

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

DIST : MUMBAI

ORIGINAL APPLICATION NO.582 of 2019

Shri Padmakar Fakira Gangave)
Age : 50 years, Occ : Assistant Director of)
Civil Supplies, R/at. H-301, Royal Park,)
Ambarnath (E).)...Applicant

Versus

- 1) The State of Maharashtra,)
Through the Principal Secretary,)
Food, Civil Supplies & Consumer)
Protection Department, Hutatma Rajguru)
Chowk, Madam Cama Rd., Mantralaya,)
Mumbai 32.)
- 2) The Joint Secretary & Director of Civil)
Supplies, Food & Civil Supplies Department,)
Mantralaya, Mumbai.)...Respondents

Shri K. R. Jagdale, Advocate for the Applicant.

Shri A. J. Chougule, Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 19.08.2019.

ORDER

1. Heard Shri K. R. Jagdale, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.
2. In the present matter, the challenge is to the suspension order dated 13.05.2019 whereby the Applicant is kept under suspension invoking the Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.
3. The Applicant is working as Assistant Director of Civil Supplies in the office of Respondent No.2 and by order dated 05.03.2019 he was deputed for

inspection of the godown at Beed where food grains were stored. He was to head inspection team and after inspection of the godown he was to submit the report to the Government. He contends that accordingly, he inspected the godown and submitted the report to the Government stating that he found misappropriation of Rs.65,14,995/- in the stock of food grains. However, the Respondent No.1 by order dated 30.05.2019 suspended him stating that he did not inspect the godown physically and prepared the record of inspection while sitting in lodge. Being aggrieved by it, the Applicant has made representation on 07.06.2019 and pointed out that in fact, he had inspected the godown and noticed misappropriation and irregularities in the stock of the food grains and submitted the report. He, therefore, requested to revoke the suspension and to reinstate him in the service but in vain. The Applicant contends that he was suspended without any valid reason and subjected to prolong suspension without taking review of the suspension.

4. Though enough time is granted, no reply is filed by the Respondents.

5. Shri K.R. Jagdale, learned Counsel for the Applicant submits that as the period of 90 days is going to over, the prolong suspension is unsustainable in view of the decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**. He, therefore, requested to dispose of the Original Application by giving direction to the Respondents to take review of the suspension.

6. Whereas, Shri A. J. Chougule, learned Presenting Officer for the Respondents submits that after completion of 90 days, department will take review of the suspension and may pass appropriate order.

7. Normally, an 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. Needless to mention that the question as to whether the facts of the

case warrants suspension of a Government servant in contemplation of D.E. is a matter of exclusive domain of the employer and the decision has to be based on the objective satisfaction based on the record. Therefore, the question as to whether the suspension was justified cannot be gone into present set of facts. However, in the present set of facts, the important question is whether the suspension can be continued indefinitely without bothering to take follow-up action as mandated by G.R. dated 9th July, 2019 as well as the law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

8. 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.”*

9. 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.

10. 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.

11. However, in the present case, admittedly no charge sheet has been issued to the Applicant though the period of 90 is going to over. In fact, the Hon'ble Supreme Court held that currency of suspension should not extend beyond three months, if within this period the memorandum of charges/charge sheet is not served upon the delinquent officer/employee and if the memorandum of charges/charge sheet is served in that event, the Disciplinary Authority is under obligation to pass reasoned order for the extension of suspension.

12. True, the period of 90 days will be over by the end of August, 2019. The learned Counsel for the Applicant submits that till date no charge sheet is served in D.E. whereas, learned P.O. submits that he has no instructions about issuance of charge sheet.

13. As stated above, the suspension should not exceed 90 days in view of the decision of Hon'ble Apex Court in **Ajay Kumar Chowdhary's** case (cited supra). Besides, the Respondent No.1 had also acknowledged the necessity of taking review of the suspension within 90 days in view of its recent G.R. dated 09.07.2019. In G.R. dated 09.07.2019, the Respondent No.1 referred the decision of Hon'ble Apex Court in Ajay Kumar Chowdhary's case and acknowledged where charge sheet is not issued within three months from the date of suspension there would be no other option except to revoke the suspension.

14. In view of above, Original Application deserves to be disposed of with suitable directions. Hence the following order.

ORDER

- (a) The O.A. is allowed partly.
- (b) As the period of 90 days will be over by the end of August 2019, the Respondents are directed to take appropriate decision about the suspension of the Applicant in terms of G.R. dated 09.07.2019.
- (c) In the event, the charge sheet is filed before expiration of 90 days in that event, the Disciplinary Authority is also required to decide as to whether continuation of suspension is necessary and shall pass appropriate orders.
- (d) In case, no charge sheet is issued within 90 days from the date of suspension which is ending by the end of August 2019, in that event the Disciplinary Authority shall take review of the suspension within a month after expiration of the period of 90 days from the date of suspension and pass appropriate order.
- (e) The order, as the case may be, be communicated to the Applicant within two weeks from the date of passing of the order.
- (f) If the Applicant felt aggrieved by the order, he may avail recourse of law as may be available to him.
- (g) No order as to costs.

(A.P. KURHEKAR)
MEMBER (J)

