

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.419 OF 2019**

**DIST : MUMBAI**

Shri Shashikant V. Joge. )  
Motor Vehicle Inspector, R/at : Executive )  
Officers Association Rest House, )  
Bungalow No.2, Rajanigandha Society, )  
Samata Nagar, Pokharan Road No.1, )  
Thane (W) – 400 606. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )  
2. The Transport Commissioner. )  
M.S, Administrative Building, 4<sup>th</sup> Floor, )  
Government Colony, Bandra (E), )  
Mumbai - 400 051. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

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

**DATE : 17.07.2019**

## JUDGMENT

1. In this Original Application, the challenge is to the suspension order dated 6<sup>th</sup> February, 2019 whereby, in view of registration of crime under the provisions of Prevention of Corruption Act, the Applicant was kept under suspension invoking Rule 4(1)(c) and 4(1)(a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules 1979'). The Applicant claims to be innocent. He had filed representation for revocation of suspension and to reinstate him in service, but in vain. He, therefore, filed the present O.A. challenging the suspension on the ground that prolong suspension of more than five months is unsustainable in law, particularly in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

2. Shri K.R. Jagdale, learned Advocate for the Applicant submitted that though the period of more than five months is over, neither charge-sheet is filed in Criminal Case nor D.E. is initiated, but the Applicant is subjected to prolong suspension without taking review of the matter. He placed reliance on the decision of Hon'ble Supreme Court *in Ajay Kumar Choudhary's* case (cited supra).

3. Per contra, Smt. A.B. Kololgi, learned Presenting Officer sought to justify the suspension order contending that in view of registration of crime against the Applicant, he has been rightly suspended.

4. Thus, what emerges from the admitted position that, though the period of more than five months is over, the Respondents have not taken the review of suspension.

5. Indisputably, neither D.E. is initiated nor charge-sheet is filed in Criminal Case. Therefore, the question arises, how long the Applicant can be subjected to suspension without giving thought to revocation of suspension and reinstatement in service in terms of law laid down by Hon'ble Supreme Court and G.R. dated 14.10.2011.

6. In so far as the period of suspension is concerned, the reference of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case is imperative and the legal position is no more *res-integra*. It will be appropriate to reproduce Para No.21 of the Judgment, which is 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 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.

8. Now, turning to G.R. dated 14.10.2011, it *inter-alia* provides for review of suspension where the Government servant is kept under suspension in pursuance of registration of crime against him or in contemplation of D.E. The Competent Authority is required to take periodical review of suspension. True, as per G.R, where the Government servant is kept under suspension because of registration of serious crime against him, the Competent Authority is required to take review after one year from the date of suspension. In the present matter, the period of one year is not yet over. However, in view of Judgment of Hon'ble Supreme Court, review has to be taken immediately after expiration of three months. The Hon'ble Supreme Court held that the currency of suspension should not extend beyond three months, if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee and if memorandum of charges/charge-sheet is served, a reasoned order must be passed for extension of suspension. In other words, the Competent Authority is required to pass a reasoned order after expiration of three months, if the charge-sheet is not filed. In the present case, admittedly, neither charge-sheet is filed in Criminal Case nor D.E. is initiated though the period of near about five months is over.

9. Indeed, the Government had recently issued G.R. on 09.07.2019 taking note of the Judgment of Hon'ble Supreme Court in **Ajay Kumar Chodhary's** case and issued instructions to ensure filing of charge-sheet within 90 days. In G.R, it is further stated that in case of failure to serve charge-sheet within 90 days, there would be no other option except to revoke the suspension.

10. In view of above position, the Applicant cannot be subjected to prolong suspension without taking review of suspension and without deciding whether the suspension deserves to be continued in the facts and circumstances of the case.

11. In view of above, the O.A. needs to be allowed partly by giving suitable directions. Hence, the following order.

**ORDER**

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to place the matter before Review Committee for taking review of suspension of the Applicant and to pass appropriate order, as it deems fit, in the facts and circumstances of the case as well as the law laid down by Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case within six weeks from today.
- (C) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter. If the Applicant feels aggrieved by the decision, he may take recourse of law, as may be permissible to him.
- (D) No order as to costs.

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

Mumbai  
Date : 17.07.2019  
Dictation taken by :  
S.K. Wamanse.