

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.929 OF 2018

DISTRICT : MUMBAI

Dr. Deepak Bhimrao Lade.)
Age : Adult, Occ.: Medical Officer,)
Group 'B' (suspended), Residing at Kankavali,)
District : Sindhudurg.)...**Applicant**

Versus

1. The Additional Chief Secretary,)
Public Health Department, Mantralaya,)
Mumbai 400 032.)
2. The Director of Health Services,)
M.S, St. George Hospital Compound,)
Near Chhatrapati Shivaji Maharaj)
Terminus, Mumbai.)...**Respondents**

Mr. D.B. Khaire, Advocate for Applicant.

Mr. S.D. Dole, Presenting Officer for Respondents.

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

DATE : 03.12.2018

JUDGMENT

1. This Original Application is taken up for final hearing at the stage of admission itself wherein the challenge is to the order of suspension dated 22.01.2016 invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The Applicant is Medical Officer (Group 'B') and at the time of suspension, he was working as Medical Officer, Central Prison, Kolhapur. On 04.11.2015, he was arrested by Anti-Corruption Bureau in a trap and offences under Section 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act, 1988 was registered vide Crime No.155 of 2015. He was released on bail by the learned Special Judge. By order dated 22.01.2016, he was kept under suspension in view of Criminal offences registered against him under Prevention of Corruption Act, by virtue of Rule 4(1)(c) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. He claims to be innocent and defence is of false implication in a trap. He made representations for revocation of suspension to the Department on 20.02.2017 as well as on 24.05.2017 but in vein. Despite that, the period of near about 35 months is over from the date of suspension, his matter was not placed before the Review Committee in terms of G.Rs. dated 14.10.2011 and 31.01.2015. Neither Departmental Enquiry was initiated nor Criminal Case is progressing. On this background, he approached this Tribunal by filing this O.A. contending that the prolong suspension is illegal in view of the Judgment of Hon'ble Apex Court as well as there is breach of compliance of G.Rs. dated 14.10.2011 and 31.01.2015.

3. Heard Shri D.B. Khaire, learned Advocate for the Applicant and Shri S.D. Dole, learned Presenting Officer for the Respondents.

4. In view of submissions advanced at the Bar, the question arose in the present O.A. is, whether prolong suspension of the Applicant is justified ?

5. Shri D.B. Khaire, learned Advocate for the Applicant submitted that, till date, the period of near about 35 months is over from the date of suspension, but no efforts are made to place the matter of suspension before Review Committee as mandated by G.Rs. dated 14.10.2011 and 31.01.2015. He also invited my attention to Judgment of Hon'ble Bombay Supreme Court in **Ajay**

Kumar Choudhary Vs. Union of India : (2015)7 SC 291. On this line of submission, he prayed for revocation of suspension and reinstatement in service.

6. Shri S.D. Dole, learned Presenting Officer fairly stated that the matter could not be placed before Review Committee and also admits that, no departmental enquiry has been initiated against the Applicant. No explanation much less valid is forthcoming for not placing the matter before the Review Committee as mandated by aforesaid G.Rs.

7. As such, what emerges from the above, that the Applicant is kept under suspension for about 35 months and no review has been taken to decide, whether continuation of suspension is warranted in the facts and circumstances of the case. 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 a short duration and if it is continued for a longer period, then it must be objectively demonstrated that the continuation for a longer period is warranted in the facts and circumstances of the case.

8. As regard the period of suspension and its continuation, the situation is clearly covered by the Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case (cited supra). It would be appropriate to reproduce Para No.21 of the said Judgment which is as follows :

"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.”

9. 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.

10. 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.”

11. Now, turning to the facts of the present case. As till date, no departmental enquiry is initiated, it can be assumed that the Department does not want to initiate departmental proceedings against the Applicant and

suspension is continued only on the basis of offence registered against the Applicant, though the period of 35 months from the date of suspension is over. Criminal Case is not progressing. Besides, admittedly, the matter is not placed before the Review Committee in terms of G.Rs. dated 14.10.2011 and 31.01.2015. In fact, it mandates that the matter of suspension be placed before Review Committee constituted for this purpose after one year from the date of suspension. The Review Committee is expected to make objective assessment to this situation and to decide about the continuation of suspension, if warranted in the facts and circumstances of the case. Clause 4 of G.R. dated 14.10.2011 further provides that, where Criminal Case is not decided within a period of two years, then in such case, 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, apathy on the part of Respondents is clearly visible, as no efforts were made to take review of suspension despite the expiration of period of 35 months from the date of suspension.

12. In view of Judgment of Hon'ble Supreme Court referred to above, further continuation of suspension of the Applicant does not appear warranted and in fact, it is contrary to the law laid down in the Judgment of **Ajay Kumar Choudhary's** case followed in **State of Tamil Nadu's** case. There is nothing to indicate that any useful purpose could be served by continuing further suspension and no case is made out that revocation of suspension could be threat for fair trial in Criminal Case. The Review Committee is, therefore, required to take appropriate decision in this regard, as mandated by G.Rs. dated 14.10.2011 and 31.01.2015. I, therefore, deem it appropriate to dispose of this O.A. by giving suitable directions to the Respondents. Hence, I pass the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The Respondents are directed to place the matter before Review Committee to take appropriate decision on the suspension of the Applicant within a period of six weeks from today, failing which, there shall be deemed reinstatement of the Applicant in service and he be reinstated accordingly. The Respondents are at liberty to post the Applicant at suitable place as deem fit.
- (C) No order as to costs.

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

Mumbai

Date : 03.12.2018

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2018\12 December, 2018\O.A.929.18.w.12.2018.Suspension.doc