

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.531 OF 2018

WITH

MISCELLANEOUS APPLICATION NO.462 OF 2018

(Subject : Suspension)

DISTRICT: NASHIK

Shri Dilip Ratan Sor,
Working as Driver,
Residing at Tulsi Chaya,
Row House No.2, Dwarka Nagar,
Borade Mala (Farm), Jail Road,
Nashik Road, Nashik.

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.. Applicant

Versus

The District Collector,
Collectorate Office,
Nashik

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..Respondents

Shri D.B. Khaire, the learned Advocate for the Applicant.

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

CORAM : SHRI A.P. KURHEKAR, MEMEBR(A)

RESERVED ON : 20.12.2018.

PRONOUNCED ON : 21.12.2018.

J U D G M E N T

1. The Original Application No.531 of 2018 is taken up for Final Hearing at the stage of Admission itself, wherein the challenge is to the order of suspension dated 19.12.2017 invoking the jurisdiction of

this Tribunal under Section 19 of the Administrative Tribunal Act, 1985. Whereas the Miscellaneous Application No.462 of 2018 is filed for change of headquarters of the Applicant during the period of suspension. The O.A. and M.A. are being disposed of by this common order.

2. Shortly stating the facts giving rise to this O.A. and M.A. are as follows :-

Applicant is serving as driver in the office of District Collector, Nashik i.e. Respondent. In 2016-17 Applicant was sent to Baglan from Nashik on deputation. Thereafter by order dated 31.05.2017 he was transferred from Nashik to Kalwan. Applicant has challenged the transfer order dated 31.05.2017 by filing O.A.No.577 of 2017 in this Tribunal. In the said proceeding interim stay was granted in favour of the Applicant. Applicant contends that as he had challenged transfer order the Respondent has initiated Departmental enquiry out of vengeance for alleged misconduct during the deputation of the Applicant at Baglan. Change-sheet was served under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 on 28.09.2018 and the S.D.O., Baglan has been appointed as Enquiry Officer.

3. Suddenly by impugned order dated 19.12.2017 Respondents placed Applicant under suspension and in view of the pending Departmental Enquiry, his headquarters has been kept at Yeola. Applicant contends that the charges framed in Departmental Enquiry

are baseless and he has also submitted his explanation for the same. He further contends that the suspension order dated 19.12.2017 is unsustainable as there is no question of apprehension to temper the witnesses in view of his stay at Nashik in pursuance of interim relief granted to him in O.A.No.577 of 2017. Applicant made representation to the Respondent on 20.04.2018 for the revocation of suspension and reinstatement of service but in vein. Applicant has, therefore, filed the present O.A. challenging legality and sustainability of suspension order dated 19.12.2017 and prayed for reinstatement in service. He contends that prolong suspension is unwarranted in view of the decision of the Hon'ble Supreme Court and secondly the Respondent failed to take review of suspension as mandated by the G.R. issued by the G.A.D. dated 14.10.2011, amongst the other grounds.

4. Simultaneously, Applicant has filed M.A.No.462 of 2018 contending that at the time of impugned suspension order he was posted at Nashik but his headquarters has been changed from Nashik to Yeola. Whereas Departmental Enquiry has been conducted at Baglan. There is no justification to change headquarter during the period of suspension. It is also contrary to the Government Circular issued by G.A.D. dated 19.03.2008. Applicant therefore prays for change of headquarters during the period of suspension.

5. Respondent has filed affidavit-in-reply (page 32 of the paper book) inter alia denying that the action taken by the Respondent in initiating Departmental Enquiry is out of vengeance. Respondent contend that during the deputation of Applicant at Baglan he was found guilty for various mis-conduct and therefore Departmental Enquiry has been initiated against him. The charge-sheet has been already served and Departmental Enquiry is in progress. In view of Departmental Enquiry Respondent thought it appropriate to suspend Applicant and therefore by order dated 19.12.2017 he has been kept under suspension under Rule 4(1)(a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. As such suspension order cannot be faulted with and challenge to the suspension order is devoid of any merit.

6. As regards M.A.No.462 of 2018, Respondent resisted the same by filing affidavit-in-reply. As regard change of headquarter all that Respondent contend that application for change of headquarter without making representation to the Department is premature and not maintainable.

7. Heard Shri D.B. Khaire, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting Officer for the Respondent.

8. At the very outset, it needs to be stated that admittedly at the time of suspension, Applicant was serving at Nashik, in view of the interim relief granted in his favour in O.A.No.577 of 2017 wherein applicant had challenged his transfer order dated 31.05.2017 from Nashik to Kalwan. The Departmental Enquiry has been initiated against the Applicant in respect of alleged mis-conduct during the deputation of the Applicant at Baglan and charge-sheet has been admittedly served on the Applicant on 28.02.2017. Whereas suspension order has been passed on 19.12.2017 and applicant's headquarter has been changed from Nashik to Yeola which is near about 100 kms. away from Nashik.

9. Undoubtedly, adequacy of material before the authority at the time of taking decision of suspension does not fall within the scope of ambit of judicial review. However it is well settled legal position that the suspension should be for the short duration and if it is continued for the longer period it must be objectively demonstrated that the continuation of longer period is warranted in the facts and circumstances of the case.

10. In the present case the applicant is under suspension for more than one year and Departmental Enquiry is still incomplete. I do not think it appropriate to make any comment on the merits or demerits of the charges leveled against the applicant in Departmental Enquiry. However the question is how long the applicant can be continued under suspension. Significant to note that there is non-observance of

the directions given in G.R. dated 14.10.2011 referred to above as well as in the light of the judgment of the Hon'ble Supreme Court and High Court which holds field in the matter of the suspension.

11. By Government Resolution dated 14.10.2011 Government has taken decision to take periodical review of the suspension of the Government employees so that suspension should not be continued for a longer period. Disciplinary authority needs to ponder over the issue of suspension of having regard to the nature of charges and to take objective decision whether to continue suspension.

12. Paragraph 7(a) of Government Resolution dated 14.10.2011 is material which is as below :-

“७.अ) ज्या प्रकरणी शासकीय अधिकारी / कर्मचा-याविरुद्ध वरील परिच्छेद ३ येथील कारणांव्यतिरिक्त केवळ महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम १९७९ च्या नियम ८ अन्वये विभागीय चौकशी प्रस्तावित अथवा सुरु असल्याच्या कारणाने त्याला निलंबित करण्यात आले असेल अशा प्रकरणी, संबंधित सक्षम प्राधिका-यांनी **निलंबनाच्या तारखेपासून ३ महिन्यांनी निलंबनाचा आढावा** घ्यावा. आढाव्याअंती पुनस्थापित करण्याचा निर्णय प्रकरणपरत्वे गुणवत्तेनुसार शिस्तभंगविषयक प्राधिकारी यांच्या स्तरावर घेता येईल. ६ महिन्यांच्या कालावधीत विभागीय चौकशीच्या संदर्भातली कार्यवाही पूर्ण झाली नसल्यास अपचा-याला चौकशीच्या कामात हस्तक्षेप करण्यापासून दूर ठेवण्याच्या उद्देशाने त्याची अन्यत्र अकार्यकारी पदावर बदली करण्याच्या अधीन त्याच्या निलंबनाचा आढावा घेऊन त्याला पुनस्थापित करण्याचा निर्णय प्रकरणपरत्वे गुणवत्तेनुसार शिस्तभंगविषयक प्राधिकारी यांच्या स्तरावर घेण्यात यावा. अशी कार्यवाही महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या नियम ४(५)(क) मधील तरतूदीनुसार संबंधित प्राधिरणास करता येईल.”

13. Thus paragraph No.7(a) mandates that when Government servant is kept under suspension in contemplation of Departmental Enquiry then disciplinary authority is under obligation to take review of the matter after three months from the date of suspension. It further provides that when the Departmental Enquiry is not completed within six months in that event Disciplinary Authority is

required to take objective decision about continuous of suspension and reinstatement of the Government servant in service.

14. Insofar as facts of present case are concerned, there is absolutely no whisper in the reply about the steps taken by the disciplinary authority pertaining to review of the suspension. As such it is quite clear that there is non compliance of Clause 7(a) of G.R. dated 14.10.2011 which mandates periodical review of the suspension and secondly when the departmental enquiry is not completed within six months.

15. In the present case though the period of one year is over the Departmental Enquiry is not completed. Suffice to say there is complete failure on the part of Respondent and apathy is clearly visible as no efforts were made to take review of suspension, though the period of more than one year from the date of suspension is over.

16. Insofar as legal position pertaining to suspension and its continuation is concerned, this situation is clearly covered by the judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India : (2015)7 SC 291**. It would be apposite to reproduce paragraph 21 of the said judgment, which reads 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.”

17. 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.

18. At this juncture, a reference can also be made to the Judgment of Hon’ble Bombay High Court in **Dr. Narender O. Bansal Vs. The Additional Chief Secretary, Mumbai & Ors., reported in 2016 (4) ALL MR 168**. In that case, the public servant/Medical Officer 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 the Review Committee in terms of G.R. dated 14.10.2011. The Hon’ble Bombay High Court held that the suspension does not appear to

be either legal or in public interest, as the people are deprived of getting medical service from Medical Officer, and therefore, further continuation of suspension could not be in public interest.

19. In view of the aforesaid judgment and principle laid down, in present case the continuation of suspension of the applicant does not appear warranted and in fact it is contrary to the law laid down by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's case Vs. Union of India : (2015)7 SC 291*** followed in ***State of Tamil Nadu Vs. Pramod Kumar and another (Civil Appeal No.2427-2428 of 2018) dated 21st August, 2018*** cited supra. There is absolutely nothing to suggest that any useful purpose could be served by continuing further suspension.

20. The alleged mis-conduct which is subject matter of the Departmental Enquiry is during the period of deputation period at Baglan and S.D.O. Baglan as Enquiry Officer in Departmental Enquiry. Applicant was serving at Nashik at the time of suspension. This being position there is no question of tempering of witnesses by the Applicant. Furthermore charges framed against the Applicant are arising from the documents which are already in custody of the Enquiry Officer.

21. Respondent is under obligation to consider these aspects, and to take review of the suspension as mandated by Clause 7(a) of G.R. dated 14.10.2011. However there is complete failure on the part of

Respondent to comply the provisions of G.R. dated 14.10.2011. There is no application of mind and mechanically suspension is continued. There is no objective assessment of the situation by the Respondent and therefore it would be appropriate to dispose of the O.A. by issuing suitable directions to the Respondent.

22. As regards the change of headquarters, as stated above there is absolutely no justification to keep the headquarter of the applicant at Yeola which is 100 kms. away from Nashik though enquiry is being conducted at Baglan. This being the position it is absurd to keep the headquarters of Applicant at Yeola. Indeed it is in contravention of Government circular dated 19.03.2008 paragraph 2 of the circular is relevant which is as follows :-

“2. An officer under suspension is regarded as subject to all other conditions of service applicable generally to Government servants and cannot leave the station without prior permission. As such the headquarters of a Government servant should normally be assumed to be his last place of duty. However, where an individual under suspension requests for a change of headquarters, there is no objection to a competent authority changing the headquarters if it is satisfied that such a course will not put Government to any extra expenditure like grant of T.A. etc. or any other complication.

23. In present case there is absolutely no justification to keep the headquarters of the applicant at Yeola. Reply of Respondent filed in M.A. is conspicuously silent on this point. Therefore it can be assumed that the decision to change headquarter is arbitrary. It is therefore imperative to repost the Applicant at Nashik as his headquarters during the period of continuation of suspension.

24. Now turning to the issue of pending Departmental Enquiry it is still not concluded. Needless to mention that in case of suspension of the employee, Departmental Enquiry needs to be expedited and completed within a period of six months. However, in present case though the period of more than one year is over Departmental Enquiry is still incomplete. Therefore, direction for expeditious completion of Departmental Enquiry deserves to be issued.

25. In view of the aforesaid discussion, O.A. as well as M.A. deserves to be allowed partly.

O R D E R

- (i) O.A. is allowed partly.
- (ii) Respondent is directed to take appropriate decision about the continuation of suspension of the Applicant as mandated by paragraph 7(a) of G.R. dated 14.10.2011 as well as in view of observations made in this judgment, within a period of two months from today. Decision, as the case may, shall be communicated to the Applicant.
- (iii) M.A. is allowed. Respondent is directed to repost the applicant at Nashik as his headquarter within two weeks from today.
- (iv) Respondents are further directed to ensure that Departmental Enquiry is completed and final order is passed within ten weeks from today.
- (v) No order as to costs.

SD/-

(A.P. KURHEKAR)
MEMBER(J)