

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.504 OF 2021  
WITH  
ORIGINAL APPLICATION NO.505 OF 2021  
WITH  
ORIGINAL APPLICATION NO.506 OF 2021  
WITH  
ORIGINAL APPLICATION NO.507 OF 2021**

**DISTRICT : Sindhudurg**

**ORIGINAL APPLICATION NO.504 OF 2021**

Shri Padmakar Ambadas Mane )  
Age -43 years, Occ : Service )  
[now under suspension], )  
Office at Regional Transport Office, Panvel Dist. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Additional Chief Secretary, )  
Department of Home (Transport), )  
Mantralaya, Mumbai – 400 032. )
2. Transport Commissioner, Office at MTNK )  
Building, Fountain 2 building, 5<sup>th</sup> floor, )  
M.G. Road, Fort, Mumbai 400 001. )...**Respondents**

**ORIGINAL APPLICATION NO.505 OF 2021**

Shri Siddheshwar Narayan Ghule )  
Age - 36 years, Occ : Service )  
[now under suspension], )  
Office at Regional Transport Office, Panvel Dist. )...**Applicant**

**Versus**

The State of Maharashtra & Anr.

**ORIGINAL APPLICATION NO.506 OF 2021**

Shravani Suchit Mayekar )  
 Age - 39 years, Occ : Service [now under suspension], )  
 Office at Dy. Regional Transport Office, Pen )  
 Dist. Raigad. )...**Applicant**

**Versus**

The State of Maharashtra & Anr. )...**Respondents**

**ORIGINAL APPLICATION NO.507 OF 2021**

Shri Swapnil D. Mundkale )  
 Age - 31 years, Occ : Service )  
 [now under suspension], )  
 Office at Regional Transport Office, Panvel Dist. )...**Applicant**

**Versus**

The State of Maharashtra & Anr. )...**Respondents**

**Shri S. S. Deokar, Advocate for Applicant.**

**Shri A. J. Chougule with Smt. Archana B. K., Presenting Officer for Respondents.**

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

**DATE : 01.09.2021**

**JUDGMENT**

1. Heard Shri S. S. Deokar, learned Counsel for the Applicants and Shri A. J. Chougule with Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. All these Original Applications are filed challenging common suspension order dated 25.11.2020 whereby the Applicants came to be suspended in contemplation of D.E.

3. The Applicants are working as Clerk-cum-Typist in the office of Deputy Regional Office, Sindhudurg and they were entrusted with the work of taking entries of registration numbers of vehicles, details of tax etc. in the computer by using their User ID given to them by the office. They were suspended by order of Respondent No.2-Transport Commissioner, Mumbai invoking Rule 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 in contemplation of D.E. and since then they are in suspension. The Applicants have, therefore, challenged the suspension order *inter-alia* contending that they are subjected to prolong suspension without taking any steps for initiation of D.E. in terms of G.R. dated 09.07.2019 which has been issued by the Government in view of the decision of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

4. Shri S. S. Deokar, learned Counsel for the Applicants submits that the Applicants have already brought to the notice of department while giving reply to the show cause notice that they are not at fault and somebody else has used their login ID. He further submits that in view of the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's case** (cited supra) suspension after 90 days is unsustainable in law since no further steps are taken for initiation of D.E.

5. Shri A. J. Chougule, learned Presenting Officer on instructions from Shri Prakash Jadhav, Motor Vehicle Prosecutor, Transport Commissioner office submits that the Respondents will take review of suspension. This is all that learned P.O. submits on behalf of the Respondents.

6. Indisputably, the Applicants were suspended by order dated 25.11.2020 in contemplation of D.E. but till date no D.E. has been initiated against the Applicants. As such, the Applicants are

subjected to prolong suspension which is about ten months without taking any steps by the Respondents to take review of suspension or to initiate D.E. against the Applicants.

7. Needless to mention that adequacy of material before the authority at the time of taking decision in suspension does not fall within the scope and ambit of judicial review. However, the question is how long the Applicants can be subjected to prolong suspension in view of the mandate of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case which has been acknowledged by the Government by issuance of G.R. dated 09.07.2019.

7. The legal position in respect of prolong suspension is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). 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.”*

8. 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.

9. As such, in view of the decision in ***Ajay Kumar Choudhary’s*** case, the competent authority is required to take review of suspension after expiration of 90 days, if no D.E. is initiated. This is also acknowledged by the Government in G.R. dated 09.07.2019 under which instructions were issued that the department must ensure

initiation of D.E. within 90 days and where D.E. is not initiated within 90 days, there would be no option except to reinstate a Government servant in service. The Applicants are not facing any criminal prosecution.

10. In view of the aforesaid legal position and failure of the Respondents to initiate D.E. within 90 days from the date of suspension, these Original Applications deserve to be disposed of with directions to the Respondents to take review of the Suspension of the Applicants in accordance to rules. Hence the following order:-

**ORDER**

- (A) All these Original Applications are allowed partly.
- (B) Respondent No.2 is directed to take review of suspension of the Applicants within a months from today and the decision as the case may be, shall be communicated to the Applicants within a week thereafter.
- (C) If the Applicants felt aggrieved by the decision, they may avail legal remedy, in accordance to law.
- (D) No order as to costs.

Sd/-

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

Place : Mumbai

Date : 01.09.2021

Dictation taken by : VSM

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