

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 819 OF 2024

DISTRICT : LATUR

Kakasaheb S/o Sidheshwar Doiphode,)
Age : 40 years, Occu. : Service)
(As Chief officer Nagar Parishad Ahmedpur),)
R/o. Surdi, Tq. Barshi, Dist. Solapur.) **APPLICANT**

V E R S U S

01. **The State of Maharashtra,**)
Through its Secretary,)
Urban Development Department (UD-2),)
Main Administrative Building 3rd Floor,)
Mantralaya, Mumbai-32.) ... **RESPONDENT**

APPEARANCE : Shri Avinash Deshmukh, counsel holding for
Shri H.P. Jadhav, Counsel for Applicant.

: Shri D.M. Hange, Presenting Officer for
respondent authorities.

CORAM : **Shri A.N. Karmarkar, Member (J)**

RESERVED ON : **03.02.2025**

PRONOUNCED ON : **14.02.2025**

O R D E R

1. By filing the present Original Application, this applicant has prayed for quashing and setting aside impugned order of suspension dated 26.07.2024 and also prayed for reinstatement. The applicant has also prayed for direction to the respondent to pay full pay and allowances on expiration of 90 days period of suspension.

2. The applicant appeared for MPSC for the post of Chief Officer, Group-B and was duly selected and appointed by order dated 08.05.2014. After training, the applicant was appointed as Chief Officer, Nagar Parishad Mahur, District Nanded vide order dated 04.04.2015. Then, the applicant was transferred to Shirdi and Ahmedpur. The applicant was promoted as Chief Officer, Group-A at Ahmedpur by order dated 25.07.2023.

One Sidheshwar Sanjay Kasnale has filed application for correction of lay-out sanctioned on 01.12.2022 in Survey No. 56 at Marshivani, Tq. Ahmedpur. The applicant was directed to remove deficiency for final sanction. On the basis of report of Mr. Kasnale, offence was registered U/s 7 & 7A of Prevention of Corruption Act 1988. The applicant was arrested on 15.02.2024 on the basis of said report and he was released on bail on 20.02.2024. It is alleged that the applicant has demanded bribe and there was no actual acceptance of amount of this applicant. The charge of the post of the applicant was given to one Vijay Narle on 15.02.2024. The respondent has issued suspension order dated 26.07.2024 as per Rule 4(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 (for short 'Rule of 1979'). So as per the said Rules, the suspension was from the deemed date of suspension i.e. 15.02.2024. Charge-sheet is yet

not filed. Memorandum of charges is also not served on the applicant. The applicant has filed representation dated 30.07.2024 for setting aside suspension and reinstatement and review of his suspension. His suspension is required to be reviewed in view of the G.R. dated 09.07.2019 and in view of the judgment of Hon'ble Apex Court in a case of **Ajay Kumar Chaoudhary Vs. Union of India and Ors.** reported in **AIR 2015 SC 2389**. The respondents have not taken decision in respect of representation filed by the applicant. While deciding similar issue, this Tribunal has issued directions to take decision on suspension within six weeks in O.A. No. 946/2019. So the act of respondent not taking steps to review suspension order as per G.R. referred above is impermissible and illegal. Therefore, the applicant is entitled for full pay and allowances on expiry of 90 days from the date of suspension.

3. Sole respondent has filed affidavit in reply. According to him, the applicant was posted as Chief Executive Officer, Ahmedpur Municipal Council, Dist. Nanded as per order dated 25.07.2023. Crime was registered vide C.R. No. 107/2024 for the offence punishable U/s 7 and 7A of Prevention of Corruption Act, 1988 with allegation of demand and acceptance of bribe through one Town Planning Officer Mr. Ajay Vijaykumar Kasture. The

applicant was arrested on 15.02.2024 and released on bail on 21.02.2024. Complete proposal and information along with documents are received by the Government from the office of Dy. Superintendent of Police, ACB, Dist. Latur on 14.06.2024. So proposal in pursuance of Rule 4 of the Maharashtra Civil Services (Discipline and Appeal), Rules of 1979 was submitted to the competent authority for approval of suspension of the applicant on 03.07.2024. It was received by department with approval on 25.07.2024. Therefore, the applicant was deemed suspended w.e.f. 15.02.2024 vide order dated 26.07.2024. In **O.A. No. 69/2020 (Suresh Ghanshyam Tandale Vs. State of Maharashtra and Others)**, this Tribunal has commented that the date of suspension should be treated as the date of passing suspension order.

4. I have heard Shri Avinash Deshmukh, learned counsel holding for Shri H.P. Jadhav, learned counsel for the applicant and Shri D.M. Hange, learned Presenting Officer for the respondent authorities. Both have submitted as per their respective contentions.

5. Learned counsel for the applicant has submitted that the memorandum of charges is not given to the applicant within

90 days from the date of suspension, nor there is review regarding suspension order. So the order of suspension needs to be revoked. For that purpose learned counsel has placed reliance on the judgment in a case of **Ajay Kumar Chaoudhary Vs. Union of India and Ors.** reported in **AIR 2015 SC 2389** and O.A. No. 248/2023. Learned counsel also submitted that during pendency of the present Original Application, memorandum of charges is served on the applicant. Though memorandum of charge appears to be of dated 23.09.2024, but it was actually served on 30.10.2024.

According to learned Presenting Officer, memorandum of charge is served on the applicant vide letter dated 23.09.2024. He has invited my attention to page Nos. 183 & 184 of paper book, thereby the Collector, Latur was directed to serve copy of memorandum of charges on same day. According to him since the memorandum of charges is served within 90 days from the date of suspension, the judgment in a case of **Ajay Kumar Chaoudhary** (cited supra) is not applicable to the case of the applicant.

6. It is undisputed fact that the applicant was suspended as per the order dated 26.07.2024 from the date of

arrest of applicant i.e. 15.02.2024 in view of Rule 4(2) of the Rules of 1979. It is undisputed fact that the offence U/s 7 and 7A of Prevention of Corruption Act, 1988 was registered against the present applicant and one Shri Kasture. Learned counsel submits that neither memorandum of charges is served on the applicant, nor there is review of suspension order in view of the judgment delivered by the Hon'ble Apex Court in a case of **Ajay Kumar Chaoudhary** (cited supra).

7. Learned Presenting Officer submits that memorandum of charges is served on the applicant as per letter dated 23.09.2024 and the direction was given to the Collector, Latur to serve the memorandum of charges on the same day. According to him, in view of the order passed by this Tribunal in O.A. No. 69/2020 (Suresh Ghanshyam Tandale Vs. The State of Maharashtra and Ors.), the date of suspension should be treated as the date of passing suspension order. Learned P.O. has invited my attention to page No. 184 of paper book in respect of initiation of Departmental Enquiry against the present applicant and Mr. Kasture. There is also note on page No. 184 directing Collector, Latur to serve memorandum of charges on the applicant on the same day i.e. on 23.09.2024. It is only one remark about receipt of memorandum of charges on 30.10.2024.

No signature is appearing below that remark. It does not appear that this applicant has received memorandum of charges on 30.10.2024. Learned P.O. want to suggest that since the Collector, Latur was directed to serve the memorandum of charges vide letter dated 23.09.2024, it can be said that those were served on the applicant within three months from the date of order of suspension dated 26.07.2024.

8. I have perused the order dated 07.07.2021 passed by this Tribunal in O.A. No. 69/2020 relied upon by learned Presenting Officer. It appears that the applicant in that O.A. was released on same day of arrest i.e. within five hours of arrest. Learned counsel for the applicant submits that the said order of suspension was under Rule 4(1) of the Rules of 1979. In the present matter, admittedly the applicant was arrested on 15.02.2024 and released on bail on 20.02.2024. The suspension order dated 26.07.2024 itself shows that since the applicant was in custody for more than 48 hours i.e. from 15.02.2024 to 20.02.2024, he is treated to be under deemed suspension. Therefore the order in O.A. No. 69/2020 relied upon by learned P.O. can be distinguished on facts and cannot be made applicable to the present case.

9. It is already discussed that the respondent could not show that the memorandum of charges is served to the applicant on 23.09.2024 or within three months from the date of suspension i.e. 15.02.2024. So the learned counsel for the applicant seems to have rightly relied upon the decision of Hon'ble Apex Court in a case of **Ajay Kumar Chaoudhary Vs. Union of India and Ors.** reported in **AIR 2015 SC 2389**, wherein the Hon'ble Apex Court in para No. 14 has made the following observations :-

“14. 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 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.”

10. Learned counsel for the applicant has also relied upon the G.R. dated 09.07.2019. The relevant portion of the said G.R. is reproduced as under :-

“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 कर्मचा—यांना ९० दिवसांच्या मुदतीत दोषारोप पत्र बजावून त्यांच्या निलंबनाच्या आढाव्या संदर्भात 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 सुरू 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 सुरू 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 सुरू 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 सुरू 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.”

11. Learned counsel for the applicant on the same point has relied on the following cases :-

(i) O.A. Nos. 946, 947 & 948 all of 2019 (Shri Sahebrao Fakira Alkunte Vs. The State of Maharashtra and Anr.), dated 4.10.2019 (Mumbai)

(ii) O.A. No. 248/2023 (Laxman Shankar Chavhan Vs. The Commissioner, Social Welfare and Anr.), dated 18.12.2023 (Aurangabad Bench)

12. The respondent also could not show that there was review pertaining to suspension order of the applicant and that there is reasoned order for extension of suspension order. Therefore, in view of the judgment of Hon'ble Apex Court in a case of **Ajay Kumar Chaoudhary** (cited supra) and G.R. dated 09.07.2019, continuation of suspension of the applicant is unsustainable.

13. Learned counsel for the applicant submitted that the applicant is claiming alternate relief pertaining to direction to place the matter before review committee to take decision about revocation /review of suspension of the applicant. Therefore, the present Original Application needs to be allowed partly. Hence, the following order :-

ORDER

The Original Application is partly allowed in following terms:-

- (i) Respondent is directed to revoke the order of suspension of the applicant within three weeks from the date of receipt of this order.
- (ii) The respondent shall issue consequential order within a period of three weeks from the date of receipt of this order.
- (iii) There shall be no order as to costs.

(A.N. Karmarkar)
Member (J)

PLACE : Aurangabad
DATE : 14.02.2025