

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.228 OF 2019  
WITH  
ORIGINAL APPLICATION NO.241 OF 2020**

**DISTRICT : SOLAPUR**

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**ORIGINAL APPLICATION NO.228 OF 2019**

Shri Pankaj Arjun Rathod. )  
Age : 31 Yrs, Awal Karkun [now under )  
suspension], Entertainment Branch, )  
District Collector Office, Solapur and )  
R/o. 55/A, Nehru Nagar, Bijapur Road, )  
Solapur. ) **...Applicant**

**Versus**

The District Collector, Solapur. )  
Having Office at Siddheshwar Peth, )  
District : Solapur. ) **...Respondent**

**WITH**

**ORIGINAL APPLICATION NO.241 OF 2019**

Shri Sandip Eknath Gaikwad. )  
Age : 45 Yrs, Circle Officer [now under )  
suspension] with last posting as Circle )  
Officer, Musti, Tal. South Solapur, )  
District : Solapur and R/o. D-23/05, )  
Abhishek Nagar, Murarji Peth, Solapur. ) **...Applicant**

**Versus**

The District Collector, Solapur. )  
Having Office at Siddheshwar Peth, )  
District : Solapur. )...**Respondent**

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

**Mr. A.J. Chougule, Presenting Officer for Respondent.**

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

**DATE : 29.10.2020**

**JUDGMENT**

1. The Applicants have challenged the suspension orders dated 24.07.2019 and 06.01.2020 respectively invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. Since the issue involved is common, both the O.As are decided by common order.

2. Facts in short of O.A.228/2020 are as under :-

The Applicant was Awal Karkun on the establishment of Respondent – District Collector, Solapur. On 08.07.2019, he was arrested by Anti-Corruption Bureau (ACB) while accepting bribe from complainant Krushna R. Tathe in Crime No.1129/2019 for the offence under Sections 7 and 12 of Prevention of Corruption Act, 1988. He was detained in custody for more than 48 hours. However, the Respondent by order dated 24.07.2019 suspended the Applicant invoking Rule 4(1)(c) (instead of 4(2)(a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as “Rules of 1979” for brevity) with retrospective effect from 09.07.2019. Thereafter, the Applicant made representation on 04.11.2019 for reinstatement in service on the ground

of prolong suspension but the same was not responded. Ultimately, the Applicant has filed the present O.A. challenging the suspension order dated 24.07.2019 on the ground, which will be adverted a little later.

3. Facts in brief of O.A.241/2020 are as under :-

The Applicant was working as Circle Officer on the establishment of Respondent – District Collector, Solapur. On 22.12.2019, he was arrested by ACB while accepting bribe from the complainant Mahesh S. Kurle in Crime No.952/2019 registered under Section 7 of Prevention of Corruption Act, 1988. He was detained in custody for more than 48 hours. However, the Respondent by order dated 06.01.2020 suspended the Applicant with retrospective effect from 22.12.2019 invoking Rule 4 (1)(c) (instead invoking Rule 4(2)(a)) of 'Rules of 1979'. Thereafter, the Applicant made representation on 23.03.2020 for reinstatement in service on the ground of prolong suspension but in vain. Ultimately, he approached this Tribunal challenging legality of suspension order dated 06.01.2020 on the grounds to be adverted during the course of discussion.

4. In both the O.As, the Respondent resisted the O.As. by filing Affidavit-in-reply thereby contending that in view of registration of offence and arrest of the Applicants by ACB, they were rightly suspended. In this behalf, the Respondent contends that in terms of G.R. dated 22.02.2013 issued by GAD on receipt of report from ACB about arrest of the Applicants in Anti-Corruption case, the Applicants were suspended by order dated 24.07.2019 and 06.01.2020 with retrospective effect invoking Rule 4(1)(c) of 'Rules of 1979'. As regard prolong period of suspension, the Respondent submits that after one year from suspension, the review of suspension will be taken in terms of G.R. dated 14.10.2011.

5. Shri A.V. Bandiwadekar, learned Advocate for the Applicant sought to assail the impugned suspension order mainly on the ground that the suspension order under Rule 4(1)(c) with retrospective effect is contrary

to law, as there could be no such suspension with retrospective effect as mentioned in suspension order, and therefore, the impugned suspension orders suffer from material illegality and deserves to be quashed. He further submits that though enough period is lapsed, no charge-sheet is filed in Criminal Case neither D.E. is initiated. On this line of submission, he contends that in terms of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**, the prolong suspension beyond 90 days without taking review of suspension is illegal. He further pleads that the Respondent consciously choose to invoke Rule 4(1)(c) and not 4(2)(a) of 'Rules of 1979' and the same aspect is also asserted by the Respondent in his reply, and therefore, now they cannot call fall back upon Rule 4(2)(a) *inter-alia* provides for deemed suspension, and therefore, the impugned suspension orders suspending the Applicant with retrospective effect is totally unsustainable in law.

6. Per contra, Shri A.J. Chougule, learned Presenting Officer supported the impugned suspension orders contending that in view of registration of crime under Prevention of Corruption Act, on receipt of report from ACB, the Respondent suspended the Applicants in terms of G.R. dated 12.02.2013 invoking Rule 4(1)(c) of 'Rules of 1979'. As regard review of suspension, he submits that in terms of G.R. dated 14.10.2011, the review will be taken only after one year from the date of suspension. He fairly admits that no charge-sheet is filed in the Criminal Case against the Applicants. As regard initiation of D.E. against the Applicant in O.A.No.228/2020, it is already initiated. Whereas, in O.A. No.241/2020, admittedly, no D.E. is initiated.

7. At this juncture, before adverting to the facts, it would be apposite to reproduce Rule 4 of 'Rules of 1979' for ready reference, which is as under :-

**"4. Suspension :**

- (1) The appointing authority or any authority to which the appointing authority is subordinate or the disciplinary authority or any other

authority empowered in the behalf by the Governor by general or special order may place a Government servant under suspension-

- (a) where a disciplinary proceeding against him is contemplated or in pending, or
- (b) where in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State, or
- (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, where the order of suspension is made by an authority lower than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order was made.

- (2) A Government servant shall be deemed to have been placed under suspension by an order of appointing authority-
  - (a) with effect from the date of his detention, if he is detained in police or judicial custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
  - (b) With effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

**Explanation –**

The period of forty eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.”

8. Thus, the perusal of Rule 4 of ‘Rules of 1979’ makes it quite clear that there is material difference between Rule 4(1) and Rule 4(2). Rule 4 *inter-alia* provides for suspension in contemplation of D.E. or where delinquent engaged himself in activities pre-judicial to the interest of security of the State or where criminal offence is under investigation. Whereas, Rule 4(2) provides for deemed suspension where a Government servant is detained in Police or Judicial custody for a period exceeding 48 hours. In other words, Rule 4(2)(a) is deeming provision by legal friction or by operation of law, where a Government servant is detained in police custody exceeding 48 hours. Such deemed suspension shall be with

effect from the date of his detention. In other words, under Rule 4(2), there will be deemed suspension with retrospective effect i.e. date of detention, even if the formal order of suspension is issued later on. However, it is not so where a Government servant is suspended under Rule 4(1) of 'Rules of 1979'.

9. Now turning to the facts of the present case, by order dated 24.07.2019, the Respondent suspended the Applicant in O.A. 228/2019 w.e.f.09.07.2019 but he specifically invoked Rule 4(1)(c) of 'Rules of 1979'. Whereas in O.A.242/2020, the Respondent suspended the Applicant by order dated 06.01.2020 with retrospective effect from 22.12.2019 but specifically invoked Rule 4(1)(c) of 'Rules of 1979'. As per reply filed by Respondent, it is on receipt of report from ACB, he passed the suspension order in terms of G.R. dated 12.02.2013.

10. In so far as G.R. dated 12.02.2013 is concerned, the said G.R. was issued about the steps to be taken by the Government for sanction to prosecution under the provisions of Prevention of Corruption Act. It appears that Respondent applied Clause No.9(c) of G.R. dated 12.02.2013 which is as follows :-

“(९) न्यायालयात अभियोग दाखल करण्यास मंजूरी देण्याबरोबरच करावयाची इतर कार्यवाही

अ) विभागीय चौकशी नियम पुस्तिका -चौथी आवृत्ती-, १९९१ मधील परिच्छेद ४.२ मध्ये फौजदारी कार्यवाहीच्या तुलनेत विभागीय कार्यवाही करण्याबाबत स्पष्ट सूचना देण्यात आल्या आहेत. सदर सूचनांचा पुनरुच्चार शासन परिपत्रक सा. प्र.वि. सीडीआर १०९७-/प्र.क्र.४६/९७/११, दि. १८/११/१९९७ अन्वये करण्यात आलेला आहे. फौजदारी खटला दाखल केला असला तरी विभागीय चौकशी आदेशित करता येऊ शकते. फौजदारी खटल्याचा निर्णय लागण्यास बराच कालावधी लागतो व त्यामुळे संबंधितांवर तात्काळ कारवाई करणे शक्य होत नाही. विभागीय चौकशी नियम पुस्तिकेतील परिच्छेद ४.२ खालील तिस-या पर्यायानुसार फौजदारी खटला भरण्याबरोबरच संबंधित अधिकारी/कर्मचारी यांच्या विरुद्ध विभागीय चौकशी चालू करण्यासंदर्भात -- चालू करावी किंवा आवश्यकता नाही-- शिस्तभंग विषयक प्राधिकारी यांच्या स्तरावर जाणीवपूर्वक निर्णय घेण्यात यावा.

ब) संबंधित अधिकारी/कर्मचारी यांच्याविरुद्ध विभागीय चौकशी सुरु न करण्याचा जाणीवपूर्वक निर्णय सक्षम अधिका-याने घेतला असल्यास त्याबाबतची संमर्पक कारणे नमूद करण्यात यावीत.

क) लाचेचा सापळा प्रकरणी -- मानीव निलंबन वगळता -- लाचलुचपत प्रतिबंधक विभागाकडून अहवाल प्राप्त झाल्यानंतर अपचारी अधिकारी/कर्मचारी यांना तात्काळ निलंबित करण्याची कार्यवाही सक्षम प्राधिका-यांनी करावी.”

11. Thus, the Respondent completely lost sight of fact that Clause 9(c) of G.R. dated 12.02.2013 applies to the matter other than deemed suspension contemplated under Rule 4(2)(a) of 'Rules of 1979'.

12. Apart while suspending the Applicants by order dated 24.07.2019 and 06.01.2020, the Respondent suspended them with retrospective effect i.e. from 09.07.2019 and 22.12.2019 respectively, invoking Rule 4(1)(c) of 'Rules of 1979'. As stated above, the retrospective effect of suspension is permissible as deeming suspension in Rule 4(2)(a) of 'Rules of 1979' only and Rule 4(1)(c) does not provide for any such retrospective suspension. In the event of invoking Rule 4(1)(c) of 'Rules of 1979', the suspension should be from the date of order. Either there is lack of legal knowledge or proper legal assistance. This being the position, the suspension orders dated 24.07.2019 and 06.01.2020 as it stands are contrary to 'Rules of 1979' and unsustainable in law.

13. Indeed, during the course of hearing this aspect of unsustainability of suspension orders owing to legal defect as adverted to above was brought to the notice of learned P.O. and he was told that the Respondent could rectify the illegality by issuance of Corrigendum or fresh order of deemed suspension invoking Rule 4(2)(a) of 'Rules of 1979'. It is for that purpose, the Judgment was reserved from 06.10.2020 awaiting remedial measures by the Respondent. In the meantime, when learned P.O. was reminded about the proposed action in the form of remedial measure, all that, he stated that he has informed to the concerned. As such, till date, despite the opportunity to rectify the error, the Respondent did not bother to take remedial measures. Thus, the Respondent seems averse to take note of legal position and to take suitable remedial action. Be that as it may, the fact remains that despite specific instructions from the Tribunal and enough time, no remedial measures are taken to rectify the legal defect. Therefore, the Tribunal has no option except to decide the O.A. on the basis of material existing on record.

14. As such, the impugned suspension orders as it stands on record are unsustainable in law. However, at the same time, the Tribunal must ensure that Rule of law must prevail, as admittedly, the Applicants were in custody for a period exceeding 48 hours and by virtue of Rule 4(2)(a) of 'Rules of 1979', they deemed to have been placed under suspension by legal fiction as no discretion is left to the authority. The moment public servant completes 48 hours' detention, he is deemed to be suspended by legal fiction and the Applicants cannot be allowed to escape from the clutches of law or cannot be allowed to take the benefit of the mistake committed by the Respondent. The Applicants were caught while accepting bribe by ACB. Therefore, one must give effect to Rule 4(2)(a) of 'Rules of 1979'.

15. At this juncture, in this behalf, it would be apposite to refer the decision of Hon'ble Supreme Court in **(2003) 6 SCC 516 (Union of India Vs. Rajiv Kumar)**. Para Nos.14 and 15 of the Judgment are important, which are as under :-

*"14. Rule 10(2) is a deemed provision and creates a legal fiction. A bare reading of the provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of the legal fiction. It has as much efficacy, force and operation as an order otherwise specifically passed under other provisions. It does not speak of any period of its effectiveness. Rules 10(3) and 10(4) operate conceptually in different situations and need specific provisions separately on account of interposition of an order of Court of law or an order passed by the Appellate or reviewing authority and the natural consequences inevitably flowing from such orders. Great emphasis is laid on the expressions "until further orders" in the said sub-rules to emphasise that such a prescription is missing in Sub-rule (2). Therefore, it is urged that the order is effective for the period of detention alone. The plea is clearly without any substance because of Sub-Rule 5(a) and 5(c) of Rule 10. The said provisions refer to an order of suspension made or deemed to have been made. Obviously, the only order which is even initially deemed to have been made under Rule 10 is one contemplated under Sub-Rule (2). The said provision under Rule 10(5)(a) makes it crystal clear that the order continues to remain in force until it is modified or revoked by an authority competent to do so while Rule 10(5)(c) empowers the competent authority to modify or revoke also. No exception is made relating to an order under Rules 10(2) and 10(5)(a). On the contrary, specifically it encompasses an order under Rule 10(2). If the order deemed to have been made under Rule 10(2) is to lose effectiveness automatically after the period of detention envisaged comes to an end, there would be no scope for the same being modified as*



*contended by the respondents and there was no need to make such provisions as are engrafted in Rule 10(5)(a) and (c) and instead an equally deeming provision to bring an end to the duration of the deemed order would by itself suffice for the purpose.*

**15.** *Thus, it is clear that the order of suspension does not lose its efficacy and is not automatically terminated the moment the detention comes to an end and the person is set at large. It could be modified and revoked by another order as envisaged under Rule 10(5)(c) and until that order is made, the same continues by the operation of Rule 10(5)(a) and the employee has no right to be reinstated to service.”*

16. In **Rajiv Kumar’s** case, the issue before the Hon’ble Supreme Court was pertaining to interpretation of Rule 10 of Central Civil Services (Classification, Control and Appeal) Rules, 1965 which is in *pari materia* with Rule 4 of ‘Rules of 1979’. The question agitated before Hon’ble Supreme Court was whether deemed suspension on account of detention in Police of Judicial Custody exceeding 48 hours is restricted in its point of duration and efficacy to the period of actual detention only or whether it continues to be operative unless modified or revoked under Rule 10(5)(c) of Central Services Rules, 1965. It is in that context, in Para No.14, the Hon’ble Supreme held as reproduce above.

17. True, in **Rajiv Kumar’s** case, the issue in question was different, but there is no denying that the observations were made that there is no requirement of formal order of deemed suspension by appointing authority. Even if the said observations of Hon’ble Supreme Court is considered as obiter dictum as distinguished from the precedent and canvassed by the learned Advocate for the Applicant, but the same are of considerable weight as held by Hon’ble Supreme Court in **(2002) 4 SCC 638 (Director of Settlement, A.P. and Ors. Vs. M.R. Apparao & Anr.)** wherein it has been held as under :-

*“An obiter dictum as distinguished from ratio decidendi is an observation of the court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such a obiter may not have binding precedent but it cannot be denied that it is of considerable weight.”*

18. Now reverting back to the facts of the present case, even if the matter in issue before Hon'ble Supreme Court in **Rajiv Kumar's** case was about the interpretation of Rule 10(2) and Rule 10(5)(c) of Central Services Rules, 1965, there is no denying that the Hon'ble Supreme Court interpreted Rule 10(2) and has categorically observed that "Rule 10(2) is a deemed provision and creates a legal fiction. A bare reading of the provision shows that an actual order is not required to be passed. That is deemed to have been passed by operation of legal fiction." The Respondent – Collector, Solapur is admittedly the appointing authority of the Applicants. Rule 4(2)(a) contemplates deemed suspension by order of appointing authority. However, as per the decision of Hon'ble Supreme Court in **Rajiv Kumar's** case, even an actual order is not required to be passed and that is deemed to have been passed by operation of legal fiction. As such, in view of decision of Hon'ble Supreme Court in **Rajiv Kumar's** case, the Applicants will have to be treated deemed suspended by legal fiction under Rule 4(2)(a) of 'Rules of 1979' of 'Rules of 1979' and by it being deemed suspension by legal fiction, it does not require formal order. Once suspension is automatic and complete by legal fiction, it can be eclipsed due to mention of wrong provision of rule in order.

19. For the aforesaid reasons, I have no hesitation to conclude that the impugned suspension orders dated 24.07.2019 and 06.01.2020 as it stands are unsustainable in law and liable to be quashed. However, Rule 4(2)(a) of 'Rules of 1979' comes in play with full vigour and the Applicants will have to be treated deemed to be suspended from the date of their detention by operation of law and legal fiction. This legal fiction created under Rule 4(2)(a) of 'Rules of 1979' cannot be watered down or eclipsed by the mistake committed by the Respondent as on the admitted facts Rule 4(2)(a) apply with full force.

20. Now turning to the prolong suspension in O.A.No.228/2020, the period of one year of suspension is already over. Whereas, in O.A.241/2020, the Applicant has undergone suspension for the period of

more than nine months. The legal position in respect of prolong suspension is no more res-integra in view of the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra) relied by the learned Advocate for the Applicants. Para Nos.11, 12 and 21 of the Judgment are important, which are 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.”*

21. 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.

22. Shri Bandiwadekar, learned Advocate for the Applicants further referred to the decision of Hon'ble Bombay High Court in **2002 (3) Mh.L.J. 249 (State of Maharashtra Vs. Shivram Sadawarte)**. In that case, the petition was filed to settle the position in law in the matter of suspension of Government employee under Rule 4(1)(c) and Rule 4(2) of 'Rules of 1979'. The Hon'ble Supreme Court after examining various Judgments summarized the law in Para No.14 of the Judgment, which is as under :-

**“14.** *In the premises, we hold as under :*

*(a) The order of suspension issued under Rule 4 of the rules can be sought to be reviewed or revoked by the suspended employee by way of representation under Sub-rule 5 thereof, (b) Such a representation can be filed at any time and rejection of a representation may not operate as a bar in filing a subsequent representation for review/revocation,*

*(c) The representation so filed ought to be decided within a reasonable period of two to three months and by taking into consideration the nature of charges, progress in enquiry, investigations/trial as the case may be including the reasons for delay and other attending circumstances in each case as well as the policy decision of the State Government,*

*(d) Challenge to the order of suspension should not be ordinarily entertained by the Tribunal/Court directly unless the remedy as provided under Rule 4(5) is exhausted by the delinquent employee,*

*(e) if the representation filed by the delinquent employee under Rule 4(5) of the Rules is not decided within a period of two to three months or if the same is rejected, the employee has the right to approach the Tribunal and the order of the Government is subject to the judicial review,*

*(f) an order of suspension issued pending enquiry, investigation or trial, as the case may be, shall continue to operate till such enquiry, investigation and/or trial is completed and the suspension order cannot be quashed and set aside by the Tribunal on the basis of the circular dated September 18, 1974 or the resolutions dated December 14, 1995 and June 14, 1996. The order of suspension is subject to a judicial review by the Tribunal depending upon the facts and merits of each case,*

*(g) the State Government/competent authority ought to review the pending suspension cases every quarter and take the requisite steps to conclude the enquiry, investigation/trial as early as possible.”*

23. Suffice to say, the competent authority is under obligation to review the suspension of the Government servant periodically and Government employee cannot be subjected to prolong suspension. Indeed, the Government of Maharashtra had issued G.R. dated 14.10.2011 which *inter-alia* provides for periodical review of suspension of a Government servant suspended on account of registration of serious criminal offence. The G.R. provides detailed instructions/guidelines about the matters to be considered while taking decision of review and reinstatement of a Government servant. True, as per Clause 3 of G.R. where suspension is on account of registration of serious criminal offence under Indian Penal Code or under Prevention of Corruption Act, such matters are to be placed before Review Committee after completion of one year from the date of suspension. However, that cannot be the ground for not taking the review of suspension earlier in view of decision of Hon'ble Supreme Court in **Ajay Kumar Chaudhary** and **Shivram Sadawarte's** case (cited supra). Admittedly, no charge-sheet is filed in Criminal Case and investigation seems still in progress. In O.A.228/2020, admittedly, no D.E. is initiated. In O.A.241/2020, D.E. seems initiated but there is no progress in D.E. In fact, as per the

submissions of learned Advocate for the Applicants that his client is not served with charge-sheet in D.E. As such, the fact remains that in O.A.228/2020, though the period of more than one year is over, the matter was not placed before Review Committee in terms of G.R. dated 14.10.2011. Whereas, in O.A.241/2020 also, the period of nine months from suspension is over but no review is taken. Therefore, the directions need to be issued to the Respondents to take review of suspension of the Applicant within stipulated time.

24. The totality of aforesaid discussion leads me to conclude that the impugned suspension orders dated 24.07.2019 and 06.01.2020 are liable to be quashed but the Applicants deemed to have been suspended under Rule 4(2)(a) of 'Rules of 1979' and the Respondent is required to take review of suspension. Hence, I proceed to pass the following order.

### **ORDER**

- (A) Both the Original Applications are partly allowed.
- (B) The suspension order dated 24.07.2019 in O.A.228/2020 and suspension order dated 06.01.2020 in O.A.241/2020 are quashed.
- (C) However, in both the O.As, the Applicants deemed to have under suspension under Rule 4(2)(a) of 'Rules of 1979' by operation of law and legal fiction.
- (D) The Respondent is directed to take review of suspension of the Applicants within six weeks from today.
- (E) The decision, as the case may be, shall be communicated to the Applicants within two weeks thereafter.

- (F) If the Applicants felt aggrieved by the decision of Review Committee, they may avail legal remedy in accordance to law.
- (G) No order as to costs.

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

Mumbai

Date : 29.10.2020

Dictation taken by :

S.K. Wamanse.

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