

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.686 of 2020

District : Thane

Shri Sachin Mahadev Bichkar,)
Aged 36 years, working as Rationing)
Inspector (under suspension) in the office of)
The Deputy Controller of Rationing, A Division,)
Purawatha Bhaan, Parel, Mumbai 12.)
Address for service of Notice :)
Shri A. V. Bandiwadekar, having office at 9,)
“Ram-Kripa”, Lt.Dilip Gupte Marg, Mahim,)
Mumbai 400 016.)...**Applicant**

Versus

The Controller of Rationing and Director of)
Civil Supply (M.S.) Mumbai, O/at Royal)
Insurance building, 5th floor, Churchgate,)
Mumbai 20.) ...**Respondent**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.
Ms S. P. Manchekar, learned Chief Presenting Officer for the
Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 22.07.2021

J U D G M E N T

In the present Original Application, the Applicant has challenged the suspension order dated 28.06.2018 whereby he was kept under suspension invoking Rule 4(1)(a)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules 1979 (hereinafter referred to as ‘Rules 1979), invoking jurisdiction of this Tribunal under Rule 19 of the Administrative Tribunal Act, 1985.

2. While the Applicant was serving as Rationing Inspector, Matunga offence vide Crime No.210/2018 under Section 376, 376(2)(N), 323 and 506 was registered against him. In sequel, he was arrested on 20.06.2018 and was detained in police custody for more than 48 hours. The Respondent No.1- Controller of Rationing and Director of Civil Supply, Mumbai, therefore, suspended the Applicant by order dated 28.06.2018. The Applicant made representations for revocation of suspension and reinstatement in service but in vain. He is subjected to suspension for more than three years.

3. It is on the above background, the present Original Application is filed challenging the prolong suspension *inter-alia* contending that it is not permissible in view of the decision of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant submits that though the Respondent had recommended for revocation of suspension of the Applicant, the Review Committee rejected the same without assigning any cogent reasons. He has further pointed out that though the charge sheet is filed in criminal case, it is simply subjudice without any progress and D.E. is also pending without passing final order therein. He, therefore, submits that prolong suspension of the Applicant is not sustainable in law and Applicant be reinstated in service.

5. Whereas, Ms S. P. Manchekar, learned Chief Presenting Officer submits that having regard to the registration of serious offence under Section 376 of IPC, the suspension was justified and the decision of Review Committee to continue the suspension cannot be faulted with since there should be deterrent effect of such incidence on a Government servant.

6. True, an adequacy of material before the authority at the time of taking decision of suspension does not fall within the scope and ambit of judicial review. In present case, *prima-facie* there was a case of suspension against the Applicant in view of registration of crime under Section 376 of IPC against him on the complaint lodged by prosecutrix. However, it is well settled that the Government servant should not be subjected to prolong suspension. In this behalf, the Government had issued various G.R.s i.e G.R. dated 14.10.2011, 31.01.2015 and Circular dated 28.03.2018 which is issued on the basis of observations made by this Tribunal in O.A. No.1023/2017 and G.R. dated 09.07.2019.

7. 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 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 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.”*

8. 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.

9. Now turning to the facts of the present case, perusal of FIR reveals that the allegations against the Applicant were to effect that he in the period from 2015 to 2018 committed sexual intercourse with prosecutrix on the promise of marriage and allegedly threatening the prosecutrix to make it public if she refused to continue with relationship. Prosecutrix was 31 years old. Thus, it appears to be the case of consensual relationship. Be that as it may, there is no denying that offence under Section 376(2)(N) read with 506 and 323 of IPC was registered against the Applicant which was reason for his suspension.

10. Indisputably, the criminal case is pending before the Sessions Court without substantial progress. Insofar as D.E. is concerned, learned counsel for the Applicant submits that evidence is completed but final order is not passed. It appears that because of pendency of criminal case, final order in D.E. is not passed.

11. In such situation, the question arises how long the Applicant could be subjected to suspension. The period of more than three years is already over. Though, the Respondent who suspended the Applicant had recommended for revocation of suspension, the Review Committee rejected the proposal thrice solely stating that offence registered against the Applicant is serious.

12. At this juncture, it would be material to note that the Government had issued instructions from time to time about revocation of suspension of a Government servant so that they are not subjected to prolong suspension. As per G.R. dated 14.10.2011 where a Government servant is suspended on account of registration of crime, the periodical review of suspension needs to be taken after every three months. As per clause 4 of G.R. where criminal case is not decided within the period of two years, the Review Committee is empowered to recommend revocation of suspension having regard to the facts and circumstances of the matter.

13. In this behalf, it would be worth to refer the Circular issued by Government dated 28.03.2018 which is based on the observations made by this Tribunal in O.A.No.1023/2017. In this O.A., the Tribunal observed that often prolong suspensions are continued by the Review Committee without there being objective decision. The Tribunal held as under :-

“ 1. It is a matter of genuine application that while deciding to continue or to revoke the suspension, the record relating to criminal case is really not studied and the decision to continue the suspension is taken subjectively than objectively.

2. *It is, therefore, considered necessary that this fact needs to be brought to the notice of the Chief Secretary for issue of directions to the Committee Members that whenever review of suspension is to be done in the background of criminal case, the documents such as stage of investigation, Case Diary, statement of witnesses and other evidence gathered by the Police be attended to and whenever it be a case other than suspension on account of a criminal case, all relevant papers must be examined and objective satisfaction must be recorded.*

3. *The Committee Members and the officer functioning as Secretary of the Committee should be cautioned that if such matters of deficient consideration comes before this Tribunal apart from personal liability towards costs of cases, serious view as regards failure to perform duty by the officers concerned could be taken by this Tribunal, apart from any liability towards disciplinary action.*

4. *Therefore, Chief Secretary is directed to issue proper order and necessary guidelines within two months from the date of receipt of this order.*

२. *महाराष्ट्र प्रशासकीय न्यायाधीकरणाने दिलेले आदेश विचारात घेता असे नमूद करण्यात येते की, ज्यावेळी फौजदारी प्रकरणाच्या अनुषंगाने शासकीय कर्मचा-याच्या निलंबनाचा आढावा घेण्यात येतो त्यावेळी प्रकरणाशी संबंधीत सर्व कागदपत्रे (पोलीस तपासाशी संबंधीत सहाय्यिती, केस डायरी, साक्षीदारांचे जबाब आणि पोलीसांनी गोळा केलेले अन्य पुरावे) तपासून घ्यावीत व त्याबाबतची वस्तुस्थिती निलंबन आढावा समितीने सर्वकषपणे विचारात घ्यावी, तदनंतरच निलंबन समाप्त करावे की पुढे चालू ठेवावे याबाबत जाणीवपूर्वक निर्णय घेऊन समितीने सुयोग्य कारणमिमांसेसह शिफारस करावी. ”*

Thus, it was obligatory on the part of Review Committee to peruse record of Criminal Case and objective decision ought to have been recorded.

14. However, in the present case, the Review Committee thrice rejected the revocation of suspension on specious ground that offence registered against the Applicant is serious one. Thus, the Committee did not take pain to examine the record of criminal case in its entirety and there is no objective decision. The Committee seems to have influenced only on the basis of registration of crime.

15. In view of the aforesaid discussion, in my considered opinion, no useful purpose would serve by continuing prolong suspension of the Applicant. It is no where the case of Respondent that revocation of suspension of the Applicant would be hurdle in the progress of criminal case or applicant would temper the evidence. In such situation, the Applicant has to be reinstated in service on any suitable post. Indeed, in terms of G.R. dated 14.10.2011 in the matter of prolong suspension, a Government servant can be reinstated on non executive post,.

16. Insofar as D.E. is concerned, evidence is already completed and it is at the verge of passing final order. Material to note that the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case in Para No.21 held as under:-

“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.”

As such, since the evidence in D.E. is already completed and Applicant has already cross examined the witnesses now the question of disclosing defence may not survive. Needless to mention that the standard of proof in D.E. is different from the standard of proof required in criminal case. In criminal case guilt of the accused is required to be proved beyond reasonable doubt. Whereas in D.E. misconduct attributed to a Government servant has to be proved by preponderance of probability. In given case, the evidence in Criminal Case may not be sufficient to establish the charge of criminal offence beyond reasonable doubt but in D.E. evidence can be held enough to prove misconduct attributed to a Government servant under Service Rules. Therefore, D.E. is required to be finalized expeditiously.

17. Learned Counsel for the Applicant submits that since the present O.A. is only for challenging suspension order, the direction for completion of D.E. should not be given. I find no substance in his objection since there has to be final order in D.E. as witnesses are already examined. The criminal case may remain pending for years together and that should not be the ground for not deciding D.E.

18. The totality of the aforesaid discussion leads me to sum up that the prolong suspension of the Applicant is not permissible and he deserves to be reinstated in service. Hence the following order :-

ORDER

- (A) Original Application is allowed partly.
- (B) Suspension of the Applicant is revoked and he be reinstated in service for any suitable post as the Respondent deems fit and be given posting within a month from today.
- (C) The Respondent is further directed to complete the D.E. by passing final order therein within two months from today in accordance to law.
- (D) No order as to costs.

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

Date : 22.07.2021
Place : Mumbai
Dictation taken by : VSM
Vaishali Santosh Mane

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