

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.855 OF 2018

DISTRICT : KOLHAPUR

Shri Rajaram T. Zajari.)
Age : 53 Yrs, Working as Naib Tahasildar in the)
Office of Tahasildar, Chandgad,)
District : Kolhapur and residing at A/P/T)
Chandgad, District : Kolhapur.)...**Applicant**

Versus

1. The Divisional Commissioner,)
Pune Division, having Office at Vidhan)
Bhavan, Pune – 1.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Revenue Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

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

DATE : 14.02.2019

JUDGMENT

1. In the present Original Application, the challenge is to the suspension order dated 27.08.2018 whereby the Applicant has been kept under suspension

in contemplation of Departmental Enquiry (D.E.) invoking Rule 4(1)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979').

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

The Applicant was serving as Naib Tahasildar at Chandgad, District : Kolhapur. By impugned order dated 27.08.2018, he was kept under suspension invoking Rule 4(1)(a) of 'Rules of 1979' in contemplation of D.E. The Applicant allegedly misused his position as a public servant and got the names of his family members recorded in 7/12 extract of Government land. The Applicant contends that the allegations of misuse of position are false and there was no enough material to pass impugned order. He, therefore, challenged the impugned suspension order inter-alia raising additional ground of incompetency of Respondent No.1 (Divisional Commissioner) to suspend him and non-compliance of proviso of Rule 4(1) of 'Rules of 1979'. He further contends that, there is no progress in D.E. initiated by Respondent No.1. He is kept under suspension for near about six months, which is in contemplation of the Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. He, therefore, prayed to set aside the impugned suspension order.

3. The Respondent No.1 filed the Affidavit-in-reply thereby resisting the application *inter-alia* denying that the impugned order suffers from any illegality. The Respondent sought to contend that the Applicant has misused his position as a public servant and got the names of his family members recorded in mutation entries pertaining to Government land. The Applicant further sought to justify the impugned transfer order contending that, it has been rightly issued under the proviso to Rule 4(1) of 'Rules of 1979' and the reasons of suspension has been communicated to the appointing authority i.e. State Government. The

Respondent further contends that the Applicant has not availed the alternative remedy of appeal, and therefore, the O.A. is not maintainable.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. N.G. Gohad, learned Presenting Officer for the Respondents.

5. At the very outset, it needs to be stated that, 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 14th 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 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.

8. At this juncture, a reference can also be made to the Judgment of Hon'ble Bombay High Court in ***Dr. Narender O. Bansal Vs. The Additional Chief Secretary, Mumbai & Ors., reported in 2016 (4) ALL MR 168.*** In that case, the public servant/Medical Officer was suspended in contemplation of departmental enquiry for a longer period and there was failure on the part of Department to place the matter before the Review Committee in terms of G.R. dated 14.10.2011. The Hon'ble Bombay High Court held that the suspension does not appear to be either legal or in public interest, as the people are deprived of getting medical service from Medical Officer, and therefore, further continuation of suspension could not be in public interest.

9. Now, turning to the facts of the present case, the charge-sheet in D.E. has been issued on 24.09.2018 to which the Applicant has submitted his reply on 05.10.2018. However, after filing of reply, there is no progress in D.E. There is nothing on record to point out that the Enquiry Officer has been appointed , so as to expedite the D.E. though the Applicant is completing six months period under suspension.

10. As stated above, in view of law laid down by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case, the Government servant cannot be subjected to prolong suspension. Furthermore, there is failure on the part of Respondent No.1 to take review of suspension in terms of Clause No.7 of G.R. dated 14.10.2011. Therefore, this O.A. can be disposed of by giving suitable directions.

11. As per the law laid down by Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case, the currency of suspension order should not extend beyond

three months. If within this period, the D.E. is initiated by issuing charge-sheet, the disciplinary authority has to pass reasoned order for the extension of suspension which is not done in the present matter.

12. As regard compliance of G.R. dated 14.10.2011, the disciplinary authority is required to take periodical review of the suspension. It further provides, where the D.E. is not completed within six months from the date of suspension, then the disciplinary authority can reinstate the delinquent by giving him posting on non-executive post, so that he should not interfere in the departmental proceedings and such decision has to be taken having regard to the facts of the case on merit. As stated above, in the present case, though the charge-sheet has been issued, no such exercise has been undertaken by Respondent No.1 which he is obliged to do in terms of G.R. dated 14.10.2011.

13. In view of above, this O.A. can be disposed of with suitable direction to Respondent No.1 to take decision about the suspension of the Applicant in terms of G.R. dated 14.10.2011 within reasonable time. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent No.1 is directed to take decision about the suspension of the Applicant in terms of Clause No.7(a) of G.R. dated 14.10.2011 and the law laid down by Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case within one month from today.
- (C) The decision, as the case may be, be communicated to the Applicant within a week thereafter.

- (D) If the Applicant is aggrieved by the said decision, he may avail further remedy in accordance to law, if so advised.
- (E) No order as to costs.

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

Mumbai

Date : 14.02.2019

Dictation taken by :

S.K. Wamanse.

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