

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.468 OF 2023

DISTRICT : RAIGAD

Sub.:- Suspension

Shri Naresh Pandurang Pawar.)
Age : 37 Yrs, Worked as Clerk-Typist)
[Now under suspension], R/o. Shivkrupa)
Building, Room No.305, Behind Girls)
School, Mhasala, Tal. : Mhasala,)
District : Raigad.)...**Applicant**

Versus

1. The District Collector.)
Raigad at Alibaug, District : Raigad.)
2. The Divisional Commissioner.)
Konkan Division, Navi Mumbai,)
Having Office at Konkan Bhawan,)
1st Floor, Navi Mumbai – 400 614.)...**Respondents**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.05.2023

JUDGMENT

Disposed of at the stage of Admission

1. The Applicant has challenged the suspension order dated 06.03.2018 whereby Collector suspended him by way of deemed suspension in view of his detention in Police Custody for more than 48

hours for the offences under Sections 167, 171, 193, 197, 198, 201, 203, 213, 214, 420, 419, 467, 468, 471 and 120 of Indian Penal Code. He was working as Clerk-cum-Typist. The Applicant allegedly committed mal-practices and forged the documents in examination for the post of Clerk and also committed offence of impersonation. He was arrested by Mandovi Police and was in custody for more than 48 hours. Consequent to it, he came to be suspended invoking Rule 4(2)(a) of Maharashtra Civil Services (Discipline and Appeals) Rules, 1979 (hereinafter referred to as 'D & A Rules of 1979' for brevity).

2. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the suspension order mainly on the ground of prolong suspension for more than five years. He submits that the suspension of the Applicant was continued mechanically from time to time and now period of more than 5 years being over, no fruitful purpose would serve by continuing suspension. He made reference to the decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

3. Per contra, Shri A.J. Chougule, learned Presenting Officer submits that the Review Committee had taken review of suspension from time to time, but having regard to the serious charges levelled against the Applicant, suspension was continued.

4. Indisputably, it is a case of deemed suspension in view of detention for more than 48 hours in Police Custody. However, the question arises as to how long suspension should continue, since period of more than 5 years from the date of suspension is now over. True, Review Committee has taken review of suspension, but suspension is mechanically extended only on the ground that the charges are serious. The Review Committee totally over-looked that co-delinquent/co-accused are already reinstated in service after revocation of suspension. This being so, the

Applicant ought to have been reinstated in service, but he is subjected to prolong suspension.

5. Notably, though Mandovi Police have filed charge-sheet in Criminal Case, it is pending in the Court and there is no certainty of its conclusion in near future. Apart, Department had taken conscious decision not to initiate DE till the decision of Criminal case. This being so, no fruitful purpose would serve by continuing the Applicant under suspension.

6. Indeed, Government had issued G.R. dated 14.10.2011 for taking review of suspension, so that Government servant is not subjected to prolong suspension. The Review Committee is required to take conscious decision after objective assessment of the situation, but in the present case, suspension is continued mechanically. Thus, the fundamental right of the Applicant for speedy decision of Criminal Case is affected. Now, period of more than 5 years is over and no fruitful purpose would serve by continuing the Applicant under suspension. In terms of G.R. dated 14.10.2011, the Applicant can be reinstated in service on non-executive post or any other suitable post as deems fit.

7. The totality of aforesaid discussion leads me to conclude that further continuation of suspension is totally impermissible and Applicant is required to be reinstated in service. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The suspension of the Applicant is revoked with immediate effect.
- (C) The Respondents are directed to reinstate the Applicant within two weeks with liberty to post him on non-executive post or any other suitable post, as deems fit.

(D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 03.05.2023

Dictation taken by :

S.K. Wamanse.

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