

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.760 OF 2019

DISTRICT : THANE

Shri Sunil Murlidhar Dusane.)
Age : 55 Yrs., Occu.: Service as Assistant)
Town Planner at Ambernath Municipal)
Council, Ambernath and residing at 21-B/)
1203, Regency Estate Dombivali,)
Tal.: Kalyan, District : Thane.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Principal Secretary,)
Urban Development Department,)
Mantralaya, Mumbai – 400 032.)
2. The Director.)
Director of Town Planning (M.S),)
Central Building, Pune – 1.)
3. The Chief Officer.)
Municipal Council, Kulgaon)
Badlapur, District : Thane.)...**Respondents**

Mr. V.P. Potbhare, Advocate for Applicant.

**Ms. S.P. Manchekar, Chief Presenting Officer for Respondent
Nos.1 & 2.**

Mr. D.P. Adsule, Advocate for Respondent No.3.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 18.09.2019

JUDGMENT

1. The Applicant has challenged the suspension order dated 28.11.2018 whereby he was suspended in contemplation of Departmental Enquiry (D.E.) as well as in view of investigation of crime registered against him invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under:-

While the Applicant was working as Assistant Town Planner at Kulgaon Badlapur Municipal Council, he alleged to have been involved in TDR scam in respect of which FIR was registered under Sections 155(A), 167, 406, 408, 409, 418, 420, 468, 120 read with Section 34 of Indian Penal Code and under Section 13(1)(D)(2) of Prevention of Corruption Act against him and other Municipal employees of Kulgaon Badlapur Municipal Council. It is on this background, he was suspended by order dated 28.11.2018 and since then, he is under suspension. He claims to be innocent and filed the present O.A. challenging suspension order on the ground that the prolong suspension is unsustainable in law. In so far as the offence registered against him and others is concerned, till date, no charge-sheet is filed in the Court of law. The D.E. was initiated on 07.08.2017, but the same is not progressing. He further contends that, in terms of G.Rs. dated 14.10.2011, 31.01.2015 and 09.07.2019, the Respondents were required to take review of suspension periodically, but no step is taken to take review of suspension and he is subjected to prolong suspension without any valid reasons. With these pleadings, he prayed to set aside the impugned suspension order.

3. The Respondent Nos.1 & 2 have resisted the application by filing Affidavit-in-reply denying the entitlement of the Applicant to the

relief claimed. The Respondents sought to justify the suspension order contending that the Applicant along with other Municipal employees were found involved in huge scam of TDR in 55 cases causing huge monetary loss to the Municipal Council. The Applicant allegedly misused his position and obtained wrongful gain. The Respondents thus sought to justify the suspension of the Applicant. As regard review of suspension, the Respondents contend that the review will be taken in terms of G.Rs. dated 31.01.2015 and 09.07.2019 in due course. The D.E. has been also initiated by issuance of charge-sheet on 07.08.2017 and the same is in process. With this pleading, the Respondents prayed to dismiss the O.A.

4. Shri V.P. Potbhare, learned Advocate for the Applicant submits that the prolong suspension beyond 90 days is unsustainable in law in view of the Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. He has further pointed out that co-delinquents viz. Shri Tukaram Mandekar and Shri Pravin Kadam against whom FIR has been registered and suspended along with the Applicant have been reinstated in service after invoking their suspension in view of the decision rendered by this Tribunal in O.A.No.61/2019 and O.A.No.56/2019. He, therefore, submits that on the ground of parity, the Applicant is also required to be reinstated in service and prayed for direction to take review of the suspension.

5. Per contra, Ms. S.P. Manchekar, learned Chief Presenting Officer sought to contend that in view of involvement of the Applicant in serious offence and huge scam in the matter of TDR, the Applicant was rightly suspended. She has further pointed out that the D.E. is already initiated and the same will be completed during the course of time. As regard Criminal Case, she submits that the sanction to prosecute is recently granted by the Competent Authority and charge-sheet is likely to be filed soon. As regard revocation of suspension,

she contends that the Competent Authority / Review Committee will consider the issue of revocation of suspension soon and appropriate orders will be passed.

6. Thus what emerges from the pleadings and submissions advanced at the Bar that :

(a) The alleged incident giving rise to the registration of offence under Sections 155(A), 167, 406, 408, 409, 418, 420, 468, 120 read with Section 34 of Indian Penal Code and under Section 13(1)(D)(2) of Prevention of Corruption Act pertains to the period from 2010 to 2013, as seen from FIR dated 19.08.2015.

(b) The suspension has been ordered by impugned order dated 28.11.2018 after three years from the date of registration of FIR which itself was belated.

(c) Till date, no charge-sheet is filed in Criminal Case.

(d) In D.E, the charge-sheet has been issued on 07.08.2017 but it is not progressing though the period of two years is over.

(e) Till date, no review is taken in terms of G.Rs. dated 14.10.2011, 31.02.2015 and 09.07.2015.

7. 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.

8. 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.

9. 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.”

10. 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.”

11. 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.”

12. 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.”

13. 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.

14. 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 beyond 90 days without taking review is unsustainable.

15. The Government has issued various G.Rs. from time to time for periodical review of suspension of the Government servant, so that there should not be prolong suspension without objective assessment of the situation. As per G.R. dated 14.10.2011, the Review Committee is required to take review of suspension of the Government servant where suspension is ordered in pursuance of registration of crime after completion of one year from the date of suspension. True, in the present matter, the period of one year is not yet over, but in view of the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra), review needs to be taken as the suspension is beyond 90 days. Admittedly, no charge-sheet is filed in pursuance of F.I.R. registered against the Applicant and others. Furthermore, though the D.E. is initiated in 2017, it is not progressing and pending without any progress. As such, there is no possibility of conclusion of Criminal Trial or decision of D.E. in near future. In such situation, in view of the Judgment of Hon'ble

Supreme Court in **Ajay Kumar Choudhary's** case, the Applicant cannot be subjected to prolong suspension without taking review.

16. Subsequently, the Government has issued one more G.R. dated 31.01.2015 in contemplation of G.R. dated 14.10.2011 for taking review of suspension of the Applicant. Besides, recently, the Government has issued another G.R. dated 9th July, 2019 where the Government had acknowledged the legal position enunciated by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case that the suspension should not exceed 90 days and by the said G.R, the instructions are issued to the Departments to ensure filing of charge-sheet within 90 days.

17. Despite the aforesaid legal position, admittedly, till date, the matter is not placed before the Review Committee though under obligation to pass appropriate reasoned order to find out whether further continuation of suspension is necessary in the fact situation. Needless to mention that, such decision should be objective decision, so that aggrieved Government servant can avail further legal recourse.

18. The learned Advocate for the Applicant has pointed out that, in the matter of co-delinquent viz. Shri Tukaram Mandekar and Shri P.V. Kadam in pursuance of the directions given by this Tribunal in O.A.68/2019 and O.A.56/2019, the Review Committee has taken decision to revoke the suspension and they are reinstated in service. This position is not countered by the learned Chief Presenting Officer. As such, the Applicant being similarly situated person, his case is also required to be examined by the Review Committee to make appropriate recommendation.

19. In view of above, the O.A. needs to be disposed of by giving suitable directions 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.

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

Mumbai
Date : 18.09.2019
Dictation taken by :
S.K. Wamanse.