

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NOS.599 & 600 OF 2020

DISTRICT : PUNE / MUMBAI

ORIGINAL APPLICATION NO.599 OF 2020

Shri Tushar Devram Mundhe.)
Age : 36 Yrs., Occu.: Ambulance Driver,)
Sassoon General Hospital, Pune – 1 and)
R/o. 101, Maitri Paritosh, Shiv Ganesh)
Colony No.1, Sai Park, Digi, Pune – 15.)...**Applicant**

Versus

The Dean.)
Sassoon General Hospital, J.N. Road,)
Pune – 1.)...**Respondent**

AND

ORIGINAL APPLICATION NO.600 OF 2020

Shri Nana Balu Thorat.)
Age : 53 Yrs., Occu.: Ambulance Driver,)
Sassoon General Hospital, Pune – 1 and)
R/o. A/P Bori Paradhi, Tal. Daund,)
District : Pune.)...**Applicant**

Versus

The Dean.)
Sassoon General Hospital, J.N. Road,)
Pune – 1.)...**Respondent**

Mr. Arvind V. Bandiwadekar, Advocate for Applicants.

Mrs. K.S. Gaikwad, Presenting Officer for Respondent in O.A.No.599/2020.

Mrs. A.B. Kololgi, Presenting Officer for Respondent in O.A.No.600/2020.

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

DATE : 01.04.2021

JUDGMENT

1. Since in both these Original Applications, the Applicants have challenged the suspension order on common ground invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, they are decided by common Judgment.

2. Shortly stated facts giving rise to these O.As are as under :-

The Applicants in both the O.As are serving on the establishment of Respondent – Dean, Sassoon General Hospital, Pune as Ambulance Drivers. Admittedly, their appointing authority is Director, Medical Education and Research, Mumbai. In both the O.As, it is Respondent Dean, Sassoon General Hospital, Pune suspended the Applicants by order dated 28.05.2020 and 08.04.2020 respectively in contemplation of D.E. invoking Rule 4(1)(c) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979' for brevity) alleging that they have refused to carry dead-bodies in Ambulance in Covid-19 pandemic situation. In view of their refusal, the offence under Section 188 of Indian Penal Code under Section 3 of Epidemic Act, 1897

has been registered against them with Bund Garden Police Station, Pune on the complaint lodged by Resident Medical Officer (RMO) of the Hospital. Simultaneously, the departmental proceedings were also initiated against the Applicants. The Applicants have challenged the suspension order mainly on the ground that their appointing authority as well as disciplinary authority is Director, Medical Education and Research and Respondent - Dean, Sassoon General Hospital, Pune is not competent authority to suspend them. Secondly, they are subjected to prolong suspension beyond 90 days in contravention of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

3. The Respondent resisted the O.A. denying that the impugned orders suffer from any legal infirmity. The Respondent sought to justify the suspension contending that the Applicants were bound to follow the instructions given by RMO to carry dead-bodies in Ambulance in Covid-19 pandemic situation and in view of refusal committed serious misconduct as well as offence under Epidemic Act, 1897. After suspension, the D.E. was initiated against them. The Respondent did not dispute that appointing authority as well as disciplinary authority of the Applicant is Director, Medical Education and Research, Mumbai but sought to support the impugned suspension order contending that Dean, Sassoon General Hospital after passing suspension order forwarded the report to Director, Medical Education and Research and the said authority granted *ex-post facto* sanction to the suspension orders. With these pleadings, the Respondent prayed to dismiss the O.A.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicants sought to assail the impugned suspension orders on the following grounds :-

- (i) The appointing authority as well as disciplinary authority of the Applicant is Director, Medical Education and Research,

Mumbai, and therefore, the suspension orders passed by Dean, Sassoon General Hospital are bad in law.

(ii) The Applicants are continued in suspension without filing charge-sheet in D.E. within 90 days and without taking review of suspension, and therefore, prolong suspension beyond 90 days is bad in law in view of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

5. Per contra, Smt. K.S. Gaikwad, learned Presenting Officer in O.A.No.599/2020 and Smt. A.B. Kololgi, learned Presenting Officer in O.A.No.600/2020 sought to support the impugned suspension order contending that in view of serious misconduct for not carrying dead-bodies in Ambulance in Covid-19 pandemic situation, the suspension was justified to maintain discipline. As regard competency, they submit that even if Dean, Sassoon General Hospital is not appointing authority or disciplinary authority of the Applicants, in view of proviso to Rule 4(1) of 'Rules of 1979', the Dean, Sassoon General Hospital has reported the matter to the appointing authority and secondly, the appointing authority had given *ex-post facto* sanction to the suspension orders. On this line of submission, the learned P.Os sought to support the impugned suspension orders.

6. Before advertng to the issue of competency, it will be appropriate to see the background and circumstances in which Applicants came to be suspended. The perusal of record reveals that before issuance of suspension orders, the Respondent –Dean, Sassoon General Hospital had issued show cause notices to the Applicants as to why departmental proceedings should not be initiated against them. The Applicants submitted the reply stating that as per instructions issued by the Department, the Ambulance cannot be used for carrying dead-bodies of the persons who died due to Covid, since it would infect the Ambulance and may affect patients who are to be carried in Ambulance. In this behalf, the learned Advocate for the Applicant has pointed out that

instructions from Hospital Manual (Page No.26 of Paper Book) wherein it is specifically stated that Ambulance should not be used for transporting dead-bodies or patients of infectious diseases. However, Dean, Sassoon General Hospital suspended the Applicants for disobeying the orders given to them to carry dead-bodies in Ambulance. Consequently, the offence under Epidemic Act, 1897 was also registered against both with Bund Garden Police Station. Since D.E. is already initiated and it is already completed in the matter of Applicant in O.A.No.599/2020, it would not be appropriate to deal with the aspect of sufficiency or insufficiency of material for suspension of the Applicant.

7. In O.A.No.599/2020, the charge-sheet in D.E. was issued on 26.10.2020 and during the pendency of this O.A, the D.E. is completed. The learned P.O. has further pointed out that the punishment of withholding one increment with cumulative effect has been imposed upon the Applicant by order dated 15.03.2021. Whereas, insofar as O.A.No.600/2020 is concerned, the charge-sheet in D.E. was served upon the Applicant on 17.12.2020 and it is in progress. Irrespective of this subsequent development, the material question is whether Dean, Sassoon General Hospital was the competent authority to suspend the Applicants and prolong suspension is permissible in view of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case.

8. Insofar as the period of suspension is concerned, the issue is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**. The Hon'ble Supreme Court in Para No.21 held as follows:-

“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.”

9. 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 21st 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.

10. As such, in view of law laid down by Hon'ble Supreme Court, the suspension should not exceed 90 days and where charge-sheet in criminal case or in D.E. has been initiated within 90 days, then the concerned authority is required to take decision about extension or revocation of suspension. The concerned authority needs to take objective decision as to whether the continuation of suspension is warranted in the facts of the case. However, in the present case, admittedly, no such exercise has been undertaken by the disciplinary authority or Review Committee.

11. Indeed, the Government of Maharashtra had issued G.R. dated 09.07.2019 consequent to the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited Supra) acknowledging the legal position that where charge sheet is not issued within three months, the suspension cannot be continued. The Government, therefore, issued

direction that Competent Authority should ensure that the charge sheet is issued in D.E. within 90 days from the date of suspension.

12. Now turning to the facts of the present case, admittedly, in both the O.As, the charge-sheet in D.E. was not issued within 90 days nor review was taken by the competent authority as mandated in **Ajay Kumar Choudhary's** case. Thus, the Applicants are subjected to prolong suspension, which is impermissible in law.

13. Now it comes material question as to whether Dean, Sassoon General Hospital was competent authority for legal and valid suspension of the Applicants. In this behalf, it would be apposite to reproduce Rule 4 of 'Rules of 1979', which is as follows :-

"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 is 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 forth-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.

(3)

(4)

.....”

[underline is supplied]

14. It is thus explicit from Rule 4(1) of ‘Rules of 1979’ that suspension order should be passed by appointing authority or any other authority to which the appointing authority is subordinate or disciplinary authority or any other authority empowered in this behalf by the Government by special or general order.

15. Now turning to the facts of the present case, the suspension order has been passed by Dean, Sassoon General Hospital, Pune who is admittedly not appointing authority of the Applicants. The Respondents in reply fairly admits this position. Furthermore, it is not in dispute that there is no empowerment in this behalf to Dean, Sassoon General Hospital, Pune by Governor by general or special order.

16. The submission advanced by the learned P.O. that in view of proviso, the Dean, Sassoon General Hospital had forwarded the report to the appointing authority (Director of Medical Education and Research) and *ex-post facto* sanction was given to the same validates the suspension order is totally misconceived. All that, what proviso mandates that where an order of suspension is made by an authority lower than appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order was made. The said proviso does not override the specific provision contained in Rule 4(1) of ‘Rules of 1979’ which mandates that where suspension is by lower authority, there has to be empowerment in that behalf by Governor by general or special order to that effect. In other words, there has to be special or general empowerment in the name of lower authority (other than appointing authority or subordinate authority) and if on the basis of such empowerment, the lower authority

suspend a Government servant, in that event, there has to be compliance of proviso for forwarding report to the appointing authority explaining the circumstances in which the order was made. As such, if Rule 4(1) is considered along with proviso, the plain interpretation is that where there is suspension by lower authority, then it must be by special or general empowerment by Governor to that effect.

17. As such, mere forwarding of report to the appointing authority will not legalize the suspension order. *Ex-post facto* sanction given by appointing authority in the matter of suspension is unknown to law and it will not validate the suspension order. I have, therefore, no hesitation to sum-up that for want of competency, the suspension order issued by Dean, Sassoon General Hospital, Pune is bad in law.

18. The totality of aforesaid discussion leads me to sum-up that the impugned suspension orders are liable to be quashed being passed by Respondent without jurisdiction and O.A. deserves to be allowed. Hence, the following order.

ORDER

- (A) Both the Original Applications are allowed.
- (B) The impugned suspension orders dated 28.05.2020 and 08.04.2020 are quashed and set aside.
- (C) The Respondent is directed to reinstate the Applicants within two weeks with consequential service benefits.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 01.04.2021
Dictation taken by :
S.K. Wamanse.

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