steps were taken to complete the D.E. The Respondents belatedly took review, but decided to continue the suspension solely on the ground that the charges are serious, and therefore, not desirable to revoke suspension till the completion of D.E. The Respondents ought to have realized that D.Es are inordinately delayed due to sheer inaction and negligence on the part of concerned and Applicant was not responsible for the delay. The Respondents were supposed to pass reasoned order after objective assessment of the situation. However, the Respondents mechanically continued the suspension, which is nothing but arbitrary exercise of powers and in blatant violation of the mandate of ratio laid down by Hon'ble Apex Court in **Ajay Kumar Choudhary's** case.

15. 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 21<sup>st</sup> 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.

16. Disgusting to note, despite various instructions issued by the Government and law laid down by Hon'ble Apex Court in **Ajay Kumar Choudhary's** case, the Applicant is subjected to prolong suspension of more than four years without showing seriousness in completion of D.E. There is obvious delay, inaction and lethargy on the part of Respondents in completion of D.E. Indeed, the Respondents have prima-facie committed contempt by not completing departmental enquiries against the Applicant and Smt. Khalekar, as directed by order dated 22.10.2020 in O.A.No.1202/2019.

17. Only two D.Es are completed but till date, no final order is passed therein. In so far as third D.E. is concerned, the learned P.O. fairly submits that only Enquiry Officer has been appointed and there is no further progress therein. The Applicant is subjected to suspension only in contemplation of D.E. and there is no registration of crime against him, so as to wait for the completion of criminal trial. Though charges leveled against the Applicant seems to be serious, no such seriousness is shown by the Respondents in completion of D.Es which Respondents ought to have perceived and should have completed D.Es expeditiously. The Applicant is due to retire on 31.01.2023 and has already undergone agony of suspension for more than four years. He is getting 75% Subsistence Allowance without doing any work, which is nothing but loss of public money. The charges attributed to the Applicant are arising from documents and record, which is already in the custody of Department. Therefore, the question of tampering of record or witnesses does not survive. Suffice to say, no fruitful purpose would serve by continuing the suspension, which is already prolonged for more than four years. In the matter of co-delinquent viz. Smt. Shubhangi Khalekar, her suspension is already revoked by order dated 22.10.2020. Therefore, I see no reason to deny the same relief to the Applicant on the ground of



parity. In this view of the matter, the suspension deserves to be revoked with liberty to the Respondents to post the Applicant on any non-executive suitable post with clear instructions that he should not contact any person concerned with the enquiry.

18. The necessary corollary of aforesaid discussion leads me to conclude that further prolong suspension of the Applicant is totally unsustainable in law and he deserves to be reinstated in service. In O.A.No.1202/2019, directions were already given for completion of D.E. within stipulated period, and therefore, further directions are not required. Hence, the following order.

### **ORDER**

- (A) The Original Application is partly allowed.
- (B) The suspension order dated 14.04.2017 stands revoked with effect from today.
- (C) The Respondents are directed to issue necessary orders for reinstatement of the Applicant within two weeks from today.
- (D) The Respondents are at liberty to repost the Applicant on any non-executive suitable post, as it deems fit.
- (E) No order as to costs.

Sd/-

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

Mumbai  
Date : 10.08.2021  
Dictation taken by :  
S.K. Wamanse.

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