

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.382 OF 2021

DISTRICT : MUMBAI

Shri Mahesh N. Salunke-Patil.)
Age : 53 Yrs., Working as Deputy Registrar)
Co-operative Societies [under suspension],)
P-Ward, B.M.C. Godown Building,)
Room No.502, A-Wing, Thakur Complex,)
Kandivali (E), Mumbai – 400 067 and)
Residing at K-502, Teakwood, Vasant)
Garden, Mulund (W), Mumbai – 400 080.) **...Applicant**

Versus

The State of Maharashtra.)
Through Additional Chief Secretary,)
Co-operation Department, Mantralaya,)
Mumbai – 400 032.) **...Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 31.03.2022

JUDGMENT

1. The Applicant has challenged the order dated 20.04.2021 whereby he came to be suspended in view of registration of crime under Section 7 of Prevention of Corruption Act, 1988 invoking Section 4(1)(c) of

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to 'Rules of 1979' for brevity).

2. The Applicant was serving as Deputy Registrar, Cooperative Societies and was exercising quasi-judicial functions. One Mr. Panja, who was member of Malad Samir Cooperative Housing Society Limited filed an appeal before the Applicant under the provisions of Maharashtra Cooperative Societies Act, 1960 against the orders passed by said Society declining him membership in Cooperative Society. The Applicant decided the appeal on 18.02.2021 giving direction to the Society to admit Mr. Panja as a member of Cooperative Society. However, Mr. Panja lodged complaint on 08.03.2021 with Anti-Corruption Bureau (ACB) stating that on 05.03.2021 when he met the Applicant, he allegedly demanded bribe of Rs.1 Lakh for issuance of order. Thereafter, ACB seems to have laid trap, but it did not succeed. Ultimately, ACB registered offence under Section 7 against the Applicant for attempt to obtain bribe on 19.03.2021. It is on this background, Applicant came to be suspended by order dated 20.04.2021.

3. Shri A.V. Bandiwadekar, learned Advocate for the Applicant has challenged the suspension order dated 20.04.2021 *inter-alia* contending that Applicant is subjected to prolong suspension for near about one year and it is in violation of the decision rendered by Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. Secondly, he has pointed out that there was no approval of the Government for investigation of crime registered against the Applicant, as mandated under Section 17-A (as amended in 2018) of Prevention of Corruption Act, 1988. He has further pointed out that till date, no charge-sheet is filed in criminal case. As regard DE, he stated that recently charge-sheet is served in DE on 07.01.2022. On this line of submission, he submits that prolong suspension of the Applicant is bad in law. He also raised issue of discrimination stating that in the matter of one Shri Jadhav, though offence was registered against him under Section 7 of Prevention of Corruption Act, he was not even suspended

and on the contrary, he was continued on the same post and was given extension by the Government.

4. Whereas, Shri A.J. Chougule, learned P.O. sought to justify the suspension *inter-alia* contending that in view of registration of crime under Section 7 of Prevention of Corruption Act, 1988, there was enough material to suspend the Applicant. As regard initiation of criminal prosecution, he fairly concedes that till date, no charge-sheet is filed in criminal case and matter is still under investigation. As regard departmental enquiry (DE), he stated that now charge-sheet is recently served and it is in progress. He further submits that review was taken twice, but authority decided to continue the suspension.

5. Insofar as applicability of Section 17-A of Prevention of Corruption Act, 1988 is concerned, no Police Officer shall conduct any enquiry or investigation into any offence alleged to have been committed by public servant in discharge of his official functions without previous approval of competent authority. However, 1st Proviso states that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person. In the present case, there are allegations of attempt to obtain bribe from the complainant Mr. Panja. Therefore, Section 17-A cannot be said attracted so as to quash the suspension order for want of without previous approval of the Government. Even assuming for a moment it is attracted, its repercussions would be upon criminal case only and not on suspension order.

6. In view of above, the question posed for consideration as to how long Applicant could be subjected to prolonged suspension, since he is completing one year of suspension in few days. The adequacy or sufficiency of material for suspension of a Government servant normally cannot be subject matter of judicial review. However, nonetheless, there should not be prolonged suspension unless a strong case to that effect is made out.

7. In **Ajay Kumar Choudhary's** case, Hon'ble Supreme Court held that currency of suspension should not exceed beyond three months, if the Memorandum of charges/charge-sheet is not served upon the delinquent and where Memorandum of charges/charge-sheet is served, a reasoned order must have passed for the extension of suspension. In Para No.14, Hon'ble Supreme Court held as under :-

“14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 prepare 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 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.”

8. Suffice to say, a Government servant cannot be subjected to prolong suspension and there has to be objective decision of the competent authority for continuation of suspension. In the present case, all that, it is stated that the authority decided to continue the suspension. Here, material to note that in criminal case, no charge-sheet is filed against the Applicant though period of near about one year is over. Even ACB has not moved the Government for approval of sanction, as mandated under the provisions of Prevention of Corruption Act for taking cognizance by Court. DE is also initiated belatedly on 07.01.2022. As such, there is no certainty of filing criminal case and its conclusion within reasonable time. Similarly, there is no certainty of conclusion of departmental proceedings. In other words, fundamental

right of the Applicant for speedy trial of criminal case or speedy disposal of departmental proceeding is defeated and on the other hand, Applicant is subjected to continuous suspension. This aspect seems not considered by Review Committee in proper perspective and there is no such objective assessment of the situation. This is not a case where revocation of suspension could be said threat to criminal case or departmental proceeding. As such, no fruitful purpose would serve by continuing the suspension, which the Applicant had already undergone for near about 11 months.

9. Indeed, the Government had issued various G.Rs. from time to time for taking periodical review of suspension of Government servants, so that they are not subjected to prolong suspension. Initially, the Government had issued G.R. dated 14.10.2011 giving detailed instructions about the periodical review of suspension of Government servants, who are suspended on account of registration of crime under the provisions of Indian Penal Code or Prevention of Corruption Act. Clause 5 of G.R. dated 13.01.2015 is material, which is as under :-

“५. शासकीय अधिकारी-कर्मचा-यांना बेहिशोबी मालमत्ता, नैतिक अधःपतन, लाचलुचपत, खून, खूनाचा प्रयत्न, बलात्कार या व अशा गंभीर प्रकरणात, फौजदारी गुन्हा दाखल झाल्यामुळे निलंबित करण्यात आले असेल तर निलंबनाच्या दिनांकापासून एक वर्षानंतर प्रकरणाचा नियतकालिक आढावा घेण्यासाठी दि. १४.१०.२०११ च्या शासन निर्णयान्वये गट-अ व गट-ब (राजपत्रित) अधिका-यांसाठी मुख्य सचिव यांच्या अध्यक्षतेखाली व गट- क व गट - ड साठी क्षेत्रीय स्तरावर महसूल विभागवार विभागीय आयुक्तांच्या अध्यक्षतेखाली निलंबन आढावा समिती गठीत करण्यात आली आहे.

शासन निर्णय, सामान्य प्रशासन विभाग, दिनांक १४.१०.२०११ मधील २(i) अनुसार मुख्य सचिव यांच्या अध्यक्षतेखालील समितीपुढे विचारार्थ सादर करण्यात येणा-या प्रस्तावांसंदर्भात सर्वसाधारणपणे खालीलप्रमाणे निकष विचारात घेण्यात येतात.

१. संबंधित अधिकारी यांच्या विरुद्ध संक्षम न्यायालयात अभियोग चालविण्यास सक्षम प्राधिका-यांनी मंजूरी दिलेली असावी.
२. संबंधित अधिकारी यांच्याविरुद्ध विभागीय चौकशी सुरु करण्यात येवून दोषारोपपत्र बजावण्यात आलेले असावे.
३. संबंधित अधिकारी यांचा निलंबन कालावधी १ वर्षाहून अधिक झालेला असावा.
वरील निकषाची पूर्तता होत असल्यास अशा प्रकरणांमध्ये सकारात्मक विचार करण्यात येतो.’’

10. Now turning to the present case, even till date, there is no approval of Government for initiation of criminal prosecution and matter is still under investigation. Indeed, the allegation of the complainant in ACB case is about the demand of bribe allegedly made after the decision of

appeal in his favour, which sounds abnormal. The Applicant was discharging judicial functions and had already decided the appeal of complainant Mr. Panja. Be that as it may, it would not be appropriate for this Tribunal to make any comment about the merits of criminal case. However, fact remains that the allegation of demand of bribe was made after the decision of appeal.

11. As such, in my considered opinion, no purpose would serve by continuing the suspension of the Applicant. He is already getting 75% Subsistence Allowance without doing any work. There is no certainty of initiation of criminal prosecution and DE which is initiated recently would also take its own time. It is, therefore, desirable to direct the Respondents to take review of suspension of the Applicant with objective assessment of the situation in the light of observations made by this Tribunal above. In view of G.Rs. dated 14.10.2011 and 31.01.2015, the suspension can be revoked and Applicant can be reposted on non-executive post or any other post as Government deems fit. Hence, the order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to take review of suspension of the Applicant within four weeks from today, in view of observations made by this Tribunal above and the decision, as the case may be, shall be communicated to the Applicant.
- (C) No order as to costs.

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

Mumbai
Date : 31.03.2022
Dictation taken by :
S.K. Wamanse.

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