

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.607 of 2019

Shri Ashok Dhondu Desale)
Occ : Inspector of State Excise,)
R/at. 302, Vrundavan Palms, Wayle Nagar)
Road, near Aarti Nagari, Kalyan (W),)
Dist. – Thane.) **...Applicant**

Versus

Government of Maharashtra,)
Through Additional Chief Secretary,)
Home Department, Mantralaya,)
Mumbai 32.) **...Respondents**

Shri M. D. Lonkar, Advocate for the Applicant.

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

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

DATE : 30.07.2019.

ORDER

1. In the present matter, the challenge is to the suspension order dated 21.02.2019 whereby the Applicant is kept under suspension in contemplation of Departmental Enquiry (D.E.) invoking the Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

2. At the time of suspension, the Applicant was serving as Inspector of State Excise, Division-I, Mumbai City. The suspension order further reveals that the offence under Section 7 of Prevention of Corruption Act, 1988 has been registered against the Applicant on 06.02.2019. However, fact remains that the Applicant has been suspended in contemplation of D.E. as seen from the suspension order. After suspension, the Applicant has made representation for revocation of suspension and reinstatement in service but it was not responded. Ultimately, the Applicant has approached this Tribunal challenging the suspension order contending that prolong suspension is unsustainable in view of the Government Resolution as well as the judgment of Hon'ble Supreme Court

in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**.

4. Shri M. D. Lonkar, learned Counsel for the Applicant submits that though the period of more than five months is over, the Respondent has not taken review of suspension and, therefore, the prolong suspension is illegal in the teeth of the decision of Hon'ble Supreme Court in **Ajay Kumar Chowdhary's** case (cited supra). He also pointed out that by G.R. dated 09.07.2019, the Government had acknowledged the legal position and issued direction for filing of charge sheet within three months from the date of suspension.

5. It goes without saying that adequacy of material before the Authority at the time of taking decision of the suspension normally does not fall within the scope of judicial review. In the present case, the Applicant has been kept under suspension in contemplation of D.E. but no steps are taken for issuance of charge sheet.

6. Needless to mention that suspension should be for a short duration and if it is continued for longer period, it must be demonstrated that continuation of suspension for longer period is warranted in the fact and circumstances of the case.

7. Ms N. G. Gohad, learned P.O. for the Respondent all that submitted that the Competent Authority will take review of the suspension in due course.

8. Now the question is whether the Applicant can be continued to prolong suspension without taking steps to review the suspension. The issue is no more res-integra in view of the judgment of Hon'ble Supreme court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**, the Hon'ble Supreme Court in Para No.21 held 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.”

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 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.

11. However, in the present case, admittedly no charge sheet has been issued to the Applicant though the period of more than five months is over. As such, neither D.E. is initiated nor Criminal Case is progressing.

12. Here, it would be apposite to refer recent G.R. issued by the Government on 09.07.2019 wherein the Government has acknowledged the right of delinquent for expeditious D.E. G.R. further states that in view of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** Case, if the charge sheet is not served within three months then there would be no option except to revoke the suspension. As such, by G.R. dated 09.07.2019 directions were issued to issue charge sheet within 90 days on the date of suspension. However, in the present case, admittedly, till date no charge sheet is served upon the Applicant.

13. In view of above, Original Application needs to be disposed of with suitable directions as the Competent Authority requires to take review of the suspension having failed to serve the charge sheet within 90 days. Hence the following order.

ORDER

- (a) The O.A. is allowed partly.
- (b) Respondent is directed to take review of the suspension of the Applicant in terms of G.R. dated 09.07.2019 in the light of observation made by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case and shall pass appropriate order within six weeks from today.
- (c) The order, as the case may be, be communicated to the Applicant within two weeks thereafter.
- (d) If the Applicant felt aggrieved by the decision, he may avail further remedy in accordance to law.
- (e) No order as to costs.

Sd/-
(A.P. KURHEKAR)
MEMBER (J)