

MAHARASHTRA ADMINISTRATIVE TRIBUNAL

NAGPUR BENCH NAGPUR

ORIGINAL APPLICATION NO. 1064 / 2021 (S.B.)

Shalik S/o Kisanrao Ladke,
Aged about 54 years, Occ. Service (At present under suspension),
R/o Basweshwar Nagar, Darwaha Road,
Lohara, Yavatmal.

Applicant.

Versus

- 1) The State of Maharashtra,
Through it's Additional Chief Secretary,
Home Department,
Mantralaya, Mumbai- 400 032,
- 2) The Superintendent of Police Yavatmal,
Having its office, LIC Chowk,
Yavatmal, Tq. and Dist. Yavatmal - 445001.

Respondents

Shri S.P.Palshikar, the Id. Advocate for the applicant.

Shri S.A.Deo, the Id. C.P.O. for the respondents.

Coram :- Hon'ble Shri M.A.Lovekar, Member (J).

JUDGMENT

Judgment is reserved on 03rd January, 2022.

Judgment is pronounced on 06th January, 2022.

Heard Shri S.P.Palshikar, Id. counsel for the applicant and Shri S.A.Deo, Id. C.P.O. for the Respondents.

2. In this application the applicant is seeking relief of revocation of order of his suspension (A-1) passed by respondent no. 2 on 11.08.2021 on the ground that its continuance beyond the period of 90 days would be bad in law since he has not been served with chargesheet in departmental enquiry within this period of 90 days.

3. The applicant was placed under suspension by respondent no. 2 by order dated 11.08.2020 (A-1). It was alleged that he had, along with one Police Constable, demanded and accepted bribe. On this allegation crime no. 0134/2021 was registered against him and the co-delinquent under Section 7 of the prevention of corruption Act. Period of 90 days since the date of order of suspension of the applicant was passed, came to an end on 11.11.2021. Within this period the applicant was not served with chargesheet. On 12.11.2021 the applicant submitted application (A-2) before respondent no. 2 that since no chargesheet was filed/ served on him within 90 days of his suspension, he be reinstated. This prayer was, however, not considered. Hence this application.

4. Chart filed in connected proceedings (bearing O.A. No. 163/2021) shows that against the applicant preliminary enquiry was ordered on 03.09.2021, it was directed to be conducted by S.D.P.O., Pandarkawda and its report is still awaited. In this chart there is mention of order passed by respondent no. 2 on review that suspension of the applicant has been continued (beyond 90 days) since chargesheet has not been filed in the special court under the prevention of corruption Act. This chart is dated 27.10.2021. Factual position that the applicant is not yet served with chargesheet of departmental enquiry is not disputed. It may be reiterated that report of preliminary enquiry itself is awaited.

5. It was submitted on behalf of the applicant that considering aforesaid undisputed facts impugned suspension order deserves to be revoked. In support of this submission reliance is placed on G.R. of G.A.D. dated 09.07.2019 (A-3). In this G.R. following observations in Ajay Kumar Chaudhary Vs. Union of India, A.I.R. 2015, Supreme Court 2391 have been quoted

"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."

On the basis of these observations following guidelines have been issued :-

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6. The applicant has also relied on Judgments dated 06.05.2021 and 01.09.2021 passed by this Tribunal in O.A. Nos. 312/2021 (A-5) and 560/2021 (A-6), respectively. In these cases this Tribunal revoked suspension of the applicant by relying on aforesaid Judgment of the Hon'ble Supreme Court, G.R. of G.A.D. and Judgment passed by the Hon'ble Bombay High Court on 17.07.2019 in W.P. No. 7506/2018 (A-4) wherein following observations have been made:-

"The Government has recently issued a resolution dated 09.07.2019 giving detailed guidelines and directions for dealing with cases of those employees who are placed under suspension and against whom the charge-sheet has been issued. In the present case, charge-sheet has already been issued and 3 months period has been over long back and therefore, the facts of this case are squarely covered by the Government Resolution dated 09.07.2019, calling for necessary intervention by this Court."

7. In reply it was pointed out by Id. C.P.O. that the reason for continued suspension of the applicant is non filing of the chargesheet in the criminal court. Attention of the Tribunal was invited to aforequoted clause (iii) of G.R. dated 09.07.2019.

8. The undisputed fact is that though period of 90 days has elapsed since the order of suspension was passed, the applicant has not yet been served with chargesheet of departmental enquiry. Legal position laid down by the Hon'ble Supreme Court in the case of Ajay Kumar Chaudhary (supra) on the basis of which G.R. dated 09.07.2019 has been issued clearly leads to the conclusion that owing to non serving of chargesheet of departmental enquiry within 90 days of suspension, further continuance of suspension would be bad in Law. The application, therefore, deserves to be allowed. Hence, the order:-

ORDER

The O.A. is allowed in the following terms:-

- A. The impugned order of suspension dated 11.08.2021 (A-1) is revoked.
- B. The respondents shall issue consequential order within 30 days from the date of receipt of this order.
- C. No order as to costs.

Member (J)

Dated :- 06/01/2022.

aps

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Akhilesh Parasnath Srivastava.

Court Name : Court of Hon'ble Vice Chairman.

Judgment signed on : 06/01/2022.
and pronounced on

Uploaded on : 07/01/2022.