

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.737 OF 2021
(Subject:- Suspension)**

DISTRICT: - Dhule.

Shri Arun S/o Sambhaji Kapadane,)
Age: 54 years, Occu. : Service as)
Sub-Registrar Grade-1, Shirpur,)
Dist. Dhule, (At present Suspended),)
R/o: Plot No.1, Manomay Dream Home,))
Konark Nagar, Adgaon, Shivar,)
Tq. & Dist. Nashik.)
Mob. No.9921935962.)...**APPLICANT**

V E R S U S

- 1. The State of Maharashtra**)
Through: The Additional Chief)
Secretary, (Stamp & Registration),)
Revenue & Forest Department,)
Mantralaya, Mumbai-32.)
 - 2. The Inspector General of**)
Registration & Stamp Controller,)
Maharashtra State, Pune,)
New Administrative Building,)
Ground Floor, Opp.Vidhan Bhavan,))
Pune-1.)
 - 3. The Divisional Commissioner,**)
(Revenue) Nashik,)
Nashik Road, Nashik.)
 - 4. The Joint District Registrar,**)
Class-1 & Stamp Collector,)
Dhule, First Floor,)
Collector Office, Dhule.)...**RESPONDENTS**
-

APPEARANCE : Shri K.B. Jadhav, learned Advocate for
the applicant.
: Shri N.U. Yadav, learned Presenting
Officer for the respondents.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **16.09.2022**

ORDER

1. By invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original Application is filed challenging the impugned suspension order of the applicant dated 26.03.2021 (part of Annex. 'A-3', page Nos.27 & 28 of P.B. collectively) issued by the respondent No.2 i.e. the Inspector General of Registration & Stamp Controller, Maharashtra State, Pune.

2. The facts in brief giving rise to this Original Application can be stated as follows:-

(i) The applicant was initially appointed on the post of Junior Clerk by the respondent No.2 i.e. the Inspector General of Registration and Stamp Controller, Pune on 05.11.1996. Thereafter, the applicant was promoted to the post of Senior Clerk on 25.05.2011. Thereafter the applicant

again promoted on the post of Sub-Registrar, Grade-1, and was posted as Sub-Registrar, Khamgaon, Dist. Buldhana on 15.05.2017. Thereafter he was transferred from Khamgaon to Shirpur on the post of Sub-Registrar, Grade-1, Shirpur, Dist. Dhule where he joined on 13.08.2020.

(ii) While working at Shirpur, the applicant registered the Sale Deed bearing No.1109/2021 on 17.03.2021 in the name of Vijay Hari Patil in respect of property bearing residential plot no.Abhi.Pra.-2, Sima.Pra.-30, Survey No.35/1 situated at Varwade, Tal. Shirpur, Dist. Dhule adms. Area 180 Sq.mtr.. The registration of the said property was completed on 17.03.2021 at about 12.30 pm. However, the complainant named Mahendra Chudaman Bagal lodged the complaint against the applicant in the office of Anti-Corruption Bureau, Dhule about the demand of Rs.400/-by the applicant for the registration of the sale deed. In view of said complaint, the officer of the Anti-Corruption Bureau, Dhule conducted raid in the office of the applicant on 18.03.2021. The complainant said to have given the amount of Rs.300/- to the accused no.2 namely Sunil @ Chhotu Pandit Baviskar. Thereafter F.I.R. (Annex. 'A-1') came to be lodged against the applicant and Sunil @ Chhotu Pandit Baviskar at Shirpur Police

Station, Dist. Dhule on 18.03.2021 under Section 7 and 7-A of the Prevention of Corruption Act, 1988. The applicant was arrested in the said crime on 18.03.2021 at about 16.56 pm. He was released on bail on 23.03.2021 as per order dated 23.03.2021 passed in Criminal Bail Petition No.282/2021 (Annex. 'A-2') by the Ld. Special Judge, Dhule.

(iii) It is further submitted that after the abovesaid alleged incident, the respondent No.2 issued suspension order of the applicant dated 26.03.2021 (part of Annex. 'A-3' collectively) retrospectively from the date of arrest i.e. 18.03.2021, which order came to be served upon the applicant only on 11.05.2021 vide forwarding letter dated 06.05.2021 (part of Annex. 'A-3' collectively, page No.29 of P.B.) by the respondent No.4 i.e. the Joint District Registrar, Class-1, & Stamp Collector, Dist. Dhule.

(iv) Being aggrieved and dissatisfied with the said suspension order dated 26.03.2021, the applicant filed representation dated 18.06.2021 (Annex. 'A-4') to the Hon'ble Minister of State, Revenue and Forest Department, Mantralaya, Mumbai for revocation of suspension and reinstatement. Similarly he submitted representation dated

18.06.2021 (Annex. 'A-5') to the Divisional Commissioner, Nashik.

(v) It is further submitted that after completion of 90 days period from the date of suspension order, the applicant filed departmental appeal dated 05.07.2021 (Annex. 'A-6') before the Hon'ble Minister of State, Revenue and Forest Department, Mantralaya, Mumbai seeking revocation of suspension and reinstatement in view of the decision of the Hon'ble Supreme Court of India in Civil Appeal No.9454/2013 in the matter of **Union of India & Ors. Vs. Ashok Kumar Aggarwal** decided on 22.11.2013. The said departmental appeal is still pending and no decision is taken on it.

(vi) Thereafter, the Deputy Inspector General of Registration and Deputy Stamp Controller, Konkan Division, Thane issued letter dated 09.08.2021 (Annex. 'A-7') to the respondent No.2 seeking permission for payment of subsistence allowance of 75% to the applicant in accordance with law. The respondent No.2, however, did not grant such permission.

(vii) It is further submitted that the applicant has filed Criminal Application No.2762/2021 before the Hon'ble High Court of Judicature at Bombay for quashing the F.I.R. Crime

No.25/2021 registered with the Shirpur City Police Station, Shirpur, Dist. Dhule against the applicant under Section 7 and 7-A of Prevention of Corruption Act, 1988. According to the applicant, the complaint lodged against him by the complainant is frivolous and it is lodged only to harass the applicant. There was no demand on the part of the applicant nor there acceptance on his part. The sale deed in question was completed on 17.03.2021 at about 12.30 pm. The complaint came to be lodged against the applicant on 18.03.2021. In view of the same, the impugned suspension order issued by the respondent No.2 is without application of mind and is issued routinely. About 9 months have passed after issuance of suspension order and till the Review Committee has not taken the review of suspension of the applicant in accordance with law.

(viii) Hence, in view of the decision of the Hon'ble Apex Court in the matter of **Ajaykumar Chaudhari Vs. Union of India** reported in 2015 (7) Supreme Court 291 and relevant G.R. dated 09.07.2019 (Annex. 'A-9') issued by the G.A.D, State of Maharashtra continuing the suspension order beyond 90 days from the date of suspension order is not tenable and is liable to be quashed and set aside and the applicant is

entitled for reinstatement with full salary and allowances upon completion of 90 days period. Hence, this application.

3. The application is resisted by filing affidavit-in-reply on behalf of the respondent Nos.1 and 2 by one Rajesh Govindrao Raut working as the Deputy Inspector General of Registration and Deputy Controller of Stamps, Nashik Division, Nashik. Thereby he denied all the adverse contentions raised in the application.

(i) It is specifically contended that the impugned order of deemed suspension dated 26.03.2021 is rightly issued against the applicant. In view of the complaint lodged against the applicant, the applicant was arrested on 18.03.2021 in F.I.R. bearing Crime No.25/2021 registered with the Shirpur City Police Station, Shirpur, Dist. Dhule against the applicant under Section 7 and 7-A of Prevention of Corruption Act, 1988. The applicant was released on bail on 23.03.2021. In view of the same, it is the case of deemed suspension of the application w.e.f. 18.03.2021. It is issued only by invoking provisions of Rule 4 of Maharashtra Civil Services (Conduct and Discipline), Rules, 1979 in contemplation of the criminal

prosecution under the Prevention of Corruption Act, 1988, which amounts to serious misconduct.

(ii) It is denied that the requisite subsistence allowance is not paid to the applicant. In that regard the letter dated 18.01.2022 (Annex. 'R-1') issued by the respondent No.2 granting 75% subsistence allowance from 18.06.2021 is placed on record. It is submitted that review of the suspension is to be taken by the review committee headed by the Divisional Commissioner. The information required to enable the review committee to take decision in respect of review of suspension of the applicant is in process. Hence, the application is devoid of merit and it is liable to be dismissed.

4. The applicant filed affidavit-in-rejoinder thereby denying adverse contentions raised in the affidavit-in-reply and reiterating the contentions raised in the Original Application. He also annexed the copy of order dated 23.12.2021 issued by the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad in Criminal Application No.2762/2021. He also made representation dated 13.12.2021 (Annex. 'RJ-2') to the respondent No.2 seeking revocation of suspension order as no action was taken in that regard in spite of lapse of 9 months period.

5. Affidavit-in-sur-rejoinder is filed on behalf of the respondent Nos.1 & 2, thereby denying the adverse contentions raised in the affidavit-in-rejoinder and contending that the review of suspension by the review committee is under process and in that regard, communication dated 05.07.2021 (Annex. 'RR-1') is received by the respondent No.2 for submitting information in 28 columns regarding the applicant's suspension.

6. I have heard at length the arguments advanced by Shri K.B. Jadhav, learned Advocate for the applicant on one hand and Shri N.U. Yadav, learned Presenting Officer representing the respondents on other hand.

7. Upon perusal of the rival pleadings and submissions, it is evident that the applicant has challenged his impugned suspension order dated 26.03.2021 (part of Annex. 'A-3' collectively) issued by the respondent No.2 i.e. the Inspector General of Registration & Stamp Controller, Maharashtra State, Pune. It is not in dispute that the respondent No.2 is competent authority to issue the suspension order. The said suspension order of the applicant was issued in contemplation of criminal prosecution in view of registration

of Crime No.25/2021 at Shirpur City Police Station, Shirpur, Dist. Dhule under Section 7 and 7-A of the Prevention of Corruption Act, 1988. The applicant was arrested in the said crime on 18.03.2021 and was released on bail on 23.03.2021. In view of the same, the applicant was suspended w.e.f. 18.03.2021. It is a case of deemed suspension from the date of arrest.

8. It is pertinent to note that the said impugned order of suspension was served upon the applicant by forwarding letter dated 06.05.2021 on 11.05.2021 issued by the Joint Registrar, Class-1 & Stamp Collector, Dhule. The present Original Application challenging the said suspension order dated 26.03.2021 is filed on or about 23.11.2021. No departmental enquiry is initiated against the applicant in respect of proposed criminal prosecution. Moreover, admittedly, no charge sheet in respect of criminal prosecution is served upon the applicant till date even after lapse of 3 months (90 days) from the date of order of suspension. In view of the same, the applicant is seeking quashment of the suspension order in view of the decision of the Hon'ble Apex Court in the matter of **Ajay Kumar Choudhary Vs. Union of India & Ors.** in Civil Appeal No.1912 of 2015 (Arising out of

SLP No.31761 of 2013) decided on 16.02.2015. In paragraph No.14 it is laid down as follows:-

“14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 prepare 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 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. In view of the abovesaid decision of the Hon'ble Apex Court in **Ajay Kumar Choudhary's case**, the G.R. dated 09.07.2019 (Annex. 'A-9') is issued by the G.A.D., Government of Maharashtra. The said G.R. dated 09.07.2019 is as follows:-

**“महाराष्ट्र नागरी सेवा (शिस्त व अपील) १९७९
निलंबित शासकीय सेवकांना ९० दिवसांच्या
कालावधीत दोषारोप पत्र बजावणेबाबत**

**महाराष्ट्र शासन
सामान्य प्रशासन विभाग
शासन निर्णय क्र.निप्रआ-१११८/प्र.क्र.११/११अ
मंत्रालय, मुंबई -४०० ०३२
दिनांक:०९ जुलै, २०१९**

वाचा:-

- १) शासन निर्णय, सामान्य प्रशासन विभाग, क्रमांक निप्रआ-११११/प्र.क्र. ८३/११अ दिनांक १४ ऑक्टोबर, २०११.
- २) शासन निर्णय, सामान्य प्रशासन विभाग, क्रमांक अभियो-१३१४/प्र.क्र. ८३/११-अ दिनांक ३१ जानेवारी, २०१५.
- ३) Office Memorandum F. No. 11012/04/2016-Estt (A) Government of India Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training Establishment A-III Desk Dated August 23, 2016

शासन निर्णय:-

निलंबित शासकीय अधिकारी/कर्मचाऱ्यांच्या निलंबनाची कारणे व त्यांचे गांभीर्य यानुसार त्यांच्या प्रकरणांचा आढावा घेण्यासंदर्भात शासनाने वेळोवेळी वर संदर्भामध्ये दर्शविल्यानुसार शासन निर्णय निर्गमित केले आहेत. श्री. अजयकुमार चौधरी विरूद्ध युनियन ऑफ इंडिया (सिव्हिल अपिल क्र.१९१२/२०१५) मध्ये मा. सर्वोच्च न्यायालयाने

दि.१६/०२/२०१५ रोजी दिलेल्या निर्णयाच्या परिच्छेद १४ मधील आदेश खालीलप्रमाणे आहेत.

We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/ Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 prepare 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 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 the 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.

२. मा. सर्वोच्च न्यायालयाने वरीलप्रमाणे दिलेल्या दि. १६/०२/२०१५ च्या निर्णयाचे अनुषंगाने केंद्र सरकारचा दि. २३ ऑगस्ट, २०१६ रोजीचा कार्यालयीन आदेश सोबत जोडला आहे. मा. सर्वोच्च न्यायालयाचा निर्णय व केंद्र सरकारचा कार्यालयीन आदेश पाहता निलंबित शासकीय कर्मचाऱ्यांना ९० दिवसांच्या मुदतीत दोषारोप पत्र बजावून त्यांच्या निलंबनाच्या आढाव्या संदर्भातील तरतुदी सुधारण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय:-

१. या अनुषंगाने शासकीय कर्मचाऱ्यांच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.

i) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेऊन निलंबन पुढे चालू ठेवावयाचे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिकाऱ्यांच्या स्तरावर घेण्यात यावा.

ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरू करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता/खबरदारी घेण्यात यावी.

iii) फौजदारी प्रकरणात विशेषतः लाचलुचपत प्रकरणी निलंबित शासकीय सेवकांवर विभागीय चौकशी सुरू करून दोषारोप पत्र बजावणेबाबत आवश्यक तो अभिलेख लाचलुचपत प्रतिबंधक विभागाने संबंधीत प्रशासकीय विभागास उपलब्ध करून देणे आवश्यक राहिल.

या आदेशातील तरतुदींमुळे या विषयावरील संदर्भ १ व २ येथील आदेशांतील तरतुदी या आदेशाच्या मर्यादित सुधारण्यात आल्या आहेत असे समजण्यात यावे.

३. सदर शासन निर्णय महाराष्ट्र शासनाच्या

www.maharashtra.gov.in या वेबसाईटवर उपलब्ध करण्यात आला

असून त्याचा संगणक संकेतांक २०१९०७०९१५२०४०५२०७ असा आहे. हा आदेश डिजीटल स्वाक्षरीने साक्षात्कृत करून काढयात येत आहे.

महाराष्ट्राचे राज्यपाल यांच्या आदेशानुसार व नावाने,

(संजू क. गुप्ते)
उप सचिव, महाराष्ट्र शासन''

10. Though the respondents resisted the application, it is not demonstrated that the review of the suspension of the applicant was taken for revocation as required or for that matter, extension if any. The present case is covered under the principles laid down in **Ajay Kumar Choudhary's** case (cited supra) and requisite G.R. dated 09.07.2019 (Annex. 'A-9') reproduced as above.

11. In view of above, it was incumbent upon the respondents to seek review of the suspension order of the applicant for it's revocation after lapse of 3 months (90 days), when no charge sheet in criminal prosecution was filed against the applicant. It is a fact that after lapse of 3 months (90 days), the applicant made two representations dated 18.06.2021 (Annex. 'A-4') and (Annex. 'A-5') respectively to the Minister of State, Revenue and Forest Department and Divisional Commissioner and also filed revision (Annex. 'A-6') under Rule 25 of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 before the Hon'ble Minister of State,

Revenue and Forest Department against the suspension order. However, the said authorities failed to consider those representations and revision. In view of above, this is a fit case for consideration of revocation of impugned suspension order of the applicant as no charge sheet in criminal prosecution is filed even after the lapse of 3 months (90 days) from the date of suspension order. It is a fact that the period of more than 17 months have passed, but no decision for revocation and reinstatement is taken.

12. No doubt the respondents have come out with the contention that they are taking review of the matter and in that regard, the review committee headed by the Division Commissioner, Nashik has sought information by letter dated 05.07.2021 (Annex. 'RR-1') and the matter of review is under process. In fact it ought to have been processed immediately after lapse of 3 months (90 days) when no charge sheet in criminal prosecution was submitted against the applicant. In view of the same, this Original Application can be disposed of by giving appropriate direction to the respondents to place the matter of suspension of the applicant before the requisite review committee for consideration of revocation of suspension and reinstatement in accordance with law within

time frame limit. I, therefore, proceed to pass the following order:-

ORDER

The Original Application is disposed of in following terms:-

- (A) The respondent No.2 to place the matter of suspension of the applicant before the requisite review committee for consideration of revocation of suspension and reinstatement with consequential service benefits from the date of completion of three months (90 days) from the date of suspension strictly in accordance with law laid down in **Ajay Kumar Choudhary Vs. Union of India & Ors.** in Civil Appeal No.1912 of 2015 (Arising out of SLP No.31761 of 2013) decided on 16.02.2015 and G.R. dated 09.07.2019 (Annex. 'A-9'). The whole exercise is to be completed within the period of one month from the date of this order
- (B) No order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:-Aurangabad
Date :16.09.2022
SAS O.A.737/2021