

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.44 OF 2023**

**DISTRICT: Solapur  
SUB : Suspension**

Shri Prashant B. Sure , )  
Age:- 43 yrs, Occ. Circle Officer, Tirhe, )  
Tal. North Solapur, R/at R-96, Nirmiti Vihar )  
Vijapur Road, Solapur 413 004. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, through )  
its Secretary, Revenue Dept., Mantralaya, )  
Mumbai 400 032. )
- 2) The Divisional Commissioner cum Chief )  
Controlling Officer, Pune Division, Vidhan )  
Bhavan, Pune 411 001. )
- 3) The Collector, Collector Office Premises, )  
Sidheshwar Peth, Solapur 413001. )
- 4) The Deputy Collector, (Rehabilitation), )  
Collector Office Premises, Sidheshwar Peth )  
Solapur 413001. )...**Respondents**

Shri R. G. Panchal, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)

DATE : 11.07.2023

**JUDGEMENT**

1. The Applicant has challenged suspension order dated 07.12.2022 whereby Respondent No.3- Collector, Solapur suspended the Applicant in contemplation of D.E. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. The Applicant is serving in the cadre of Circle Officer on the establishment of Respondent No.3- Collector, Solapur. He came to be suspended by order dated 07.12.2022 in contemplation of D.E. for certain alleged misconduct and at the same time, the charge sheet was also served on the Applicant thereby alleging that he certified the mutation entries without following due process. The Applicant contends that all that he carried the instructions issued by his superiors while certifying mutation entries and there is no such misconduct much less to invite suspension. That apart, he assailed suspension order on the ground that he subjected to prolong suspension for more than six months without taking review of suspension and it is in contravention of decision the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

3. Heard Shri R. G. Panchal, learned Counsel for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

4. In O.A. though enough time was granted to Respondents, no reply is filed and ultimately proceeded without Affidavit in Reply.

5. Indeed, non-filing of Affidavit in Reply itself reflects casual approach of the Respondents and failure to justify the suspension particularly when he subjected to prolong suspension for more than six months and no steps are taken to review the suspension after three months as mandated by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's case**.

6. All that learned P.O. tried to contend that now the department is taking steps to reinstate the Applicant. This is nothing but attempt to circumvent the direction of the Hon'ble Supreme Court and damage control exercise.

7. However, as on today no such order of reinstatement or posting is forthcoming. Nobody is present on behalf of the Respondents.

8. Having heard the matter, in my considered opinion, the O.A. could be disposed of solely on the ground of failure of the Respondents to take review of the suspension within three months. The Applicant was suspended and on the same date, charge sheet was issued. However, no further steps were taken for completion of D.E. nor review was taken for extension of suspension if so warranted.

9. Strangely, later the Respondent No.3 - Collector, Solapur by letter dated 03.04.2023 cancelled the D.E. initiated by charge sheet dated 07.12.2022 and ordered for joint enquiry afresh against the Applicant and other Shri P.M. Chavan, Talathi. This fact is not disputed by the learned P.O.

10. Thus, what transpires that after suspension order dated 07.12.2022 neither review was taken nor D.E. was completed within three months and on contrary later by communication dated 03.04.2023, D.E. itself was cancelled and fresh joint D.E. is ordered.

11. The issue of permissibility of suspension period is no more res-integra in view of the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. Normally, the Tribunal should not look into sufficiency or insufficiency of the material for passing suspension order. Even assuming for sake of argument that suspension was really warranted in that event also, it being in contemplation of D.E. the Respondents were under obligation to take review of suspension before expiration of three months from the date of suspension but they failed to do so. Resultantly, the Applicant is subjected to prolong suspension which is now more than six months and totally impermissible.

12. At this juncture, It would be apposite to reproduce Para Nos.11, 12 and 21 of the judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. which are 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.”*

13. As such, there is no escape from the conclusion that prolong suspension for the Applicant is totally impermissible. Indeed, in view of directions of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, the Government had issued Circular dated 28.03.2018 issuing instructions to department to take review of the suspension within three months from the date of suspension making it clear that failing to which there would be no option except to reinstate a Government servant in service. Appalling to note despite this position, the Respondents failed to discharge their obligation under law. In view of mandate of the Hon'ble Supreme Court, the Applicant deemed to have been reinstated in service after expiration of three months from the date of suspension i.e. from 07.03.2023.

14. Since fresh joint D.E. is again initiated, it would not be appropriate to make any comment about merits of the suspension. Whether Applicant has committed any such misconduct is the question to be decided after conclusion of D.E.

15. In this view of the matter, the Applicant is required to be reinstated forthwith. He is also entitled to back-wages for the period after expiration of three months period from the date of suspension. Hence, the following order :-

**ORDER**

- (A) The Original Application is allowed partly.
- (B) The suspension of the Applicant stands revoked and he be reinstated in service within a week from today.
- (C) The Respondent No.3 is further directed to release pay and allowances to the Applicant for the period from 07.03.2023 since he deemed to have been reinstated in service on 07.03.2023 within a month from today.

- (D) The joint enquiry initiated against the Applicant and other be concluded at the earliest.
- (E) No order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai

Date : 11.07.2023

Dictation taken by: Vaishali Santosh Mane

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