

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.452 OF 2021

DISTRICT : THANE

Shri Vikas Eknath Jog.)
Age : 50 Yrs., Working as Inspector of)
Legal Metrology, Mandavi Division – II,)
Masjid Bandar (W), Mumbai and residing)
at 602, Spring, Season Complex,)
Khandakpada Circle, Kalyan (W),)
District : Thane.)...**Applicant**

Versus

1. The Controller.)
Legal Metrology, M.S, Mumbai,)
Having Office at Fountain Telecom)
Building No.1, 7th Floor, M.G. Road,)
Fort, Mumbai – 400 001.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Civil Supply, Consumer Protection)
Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 27.10.2021

JUDGMENT

1. The Applicant has challenged the suspension order dated 28th June, 2021 whereby he is suspended in contemplation of departmental enquiry invoking Rule 4(1) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity).

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

While Applicant was serving as Inspector of Legal Metrology, Mandvi-2, there were complaints against his functioning, and therefore, Respondent No.1 – Controller, Legal Metrology by order dated 01.03.2020 shifted him as Inspector of Legal Metrology, Vikalp-Vahan, Tank-1 on vacant post. However, the Applicant did not join at the place where he was shifting and did not handover the charge of his post at Mandvi-2. Therefore, the Respondent No.1 by order dated 28.06.2021 suspended the Applicant in contemplation of D.E. for disobedience, etc. He is subjected to prolong suspension without initiating the D.E, and therefore, has approached this Tribunal by filing the present O.A.

3. Shri Bandiwadekar, learned Advocate for the Applicant submits that the Applicant is subjected to prolong suspension beyond 90 days without filing charge-sheet, and therefore, he is liable to be reinstated in service in terms of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. He has further pointed out that even till date, no charge-sheet is served upon the Applicant for which he was suspended by order dated 20.06.2021. He, therefore, prayed that direction be given to take review of suspension.

4. Per contra, Mrs. A.B. Kololgi, learned Presenting Officer submits that there was serious complaints against the Applicant which necessitated his shifting from Mandvi-2 to Vikalp-Vahan, Tank-1, but he

did not join there and thereby committed serious misconduct. As regard initiation of DE, she submits that matter is under process at the level of Government and charge-sheet will be issued soon. She fairly concedes that no review is taken till date though period of 90 days is over.

5. Undoubtedly, the adequacy of material before the competent authority for suspension of a Government servant cannot be the subject matter of judicial review, since it exclusively falls within the domain of competent authority. However, the question posed in the present O.A. is to how long Applicant could be subjected to prolong suspension without taking any steps to review the suspension. The Applicant was subjected to suspension only in contemplation of DE, for which till date, no DE is initiated though period of four months is over.

6. The legal position in respect of prolong suspension is no more res-integra in view of Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. 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 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 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 21st 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. Shri G.A. Bandiwadekar, learned Counsel for the Applicant further referred to the decision of Hon’ble Madras High Court in **W.P. No.29881 of 2010 and M. P. No.2 of 2010 (V. Santhanagopalan V/s. The Commissioner/Director of Rural Development & Panchayat Raj), decided on 07.12.2017**. In the said case, the Petitioner was kept under

suspension in view of the registration of crime under Prevention of Corruption Act as well as in contemplation of D.E. by suspension order dated 29.07.2009. However, he was subjected to prolong suspension. Hon'ble Madras High Court relying on the decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra), quashed the suspension order and directions were issued to post the Petitioner on non-sensitive post as the administration deems fit.

9. Suffice to say, in view of dicta of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** matter, the suspension should not exceed beyond 90 days, if within this period, the memorandum of charges is not served upon a Government servant and where memorandum is served, a reasoned order must be passed for the extension of suspension. However, in the present case, no such exercise is undertaken though period of more than four months is over, which is in contravention of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. The Respondent is under obligation to take review of suspension and to pass appropriate order about the revocation of suspension or continuation of suspension for the reasons to be recorded, as the case may be. But in any case, the Applicant cannot be subjected to such prolong suspension.

10. Indeed, the Government by G.R. dated 09.07.2019 has acknowledged the mandate laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case that suspension beyond 90 days would be impermissible and instructions are issued to the Departments to ensure initiation of DE within 90 days. In the said G.R, it is clarified by the Government that where charge-sheet is not served within three months in the light of decision of Hon'ble Supreme Court, there would be no option except to revoke the suspension, and therefore, directions were issued to ensure initiation of DE within 90 days.

11. In view of above, the present O.A. is required to be disposed of by giving direction to the Respondents to take review of suspension of the Applicant. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to take review of suspension of the Applicant and shall pass appropriate order within six weeks from today.
- (C) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (D) If Applicant felt aggrieved by the decision, he may avail further remedy in accordance to law.
- (E) No order as to costs.

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

Mumbai

Date : 27.10.2021

Dictation taken by :

S.K. Wamanse.

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