

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.954 OF 2018**

**DISTRICT : THANE**

Shri Vidyasagar V. Chavan. )  
Age : 52 Yrs., Assistant Town Planner, )  
Ambarnath Municipal Council, Ambarnath, )  
District : Thane and residing at Room No.5, )  
Baar Bungalow, Pawar Nagar, Thane. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Urban Development Department, )  
Mantralaya, Mumbai – 400 032. )  
2. Ambarnath Municipal Council. )  
Through its Chief Officer, Ambarnath, )  
District : Thane. )...**Respondents**

**Mr. V.V. Tare-Patil, Advocate for Applicant.**

**Ms. S.T. Suryawanshi, Presenting Officer for Respondent No.1.**

**Ms. P.J. Gavhane, Advocate for Respondent No.2**

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

**DATE : 01.12.2018**

**JUDGMENT**

1. This Original Application is taken up for final hearing at the stage of admission itself wherein challenge is to the order of suspension dated 10.03.2017

invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. At the time of impugned suspension order dated 10.03.2017, the Applicant was serving as Assistant Town Planner, Ambernath Municipal Council, District Thane. On 06.12.2016, the offences under Section 7, 13(1)(d) read with 13(2) of Prevention of Corruption Act vide Crime No.23/2016 was registered against the Applicant. He secured anticipatory bail from Learned Special Judge, Kalyan. By impugned order dated 10.03.2017, he was placed under suspension invoking Section 4(1) [without specifying Clauses (a), (b) and (c)] of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as "Rules of 1979"). However, the perusal of impugned order dated 10.03.2017 reveals that in view of offences registered against the Applicant, the disciplinary authority in contemplation of departmental enquiry placed the Applicant under suspension under Section 4 of 'Rules of 1979'. The Applicant claims to be innocent and defence seems to be of false implication into trap of ACB. He contends that, prolong suspension of about 20 months is illegal and unwarranted in law and facts. As per G.R. dated 14.10.2011, the Respondent No.1 was obliged to place the matter of suspension before Review Committee and take appropriate decision objectively, but it failed to do so and thereby committed breach of its own Circular. In criminal case, the charge-sheet filed but the case is not progressing.

3. In fact, the Applicant had earlier filed O.A.No.235/2017 for revocation of suspension which came to be disposed of by this Tribunal by order dated 23.06.2017 with the observation that the application was premature as it was filed immediately after three months from the date of suspension and liberty was granted that he can again knock the doors of this Tribunal.

4. As such, this is the second round of litigation wherein the Applicant having remained in suspension for about 22 months, prayed to set aside the suspension with reinstatement in service.

5. Shri Tare-Patil, learned Advocate for the Applicant urged that, till date, the period of more than 20 months is over, but no decision has been taken by the Review Committee in terms of G.R. dated 14.10.2011 and on this line of submission, he contends that the continued suspension of the Applicant is illegal in view of Judgment of Hon'ble Apex Court in ***Ajay Kumar Choudhary Vs. Union of India (2015) 7 SC 291***. He also referred to the Judgment passed by this Tribunal in ***O.A.No.35/2018 (Dilip J. Ambilwade Vs. State of Maharashtra)*** wherein this Tribunal relying on the Judgment in ***Ajay Kumar Choudhary's*** case held that the suspension beyond 90 days is disregarded. He, therefore, prayed to set aside the suspension order dated 10.03.2017 with reinstatement in service.

6. Per contra, Ms. Suryawanshi, learned Presenting Officer submitted that the subject of revocation of suspension was placed before the Review Committee in its meeting on 15.06.2018, but for want of papers of Criminal Case, no decision was taken. As regard departmental enquiry, she has submitted that, the charge-sheet has been issued on 17.11.2017 and the departmental proceedings are pending at the stage of appointment of Enquiry Officer.

7. Having considered the submissions advanced at the Bar, there is no escape from the conclusion that there is no diligence on the part of Respondents to take required measures / steps in terms of G.R. dated 14.10.2011 as well as no diligence is found in completing the departmental enquiry in reasonable time.

8. The perusal of noting of meeting of Review Committee dated 15.06.2018 reveals that the matter was placed before the Review Committee, but the papers of Criminal Case pending against the Applicant in Special Court were not placed before the Review Committee. The Review Committee appears conscious that

the decision about revocation of suspension needs to be taken in light of material / evidence available against the Applicant in Criminal Case in terms of Circular issued by G.A.D. dated 28.03.2018 in deference of the direction given by this Tribunal in **O.A.No.1023/2017 (Ravindra Bharti Vs. State of Maharashtra)**. The perusal of noting further reveals that the subject is being tossed from one Department to another Department on the point of production of papers of Criminal Case and it is simply lingering. Till date, no final decision has been taken. Whereas, the G.R. datd 14.10.2011 mandates that the review should be taken after one year from the date of suspension so that the person should not be continued in prolong suspension, if not warranted.

9. Furthermore, there is an inordinate delay in completing D.E. The perusal of impugned suspension order dated 10.03.2017 reveals that the Applicant was placed under suspension in contemplation of D.E. under Section 4(1)(a) of 'Rules of 1979'. The charge-sheet has been issued on 17.11.2017 i.e. after 8 months. Even thereafter till date, there is no progress in the D.E. as the Enquiry Officer is not yet appointed. If this is the state of things and he is allowed to continue, then the Applicant will be left with no remedy and to undergo suspension indefinitely which is contrary to settled legal principles. No doubt, an 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, 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.

10. 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.”*

11. The Judgment in ***Ajay Kumar Choudhary’s*** case was also followed by Hon’ble Supreme Court in ***State of Tamil Nadu’s*** case (cited supra) 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. As such, in view of legal principles enunciated in the above mentioned cases, the continuation of suspension of the Applicant is not warranted and in fact, it is contrary to the law laid down by the Hon'ble Apex Court. No useful purpose would be served while continuing further suspension and no case is made out that revocation of suspension would be threat for fair trial in departmental proceedings or criminal case. The Review Committee, is therefore, required to take appropriate decision in this regard. I, therefore, deem it appropriate to dispose of this O.A. with suitable direction. Hence, I pass the following order.

**ORDER**

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to place the matter before Review Committee and 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.
- (C) No order as to costs.

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

Mumbai  
Date : 01.12.2018  
Dictation taken by :  
S.K. Wamanse.