

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.977 OF 2018  
WITH  
ORIGINAL APPLICATION NO.978 OF 2018**

**DISTRICT : SATARA**

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**ORIGINAL APPLICATION NO.977 OF 2018**

Shri Bhagwan Bhalguram Pawar. )  
Age : 41 Yrs., Occu.: Constable (Excise), )  
R/o. At and Post Umbraj, Tal.: Karad, )  
District : Satara – 415 109. )...**Applicant**

**Versus**

1. The State of Maharashtra. )  
Through the Secretary (Excise Dept.), )  
Mantralaya, Mumbai 400 032. )  
2. The Commissioner for State Excise (M.S.), )  
Old Custom House, 2<sup>nd</sup> Floor, Fort, )  
Mumbai - 400 023. )...**Respondents**

**WITH**

**ORIGINAL APPLICATION NO.978 OF 2018**

Shri Bhiwa Laxman Yele. )  
Age : 48 Yrs., Occu.: Sub-Inspector (Excise) )  
R/o. Shreeram Park, flat No.F, Anand Nagar, )  
Godoli, District : Satara – 415 002. )...**Applicant**

**Versus**

1. The State of Maharashtra & Anr. )...**Respondents**

**Mr. R.M. Kolge, Advocate for Applicant.**

**Mrs. K.S. Gaikwad, Presenting Officer for Respondents.**

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

**DATE : 04.01.2019**

**JUDGMENT**

1. In these Original Applications, the Applicants have challenged their suspension order dated 24.04.2017 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. As both the O.As are arising from similar incident, they are being disposed of by this common Judgment.

2. Shortly stated facts giving rise to this application are as under :

The Applicants were working as Sub Inspector of State Excise at Phaltan, District : Satara. On 20.03.2017, they were arrested in view of registration of offences under Section 7, 13(1)(d)(1)(2) read with Section 15 of Prevention of Corruption Act, 1988 registered with Koregaon Police Station. Therefore, by order dated 24.04.2017, they were kept under suspension invoking the provisions of Rule 4(1)(c) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979.

3. The Applicants have challenged the suspension order contending that the prolonged suspension without taking review of the same in terms of G.R. of General Administration Department, State of Maharashtra dated 14.10.2011 is illegal and unsustainable. The Criminal Case as well as departmental enquiry is not

progressing. Despite the representation made by the Applicants, no steps have been taken to revoke the suspension. The Applicants sought to contend that, prolong suspension is contrary to the Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary Vs. Union of India : (2015) 7 SCC 291***. The Applicants, therefore, prayed to set aside the order of suspension and for reinstatement in service.

4. Both the O.As are taken out for final decision at the stage of admission and accordingly, notices were issued.

5. Despite enough chances, the Respondents failed to file Affidavit-in-reply. Besides, when the matter was taken up for admission on 06.12.2018 and thereafter on 20.12.2018, it was observed that the Applicants being kept in prolong suspension for more than one year and eight months, it was expected to place the matter before the Review Committee for appropriate decision. On 20.12.2018, the learned P.O. made a statement that the Review Committee meeting was scheduled on 05.12.2018, but it was adjourned, and therefore, the matter will be placed in the next meeting. On this submission, the matter was adjourned to take further instructions for placing the matter before the Review Committee. However, today also, the learned P.O. stated that the date of meeting of Review Committee is not yet fixed and as and when it is convened, the matter will be placed before the same for consideration. In such situation, I do not think it necessary to adjourn the matter indefinitely, and therefore, this matter is heard today and decided at the state of admission.

6. Shri R.M. Kolge, learned Advocate for the Applicant urged that, till date, the period of near about 20 months is over, but the Respondents are not serious in taking review in terms of its own policy vide G.R. dated 14.10.2011. He referred the Judgment of Hon'ble Apex Court in ***Ajay Kumar Choudhary's*** case (supra) and urged that, the prolong suspension is unwarranted as well as illegal,

particularly when, the criminal case as well as D.E. initiated against the Applicants are not progressing.

7. Per contra, Smt. K.S. Gaikwad, learned P.O. has submitted that the suspension in view of registration of offences against the Applicant is justified and the same will be considered by Review Committee in due course.

8. Thus what emerges from the submission that, admittedly till date, the matter is not placed before the Review Committee though the Applicants are under suspension for about 20 months. No doubt, the sufficiency of material before the authority at the time of taking decision of suspension does not fall within the scope and ambit of judicial review except where it is arbitrary or malicious. However, it is well settled that the suspension should be for the short duration and if it is continued for a longer period, then it must be objectively demonstrated that the continuation for a longer period is warranted to the facts and circumstances of the case.

9. The legal position in respect of prolong suspension is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). It will be appropriate to reproduce Para Nos.11, 12 & 21 of the Judgment, which is 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.”*

11. 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.

12. At this juncture, a reference can also be made to the Judgment of Hon'ble Bombay High Court in ***Dr. Narender O. Bansal Vs. The Additional Chief Secretary, Mumbai & Ors., reported in 2016 (4) ALL MR 168.*** In that case, the public servant/Medical Officer was suspended in contemplation of departmental enquiry for a longer period and there was failure on the part of Department to place the matter before the Review Committee in terms of G.R. dated 14.10.2011. The Hon'ble Bombay High Court held that the suspension does not appear to be either legal or in public interest, as the people are deprived of getting medical service from Medical Officer, and therefore, further continuation of suspension could not be in public interest.

13. In the present matter also, there is no compliance of the directions laid down in G.R. dated 14.10.2011 which mandates that the matter of suspension should be placed before the Review Committee constituted for this purpose after one year from the date of suspension where the public servant is charged with criminal offence. However, in the present case, admittedly, no efforts were made to place the matter before the Review Committee for consideration of revocation of suspension. Clauses 4 & 5 of G.R. further provides that, where Criminal Case is not decided within a period of two years from the date of filing of the charge-sheet, then in that event, the Review Committee is empowered to recommend revocation of suspension and posting of the public servant on non-executive post.

14. This Tribunal has come across several cases where no sincere efforts were made to place the matter before the Review Committee and apathy on the part of Department is writ at large. There is absolutely nothing to indicate that any useful purpose is served in continuing the suspension and no case is made out to

show that the revocation of suspension would be threat for fair trial in Criminal Case or in D.E. As such, in view of law laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary** (cited supra) the continuation of suspension appears unwarranted.

15. For the aforesaid reasons, I have no hesitation to sum-up that both the O.As deserve to be allowed partly with direction to take review of the suspension of the Applicants and to take appropriate decision within time limit. Hence, the following order.

### **ORDER**

- (A) Both the O.A.Nos.977 of 2018 and 978 of 2018 are allowed.
- (B) The Respondents are directed to place the matter before Review Committee and to take decision on the suspension of the Applicants within one month from today and the decision, as the case may be, be communicated to the Applicant.
- (C) No order as to costs.

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

Mumbai  
Date : 04.01.2019  
Dictation taken by :  
S.K. Wamanse.