

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.36 & 102 OF 2018

DISTRICT : THANE

ORIGINAL APPLICATION NO.36 OF 2018

Smt. Chitra M. Vishe.)
Age : 35 Yrs., Occu.: Talathi, Saza Khani,)
Tal. Bhiwandi, District : Thane and R/at 601,)
Shri Laxmi Tower, Opp. Sachin Industry,)
Shelar Pada, Thane (W).)...**Applicant**

Versus

1. The Sub Divisional Officer-cum-Sub)
Divisional Magistrate, Bhiwandi,)
District : Thane, Having office at Opp.)
Bhiwandi S.T. Stand, Bhiwandi,)
District : Thane.)
2. The District Collector, Thane.)
3. The State Election Commission.)
Through Under Secretary, having office)
at New Administrative Building,)
M.K. Road, Mumbai 32.)
4. The State of Maharashtra.)
Through Principal Secretary (Revenue),)
Revenue & Forest Department,)
Mantralaya, Mumbai 400 032.)
5. The Tahasildar.)
Tal. Bhiwandi, District : Thane.)

6. Shri J.B. Valvi.)
 District Supply Officer, Thane,)
 Having Office at Campus of Office of)
 District Collector, Thane.)...Respondents

WITH

ORIGINAL APPLICATION NO.102 OF 2018

- Shri Chandrakant N. Shirsat.)
 Age : 36 Yrs., Occu.: Junior Clerk,)
 Working in Office of Tahasildar, Bhiwandi,)
 District : Thane and R/at 302, Pragati Prime)
 Building, Opp. Ved Hospital, Kongaon,)
 Tal.: Bhiwandi, District : Thane.)...Applicant

Versus

1. The District Collector, Thane.)
 2. The State Election Commission.)
 Through Under Secretary, having office)
 at New Administrative Building,)
 M.K. Road, Mumbai 32.)
 3. The Tahasildar.)
 Tal. Bhiwandi, District : Thane.)
 4. Shri J.B. Valvi.)
 District Supply Officer, Thane,)
 Having Office at Campus of Office of)
 District Collector, Thane.)...Respondents

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

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

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

DATE : 09.01.2019

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicants and Smt. A.B. Kololgi, learned Presenting for the Respondents.
2. The Applicant is O.A.No.36/2018 is working as Talathi whereas the Applicant in O.A.No.102/2018 is working as Junior Clerk. Both the Applicants were suspended by order dated 16.12.2017 in contemplation of Departmental Enquiry (D.E.) invoking Rule 4(1)(a) of Maharashtra Civil Services (Disciplinary and Appeal) Rules, 1979. Since then, they are under prolong suspension. Neither the D.E. has been initiated nor the disciplinary authority or Review Committee has given second thought to the prolong suspension of the Applicants. The Applicants, therefore, contend that the continuous suspension is unwarranted as well as illegal. On this premises, they have filed these O.As challenging the suspension order.
3. Shri A.V. Bandiwadekar, learned Advocate for the Applicants submitted that ex-facie, the suspension itself is unsustainable. He has also pointed out that, having regard to this fact, the Hon'ble Chairman granted stay to the suspension order by passing the dated on 16th January, 2018. He, therefore, submitted that the suspension being illegal, it deserves to be quashed.
4. Whereas, the learned P.O. tendered a letter dated 08.01.2019 written by S.D.O, Bhiwandi stating that the matter will be placed before Review Committee within one month. On the basis of this letter, the learned P.O. submitted that the matter be disposed of as the review process is underway and will be completed within one month.
5. Admittedly, though the period of more than one year is over since the date of suspension, neither D.E. has been initiated nor steps are taken as per G.R.

dated 14th October, 2011. In the present case, Para No.7(a) of G.R. dated 14.10.2011 is material, which provides that where the Government employee is kept under suspension in contemplation of enquiry, the disciplinary authority is required to take review firstly after three months from the date of suspension, so that the question of reinstatement in service could be decided on merit of the case. It further provides that where the D.E. is not completed within six months, in that event, the disciplinary authority again needs to consider the continuation of suspension and if the continuation is found unwarranted, then the suspension can be revoked with reinstatement of the employee on non-executive post. As such, the obligation is cast on the disciplinary authority to take review firstly after three months and secondly, after six months and there should be objective decision based on the facts of the facts.

6. In the present case, admittedly, the disciplinary authority did not bother to take the review of suspension of the Applicant nor it has been placed before the Review Committee which now the Respondents want to do as per the letter dated 08.01.2019 placed on record today.

7. In view of above, all these O.As can be disposed of with suitable directions.

8. Here, it is pertinent to note that the suspension order has been stayed by this Tribunal by order dated 16.01.2018 having found prima-facie case in favour of Applicants that it does not warrant the suspension. Secondly, in view of Judgment of Hon'ble Supreme Court in **(2015) 2 SCC (L & S) 455 (Ajay Kumar Choudhary Vs. Union of India)**, if the charge-sheet either in Criminal Case or in D.E. is not filed within 90 days, then the suspension beyond 90 days is illegal. This aspect needs to be considered by disciplinary authority while taking review of the suspension.

9. Both the O.As are, therefore, disposed of with direction to the Respondents to place the matter of both the Applicants before the disciplinary authority as contemplated in Clause 7(a) of G.R. dated 14.11.2011 or before Review Committee as it thinks fit and the decision be taken thereon within one month from today and it be communicated to the Applicants. The interim relief granted by this Tribunal on 06.01.2018 in O.A.36 of 2018 and on 05.02.2018 in O.A.No.102 of 2018 shall continue till the decision of review. In case, the decision of review is taken against the Applicants, the interim relief shall be continued for two weeks only thereafter. No order as to costs. Hamdast granted.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 09.01.2019

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2019\1 January, 2019\O.As.36 & 102.18.w.1.2019.Suspension.doc