

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.894 OF 2019
DISTRICT : MUMBAI**

Shri Sudhri Baburao Sasane)
Child Development Project Officer)
[now under suspension], Bhandup (E))
R/o. Govt. Colony, A-6/1, opp.)
Hanuman Temple, Bandra (E), Mumbai 51.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Secretary, Women & Child)
Development Dept, Mantralaya,)
Mumbai – 400 032.)

2. The Commissioner, Women & Child)
Development, 28, Queens Garden,)
Pune 1.)...**Respondents**

Mr. K. R. Jagdale, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 04.10.2019

JUDGMENT

1. In the present matter, the challenge is to the suspension order dated 28.06.2016 whereby the Applicant is kept under suspension invoking the Rule 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. At the time of suspension, the Applicant was serving as Child Development Project Officer, Bhandup. The offence u/s 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 was registered against him. Simultaneously, the Departmental Enquiry (D.E.) was initiated and concluded, but no final order is passed. In so far as Criminal Case is concerned, charge sheet was filed on 23.07.2018 but it is not progressing. On this background, the Applicant has filed the present O.A. challenging the prolonged

suspension for the period of more than three years contending that same is unsustainable in law.

2. Shri K. R. Jagdale, learned Counsel for the Applicant referred to the decision of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** and submits that the suspension beyond 90 days is impermissible in law. He has further pointed out that though the period of more than three years is over, the Respondents have not bothered to place the matter before Review Committee in terms of G.R. dated 14.10.2011, 31.01.2015 and 09.07.2019. He, therefore, prayed to revoke the suspension and for direction to reinstate the Applicant in service.

3. Per contra, Shri A. J. Chougule, learned Presenting Officer for the Respondents submits that having regard to the serious charges against the Applicant, he was kept under suspension and D.E. was also initiated. According to him, in view of pendency of the Criminal Case, department has not passed final order in D.E. As regard, non placing the matter before the Review Committee, he fairly concedes that the matter was not placed before the Review Committee.

4. This matter was taken up for hearing at the stage of admission having noticed that the Applicant is subjected to prolong suspension for the period of three years. It was also indicated by the Tribunal that as D.E. is already concluded, the Disciplinary Authority is at liberty to pass final order in accordance to rules. However, no such final decision is taken in D.E.

5. Thus, what transpires from the admitted facts that the Applicant is subjected to prolong suspension for the period of more than three years and the Respondents have failed to place the matter before Review Committee in terms of G.R. dated 14.10.2011, 31.01.2015 and 09.07.2019. Though the charge sheet is filed in Criminal Case, it is not progressing.

6. 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 14.10. 2011, 31.01.2015 and 09.07.2019 as well as the law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

7. 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.”*

8. 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.

9. Shri K. R. Jagdale, learned Counsel for the Applicant further referred to the decision of Hon’ble Madras High Court in ***W.P. No.29881 of 2010 and M. P. No.2 of 2010 (V. Santhanagopalan***

V/s. The Commissioner/Director of Rural Development & Panchayat Raj), decided on 07.12.2017. In the said case, the Petitioner was kept under suspension in view of the registration of crime under Prevention of Corruption Act as well as in contemplation of D.E. by suspension order dated 29.07.2009. However, he was subjected to prolong suspension. Hon'ble Madras High Court relying on the decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra), quashed the suspension order and directions were issued to post the Petitioner on non-sensitive post as the administration deems fit.

10. At this juncture, it would be material to note that the Government had issued instructions from time to time by G.R. dated 14.10.2011, 31.01.2015 and 09.07.2019 to take review of the suspension of the government servant so that they are not subjected to prolong suspension. As per, G.R. dated 14.10.2011, the Review Committee was under obligation to take periodical review after every three months. Clause 4 (a) of G.R. states that where the government servant is suspended in view of registration of serious crime against him and the Criminal Case is not decided within two years from the date of filing of charge sheet then the Review Committee may recommend for reinstatement of the government servant on non-executive post. Whereas, as per Clause 4(b) of G.R., where the period of two years from filing of charge sheet is not over or where no charge sheet is filed, in that event also, the Review Committee can make recommendation for revocation of suspension and to reinstate the government servant having regard to the guidelines mentioned in G.R.

11. Later, by G.R. dated 31.01.2015, the Government again issued clarification which inter-alia empowers the Review Committee to revoke the suspension where D.E. is already initiated, the period of one year of suspension is over and sanction for prosecution is already granted.

12. Later, again recently, the Government of Maharashtra had issued G.R. dated 09.07.2019 thereby acknowledging the mandate laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case that suspension beyond 90 days would be impermissible and instructions are issued to all departments to ensure initiation of D.E. within 90 days.

13. Despite the aforesaid Government Respondents, the Respondents have failed to place the matter before the Review Committee and the Applicant is subjected to prolong suspension of more than three years.

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

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to place the matter before Review Committee to take decision about continuation or revocation of suspension of the Applicant and pass appropriate order within six weeks from today.
- (C) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (D) If the Applicant felt aggrieved by the decision, he may avail legal remedy, in accordance to law.
- (E) No order as to costs.

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