

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.547 OF 2018**

**DISTRICT : SATARA**

Shri Ashok Nilappa Bolde. )  
Age : 56 years, Occ. Civil Surgeon, Class-I, Sangli )  
(under suspension), Presently at HQ Zilla )  
Rughnalaya, Satara and Residing at Flat No.E-1, )  
C/o. Shri Chandrakant Pol, 100-Kesar Peth, )  
Satara – 415 001. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Public Health Department, Mantralaya, )  
Mumbai. )

2. Commissioner of Health and Family Welfare )  
and Mission Director, National Health )  
Mission, Aarogya Bhavan, 3<sup>rd</sup> Floor, )  
St. Georges Hospital Compound, )  
Maharashtra State, Mumbai 400 001. )...**Respondents**

**Ms. Lata Patne, Advocate for Applicant.**

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

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

**DATE : 01.12.2018**

**JUDGMENT**

1. In this O.A, the challenge is to the order of suspension dated 31<sup>st</sup> January, 2017 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals, Act, 1985.

2. The Applicant was working as Civil Surgeon at Hingoli from 2011 to 2013, and thereafter, transferred to Beed where he worked from October, 2017. In 2017, he was transferred and posted at Sangli. While he was serving at Sangli, he came to be suspended by order dated 31<sup>st</sup> January, 2017 on the allegation that, during his tenure at Hingoli, he misused and abuse his position as public servant by submitting false bills of T.A. and D.A. and misappropriated the amount of Rs.1,71,315/-. On the report of Mr. Mazhar Shaikh and Mr. Shaikh Naim Shaikh Lala residents of Hingoli, the Anti-Corruption Bureau enquired into the matter and in sequel offence FIR No.35/2016 was registered on 2<sup>nd</sup> September, 2016 for the offences under Section 13(1)(d)(ii) and 13(2) of Prevention of Corruption Act, 1988. He was released on Anticipatory Bail by Special Judge, Hingoli. The Applicant contends that he had actually spent the amount on official tours with prior permission of the Department, and therefore, the offences registered are false and unsustainable. In view of the suspension order dated 31.01.2017, he has been posted at Head Quarter, Satara. As such, for alleged incident occurred at Hingoli, he came to be suspended during his tenure at Sangli. He made representations dated 24.04.2017, 07.08.2017 and 21.12.2017 to the Department for revocation of suspension and reinstatement in service, but in vein. He is under suspension for about 22 months and criminal case is not progressing. The Respondents failed to take review of the suspension in terms of G.R. dated 14.10.2011. He, therefore, contends that the prolonged suspension is unwarranted in the facts and circumstances of the case and illegal in view of the decision of the Hon'ble Supreme Court.

3. The Respondents resisted the application by filing Affidavit-in-reply at Page 33 of the Paper Book *inter-alia* justifying the suspension of the Applicant by order dated 31.01.2017. The Respondents contend that the Applicant during his tenure at Hingoli submitted false T.A, D.A. bills of tours and grabbed the amount of Rs.1,71,315/-. Accordingly, crime was registered against him by ACB and after

investigation, the charge-sheet has been filed. The Respondents thus sought to justify the suspension on the ground of registration of offence against the Applicant. As regard review of the suspension, the Respondents contend that the matter was placed before the Review Committee, but it was decided to continue the suspension. On these pleadings, the Respondents prayed to dismiss the application.

4. Heard Ms. Lata Patne, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

5. In view of the submissions advanced at the Bar, the issue involved is, whether prolonged suspension of the Applicant is just and legal.

6. At the very outset, it may be stated that undisputedly, the suspension order dated 31<sup>st</sup> January, 2017 was passed on the basis of FIR registered against the Applicant or alleged misappropriation of Rs.1,71,315/- by submitting false T.A. and D.A. bills while working at Civil Surgeon, Hingoli. Admittedly, he secured Anticipatory Bail and was released on bail.

7. Ms. Lata Patne, learned Advocate for the Applicant vehemently urged that, in view of Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary Vs. Union of India reported in (2015) 7 SC 291***, which has been followed by Hon'ble Apex 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***, the prolonged suspension is unwarranted and ratio in the Judgment of ***Ajay Kumar Choudhary's*** case, the suspension beyond 90 days is totally illegal. She further contends that the alleged incident occurred in 2016 for which, the Applicant has been suspended after one year during his tenure at Sangli. She has further pointed out that, as charge-sheet has already been filed in the Court of Law and the evidence being part of record, the question of tampering of witnesses by the Applicant

does not survive. She further tried to maintain that the charge-sheet leveled against the Applicant is absolutely false, as the amount spent on tours was actually spent and for that purpose, the necessary permission was already obtained from the Department. She, therefore, prayed to quash and set aside the suspension with reinstatement in service.

8. Per contra, Ms. N.G. Gohad, learned Presenting Officer tried to justify the suspension contending that it was necessitated in view of registration of offences against the Applicant. As regard review, the learned P.O. submitted that the review was taken in the meeting dated 11.04.2018, but it was decided to continue the suspension. As regards second review, she urged that it is under consideration and after the appointment of Enquiry Officer, the suspension is likely to be revoked.

9. Needless to mention that, 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. However, the suspension should be for a short duration and if it is continued for longer period, then it must be objectively demonstrated that the continuation for a longer period is warranted in the facts and circumstances of the case. In the present case, no such compelling circumstances or reasons for continuing the suspension are forthcoming. The Applicant is under suspension by order dated 31.01.2017 and now the period of near about 22 months is over. Criminal case is not progressing. The alleged charge is based upon the documentary evidence which is already seized and filed in Criminal Court. As such, the question of tampering of witnesses does not survive.

10. As per G.R. dated 14.10.2011, the Review Committee is obliged to consider the aspect of continuing of suspension having regard to the facts of the case, the purpose if any, to be served by continuing the suspension amongst

other things. In the present case, the Review Committee considered the Applicant's suspension matter, but decided to continue suspension as seen from the minutes of the meeting dated 11.04.2018. However, it is strange to note that, in majority of matters, the Review Committee revoked the suspension of Medical Officers. In so far as the Applicant is concerned, in the Column of 'decision of Committee', it is simply mentioned "suspension be continued". This cannot be said the compliance in letter and spirit.

11. As regard the period of suspension and its continuation, the situation is clearly covered by the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (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. The Judgment in **Ajay Kumar Choudhary's** case was also followed by Hon'ble Supreme Court in **State of Tamil Nadu's** case (cited supra) 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.

13. 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.

14. Now, turning to the submissions advanced by the learned P.O. about second review, Shri Kiran Dhavade, Under Secretary, Public Health Department who was present in the Court submitted that the charge-sheet in departmental proceeding has been issued to the Applicant and he will be reinstated after the appointment of Enquiry Officer. I fail to understand, how the appointment of Enquiry Officer is relevant for keeping the suspension of the Applicant continued indefinitely. The subject of appointment of Enquiry Officer in D.E. has nothing to do with the continuation of suspension, as the Applicant is already under suspension for more than 22 months and further continuation does not appear useful for any purpose. As stated earlier, the allegations are based upon the documents which are in the custody of the Court, and therefore, the question of

tampering of evidence does not arise. It is nowhere the contention of the Respondents that the Applicant is trying to influence the witnesses in the D.E. In fact, the alleged incident occurred while the Applicant as serving at Hingoli, whereas at the time of suspension, he was serving at Sangli and after suspension, his Head Quarter is kept at Satara. This being the position, there could be no apprehension of tampering the witnesses at the hands of Applicant.

15. For the aforesaid reasons, I have no hesitation to sum-up that the continuation of suspension is not warranted and the O.A. deserves to be allowed partly, so that Review Committee should decide on the continuation of the suspension within time limit. Hence, I pass the following order.

### **ORDER**

The Original Application is partly allowed. The Respondents are directed to place the matter before the Review Committee and to take decision on the suspension of the Applicant within a month from today, failing which, there shall be deemed reinstatement of the Applicant in service and he be reinstated accordingly. No order as to costs.

Sd/-

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

Mumbai

Date : 01.12.2018

Dictation taken by :

S.K. Wamanse.

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