

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.970 OF 2018**

**DISTRICT : THANE**

Shri Dnyaneshwar Kisan Shinde. )  
Age : 56 Yrs., Occu.: Talathi (now under )  
suspension), Sazam, Nagaon, Tal.: Bhiwandi, )  
District : Thane and residing at Kasturi Park, )  
A/7, Jasood, 203, Kalyan (W), District : Thane. )...**Applicant**

**Versus**

1. The Sub Divisional Officer-cum-Sub- )  
Divisional Magistrate, Bhiwandi, )  
Having office at Opp. Bhiwandi S.T. )  
Stand, Agra Road, Bhiwandi, )  
District : Thane. )
2. The Divisional Commissioner. )  
Konkan Division, Having office at Konkan )  
Bhawan, 1<sup>st</sup> Floor, Navi Mumbai – 614. )
3. The State of Maharashtra. )  
Through Principal Secretary, )  
Revenue Department, Mantralaya, )  
Mumbai 400 032. )...**Respondents**

**Mr. A.V. Bandiwadekar, Advocate for Applicant.**

**Ms. N.G. Gohad, Presenting Officer for Respondents.**

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

**DATE : 15.01.2019**

**JUDGMENT**

1. This Original Application wherein challenge is to the suspension order dated 01.06.2016 is taken up for final hearing at the stage of admission.

2. The Applicant is working as Talathi under the control of Respondent No.1 (S.D.O, Bhiwandi, District Thane). On 19.05.2006, an offence under Sections 7, 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 was registered against the Applicant by Anti-Corruption Bureau (ACB), Thane. He was arrested and detained in Police Custody for more than 48 hours. Consequently, the Respondent No.1 by order dated 01.06.2016 kept him under suspension invoking Rule 4(1) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. The Applicant claims to be innocent. As Respondent No.1 kept him under continuous suspension, he made representation on 10.08.2017 to review his suspension, but in vein. He had also filed appeal before the Government (Respondent No.3) on 03.10.2017 which was head by Hon'ble Minister on 09.10.2017, but till date, the order has not been passed. There is no progress in Criminal Case filed by ACB. Besides, though charge-sheet has been issued in DE, it is also not progressing. Further, till date of filing of application, the matter was not placed before Review Committee as contemplated under G.R. dated 14.10.2011. Ultimately, the Applicant has approached this Tribunal contending that the prolong suspension is illegal in view of law laid down by Hon'ble Supreme Court. He, therefore, prayed to set aside the suspension order dated 01.06.2016 and for reinstatement in service.

3. When the matter came up for admission on 30.10.2018, this Tribunal has observed that, though the appeal was heard on 09.10.2017, the decision has not been taken, and therefore, directions were issued to communicate the decision taken, if any, in respect of appeal filed by the Applicant and the matter was adjourned to 04.12.2018. Thereafter, on 04.12.2018, the learned P.O. informed

the Tribunal that the Review Committee in its meeting dated 28.11.2018 decided to continue suspension. Therefore, it was directed to proceed with the O.A. on merit and the time was granted to file reply. However, till today, the reply is not filed. Apart, no decision has been taken on the appeal filed by the Applicant though heard before more than one year. It is of this background, the matter is being decided at the stage of admission, as lethargy on the part of Respondents to take timely action is clearly obvious from the record.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that, till date, the period of more than two and half years is over, but the Applicant is kept under prolong suspension which is contrary to the law laid down by Hon'ble Supreme Court in ***Ajay Kumar Choudhary Vs. Union of India (2015) 2 SCC (L & S) 455***. He also referred to the Judgment passed by this Tribunal in ***O.A.No.34/2018 (Shri Dilip J. Ambilwade Vs. State of Maharashtra) decided on 11.09.2018***. He has also pointed out the Applicant is subject to discrimination in view of revocation of suspension and reinstatement of some other employees. As regard decision of Review Committee dated 28.11.2018 to continue the suspension, the learned Advocate for the Applicant urged that there is no objective assessment of the situation and the suspension is continued mechanically. On this line of submission, he prayed to quash and set aside the impugned order.

5. Per contra, Ms. N.G. Gohad, learned P.O. submitted that the Review Committee in its meeting dated 28.11.2018 had decided to continue the suspension. However, she was not able to demonstrate how the prolong suspension is sustainable in law and facts.

6. Having heard the learned Counsels, the following factors emerges as an admitted position.

- (a) Till date, the period of more than two and half years from the date of suspension is over.
- (b) In Criminal Case, the charge-sheet under Sections 7, 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 was filed in the Court of law on 25.03.2017 which is after the period of 90 days mandated by Hon'ble Supreme Court in Ajay Kumar Choudhary's case (cited supra).
- (c) In departmental enquiry, the charge-sheet was issued on 02.11.2018 which is also after the period of 90 days from the date of suspension.
- (d) Appeal preferred by the Applicant on 03.10.2017 was heard by Hon'ble Minister on 09.10.2017, but till date, no order has been passed.
- (e) No review was taken as contemplated in G.R. of 14.10.2011 within two years and for the first time, it was placed before the Review Committee on 28.11.2018.
- (f) The Government has reinstated Smt. Sorte, the then Tahasildar, Ajara, District Kolhapur against whom the offences under Sections 7, 13, 1 read with 13(2) of Prevention of Corruption Act was registered on 21.02.2014 has been reinstated in service by order dated 25.02.2014 (Page 739 of Paper Book).
- (g) Shri Pravin R. Chavan, the then Naib-Tahasildar against whom the offences under Prevention of Corruption Act was registered on 18.01.2013 and was kept under suspension by order dated 05.02.2013 has been reinstated in service after invoking suspension by the Government by order dated 30.01.2014 (Page 40 of P.B.).

- (h) Shri Prabhakar S. Choudhary against whom the offences under Prevention of Corruption Act was registered on 15.09.2014 and was suspended on 24.11.2014 has been reinstated in service in appeal by the Government by order dated 03.12.2015 (Page 52 of P.B.).

8. As the Hon'ble Minister has not passed the order on his appeal though the period of more than one year is over from the date of hearing, the Applicant having no other alternative approached this Tribunal after exhausting the remedy available to him as contemplated under Section 20 of Administrative Tribunals Act, 1985. It is really surprising and anguishing that no order is passed in appeal for such a long and unreasonable period. It is certainly against the principles of justice delivery system and good governance policy. Be that as it may, now question comes whether the prolong suspension is warranted in the law and facts.

9. True, for the first time, the Review Committee has taken review on 28.11.2018 and decided to continue the suspension. In this behalf, it is material to note that the decision of the Committee placed on record by learned P.O. does not disclose any reason much less valid one for the continuation of suspension. The Committee was required to examine the matter consciously and objective decision is expected. However, the Committee continued his suspension stating that the DE is contemplated. This cannot be the ground for continuing the suspension. On the contrary, as till then, no DE was factually initiated, there was no reason to continue the suspension. In fact, the Respondent No.1 had recommended for revocation of suspension. As such, such decision of continuation of suspension is nothing but mechanical continuation of suspension dehors the law.

10. No doubt, the sufficiency 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 decision and it must be demonstrated that the continuation for a longer period is warranted in the facts and circumstances of the case.

11. 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.”*

12. 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.

13. 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.

14. Turning to the facts of present case, the charge-sheet in Criminal case has been filed on 27.03.2017. The charge-sheet in D.E. was issued on 02.11.2018.

Admittedly, till date, no Enquiry Officer has been appointed in D.E. As such, neither Criminal Case is progressing nor D.E. is expedited. In fact, where the Government servant is under suspension, the D.E. is required to be completed within six months as contemplated in G.R. dated 14.10.2011. Regretfully, though the appeal was heard before more than one year, no decision is taken thereon. In Ajay Kumar Choudhary's case (cited supra), the Hon'ble Supreme Court laid down the law that, where charge-sheet in Criminal Case or in D.E. is not filed within 90 days from the date of suspension, then the suspension is unsustainable. In the present case, as stated above, the charge-sheet in Criminal Case as well as in D.E. was not filed within 90 days. The charge-sheet in Criminal Case was filed after more than one year and in D.E, it was issued after 18 months. There is nothing to indicate that any useful purpose would be served by continuing the suspension. No case is made out that the revocation of suspension would be threat or fair trial in Criminal Case. Thus, there is no escape from the conclusion that continuation of suspension in the present set of facts is not sustainable.

15. At this stage, the learned P.O. has tendered a letter issued by S.D.O, Bhiwandi, dated 4<sup>th</sup> January, 2019 addressed to Divisional Commissioner wherein it was requested to consider the matter for reinstatement of the Applicant in service. Thus, it seems that, now the matter is again under consideration. Therefore, it is desirable to place the matter again before Review Committee to take appropriate decision. As stated earlier, the decision of Review committee taken in the meeting dated 28.11.2018 is not objective decision and only mechanical suspension has been continued. It is not the compliance of the instruction given in G.R. dated 14.10.2011 in letter and spirit. The Review Committee should bear it in mind while taking review of the matter in the light of settled legal position discussed above.

16. For the aforesaid reason, this Original Application deserves to be allowed partly. Hence, 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 decision on the suspension of the Applicant afresh, having regard to the legal position discussed in the Judgment within a period of one month and the decision, as the case may be, shall be communicated to the Applicant.
- (C) If the Applicant is aggrieved by the decision, he can avail further legal remedy in accordance to law.
- (D) No order as to costs.

Sd/-

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

Mumbai

Date : 15.01.2019

Dictation taken by :

S.K. Wamanse.

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