

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL**

**MUMBAI**

**ORIGINAL APPLICATION NO.1072 OF 2023**

**DISTRICT : THANE**

Rajendra Pandharinath Patil, )  
Age about 57 years, Water Conservation Officer, )  
Soil & Water Conservation Department, )  
Sinchan Bhavan, Kopari, Thane )  
R/at 102/363, Jhalak Garden, Sai-Section, )  
Ambernath (East) 421 501 )..Applicant

Versus

The Government of Maharashtra, )  
Through Principal Secretary, )  
Soil & Water Conservation Department, )  
Mantralaya, Mumbai 400032 )..Respondent

Shri M.D. Lonkar – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 11<sup>th</sup> December, 2023

PRONOUNCED ON: 14<sup>th</sup> December, 2023

**J U D G M E N T**

1. By invoking Section 19 of the Administrative Tribunals Act, 1985 the applicant seeks to challenge the suspension order dated 9.5.2023 by

which the applicant was placed under suspension by exercising power under Rule 4(2)(a) r/w Rule 4(1)(c) of the MCS (Discipline & Appeal) Rules, 1979.

2. The applicant who was working as Water Conservation Officer, Thane was suspended on 9.5.2023 pursuant to CR No.50/2023, which came to be registered against the applicant for having committed offence punishable under Section 7 of the Prevention of Corruption Act, 1988. The applicant was arrested on 25.3.2023 and was released on bail by order dated 28.3.2023. Subsequently, applicant made representation dated 26.6.2023 stating that the order of suspension should be revoked.

3. Ld. Advocate for the applicant pointed out that applicant deserves to be reinstated in service on the basis of various judicial pronouncement and considering the fact that charge sheet was not issued within a period of three months as stipulated in GR dated 9.7.2019. He pointed out that although the suspension order was issued on 9.5.2023 it was with retrospective effect from 25.3.2023 that is the date on which the applicant was arrested. A charge sheet in this case was issued on 12.7.2023 and 13.7.2023. He pointed out that the law laid down by the Hon'ble Supreme Court in the case of Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291 is squarely applicable to the facts of the present case and therefore the suspension deserves to be quashed and set aside. Further it was stated that no review has been taken of the suspension order dated 9.5.2023.

4. Per contra Ld. PO refutes the submissions made by the Ld. Advocate for the applicant. She submits that charges leveled against the applicant are serious. She relied on the affidavit in reply dated 16.10.2023 filed by Yuvraj Bayaji Ajetroa, Deputy Secretary, Soil & Water Conservation Department, Mantralaya, Mumbai. He pointed out that applicant has not

followed due procedure of preferring appeal as laid down in Rule 3 of MCS (Discipline & Appeal) Rules, 1979 before approaching this Tribunal by way of present OA. He further pointed out that the Courts/Tribunal in number of judgments have laid down that 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) of the MCS (Discipline & Appeal) Rules, 1979 is exhausted. He pointed out that in DE charge sheet was given to the applicant within 90 days i.e. date of suspension order dated 9.5.2023.

5. Considered the submissions of both the sides. 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 (supra). It would be apposite to reproduce Para Nos.11, 12 and 21, 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.”*

6. The facts of the case clearly reveal that the applicant was suspended on 9.5.2023 however the said order states that he was deemed to be suspended w.e.f. 25.3.2023. In this connection it is apposite to look to the GR dated 9.7.2019, clause 1(ii) of which reads as under:

“१. या अनुषंगाने शासकीय कर्मचाऱ्यांचा निलंबनाचा आढावा घेण्यासंदर्भात पुढील प्रमाणे सूचना देण्यात येत आहेत.

ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरु करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता / खबरदारी घेण्यात यावी. ”

7. In this case it is seen that a period of 3 months as stipulated in GR dated 9.7.2019 has lapsed on 25.6.2023. However charge sheet was issued on 12.7.2023 which is clearly after a period of three months had lapsed.

8. Ld. Advocate for the applicant relied on the judgment and order dated 15.9.2023 passed by the Nagpur Bench of this Tribunal in **OA No.835/2023 (SB) Promod Shivaji Bagde Vs. State of Maharashtra & Ors.** Para 7 of the judgment reads as under:

*“7. Heard Ld. PO. He has opposed to allow the OA. The Hon’ble Supreme Court in the case of Ajay Kumar Chaudhary Vs. Union of India through its Secretary & Anr. has held that if the charge sheet is not served to the delinquent employees within a period of 90 days, then suspension is to be revoked.”*

9. In view of the facts and circumstances of the case and in view of the ratio in the case of *Ajay Kumar Chaudhary* (supra), I pass the following order:

**ORDER**

(A) The Original Application is allowed.

(B) The impugned suspension order dated 9.5.2023 is quashed and set aside. The respondent is directed to reinstate the applicant in service and are liberty to give him suitable posting, as deemed fit, within four weeks from today.

(C) No order as to costs.

**Sd/-  
(Medha Gadgil)  
Member (A)  
14.12.2023**

Dictation taken by: S.G. Jawalkar.