

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**DIST : MUMBAI**

**ORIGINAL APPLICATION NO.844 OF 2019**

Shri Charudatta D. Tambe )  
Occ : Assistant Director District Skill Devlp. )  
(under suspension), R/at. Parijat CHS, 5<sup>th</sup> )  
Floor, Flat No.54, Mahavir Nagar, )  
Kandivali (W), Mumbai 400 067. )...**Applicant**

**Versus**

1) The State of Maharashtra, )  
Through the Addl. Chief Secretary, )  
Skill Department & Entrepreneurship Dept. )  
2<sup>nd</sup> floor, Main Building, Mantralaya, )  
Mumbai 400 032. ) ...**Respondents**

Shri U. V. Bhosale, Advocate for the Applicant.

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

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

DATE : 27.08.2019.

**ORDER**

1. In the present O.A., the Applicant has challenged the suspension order dated 23.10.2017 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant was serving as Assistant Director District Skill Development, Employment & Entrepreneurship Guidance Centre, Mumbai Suburban, Mumbai. By order dated 23.10.2017, he was suspended invoking the Rule 4(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 in view of his arrest in Crime No.29/2017 registered against him for the offence u/s 7, 13 (1)(D) r/w 13(2) of Prevention of Corruption Act, 1988. He was arrested on 12.08.2017 and was in custody for more than 48 hours. Consequently, he was suspended by order dated 23.10.2017. The Applicant has made various representations but in

vain. As he subjected to prolong suspension without taking review of the suspension or without taking any steps for initiation of D.E. or filing of charge sheet in Criminal Case, he had filed the present Original Application challenging the suspension.

3. Shri U. V. Bhosale, learned Counsel for the Applicant submits that though the period of 2 years under suspension is over neither charge sheet is filed in Criminal Case nor D.E. is initiated against the Applicant but he is subjected to prolong suspension without bothering to take review of the suspension in terms of G.R. dated 14.10.2011. He, further urged that such prolonged suspension is unsustainable in view of the law laid down by the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**.

4. Shri A. J. Chougule, learned Presenting Officer for the Respondents fairly concedes that till date neither charge is filed in Criminal Case nor D.E. is initiated against the Applicant. He submits that the matter be disposed of with suitable direction so that the Government can take review of the suspension in terms of G.R. dated 14.10.2011.

5. 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 14<sup>th</sup> October, 2011 as well as the law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

6. 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.”*

7. 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.

8. Thus what transpires that though the period of 2 years under suspension is over, the Respondent did not bother to take review of suspension in terms of G.R. dated 14.10.2011. As per Clause 4(a), where the Criminal Case is not decided within two years from the date of filing of charge sheet in such matter is required to be placed before the Review Committee and Review Committee is empowered to revoke the suspension and to reinstate the Government servant on non-executive post. Whereas, as per Clause 4(b) of G.R. dated 14.10.2011, where even if the period of two years is not over or where charge sheet itself is not filed, in that event also, the Review Committee needs to take decision about continuation or revocation of suspension having regard to the factors laid down in the Clause. However, in the present case, admittedly charge sheet in Criminal Case is not filed. Besides, admittedly, no D.E. is initiated. Thus, the position emerges that the Applicant is subject to prolong suspension of two years without bothering to initiate D.E. or to ensure filing of charge sheet in the Criminal Case.

9. This being the position, the law laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra) is attracted, where it has been specifically held that currency of suspension should not exceed three months.

10. In view of above, the present O.A. deserves to be disposed of by giving suitable directions to Respondents to take review on the suspension of the Applicant. Hence the following order.

**ORDER**

- (a) The O.A. is allowed partly.
- (b) The Respondent is directed to take review on the suspension of the Applicant in terms of G.R. dated 14.10.2011 within six weeks from today and shall pass appropriate order.
- (d) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (e) If the Applicant felt aggrieved by the decision, he may avail further recourse of law.
- (f) No order as to costs.

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