

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.52 OF 2016

DISTRICT : THANE

Mr. Shrikant Vinayak Varunjikar. )  
An adult, Occ. Service, Residing at )  
G-1, Madhuban Co-op. Society, Gokul )  
Nagar, Chendhare, Alibag, Dist : Raigad. )...**Applicant**

**Versus**

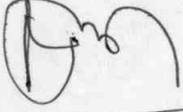
The State of Maharashtra. )  
Through Commissioner of Fisheries, )  
Maharashtra State, having Office at )  
Taraporwala Aquarium, Netaji Subhash )  
Road, Charni Road, Mumbai 400 002. )...**Respondent**

**S/S Uday Warunjikar with P.S. Pathak, Advocates for Applicant.**

**Ms. A.B. Kololgi, Presenting Officer for Respondent.**

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 01.12.2016**

  
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## **JUDGMENT**

1. The Applicant an Assistant Fisheries Development Officer currently under suspension calls into question the said order and seeks relief *inter-alia* of revocation of suspension so as to facilitate resumption of duties.

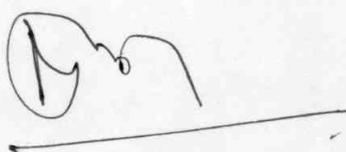
2. I have perused the record and proceedings and heard Mr. Uday Warunjikar with Shri P.S. Pathak, the learned Advocates for the Applicant and Ms. A.B. Kololgi, the learned Presenting Officer for the Respondents.

3. The Applicant had been working in the capacity hereinabove mentioned from 25<sup>th</sup> July, 1992. It appears from the record that a First Information Report (FIR) came to be lodged by Shri Vinod P. Patil on 3.2.2013 alleging therein a huge financial impropriety involving the subsidy on diesel which was allegedly distributed to the non-fishermen. It appears from a few documents on record including the order of the learned Additional Sessions Judge, Raigad, Alibaug, dated 5.5.2015 in MA No.424/2015 (Shrikant Varunjikar Vs. State of Maharashtra), a copy of which is to be found on Page 26 of the Paper Book (PB) that the name of the Applicant was



not mentioned in that FIR. A few accused therein were enlarged on what is commonly called anticipatory bail which order was confirmed right up to the Hon'ble Supreme Court. What really happened was that as per the record, the Applicant came to be arrested in connection with that matter on 24.4.2015 which was a couple of years post FIR. He was in Police custody for a period in excess of 48 hours and was, therefore, placed under deemed suspension in accordance with the Rules relevant in that behalf. The learned Magistrate did not enlarge him on bail. He went before the Court of Sessions by way of the applications hereinabove detailed and he was released on bail on execution of P.R. bond of Rs.15,000/- and one surety in the like amount. He was directed to attend the office of Economic Offences Wing (EOW) on every Monday during 10 to 12 hours till the completion of the investigation. It is common ground that by an order of 2.1.2016 even that condition was relaxed by the Court of Sessions at Raigad, Alibaug.

4. Now, that is in so far as the offence aspect of the matter is concerned. Going by the record such as it is at the moment, it is really very difficult to decipher as to what are the accusations against the Applicant.

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5. Now, by an order of 29.4.2015, the Applicant came to be placed under suspension. It is there at Exh. 'D' (Page 28 of the P.B). The Applicant made a few representations for reinstatement without any success in the matter and he is up before me by way of this OA for the relief already indicated at the outset.

6. The issue of suspension of a public servant is regulated by a Government Resolution (G.R. hereinafter) dated 14<sup>th</sup> October, 2011. Thereunder the said issue is required to be placed before a Suspension Review Committee established by the said G.R. periodically. It appears therefrom that in case of serious offences, mainly falling within the provisions of the Prevention of Corruption Act, the offences involving moral turpitude, murder, attempt to commit murder, rape and such serious offences, the matter is required to be placed before the said Committee after one year of the date of suspension and in other cases, it is required to be placed before the said Committee within three months time. Thereafter also, a periodical review is required to be taken. Quite pertinently, Clause 4 thereof prescribes the guidelines in respect of the manner in which the Committee should be going about performing its functions. The said Clause 4 needs to be fully reproduced.

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“४. निलंबन आढावा समितीने, प्रकरणांचा आढावा घेताना पुढील बाबी विचारात घ्याव्यात.

अ) फौजदारी गुन्हा दाखल झालेल्या प्रकरणात न्यायालयात दोषारोप पत्र / अभियोग दाखल झाल्यानंतर दोन वर्षांच्या कालावधीत प्रकरणाचा निकाल लागला नसेल तर अशा प्रकरणी निलंबन संपुष्टात आणून अकार्यकारी पदावर नियुक्ती देण्याची शिफारस संबंधित निलंबन आढावा समिती करू शकते.

ब) ज्या ठिकाणी न्यायालयात दोषारोप पत्र / अभियोग दाखल होऊन २ वर्षांचा कालावधी झालेला नसेल किंवा दोषारोप पत्र / अभियोग दाखल झालेला नसेल अशा प्रकरणी निलंबन आढावा समितीने खालील बाबी विचारात घेऊन उचित शिफारस करावी.

(१) विभागीय चौकशांतील/ न्यायालयात दाखल झालेल्या दोषारोपपत्रातील दोषारोपाचे गांभीर्य, स्वरूप व व्याप्ती तसेच, तो सिध्द झाल्यास होऊ शकणारी कमाल शिक्षा.

(२) निलंबनाचा कालावधी.

(३) फौजदारी गुन्ह्याच्या संदर्भात सक्षम न्यायालयात अभियोग दाखल करण्याच्या प्रक्रियेची सद्यः स्थिती.

(४) संबंधिता विरुद्ध चालू असलेली विभागीय चौकशी/ न्यायालयीन कार्यवाही/ दोषारोप पत्र सादर करण्याच्या कार्यवाहीत विलंबास संबंधित अपचारी जबाबदार आहे किंवा कसे?

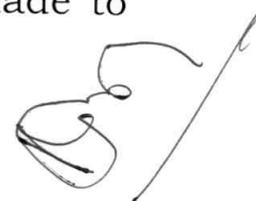
(५) संबंधित अधिकारी/ कर्मचा-यांचा त्यापूर्वीचा सेवा तपशील व सक्षम प्राधिका-याचे मत.

(६) संबंधित अधिकारी/ कर्मचा-यांस अदा करण्यात येणा-या निर्वाह भत्त्याची टक्केवारी व रक्कम.”



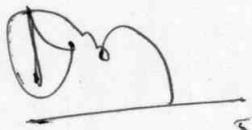
7. In the above background, returning to the facts, I find from the record that on 25.10.2016, I made the following order (Farad). The same may be reproduced.

- “1. Heard Shri P.S. Pathak, the learned Advocate for the applicant and Smt Archana B.K., the learned P.O. for the respondents.
2. An Affidavit has been presented sworn by Shri Pralhad R. Rathod, Administrative Officer in the office of Regional Deputy Commissioner, Fisheries, Mumbai.
3. My order of 19.10.2016 needs to be perused. The matter was then adjourned to 24.10.2016 and then to 26.10.2016. Although there was no Farad Order on 24.10.2016, but it seems that the point of the Minutes of Meeting was very much discussed. In the speaking order dated 19.10.2016, I clearly directed the respondents to explain the reasons for continuing the suspension of the applicant. In the affidavit submitted today, that direction has not been complied with. There was a faint suggestion about attempts having been made to



secure the copy of the Minutes of the Meeting but that was sought to be advanced at the bar. An adjournment shall be inevitable but I am very clearly of the view that the conduct is such that the matter cannot be simply adjourned without imposing cost. Subject to payment of cost of Rs.5,000/- which shall be deposited in the office of this Tribunal by 27.10.2016.

4. The respondents shall also make sure that they may file a proper affidavit explaining the reasons for continuing with the suspension of the applicant. They may also furnish the name and the designation of the authority from whom the copy of the Minutes of the Meeting could be had, so that the said authority could be directed to submit it before this Tribunal. The officer concerned of the respondents is also authorized to produce before the said authority who has the custody of the Minutes of the Meeting and hand it over to him to be produced before this Tribunal. Despite this clear direction though somewhat verbose if the compliance is not made, there will be imposition of further cost the amount of which will be really prohibitive. Two



copies of this order be handed over to Shri Pralhad Rathod, Administrative Officer in the office of Regional Deputy Commissioner, Fisheries, Mumbai, one for himself and his office and another for the office of the authority who will be in custody of the Minutes of the meeting.

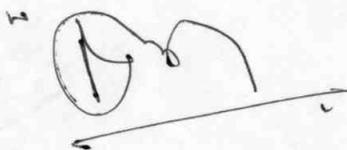
5. S.O. to 15.11.2016.”

8. It was thereafter that an Affidavit came to be filed by Shri Anil S. Ramteke, Assistant Commissioner of Fisheries (Admin) in the office of Commissioner of Fisheries. He tendered apology and assured that his inaction or action was not deliberate or intentional. Mrs. Pradnya Sawant, Tahasildar in the Office of the Divisional Commissioner, Konkan Division had informed him that by a letter of 21.10.2016, the Committee decided to continue the suspension of the Applicant. There was a hint in his Affidavit that I should recall my order dated 25.10.2016 implying thereby that the cost awarded should be cancelled. I have no hesitation in out-rightly rejecting this request and I have got nothing more except the said order itself to furnish as justification for the said view.



9. A copy of the meeting of the Committee which was held on 4.10.2016 has been annexed to the Affidavit of Mr. Ramteke at Exh. 'R-1'. It is in Marathi. It was mentioned therein that disputing the order of suspension, the Applicant had brought this OA which was heard on 11.8.2016 and this Tribunal directed that a decision be taken in that behalf which fact was communicated on 26.8.2016, whereupon the employing authority was told to give his remarks in the matter and he had, vide his letter of 22<sup>nd</sup> July, 2016 conveyed that the suspension should not be revoked. Again in the meeting of 4.10.2016, it was found that in as much as the offences under Sections 406, 420, 465, 468 and 471 were registered against the Applicant and he was arrested and the investigation was going on, he should not be reinstated.

10. A bare perusal of the relevant extract of the G.R. above quoted when studied in *juxta-position* with the contents of the meeting of the Committee should in my view make it very clear that the Committee did not bear in mind the guiding principles emerging therefrom. Quite pertinently, in Clause 5 and a few Clauses thereafter, the harp in that G.R. is on the need to reduce the period of suspension or rescind the suspension itself and at the most post revocation, he may be posted in what is



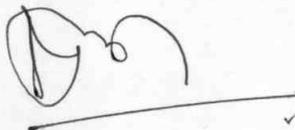
described as non-executive post. This is in so far as the position obtaining from the G.R. is concerned.

11. Mr. Uday Warunjikar, the learned Advocate for the Applicant in order to serve as guidance invited reference to two very apposite Judgments of the Hon'ble Supreme Court in **Capt. Paul Anthony Vs. Bharat Gold Mines Ltd. and another, (1999) 3 SCC 679** and **Ajay Kumar Choudhary Vs. Union of India, (2015) 2 SCC (L & S) 455 = (2015) 7 SCC 291**. I had an occasion to deal with similar issues in a few OAs and the most recent one was in **OA 405/2016 (Smt. Preeti Harsh Wig Vs. The Govt. of Maharashtra and one another, dated 25.10.2016**. Therein I sought extensive guidance from **Ajay Kumar Choudhary** (supra) and a number of other Judgments that came to be considered therein. That was in Para 12 of my Judgment. I think I had better reproduced Paras 12 and 13 from **Preeti Wig's** case wherein there are quotations from **Ajay Kumar Choudhary** (supra).

"12. Mr. M.D. Lonkar, the learned Advocate for the Applicant relied upon a very apposite and pertinent Judgment of the Hon'ble Supreme Court in the matter of **Ajay Kumar Choudhary**

**Vs. Union of India (2015) 2 SCC (L & S) 455 = (2015) 7 SCC 291**, Their Lordships discussed in extenso with the help of earlier decided cases the issue of suspension of an employee in the circumstances such as they are. I had an occasion to take guidance from **Ajay Choudhary** (supra) in a fasciculus of 4 OAs, the first one being **OA 167/2016 (Shri Anand B. Dalvi Vs. The Additional Commissioner of Police and one another and other OAs, decided on 15.10.2016.** In Para 10 of that common Judgment, I relied upon another Judgment rendered by me in **OA 26/2015 (Shri Anil R. Parab Vs. Government of Maharashtra and one another, dated 15.12.2015)** wherein also, I took guidance from **Ajay Choudhary** (supra) and also from **O.P. Gupta Vs. Union of India (1987) 4 SCC 328 and State of Andhra Pradesh Vs. N. Radhakrishna (1998) 4 SCC 154** and I reproduced Para 28 of my Judgment wherein I had reproduced the observations of the Hon'ble Supreme Court. The said Para 28 in fact needs to be fully reproduced hereinbelow for the significance of **Ajay Choudhary**, which is mainly

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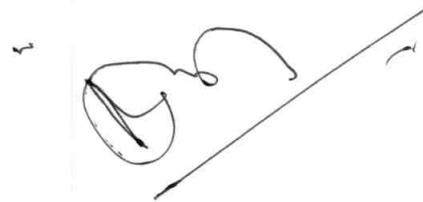


an authority on suspension preceding the formation of charge.

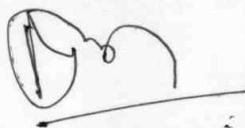
"28. In the above background Their Lordships were pleased to make observations which are of great moment and education to all students of law. In that connection para nos. 11 and 12 (pages 297 and 298 of S.CC. need to be fully reproduced.

"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.

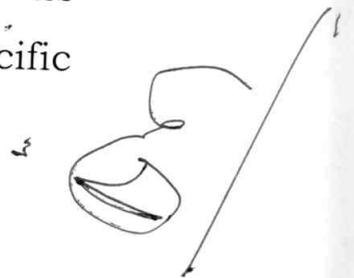
12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspension person suffering the derision

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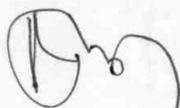
of his department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right 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 grounds 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 prosecution the accused shall enjoy the right to a speedy and public trial."

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13. The above discussion would, therefore, make it very clear that the employer cannot be allowed to place the employee under suspension and let the things remain dormant for an indefinite period of time. It must be clearly understood, however, that as per Rule 4 of the Maharashtra Civil Services (D & A) Rules, 1979, the Government has undoubtedly powers to place the would be delinquent under suspension if a DE was under contemplation. However, that is a provision as per a Rule framed under the proviso to Article 309 of the Constitution, and therefore, if the Hon'ble Supreme Court has been pleased to lay down the law interpreting such a provision in **Ajay Choudhary** (supra), the judicial fora will have to apply those principles in interpreting the Rule like Rule 4 herein relevant. It is possible in certain cases that due to circumstances which cannot be exhaustively enumerated the finalization of the DE might take time. It is also possible that reinstatement of a suspended employee could bring about a situation where he would be in a position to influence the course of the enquiry by various ways and means which again is a fact specific



matter and not capable of being enlisted exhaustively. Therefore, there can be circumstances requiring a proper approach to be adopted in such matters. However, by no stretch of imagination can the law laid down by the Hon'ble Supreme Court by virtue of Article 141 of the Constitution can be allowed to be trifled with and no judicial fora can even think of doing so. The expeditious movement in the matter of suspension is absolutely imperative and as held by the Hon'ble Supreme Court in effect in **Ajay Choudhary** (supra) other than suspension, other measures could always be adopted post revocation of suspension. It is always possible and in fact, I may clearly mention here, it is possible here also that certain measures could be adopted including in the matter of posting post revocation of suspension, so as to ensure that there was no attempt to interfere with, influence or affect the enquiry if and when it gets underway. But then to keep the things hanging in limbo, despite the clear authority of the Hon'ble Supreme Court in **Ajay Choudhary** (supra) is unacceptable."



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12. Mr. Warunjikar, the learned Advocate laid particular emphasis on the principles enunciated by the Hon'ble Supreme Court in **Paul Anthony** (supra) in Para 29. That also needs to be reproduced.

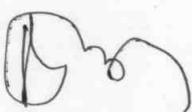
**"29.** Exercise of right to suspend an employee may be justified on the facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of "subsistence allowance", so that the employee may sustain himself. This Court, in O.P. Gupta V. Union of India made the following observations with regard to subsistence allowance: (SCC p.340, para 15)

"An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand V. Union of India is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only



some allowance- generally called subsistence allowance- which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance, has an undeniable penal significance. The dictionary meaning of the word 'subsist' as given in Shorter Oxford' English Dictionary, Vol. II at p.2171 is 'to remain alive as on food; to continue to exist'. 'Subsistence' means - means of supporting life, especially a minimum livelihood."

13. Having reproduced the Paragraphs containing momentous principles of complete applicability to the facts from the Judgments of the Hon'ble Supreme Court, all I can say is that the authorities below have faithfully abided by these principles in complete breach thereof. I am not here to opine on the merit of the allegations themselves but for all one knows, what the authorities have done is to merely got guided by the exaggerated notion of the mere pendency of the prosecution though in the first place as per the order of the learned Additional Sessions Judge and other material on record, the name of the Applicant did not even appear in the FIR itself and secondly, the prosecution has made no headway at all and going by what is clearly

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capable of being perceived from the record, no departmental enquiry has gone underway. In such a state of affairs, if the suspension has to continue mere mechanically, the very basic concept of the law laid down by the Hon'ble Supreme Court as well as the 2011 G.R. would get injured.

14. I am, therefore, quite clearly of the opinion that the order of suspension should not continue in so far as the Applicant is concerned. The authorities shall be free to, post revocation of suspension, give him a posting which according to them will be appropriate in accordance with the guidelines from the G.R. above referred to and the case law, but the suspension cannot be continued almost ad-infinitum. Normally, the matter would have been remitted with necessary directions to the authorities, but in view of the events that have happened and most importantly, in view of the clear mandate of the Hon'ble Supreme Court hereinabove discussed, in my view, presiding over a judicial forum, I cannot approach in a manner which would be pedantic and which might needlessly postpone the implementation of the law laid down by the Hon'ble Supreme Court. I am, therefore, so disposed as to give directions in that behalf, here and now, which would be binding on the authorities.

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15. The order of placing the Applicant under suspension stands hereby revoked and cancelled. The Respondents are directed to reinstate the Applicant guided in the matter by the observations in the preceding Paragraph within a period of four weeks from today. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**01.12.2016**

Mumbai

Date : 01.12.2016

Dictation taken by :

S.K. Wamanse.

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