

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.810 OF 2024

**DISTRICT : PUNE
SUB : Suspension**

Dr. Sanjay Kashiram Marsale)
Age: 53 yrs., Occupation: Medical)
Officer (Suspended))
Address: Flat No.302 A, Panchshil)
Nil View, 47/2A, Lane No.6, Heaven)
Park, Mohammed Wadi.Pune 411 060.)....Applicant

Versus

1. The State of Maharashtra, Through the)
Secretary, Department of Public Health)
Government Hospital Complex Building,)
10th Floor, Mantralaya, Mumbai 400 032.)
2. The Commissioner of Health Services Arogya)
Bhawan, St. Georges Hospital Compound,)
Mumbai-400001.)
3. The Superintendent, Yerwada Central Jail)
Pune 411006.)
4. The Dean, Sassoon Hospital, Agarkar Nagar,)
Pune, Maharashtra 411001.)
5. The Commissioner of Police, Pune City Police)
Office of the Commissioner of Police, Sadhu)
Vaswani Road, Pune 411001.)...Respondents

Smt. M. A. Rehpade, learned Advocate for the Applicant.

Smt. Archana B. K., learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 29.01.2025

Pronounced on : 03.02.2025

JUDGEMENT

Heard Smt. M. A. Rehpade, learned Advocate for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. Admitted facts which are necessary to be stated to decide this Original Application are as follows :-

Crime No.308/2023 was registered against the Applicant at Bund Garden Police Station, Pune City under Sections 223, 224, 225, 120(b), 201 read with 34 of I.P.C. when he was working as Medical Officer, Yerwada Central Jail, Pune. In this crime, he was arrested on 04.12.2023 and remanded to police custody for more than 48 hours. By the impugned order dated 28.02.2024, the Respondent No.1 placed the Applicant under suspension with effect from 04.12.2023. In its meeting dated 06.06.2024, the Committee reviewed suspension of the Applicant and concluded that it was to be extended. The charge sheet of Departmental Enquiry was issued to the Applicant on 04.07.2024.

3. According to the Applicant, considering admitted facts of the case and settled legal position, his further suspension would be illegal.

4. In their reply, the Respondents No.1 & 2 have reiterated the admitted facts. According to them, the Applicant has not yet given reply to the charge sheet of Departmental Enquiry dated 04.07.2024 thereby impeding further progress in the enquiry. According to Respondent No.3, steps taken by the Department against the Applicant are in accordance with relevant rules.

5. Though, in the Original Application several reliefs are claimed, it was submitted by learned Advocate for the Applicant that relief of only reinstatement was presently sought.

6. In support of aforesaid relief, reliance is placed on **Ajay Kumar Choudhary V/s Union of India, (2015) 7 SCC 291**. On the basis of this judgment of the Hon'ble Supreme Court, the G.A. D., Government of Maharashtra issued G.R. dated 09.07.2019 which reads as under:-

शासन निर्णय :-

निलंबित शासकीय अधिकारी / कर्मचाऱ्यांच्या निलंबनाची कारणे व त्यांचे गांभीर्य यानुसार त्यांच्या प्रकरणांचा आढावा घेण्यासंदर्भात शासनाने वेळोवेळी वर संदर्भामध्ये दर्शविल्यानुसार शासन निर्णय निर्गमित केले आहेत. श्री. अजयकुमार चौधरी विरुद्ध युनियन ऑफ इंडिया (सिव्हिल अपिल क्र. १९१२/२०१५) मध्ये मा. सर्वोच्च न्यायालयाने दि. १६/०२/२०१५ रोजी दिलेल्या निर्णयाच्या परिच्छेद १४ मधील आदेश खालीलप्रमाणे आहेत.

We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 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 the 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.

२. मा. सर्वोच्च न्यायालयाने वरीलप्रमाणे दिलेल्या दि. १६/०२/२०१५ च्या निर्णयाचे अनुषंगाने केंद्र सरकारचा दि. २३ ऑगस्ट, २०१६ रोजीचा कार्यालयीन आदेश सोबत जोडला आहे. मा. सर्वोच्च न्यायालयाचा निर्णय व केंद्र सरकारचा कार्यालयीन आदेश पाहता निलंबित शासकीय कर्मचाऱ्यांना ९० दिवसांच्या मुदतीत दोषारोप पत्र बजावून त्यांच्या निलंबनाच्या आढाव्या संदर्भातील तरतुदी सुधारण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :-

१. या अनुषंगाने शासकीय कर्मचाऱ्यांच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.

i) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेऊन निलंबन पुढे चालू ठेवावयाचे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिकाऱ्याच्या स्तरावर घेण्यात यावा.

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.

iii) फौजदारी प्रकरणात विशेषतः लाचलुचपत प्रकरणी निलंबित शासकीय सेवकांवर विभागीय चौकशी सुरु करून दोषारोप पत्र बजावणेबाबत आवश्यक तो अभिलेख लाचलुचपत प्रतिबंधक विभागाने संबंधीत प्रशासकीय विभागास उपलब्ध करून देणे आवश्यक राहिल.

या आदेशातील तरतुदींमुळे या विषयावरील संदर्भ १ व २ येथील आदेशांतील तरतुदी या आदेशाच्या मर्यादित सुधारण्यात आल्या आहेत असे समजण्यात यावे.”

7. In reply, the Presenting Officer has relied on a Full Bench judgment of the Hon'ble Madras High Court in (**P. Kannan V/s the Commissioner for Municipal Administration** – common judgment dated 15.03.2022 in a batch of two WPs.). In this case, it is held:-

“(i) The judgment of the Apex Court in the case of Ajay Kumar Choudhary, supra, does not lay down absolute proposition of law that an order of suspension cannot be continued beyond the period of three months if the memorandum of charges/charge-sheet has not been served within three months, or if memorandum of charges/charge-sheet is served without reasoned order of extension.”

Here, it would be apposite to restate the following observations in **Ajay Kumar Choudhary (supra) :-**

“However, the imposition of a limit on the period of suspension has not been discussed in the prior case law, and would not be contrary to the interests of justice.”

With respect, I prefer to adopt the view taken by this Tribunal in number of cases which is based on its reading of aforequoted para in the case of **Ajay Kumar Choudhary (supra)** and G.R. dated 09.07.2019. Details of some of the judgments of this Tribunal are as follows :-

(A) Judgment of the Aurangabad Bench of this Tribunal dated 07.07.2021 in **O. A. No.69/2020 (Suresh S/o. Ghanshyam Tandale V/s State of Maharashtra & 3 Ors.)**. In this case, it is held that on expiry of 90 days order of suspension ceases to exist.

(B) Judgment of the Principal Bench of this Tribunal dated 13.04.2023 in **O.A.No.1225/2022 (Shri Ravindra Mansing Kadam V/s the Commission of Police, Pune City)**. In this case, it is held that suspended employee is entitled to full pay and allowances on expiry of three months from the date of order of suspension.

(C) Judgment of the Principal Bench of this Tribunal dated 14.12.2023 in **O.A.No.1072/2023 (Rajendra Pandharinath Patil V/s Government of Maharashtra)**.

(D) Judgment of the Principal Bench of this Tribunal dated 19.06.2024 in **O.A.No.753/2023 (Shri Suresh Shankarrao Bawulgave V/s Commissioner of Fisheries, (MS), Mumbai)**.

8. In Judgment dated 21.03.2024 in **W.P. No.6304/2023 (Sonal D/o Prakashrao Gawande V/s Municipal Council, Pandharkawada)**, the Nagpur Bench of the Hon'ble Bombay High Court has held –

“13. It is imperative to note that on 9th July, 2019 the State Government issued instructions as regards the suspension and thereby it was directed that in a case when the departmental inquiry has been initiated and the chargesheet is served upon the delinquent within three months from the date of suspension, a review shall be made about the continuation of order of suspension and a clear decision shall be taken in this respect. The said Government Resolution further says that where in a case after suspension within three months the departmental inquiry has not been initiated or the chargesheet is not served upon the delinquent, as per the judgment of the Hon'ble Supreme Court of India, the only option left is to cancel the suspension.”

9. Crucial dates may be reiterated. The Applicant was placed under suspension by order dated 28.02.2024 w.e.f. 04.12.2023. His suspension was reviewed by the Committee on 06.06.2024. By charge sheet dated 04.07.2024 Departmental Enquiry was initiated against him. Thus, neither filing of charge sheet nor review was done within three months from the date of order of suspension. In these facts, having regard to the settled legal position discussed above, the Original Application is allowed in the following terms:-

The Respondent No.1 is directed to issue order of reinstatement of the Applicant within seven days from today. It would be open to Respondent No.2 to pass appropriate order in respect of posting of the Applicant, as observed in aforequoted para of the judgment in **Ajay Kumar Choudhary** (supra).

10. No order as to costs.

✓

Sd/-

(M. A. Lovekar)
Vice-Chairman