

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.889 OF 2018**

**DISTRICT : PUNE**

Dr. Abhay Waman Vaidya, )  
Age : 53 Yrs, Medical Officer, Group A, )  
ESIS Hospital, Mohan Nagar, Chinchwad, )  
Pune (under suspension) and residing at Flat )  
No.6, Girija-Shankar Apartments, 2<sup>nd</sup> Floor, )  
Karve Nagar, Kothrud, Pune 411 052. )...**Applicant**

**Versus**

Government of Maharashtra, )  
Through Principal Secretary, )  
Public Health Department, having office at )  
G.T. Hospital Compound, L.T. Road, )  
Mumbai 400 001. )...**Respondent**

**Mr. M.D. Lonkar, Advocate for Applicant.**

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

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

**DATE : 14.12.2018**

**JUDGMENT**

1. This Original Application is taken up for final hearing at the stage of admission wherein the challenge is to the suspension order dated 29<sup>th</sup> October, 2016 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant is Medical Officer (Group 'A') in E.S.I.S. at Solapur. On 19.09.2016, the Applicant came to be arrested in Crime No.468/2016 under Sections 7, 13 (1) (d) read with Section 13(2) of Prevention of Corruption Act. He was in police custody for more than 48 hours. Therefore, by order dated 29.10.2016, he was kept under suspension w.e.f.19.09.2016 invoking the powers under Section 4(1)(c) and 4(2)(A) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. Since then, he is under suspension. The Applicant claims to be innocent as regard the offences registered against him under Prevention of Corruption Act. He made representations on 20.03.2017, 24.05.2018 and on 29.06.2018 for revocation of suspension and reinstatement in service, but in vein. Therefore, the Applicant has filed this O.A. challenging the order of suspension dated 29.10.2016 by contending that the prolong suspension of more than 2 years is illegal and not sustainable in view of law laid down by Hon'ble Supreme Court. No review of the suspension was taken in terms of G.R. issued by G.A.D, State of Maharashtra dated 14<sup>th</sup> October, 2011. In so far as the offences registered against the Applicant is concerned, no criminal case is yet filed in the Court. Further, no departmental enquiry has been initiated against him. As such, the prolong suspension without placing the matter before Review Committee is arbitrary and illegal. He, therefore, prayed to set aside the order of suspension and reinstatement in service. Besides, the grievance is also raised for non-payment of Subsistence Allowance.

3. The Respondent resisted the application by filing Affidavit-in-reply. The Respondent contends that the process of filing charge-sheet in the Court is under process, as the Government recently granted sanction for the prosecution. As regard non-placing the matter before the Review Committee, the Respondent contends that, it can be done only after filing of charge-sheet. Thus, according to Respondent, the suspension is legal. As regard Subsistence Allowance, the Respondent contends that, it is being paid with enhanced and the arrears will be cleared soon.

4. Heard Mr. M.D. Lonkar, learned Advocate for the Applicant and Mrs. A.B. Kololgi, learned Presenting Officer for the Respondents.

5. In view of submissions advanced at the Bar, the question posed for determination is whether prolong suspension of the Applicant is legal.

6. Mr. M.D. Lonkar, learned Advocate for the Applicant has pointed out that, though the period of 2 years and 2 months from the date of suspension is over, neither charge-sheet nor departmental enquiry is initiated. He has further pointed out that, in view of the stand taken by the Respondent, admittedly, the matter was not placed before the Review Committee. On this line of submission, he urged that the prolong and continuous suspension is illegal in view of Judgment of Hon'ble Supreme Court in **(2015) 7 SC 291 (Ajay Kumar Choudhary Vs. Union of India)**.

7. Per contra, learned P.O. submitted that, for want of papers of Criminal Case, the matter could not be placed before the Review Committee and it will be placed soon. She has further pointed out that, recently, the Government has accorded sanction for his prosecution and the charge-sheet will be filed soon.

8. Thus, what emerges from the submission that, admittedly, till date, no charge-sheet has been filed against the Applicant. Furthermore, admittedly, the

D.E. is not initiated. The subject of revocation of suspension is also not placed before the Review Committee though the Applicant is under suspension for more than 2 years.

9. No doubt, the adequacy of material before the authority at the time of taking decision of suspension does not fall within the scope and ambit of judicial review. However, it is well settled that the suspension should be for the short duration and if it is continued for a longer period, then it must be objective and demonstrated that the continuation for a longer period is warranted in the facts and circumstances of the case.

10. 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.”*

11. 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.

12. 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."

13. Now, coming to the facts of the present case. Admittedly, till date, neither charge-sheet has been filed nor D.E. has been initiated. This being the position, the ratio laid down in ***Ajay Kumar Choudhary's*** case is fully attracted. The Hon'ble Supreme Court mandated that, the continuation of suspension beyond three months without filing charge-sheet is illegal and unsustainable in law. On this ground alone, the continuation of suspension of the Applicant is not sustainable.

14. Furthermore, there is no compliance of the directions laid down in G.R. dated 14.10.2011 which mandates that the matter of suspension be placed before the Review Committee constituted for this purpose after one from the date of suspension where the public servant is charged with criminal offence. Clause 4 of G.R. further provides that, where criminal case is not decided within a period of two years from the date of filing of charge-sheet, then in that event, the Review Committee is empowered to recommend revocation of suspension and posting of the public servant on non-executive post. However, in the present case, there is complete failure on the part of Respondent to consider the continuation of suspension and the Applicant is put to prolong suspension and agony.

15. Regret to note that, no sincere efforts were made to place the matter before Review Committee and apathy on the part of Department is obvious. There is nothing to indicate that, any useful purpose would be served by

continuing the suspension and no case is made out that the revocation of suspension would be threat or fair trial in criminal case. Suffice to say, in such situation, the continuation of suspension of the Applicant is not warranted.

16. For the aforesaid reasons, I sum up that the O.A. deserves to be allowed partly with direction to Review Committee to take decision on the continuation of suspension within time limit. As regard non-payment of Subsistence Allowance, learned P.O. made a statement, that the arrears on Subsistence Allowance payable as per Rules will be paid within a month from today. Hence, I pass the following order.

### **ORDER**

- (A) The Original Application is partly allowed.
- (B) The Respondent is directed to place the matter before Review Committee and to take decision on the suspension of the Applicant having regard to the legal position discussed in the Judgment within two months from today and the decision, as the case may be, be communicated to the Applicant.
- (C) The arrears of Subsistence Allowance be paid within one month from today.
- (D) No order as to costs.

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

Mumbai  
Date : 14.12.2018  
Dictation taken by :  
S.K. Wamanse.