

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.422 OF 2020**

**DISTRICT : THANE**

Shri Dilip Ravindra Bhosle. )  
Aged : 31 Yrs, Occu. : Junior Clerk in )  
S.R.P.F. Group XI, Navi Mumbai, )  
Camp Balegaon, District : Thane and )  
Residing at C/o. Sanjay M. Chikankar, )  
Near SRPF Group XI, Navi Mumbai, )  
Camp Balegaon, At Narhen, Post : Wadi, )  
Tal.: Ambarnath, District : Thane. ) **...Applicant**

**Versus**

The Commandant. )  
S.R.P.F. Group XI, Navin Mumbai, )  
Camp Balegaon, District : Thane. ) **...Respondent**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondent.**

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

**DATE : 20.10.2021**

**JUDGMENT**

1. The Applicant has challenged the suspension order dated 17.07.2020 whereby he was suspended in contemplation of departmental enquiry invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

The Applicant is serving as Junior Clerk on the establishment of Respondent. Initially, the Respondent suspended the Applicant by order dated 15.04.2020 invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) in contemplation of D.E. Since no charge-sheet was issued in respect of said suspension matter, the Respondent by order dated 16.07.2020 revoked the suspension of the Applicant. However, surprisingly, on the very next day i.e. on 17.07.2020, the Respondent again suspended the Applicant by order dated 17.07.2020 in contemplation of DE digging out alleged misconduct of October, 2019. Simultaneously, the charge-sheet for this alleged misconduct was also served upon the Applicant on the same day. Later, the suspension was revoked and Applicant was reinstated in service by order dated 11.11.2020. It is on this background, the Applicant has challenged the suspension *inter-alia* contending that it was totally unwarranted and colourable exercise of power by filing this O.A. on 27.08.2020.

3. During the pendency of O.A, the DE has been completed and Respondent imposed punishment of withholding one increment with cumulative effect by order dated 25.11.2020 against which the Applicant has filed the appeal which is subjudice.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant severely criticized the impugned action of suspension *inter-alia* contending that it is totally misuse of power since it was not at all a case of suspension but the Applicant is suspended in very routine and casual manner immediately on next day after his reinstatement in service and revocation of earlier suspension order dated 15.04.2020. He, therefore, contends that Respondent was hell bent to keep the Applicant under suspension as long as he desire and this is nothing but malicious and colourable exercise of powers.

5. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer sought to justify the suspension order dated 17.07.2020 *inter-alia* contending that in DE concluded subsequently, the charges framed against the Applicant are proved and it justify the action of suspension. She further submits that in the meantime, the Applicant is already reinstated in service, and therefore, the challenge to the suspension order has become infructuous.

6. In view of submissions advanced at the Bar, the issue posed for consideration is whether in facts and circumstances of the matter, the suspension was warranted.

7. Normally, the adequacy of material for suspension falls within the domain of executive and powers of Tribunal in this behalf are limited. However, it is well settled that suspension should not be resorted casually or routinely only because the authority is empowered in law to suspend a Government servant. This is a case of back to back suspension, and therefore, it needs to be examined as to whether suspension was really warranted.

8. Before going ahead in this behalf, it would be material to note that the instructions laid down in Departmental Manual laying down the principles to be borne in mind while placing a Government servant under suspension, which are as under :-

**“2.1 When a Government Servant may be suspended.-** Public interest should be the guiding factor in deciding to place a Government servant under suspension. The Disciplinary Authorities should not suspend a Government servant lightly and without sufficient justification. They should exercise their discretion with utmost care.

Suspension should be ordered only when the circumstances are found to justify it. The general principle would be that ordinarily suspension should not be ordered unless the allegations made against a Government servant are of a serious nature and on the basis of the evidence available there is a *prima facie* case for his dismissal or removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. In other cases, it will suffice if steps are taken to transfer the

Government servant concerned to another place to ensure that he has no opportunity to interfere with witnesses or to tamper with evidence against him.

(I) By way of clarification of the general principle enunciated above, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory :-

(i) Cases where continuance in office of a Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);

(ii) where the continuance in office of a Government servant is likely to seriously subvert discipline in the office in which the Government servant is working;

(iii) where the continuance in office of a Government servant will be against the wider public interest (other than the cases covered by (i) and (ii) above) such as, for instance, where a scandal exists and it is necessary to place the Government servant under suspension to demonstrate the policy of Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) where allegations have been made against a Government servant and the preliminary enquiry has revealed that *prima facie* case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

In the first three circumstances enumerated above, the Disciplinary Authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established.”

9. In continuation of the aforesaid guidelines, it would be useful to refer the observations made by Hon’ble Bombay High Court in **1987 (3) Bom.C.R. 327 (Dr. Tukaram Y. Patil Vs. Bhagwantrao Gaikwad & Ors.)**, which are as follows :-

*“Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or*

*place has also to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned.”*

10. Similarly, reference was made to the Judgment of Hon’ble Supreme Court in **1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)**. It would be apposite to reproduce Para No.9, which is as follows :

*“9. It is settled law by several judgments of this Court as well as the Apex Court that suspension is not to be resorted to as a matter of rule. It is to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being away from the post.”*

11. Furthermore, reference of Judgment of Hon’ble Supreme Court in **(2015) 7 SC 291 (Ajay Kumar Choudhary Vs. Union of India)** is imperative and the legal position is now no more res-integra. 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.”*

12. 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.

13. It is thus manifest that suspension should be ordered only when it is extremely essential, allegations are of very serious nature and *prima-facie* cases made out for dismissal or renewal of service. Where the charges are not serious and there is no possibility of tampering of witnesses and DE can be completed without placing the Government servant under suspension, in that event, the suspension should not be ordered merely because authority in law is empowered with the powers of suspension.

14. Now turning to the facts of the present case, as stated above, this is a case of back to back suspension faced by the Applicant. Significantly, initially, he was suspended by order dated 15.04.2020 attributing the following allegations.

“ज्याअर्थी तुम्ही कनिष्ठ लिपिक दिलीप रवींद्र भोसले नेमणूक पत्रव्यवहार शाखा-३ व ४ रा.रा.पो. बल गट क्र.११ नवी मुंबई,पत्रव्यवहार शाखा-३ या दफ्तराकडे कामकाज करीत आहात. सदर दफ्तराकडे कामकाज करीत असताना, तुम्ही माहे फेब्रुवारी-२०२० चे नक्षल बंदोबस्त व कंपनी संचार मासिक विवरणपत्र दि.०९/०४/२०२० रोजी प्रदीर्घ विलंबाने मा. समादेशक यांचे समक्ष स्वाक्षरीस सादर केलीत. परिक्षेत्रीय क्रीडा स्पर्धेकरिता औरंगाबाद येथे जाते वेळेस प्रवासादरम्यान चे रक्कम रु.३१,१६७/- (अक्षरी रुपये एकतीस हजार एकशे सडुसष्ट मात्र) चे इंधन देयक ५८ दिवस उशिराने मा. समादेशक यांचेकडे स्वाक्षरी सादर केले आहे. तसेच वाहनांची इंधने देयके एक महिन्यापेक्षा जास्त काळ प्रलंबित ठेवून विलंबाने स्वाक्षरी सादर केली आहेत. घरबांधणी अग्रिम अर्ज विलंबाने नस्तीवर सादर केलात. तुम्ही तुमचे दफ्तराकडील इतर नस्ती उदा. मोटार परिवहन विभागातील बिले इत्यादी नियमित मा. समादेशक यांचे समक्ष स्वाक्षरीकरीता घेऊन येत होतात. तरी सदरच्या नस्त्या तुम्ही इतक्या प्रदीर्घ विलंबाने स्वाक्षरीसह सादर केले असून, कर्तव्यात अत्यंत निष्काळजीपणा केला आहे. तसेच यावरून तुमचे काही विशिष्ट नस्तीमधील गैर हेतू स्पष्ट दिसून येत आहे. तुमचे कृत्य हे राज्य राखीव पोलीस बलासारख्या शिस्तप्रिय खात्यात अत्यंत अशोभनीय, बेजबाबदारपणाचे व बेशिस्तपणाचे आहे.”

15. Since in view of mandate of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, no steps were taken to initiate the D.E, the Respondent had no choice except to revoke the suspension by order dated 16.07.2020 on completion of 90 days suspension. Curiously, in respect of that suspension, no further steps were taken for initiation of D.E. Astonishingly, on the very next day i.e. on 17.07.2020, the Respondent slapped another suspension order upon the Applicant again invoking Rule 4(1)(a) of 'Rules of 1979' in contemplation of DE. Here, pertinent to note that for second suspension, the Respondent dug out old alleged misconduct took place in October, 2019. Following were the allegations for suspension in second suspension order dated 17.07.2020.

“ज्या अर्थी तुम्ही कनिष्ठ लिपिक श्रेणी लिपिक दिलीप रवींद्र भोसले, नेमणूक पत्र व्यवहार शाखा-३ व ४ रा.रा.पो. बल गट क्र. ११ नवी मुंबई, पत्रव्यवहार शाखा-३ या दफ्तराकडे कामकाज करीत होता. तुम्ही समादेशक कार्यालय किंवा वरिष्ठांची कोणतीही पूर्वपरवानगी न घेता मोटार परिवहन विभागाकडून गट रुग्णालयाकरिता देण्यात आलेल्या रुम पैकी रुम मध्ये २२ ऑक्टोबर २०१९ मध्ये अनधिकृतपणे व अवैधरित्या तुमच्या वस्तू व साहित्यासह प्रवेश केलेला असून दि.०९.०९.२०२० रोजी पर्यंत तेथे वास्तव्य केले आहे. सदर कालावधीसाठी तुम्ही तुमच्या मासिक वेतनामध्ये घरभाडे भत्ता मिळण्याच्या हेतूने हेतुपुरस्करपणे समादेशक कार्यालयाकडून सदर बाब लपवून रीतसर परवानगी घेतली नाही व रुग्णालयाच्या वॉर्डरूमचा अनधिकृतपणे वापर केला असल्याचे निदर्शनास आले आहे. दिनांक २२ ऑक्टोबर २०१९ ते दिनांक ०९.०९.२०२० या कालावधीमध्ये वेतनामध्ये घरभाडे भत्ता घेतलेला असून मा. समादेशक यांचे परवानगीशिवाय अनधिकृतपणे, आपअधिकारात मोटार परिवहन विभागाकडून गट रुग्णालयातकरिता उपलब्ध करून देण्यात आलेल्या शासकीय रुमपैकी रुम मध्ये राहून शासनाची दिशाभूल व फसवणूक केली आहे. तुम्ही महाराष्ट्र नागरी सेवा (वर्तणूक) नियम १९७९ चे नियम ३ चा भंग केला आहे. तुम्ही गंभीर स्वरूपाची अनियमितता व गुन्हेगारी कृत्यातून खोटी माहितीच्या आधारे शासनाची फसवणूक केलेली आहे. तुमचे कृत्य हे राज्य राखीव पोलीस बलासारख्या शिस्तप्रिय खात्यात अत्यंत अशोभनीय, बेजबाबदारपणाचे व बेशिस्तपणाचे आहे.”

16. Furthermore, interesting to note that on the same day i.e. on 17.07.2020 charge-sheet was also issued to the Applicant by appointing Enquiry Officer with direction to complete the enquiry within a month. Thus, the suspension was invoked though on the same day, charge-sheet was issued. True, subsequently, the DE was completed and Applicant was held guilty for the charges levelled against him and punishment of withholding of one increment with cumulative effect has been imposed by order dated 25.11.2020. Needless to mention, only because in DE, the Applicant was held guilty that *ipso-facto* does not justify or legalize the suspension and Respondent ought to have considered as to whether suspension was really justified or warranted, particularly on the backdrop of earlier suspension as well as nature of charges.

9. As such, the facts of this case are very peculiar in nature where initially, the Applicant was suspended by order dated 15.04.2020 in contemplation of DE for the misconduct allegedly took place in the period from February to April, 2020 but no further steps were taken for initiating the DE. The Applicant was, therefore, reinstated in service by order dated 16.07.2020 and again on second day i.e. on 17.07.2020, he was suspended for another alleged misconduct which has taken place much earlier i.e. in October, 2019. This clearly indicates that the Respondent has dug-up old alleged misconduct only to keep the Applicant under suspension. Indeed, on the same day, the charge-sheet was issued and Enquiry Officer was also appointed. The charges for second suspension was of unauthorized occupation of Office Room without permission and availment of HRA. It is nowhere the case of Respondent that the said facts were not within the knowledge of Respondent when he was suspended initially by order dated 15.04.2020. At the time of initial suspension itself, the Respondent ought to have considered alleged misconduct of October, 2019, but appears that he has adopted practice of piecemeal suspension so that the Applicant is continued under suspension even after revocation of first suspension. The charges of second suspension does not seems to be so serious as to



warrant major punishment. Indeed, in DE, minor punishment of withholding increment with cumulative effect has been imposed. This being the position, it will have to be held that there was no such situation warranting second suspension, but Applicant was subjected to suspension in very casual and cavalier manner.

10. True, the Respondent was at liberty to initiate the departmental proceeding for the alleged misconduct of October, 2019 but the question would be whether there was any such necessity or situation warranting the suspension. It cannot be said that there was any threat or fair conduct of DE. The alleged misconduct was based upon the record, and therefore, the question of tampering of evidence did not arise.

11. As observed by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, a person under suspension suffers ignominy of insulations, scorn of society and has to suffer torment. Therefore, the suspension should not be resorted as a matter of Rule and it can be resorted to where the allegations are grave and serious, there is possibility of tampering of evidence, charges invites major punishment of dismissal or removal from service or continuation of a Government servant in the Office is against wider public interest. There is no such case here. On the contrary, it is a case of back to back suspension though there was no such extreme situation for placing the Applicant under suspension again. Suffice to say, the second suspension is in contravention of the provisions laid down in Departmental Manual as well as settled principles of law enunciated in the authorities discussed supra.

12. The cumulative effect of aforesaid discussion leads me to hold that second suspension was not at all warranted and it is nothing but colourable exercise of power. Consequently, suspension order dated 17.07.2020 is liable to be quashed. However, it is made clear that this has nothing to do with the merits of final order passed in DE holding the

Applicant guilty for the charges framed against him and the observations are restricted only to the extent of legality and necessity of suspension order. Hence, the order.

**ORDER**

- (A) The Original Application is allowed.
- (B) The impugned suspension order dated 17.07.2020 is quashed and set aside.
- (C) The Respondent shall treat the period undergone by the Applicant under suspension as a duty period with all consequential service benefits.
- (D) No order as to costs.

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

Mumbai

Date : 20.10.2021

Dictation taken by :

S.K. Wamanse.

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