

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.886 OF 2019**

- 1) Shri Yuvraj Shankar Bhanse, )  
Occ. Junior Clerk (under suspension) )  
in the office of the Project Officer, Integrated )  
Tribal Development Project, Dahanu, )  
Dist. Palghar, R/o. Room No.4, Bariyawad, )  
A/P/T Umargaon, Dist. Valsad. ) ... **Applicant**

**Versus**

- 1) The Additional Commissioner, )  
Tribal Development, Thane, )  
Having Office at Vardan Sankul, )  
Opp. MIDC, Thane (W)-4. )
- 2) The State of Maharashtra, )  
Through Principal Secretary, )  
Tribal Development Department, Having Office )  
At Mantralaya, Mumbai-400 032. )...**Respondents**

Shri Bhushan Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 17.12.2020

**JUDGMENT**

This Original Application is being decided finally at the stage of admission wherein the challenge is to the suspension order dated 14.09.2010 whereby the Applicant was suspended in contemplation of Departmental Enquiry (D.E.).

2. At the very outset, it needs to be stated that the facts emerges from the record are rather very disturbing and reflects very sorry state of affairs of the administration of the Respondent No.1-Additional Commissioner, Tribal Development Department, Dist. Thane as the Applicant was subjected to agony of prolong suspension for the period more than ten years without initiating departmental action.

3. The Applicant was serving as Junior Clerk in the office of Project Officer, Integrated Tribal Development Project, Dahanu, Dist. Palghar under the control of Respondent No1-Additional Commissioner, Tribal Development Department, Dist. Thane being the Disciplinary Authority. On 03.09.2010, the Respondent No.1 issued show cause notice to the Applicant as to why D.E. should not be initiated against him under the provision of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules 1979' for brevity) for irregularities in the purchase of food grains for Ashram Schools. The Applicant submitted his reply on 07.09.2010. However, Respondent No.1 felt it unsatisfactory and suspended the Applicant by order dated 14.09.2010 invoking Rule 4(1)(a) of 'Rules 1979' in contemplation of D.E.. Material to note that some other employees namely Shri Channe and Shri Halape were also suspended in the same matter but they were reinstated in service in 2012-2013. However, the Applicant was subjected to prolong suspension despite specific instructions under G.R. dated 14.10.2011 which *inter-alia* provides for review of suspension of the Government servant periodically. No such steps were taken by the Respondent No.1. It is on this background, having subjected to ten years suspension, the Applicant has filed the present Original Application.

4. When the O.A. was taken up for issuance of notices having noticed that inordinate and prolonged delay of ten years vis-à-vis laxity and negligence on the part of Respondent No.1. Learned P.O.

was directed to apprise the Tribunal why the Applicant is not reinstated in terms of G.R. dated 14.10.2011. It is only after passing the said order, the Respondent No.1 woke up and by order dated 13.09.2019 reinstated the Applicant.

5. Though, the Applicant has been reinstated in service during the pendency of O.A., the issue is still remains about the legality of prolong suspension.

6. Heard Shri Bhushan Bandiwadekar, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

7. True, after suspension of the Applicant in contemplation of D.E., later one crime for the offence under Section 406, 409 and 420 of I.P.C. was registered against the Applicant vide Crime No.I-13/2011, with Economic Offence, Crime Branch at Bhynder, District Thane (Gramin). However, it has nothing to do with the suspension which was purely in contemplation of D.E. Apart what is striking to note that as fairly submitted by the learned P.O. that Economic Offence after investigation found FIR lodged by the complainant was false and submitted B-summary on 26.09.2011. As such, registration of criminal offence in any way could not justify the prolong suspension at least after filing of B-summary. The Respondent No.1 ought to have been reinstated the Applicant but failed to do so and it was only after filing of O.A. and stern order passed by this Tribunal, he was reinstated in face saving exercise.

8. Perusal of record reveals that though the Respondent No.1 was competent authority for passing the order of reinstatement of the Applicant, he unnecessarily made correspondence with the Government and sought directions.

9. Appalling to note that though the Applicant was suspended in contemplation of D.E., the D.E. was initiated after nine years by serving charge-sheet on 24.09.2019. As such, it is after nine years only D.E. has been initiated which is still under way without any substantial progress except appointing of the Enquiry Officer. This shows total laxity and negligence of the concerned officials in discharging duty as public servant.

10. It is on this background, one need to see whether such suspension order can be termed legal and the answer is in negative.

11. Normally the adequacy of the material before the authority at the time of taking decision of the suspension does not fall with the scope and ambit of judicial review. However, where the suspension is prolonged for a decade and the Government servant is subjected to agony without any steps on the part of Government to initiate D.E., such suspension order is liable to be struck down.

12. At this juncture, it would be apposite to refer the Judgment in **Madanlal Sharma's** case (cited supra) wherein Para No.15 is as follows :

*“15. Indefinite continuation of suspension has always been declared invalid by a catena of decisions where it was demonstrated that for continuation of the suspension, the employee was not responsible. In addition, if the disciplinary authority did not proceed by issuing chargesheet and appointing the Enquiry Officer so as to initiate departmental proceedings within a reasonable period from the date of suspension, such suspension order continued for years together, get vitiated and, therefore, it is required to be declared as invalid as well as illegal. We may in this regard refer to the decision of the Apex Court in the case of K. Sukhendar Reddy vs. State of A.P. and another, (1999) 6 SCC 257.”*

13. Furthermore, the legal position in respect of prolong suspension is no more *res-integra* in view of the Judgment of Hon'ble Supreme Court In **Ajay Kumar Choudhary's** case (supra). It would be apposite to reproduce Para Nos.11, 12 and 21, which are 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 prepare 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. As such in view of law laid down by the Hon'ble Supreme Court in Ajay Kumar Chowdhary's case (cited supra) and in **Madanlal Sharma's case** there is no escape from the conclusion with the prolong suspension of the Applicant is illegal and unsustainable in law.

15. Now, turning to G.R. dated 14.10.2011 as stated above, there is complete failure on the part of Respondent to follow the instructions contained therein. Where, the suspension is because of registration of crime against the employee, then in that event, after one year from the date of suspension, the Review Committee needs to take decision about the revocation or continuation of the suspension. The decision should be objective and record based. As per Clause 4, where Criminal Case is not decided within two years, then the Review Committee needs to take decision about the revocation of suspension and to reinstate the employee on non-executive post. Whereas, as per Clause 7(a), where suspension is in contemplation of D.E, then the disciplinary authority is required to take review of such matter after three months from the date of suspension. It further mandates that, where the D.E. is not completed within six months, such Government employee can be reposted on non-executive post after revocation of suspension. As such, there are exhaustive and elaborate instructions in G.R. dated 14.10.2011 about the follow-up action to be taken by the Review Committee as well as disciplinary authority. However, in

the present case, there is complete inaction as well as failure on the part of Respondents to abide instructions contained in G.R. dated 14.10.2011.

16. Thus, despite specific instructions by G.R. dated 14.10.2011, the Respondents did not bother to take review of the suspension and the Applicant was subjected to prolong suspension unnecessarily. He was paid subsistence allowance of 75% without any work. It is not the case of the Respondents that reinstatement of the Applicant was threat for fair conduct of enquiry. Suffice to say, the Applicant ought to have been reinstated in service in terms of G.R. dated 14.10.2011 on non executive post and there is complete defiance of provisions of law as well as instructions contained in G.R. dated 14.10.2011. Indeed, in terms of G.R., the D.E. was required to be completed within six months whereas in the present case, D.E. itself had been initiated after nine years from the date of suspension which clearly indicates maladministration and non adherence of instructions issued by the Government. Rather the act of Respondent No.1 is in defiance of law.

17. Indeed, recently the Government by G.R. dated 09.07.2019 issued instructions to all the departments that where D.E. is not initiated within three months from the date of suspension, such suspension will have to be revoked in view of the decision of the Hon'ble Supreme Court in **Ajay Kumar Chowdhary's** case.

18. Suffice to say, despite various instructions by G.R. dated 14.10.2011 and 09.07.2019, the Respondent No.1 turned blind eye and continued to suspension of the Applicant for ten years. Such prolong suspension is not countenanced in law and deserves to be struck down. Original Application is, therefore, deserves to be allowed. Hence the following order:-

**ORDER**

- (A) Original Application is allowed.
- (B) Suspension order dated 14.09.2010 is hereby quashed and set aside.
- (C) The Respondents are directed to ensure the completion of D.E. including passing final order within six months from today.
- (D) As the Applicant is subjected to prolonged suspension of ten years and constrained to file this O.A. I am inclined to impose exemplary cost of Rs.10,000/- upon the Respondents jointly and severally.

Sd/-

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

Place : Mumbai  
Date : 17.12.2020  
Dictation taken by : Vaishali Mane  
Uploaded on :  
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