

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.61 OF 2019**

**DISTRICT : THANE**

Shri Tukaram N. Mandekar. )  
Occu.: Municipal Engineer, Grade-A at )  
Ratnagiri Municipal Council and residing at )  
G.D. Rawal Complex, G/203, Nr. Ruchira Hotel, )  
MIDC Road, Katrap, Badlapur (E), )  
District : Thane. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through Principal Secretary, )  
Urban Development Department, )  
Mantralaya, Mumbai 0 400 032. )  
2. The Commissioner / Director. )  
Directorate of Municipal Council, )  
Government Transport Services Bldg., )  
3<sup>rd</sup> Floor, Sir Pochkhanwala Road, )  
Worli, Mumbai – 400 013. )  
3. The Chief Officer. )  
Kulgaon-Badlapur Municipal Council, )  
Dubey Hospital Building, 1<sup>st</sup> Floor, )  
Near Adarsha Vidyamandir, Badlapur (E), )  
District : Thane. )...**Respondents**

**Mr. K.R. Jagdale, Advocate for Applicant.**

**Mrs. A.B. Kololgi, Presenting Officer for Respondents.**

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

**DATE : 26.06.2019**

**JUDGMENT**

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Smt. A.B. Kololgi, learned Presenting Officer for the Respondents.
2. In the present O.A, the challenge is to the suspension order dated 20.11.2018 whereby the Applicant along with other employees of Kulgaon-Badlapur Municipal Council were kept under suspension in view of registration of crime against them. The Applicant was Municipal Engineer from 2009 to June, 2013.
3. Shri K.R. Jagdale, learned Advocate for the Applicant raised following grounds to challenge the suspension.
  - (a) The alleged complaint of misappropriation pertains to period from 2010 to September, 2013 as seen from FIR dated 19.08.2015 (Page Nos.21 and 22 of Paper Book).
  - (b) The Applicant's tenure at Kulgaon-Badlapur Municipal Council was from 2009 to 05.06.2013.
  - (c) After registration of crime, the Applicant has been transferred from Kulgaon-Badlapur Municipal Council to Khopoli and thereafter, from Khopoli he was transferred to Ratnagiri where at present he is working.
  - (d) The suspension has been ordered after three years from the date of FIR which itself was belated.
  - (e) No charge-sheet is filed in criminal case.
  - (f) In D.E, the charge-sheet has been filed on 07.08.2017 and the Applicant has submitted reply on 22.09.2017, but D.E. is not progressing.

- (g) The Applicant has completed near about eight months under suspension, but no review is taken in terms of G.R. dated 14.10.2011.
- (h) The suspension beyond 90 days is unsustainable in view of the Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

4. Per contra, the learned P.O. opposed the O.A. and made following submissions.

- (a) There was huge scam of TDR in 42 cases wherein preliminary enquiry was conducted by Director of Town Planning and the Applicant with other 5 employees were found prima-facie responsible. In D.E, the Enquiry Officer (E.O.) has been appointed on 28.11.2018. As the Applicant found prima-facie responsible for misappropriation in TDR, the suspension was warranted.
- (b) The O.A. being filed before expiration of one year i.e. the period contemplated in G.R. dated 14.10.2011 for taking review is premature.

5. At the very outset, it needs to be stated that the suspension order dated 20.11.2018 was challenged by one of the co-delinquent viz. Shri Pravin Kadam by filing O.A.56 of 2019, which came to be allowed on 25.04.2019 by giving direction to the Respondents to take review of suspension within six weeks in the light of Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case. True, in that case, it was noticed that the name of Shri Pravin Kadam was not in F.I.R. and no crime was registered against him. This is the only distinguishing factor.

6. Normally, the adequacy of material before the disciplinary authority for suspension of Government servant cannot be looked into by the Tribunal, as it

falls within the province of disciplinary authority. However, at the same time, one needs to consider whether the suspension was really necessitated and secondly, as to whether the Applicant can be subjected to prolong suspension without taking review of suspension, as neither D.E. is progressing nor charge-sheet is filed in Criminal Case. It is in this context, the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case needs consideration by the concerned competent authority. This aspect will be dealt with a little later.

7. Now, turning to the facts of the present case, the alleged misappropriation was of the period from 2010 to September, 2013. Whereas, the FIR was filed on 19.08.2015 for the offences under Section 166-A, 167, 406, 409, 418, 420, 468 read with 120 of Indian Penal Code. It appears that the alleged misappropriation was unearthed at later point of time, and therefore, the FIR seems to have been filed belatedly.

8. On the point of necessity of suspension of the Applicant, it was pointed out that the Joint Secretary himself did not find it necessary to suspend the Applicant in view of his transfer from Kulgaon-Badlapur Municipal Council. In this behalf, the perusal of note (Page No.196 of P.B.) reveals that, when the note for suspension was placed before the Hon'ble Minister, the Joint Secretary opined that the Applicant being transferred from the said Municipal Council, he need not be suspended and recommended for suspension of others. Thus, it seems that the note of the fact of transfer of the Applicant from the said Municipal Council was taken and found suspension not justified, but ultimately, the competent authority thought it fit to keep the Applicant under suspension.

9. At this juncture, it would be apposite to mention that the suspension cannot be resorted to as a matter of rule and the recourse of suspension has to be taken where there is possibility of tampering the witnesses by delinquent by continuing him at the same place. In the present matter, as the Applicant has

been already transferred from the said place, the question of tampering of witnesses did not survive.

10. In this behalf, it would be material to note the instructions laid down in Departmental Manual laying down the principles to be borne in mind in the matter of suspension, which are as follows :

*“2.1 When a Government Servant may be suspended.- Public interest should be the guiding factor in deciding to place a Government servant under suspension. The Disciplinary Authorities should not suspend a Government servant lightly and without sufficient justification. They should exercise their discretion with utmost care.*

*Suspension should be ordered only when the circumstances are found to justify it. The general principle would be that ordinarily suspension should not be ordered unless the allegations made against a Government servant are of a serious nature and on the basis of the evidence available there is a prima facie case for his dismissal or removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. In other cases, it will suffice if steps are taken to transfer the Government servant concerned to another place to ensure that he has no opportunity to interfere with witnesses or to tamper with evidence against him.*

*(I) By way of clarification of the general principle enunciated above, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory :-*

*(i) Cases where continuance in office of a Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);*

*(ii) where the continuance in office of a Government servant is likely to seriously subvert discipline in the office in which the Government servant is working;*

*(iii) where the continuance in office of a Government servant will be against the wider public interest (other than the cases covered by (i) and (ii) above) such as, for instance, where a scandal exists and it is necessary to place the Government servant under suspension to demonstrate the policy of Government to deal strictly with officers involved in such scandals, particularly corruption;*

*(iv) where allegations have been made against a Government servant and the preliminary enquiry has revealed that prima facie case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.*

*In the first three circumstances enumerated above, the Disciplinary Authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a prima facie case has been established.”*

11. In continuation of the aforesaid guidelines, it would be useful to refer the observations made by Hon’ble Bombay High Court in **1987 (3) Bom.C.R. 327 (Dr. Tukaram Y. Patil Vs. Bhagwantrao Gaikwad & Ors.)**, which are as follows :-

*“Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned.”*

12. Similarly, reference was made to the Judgment of Hon’ble Supreme Court in **1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)**. It would be apposite to reproduce Para No.9, which is as follows :-

*“9. It is settled law by several judgments of this Court as well as the Apex Court that suspension is not to be resorted as a matter of rule. It is to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being away from the post.”*

13. Furthermore, reference of Judgment of Hon’ble Supreme Court in **(2015) 7 SC 291 (Ajay Kumar Choudhary Vs. Union of India)** is imperative and the legal

position is now no more *res-integra*. It will be appropriate to reproduce Para No.21 of the 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.”*

14. 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 21<sup>st</sup> 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.

15. Thus on perusal of Departmental Manual as well as catena of decisions referred to above, it is quite clear that suspension should be ordered only when circumstances warrants the same and it should not be invoked as routine. In view of law laid down by Hon’ble Supreme Court in ***Ajay Kumar Choudhary’s***

case the suspension should not exceed 90 days and where charge-sheet is filed before expiration of 90 days, the Disciplinary Authority is required to consider whether extension of suspension is necessary and obliged to pass order to that effect on objective consideration of the matter. Thus in view of law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case suspension of 90 days without taking review is unsustainable.

16. Now, turning to G.R. dated 14.10.2011 it *inter-alia* provides for review of suspension where the Government servant is kept under suspension in pursuance of crime registered against him or in contemplation of D.E. As per G.R. dated 14.10.2011, the Competent Authority is required to take periodical review of suspension and in case where suspension is ordered in pursuance of registration of crime, the review needs to be taken after one year from the date of registration of crime. Whereas, in the present case, though the period of one year is not over, the matter needs to be examined in the light of law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). In the present matter, no charge-sheet is filed in the criminal case. In D.E, the charge-sheet has been filed on 7<sup>th</sup> August, 2017 and the Enquiry Officer appointed in November, 2018. However, the D.E. is not progressing. Thus, it seems that, after the appointment of Enquiry Officer, there is absolutely no further progress in D.E. Thus, situation emerges that there is no possibility of conclusion of criminal trial in near future and D.E. is also not progressing. This being the position, the Applicant cannot be subjected to prolong suspension without taking review of suspension and to find out where the suspension deserves to be continued in the facts and circumstances of the case.

17. As such, in view of the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, now the Competent Authority is under obligation to take review, as the charge-sheet in D.E. is already filed. The Hon'ble Supreme Court



directed that the currency of suspension should not extend beyond three months if within this period, the memorandum of charges or charge-sheet is not served on the delinquent officer and if memorandum of charge or charge-sheet is served, the Competent Authority is required to pass reasoned order for the extension of suspension, if warranted in the facts and circumstances of the case. This being the position, the Respondents now are under obligation to take review of suspension of the Applicant. It must be borne in mind that the alleged occurrence took place in 2010 to 2013 and the Applicant is already transferred from Kulgaon-Badlapur Municipal Council, and therefore, the question of tampering the witnesses does not arise. As such, no purpose is going to be served by prolong suspension of the Applicant.

18. In view of above, the O.A. needs to be disposed of by giving suitable direction to take decision about the revocation or extension of suspension of the Applicant in the light of Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case referred to above and the attending circumstances observed above in the order. Hence, the following order.

### **ORDER**

- (A) The Original Application is allowed partly.
- (B) The Respondent No.1 is directed to take review of suspension of the Applicant within six weeks from today and shall pass appropriate order, as it deems fit in the facts and circumstances of the case.
- (C) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter. If the Applicant feels aggrieved by the decision, he may take recourse of law, as may be permissible to him.

(D) No order as to costs.

Sd/-

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

Mumbai

Date : 26.06.2019

Dictation taken by :

S.K. Wamanse.

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