

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.474 OF 2018

DISTRICT : MUMBAI

Shri Mukund Vilas Solase)
Age : 42 Yrs, Occu.: Service, R/o. A-601,)
Sushil harmony, Plot No.92/93, Sector 22,)
Kamote, Panvel – 410 209.)...Applicant

Versus

1. The State of Maharashtra.)
Tribal Development Department,)
Through its Secretary, Tribal Development)
1st Floor, Annex Building, Gen. Bhosale)
Marg, Mantralaya, Mumbai 400 032.)
2. Tribal Development Department.)
Through its Additional Commissioner, Thane)
Having office at Vardan Sankul, 9th Floor,)
Wagle Estate, Thane West, Thane 400 604.)...Respondents

Mr. A.A. Desai, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

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

DATE : 03.11.2018

JUDGMENT

1. The Applicant has approached this Tribunal challenging the order of suspension dated 23.11.2017 under Section 19 of the Administrative Tribunals Act, 1985.
2. The Applicant was working as Clerk-cum-Typist in the Office of Additional Commissioner, Tribal Development, Thane (Respondent No.1). At the relevant time,

additional charge of Tribal Development Inspector was given to him. FIR dated 11.07.2016 was registered against him and others for the offences under Section 406, 409, 417, 420, 464, 468, 471 and 466 r/w 34 of Indian Penal Code, 1860 with Khandeshwar Police Station, Navi Mumbai. The Applicant was arrayed as Co-accused in the FIR. Thereafter, he continued to work and also subjected to transfer to other place. In pursuance of FIR dated 11.07.2016, he was arrested on 30.01.2017 and bailed but on 04.02.2017. After releasing on bail, he continued to work for about 10 months. However, suddenly, the suspension order was passed on 23.11.2017 suspending the Applicant with retrospective effect i.e. from the date of arrest 30.01.2017 under Section 4(2)(a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred as 'Rules 1979'). Despite the representations made by him to the Department, no decision was taken to review the suspension. He contends that the other co-accused though were in custody, he was only picked for the suspension, and therefore, the order of suspension is discriminatory and suffers from malice. Though he is under suspension for almost 27 months, no charge-sheet has been filed in pursuance of FIR dated 11.07.2016 nor any departmental action has been initiated which shows lack of adequate material for continuation of suspension. There is no compliance of the provisions of G.R. dated 14th October, 2011 to take review in the matter of suspension and for reinstatement. He, therefore, sought direction to Respondents to revoke suspension and reinstate him in service.

3. The Respondent No.2 has filed Affidavit-in-reply *inter-alia* denying the allegation that the Applicant has been subjected to discrimination. The Respondents sought to justify the suspension on the ground that suspension was necessitated in view of offences registered against him vide FIR dated 11.07.2016. According to Respondents, having regard to the serious charges leveled in the FIR, the suspension is legal and correct. As regards review of suspension, the Respondents plead that the matter is under process and it will be placed before the Review Committee and his representation will be considered. The Respondents, therefore, prayed to dismiss the application.

4. The Applicant filed Affidavit-in-rejoinder thereby reiterating the grounds raised in the application.

5. Heard Shri A.A. Desai, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

6. Shri A.A. Desai, learned Advocate for the Applicant assailed the suspension order dated 23.11.2017 mainly on the following grounds.

(i) In FIR dated 11.07.2016, the allegations leveled against the Applicant are restricted to the submission of incorrect report to his Department and major role / accusation are against the other accused. In FIR, he is arrayed as Accused No.6 which shows his minor alleged role in the crime.

(ii) Even after the registration of FIR, the Applicant rendered continuous service of 10 months and in this period, he was also subjected to transfer.

(iii) The suspension order passed after 10 months from the registration of FIR is *malafide*.

(iv) No suspension order has been issued against other main accused which indicates discrimination and malice.

(v) Neither charge-sheet has been filed in pursuance of the FIR dated 11.07.2016 nor Departmental Enquiry has been initiated till date which shows lack of adequate material to substantiate the charges.

(vi) In view of Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary Vs. Union of India, reported in (2015) 7 SCC 291***, the continuation of suspension beyond 90 days is totally illegal.

7. Per contra, Ms. N.G. Gohad, learned P.O. sought to justify the order of suspension on the ground that the accusation in FIR pertains to serious offences, and therefore, the suspension cannot be said *malafide*. As the Applicant was in custody for five days, suspension order came to be passed under Section 4(2)(a) of 'Rules 1979'.

8. Significantly, no satisfactory explanation could be given by the learned P.O. for belated suspension order. All that she submitted the Department came to know about registration of offences before 2/3 days of the passing of order, and therefore, there is

no delay in issuance of suspension order. To say the least, this explanation is difficult to accept. On the contrary, it shows that the Department was not diligent enough.

9. Normally, an adequacy of material before the authority at the time of taking decision of suspension does not fall within the scope and ambit of judicial review. If suspension is on account of detention in Police Custody for more than 48 hours, then its legality cannot be questioned. However, in given set of facts, the important question is whether the suspension can be continued indefinitely without bothering to take follow-up action mandated by the law and Government policy.

10. It is true merely because suspension is continued for a longer period that itself does not invalidate the suspension. However, it is subject to rider in view of recognized principle of law that the period of suspension should not be unnecessarily prolonged if adequate and plausible reasons exist. However, in the present case, no such material exists to justify the inordinate and longer period of suspension, particularly when, no such suspension action has been taken in respect of other persons against whom the offences have been registered along with the present Applicant.

11. Now, the situation is squarely covered by the Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary*** (cited supra). It would be appropriate to reproduce Para No.21 of the said 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.”

12. Shri A.A. Desai, learned Advocate for the Applicant also heavily placed reliance on the Judgment passed by this Tribunal in ***O.A.No.35/2018 decided on 11th September, 2018 (Dilip J. Ambilwade Vs. State of Maharashtra and O.A.No.269/2018) decided on 16th October, 2018*** wherein the law laid down in ***Ajay Kumar Choudhary's*** case has been followed with observation that the question, as to whether continuation of suspension beyond 90 days is justified, is no more open for debate being judicially concluded by the Hon'ble Apex Court which was also followed by the Hon'ble Supreme Court in ***State of Tamil Nadu Vs. Pramod Kumar and Another (Civil Appeal No.2427-2428 of 2018)***.

13. In this behalf, reliance is also placed on the Judgment of Hon'ble Bombay High Court in ***Dr. Narender Omprakash Bansal Vs. The Additional Chief Secretary, Mumbai & Ors., reported in 2016(4) ALL MR 168***. In that case, the Applicant was suspended in contemplation of departmental enquiry for a longer period and there was failure on the part of Department to place the matter before Review Committee in terms of G.R. dated 14th October, 2011 and the matter was simply lying with the disciplinary authority. The Hon'ble Bombay High Court held that the suspension does not appear to be either legal or in public interest and quashed the suspension order.

14. In terms of G.R. dated 14th October, 2011, the Review Committee was under obligation to consider the subject of continuation of suspension after one year, in case where the public servant is suspended for the serious offences registered under Prevention of Corruption Act and Indian Penal Code.

15. As per Affidavit-in-reply, till then till the filing of the reply, the matter was not placed before Review Committee is the admitted position. However, during the course of argument, the learned P.O. orally informed that the review was taken and it was decided to continue the suspension. Strangely, no such order is forthcoming to see the ground mentioned for continuation of suspension and to find out whether the decision is rational and objective.

16. As indicated earlier, the Respondent No.2 has not suspended the other co-accused who was also in judicial custody for more than 48 hours. One of the accused secured anticipatory bail, and therefore, could not be arrested. However, that does not preclude the Respondent No.2 from initiating the D.E, which is admittedly not initiated.

17. Furthermore, though the Applicant was arrested on 30.01.2017 and bailed out on 04.02.2017, the suspension order was issued belatedly after 10 months on 23.11.2017. During this period, the Applicant was in service and was also subjected to transfer. This inordinate delay in taking the action of suspension is indicative of the fact that there was no adequate or sufficient material before the authority except to apply Rule 4(2)(a) of 'Rules 1979' mechanically.

18. In FIR, the role attributed to the Applicant is restricted to submission of false report in the capacity of charge of Tribal Development Inspector. No action of suspension has been taken against whom there are serious allegations for misappropriation of public money and forgery.

19. In view of above discussion, what emerges is that the suspension order has been passed belatedly after 10 months from the date of arrest of the Applicant and there is no plausible explanation forthcoming for such belated action. It can be inferred that there was no enough material to take immediate action to warrant the suspension. Thereafter, though the period of more than 27 months is over, no charge-sheet has been filed in pursuance to the FIR neither Department has initiated departmental proceedings. This again reinforce the inference that the Department has no enough grounds / material to take the things to logical conclusion. No action has been taken against the similarly placed persons whose names are figured in the FIR. In view of Judgment of Hon'ble Apex Court in **Ajay Kumar Choudhary** (cited supra), there is cap of 90 days for suspension period. As such, the submission advanced by the learned Advocate for the Applicant that the continuation of suspension is unsustainable, cannot be repelled.

20. For the aforesaid discussion, I conclude that the continuation of suspension is not legal and it needs to be revoked by reinstating the Applicant in service and application deserves to be allowed. Hence, the following order.

ORDER

- (i) The O.A.No.474 of 2018 is allowed.
- (ii) The suspension order dated 23.11.2017 passed by Respondent No.2 is hereby quashed and set aside.
- (iii) The Respondent No.2 is directed to reinstate the Applicant in service within two weeks from today and appropriate posting order be issued.
- (iv) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 03.11.2018

Dictation taken by :

S.K. Wamanse.

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