

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.931 OF 2024

District : Nashik
Sub.:- Suspension

Shri Santosh P. Bhatambrekar.)
Age : 55 Yrs, Joint Sub-Registrar)
[Class-II], Having office at Haveli-24,)
District : Pune and R/o. 501, Avalon)
Heights, Opp. Nirmala High School,)
Gangapur, District : Nashik.)...**Applicant**

Versus

The State of Maharashtra.)
Through Additional Chief Secretary,)
Revenue & Forest Department (Revenue),)
Having office at Mantralaya, Mumbai-32.) ...**Respondent**

Shri A.V. Bandiwadekar, Advocate for Applicant.

Shri D.R. Patil, Presenting Officer for Respondent.

CORAM : M.A. Lovekar, Vice-Chairman

DATE : 05.03.2025

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri D.R. Patil, learned Presenting Officer for the Respondents.

2. Case of the Applicant is as follows. The Applicant was working as Joint Sub-Registrar, Class-II, Haveli No.24, Pune. On 12.10.2023,

surprise visit was paid by Deputy Inspector General of Registration, Deputy Controller of Stamps and Joint District Registrar, Class-I-cum-Stamp Collector, Pune City to his office. On 17.10.2023, the Inspector General of Registration and the Deputy Controller of Stamps (M.S.), Pune submitted a report to the Respondent attributing misconduct to the Applicant. By the impugned order dated 19.10.2023, the Applicant was placed under suspension. As per this order, the Applicant joined at Gadchiroli under protest on 26.10.2023. On 30.11.2023, a Show Cause Notice was issued by the Respondent to the Applicant. The Applicant submitted his Reply dated 26.12.2023 to the Show Cause Notice.

Thereafter, there was no progress. The Applicant has not been served with a Charge-sheet of Departmental Enquiry. The period of 90 days/3 months from the date of order of suspension came to an end on 19.01.2024. On 13.02.2024, the Applicant made a Representation that his suspension be revoked and he be posted in Nashik Division. This Representation went unheeded. He has not been paid arrears of Subsistence Allowance. The alleged misconduct of the Applicant had taken place in Pune City and therefore by the impugned order of suspension, Headquarter of the Applicant (during the period of suspension) could not have been kept at Gadchiroli as per Circular dated 19.03.2008 issued by the Government. For all these reasons, the impugned order of suspension of the Applicant cannot be sustained and it is required to be revoked at once. In view of settled legal position, period of suspension of the Applicant beyond 90 days will have to be treated as 'Duty Period' and for such period, the Applicant would be entitled to get full pay and allowances. Hence, this Original Application.

3. Stand of the Respondent is as follows. Initiation of Departmental Enquiry against the Applicant is proposed. Considering this factual aspect, the impugned order cannot be faulted. The impugned order was passed after obtaining necessary approval from the Competent Authority. The Note which is approved reads as under :-

“पू०२/प.वि. वरील नोंदणी महानिरीक्षक व मुद्रांक नियंत्रक, महाराष्ट्र राज्य, पुणे यांच्या दि. १०.१०.२०२२ रोजीच्या प्रस्तावास अनुलक्षून सादर.

०२. उपनोंदणी महानिरीक्षक व मुद्रांक उपनियंत्रक, महाराष्ट्र राज्य, पुणे यांच्या समवेत सह जिल्हा निबंधक वर्ग-१ तथा मुद्रांक जिल्हाधिकारी, पुणे शहर यांनी सह दुय्यम निबंधक वर्ग-२. हवेली क्र.२४ या कार्यालयाला अचानक भेट देऊन सह जिल्हा निबंधक वर्ग-१ तथा मुद्रांक जिल्हाधिकारी, पुणे शहर यांच्या कार्यालयातील तपासणी पक्कामार्फत सह दुय्यम निबंधक वर्ग-२, हवेली क्र.२४ या कार्यालयात कार्यरत असलेले सह दुय्यम निबंधक वर्ग-२ संगयांतोल श्री.एस.पी. भातबरेकर, यांनी माहे, सप्टेंबर २०२३ व ऑक्टोबर २०२३ (दिनांक ११.१०.२०२३ पर्यंत) नोंदविलेल्या दस्तांची स्वैरपध्दतीने तपासणी केली असता श्री. भातबरेकर यांनी दिनांक ११ सप्टेंबर, २०२३ रोजी नोंदविलेल्या दस्त क्र.२०३७०६२०२३ या खरेदी खताच्या दस्तामध्ये रु.२४,९०,१५,८००/- इतक्या मुद्रांक शुल्काची कमी आकारणी केली असल्याची बाब उक्त तपासणी पथकाला प्रथमदर्शनी निदर्शनास आली आहे.

०३. सबब, शासनाच्या महसूलाची हानी केली असल्याने सदयस्थितीत तातडीने श्री.एस.पी. भातबरेकर यांचेविरुद्ध तातडीने महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ च्या तरतुदीनुसार, शिस्तभंगविषयक कारवाई प्रस्तावित करून त्यांना उक्त नियमाच्या नियम ४ च्या पोट-नियम (१) च्या खंड (अ) नुसार निलत्ति करण्यास मान्यता देण्याची सक्षम प्राधिकारी तथा शिस्तभंगविषयक प्राधिकारी म्हणून मा. मंत्री (महसूल) यांना विनंती करण्यात येत आहे.

सक्षम प्राधिकारी तथा शिस्तभंगविषयक प्राधिकारी यांच्या मान्यतेनंतर निलंबनाचे आदेश निर्गमित करण्यात येतील.”

4. Copy of order dated 26.06.2024 issued by Respondent No.1 is placed on record. By this order, Departmental Enquiry has been initiated against the Applicant.

5. The Applicant has placed on record copy of order dated 12.08.2024 passed by Chief Controller, Revenue Authority, Maharashtra State, Pune. Operative Part of this order reads as under :-

“१. अपिलार्थीचे अपिल अंशतः मान्य करण्यात येत आहे.

२. सह जिल्हा निबंधक (वर्ग-१) आणि मुद्रांक जिल्हाधिकारी, पुणे शहर, पुणे यांचेकडील प्रकरण क्र. पश/३२अआदेश/२०१३९/२०२३ अंतर्भुत दमनऐवजाचे बाजारमुल्य रु.२३९,७४,०९,०००/- (अक्षरी रुपये दोनशे एकोणचाळीस कोटी चौहत्तर लाख नऊ हजार मात्र) इतके अंतिम ठरविण्यात येत आहे.

३. सदर दस्तऐवजावर एकूण रु.११,९८,७०,४५०/- (अक्षरी रुपये अकरा कोटी अठठ्यान्नव लाख सत्तर हजार चारशे पन्नास मात्र) इतके मुद्रांक शुल्क देय आहे.

४. अपिलार्थीने उक्त दस्तऐवजावर कमी पडलेले मुद्रांक शुल्क रु.१,२२,९५,४५०/- (अक्षरी रुपये एक कोटी बावीस लाख पंचान्नव हजार चारशे पन्नास मात्र) इतके आणि एकूण दंड रक्कम रु.२३,१३,३३,६६९/- (अक्षरी रुपये तेवीस कोटी तेरा लाख तेहतीस हजार सहाशे एकोणसत्तर मात्र) इतके सदरचे आदेश प्राप्त झाल्यापासून १५ दिवसांचे आत शासनजमा करावेत अन्यथा नियमानुसार पुढील दंड आकारण्यात येईल.

५. अपिलार्थीने वर नमूद रक्कम शासन जमा केल्यानंतर सह जिल्हा निबंधक (वर्ग-१) आणि मुद्रांक जिल्हाधिकारी, पुणे शहर, पुणे यांनी दस्तऐवज यथोचित प्रमाणित करून द्यावा.”

Aforequoted order is relied upon by the Applicant to contend that no loss has been caused to the Government and the deficit amount of stamp duty is recovered from the concerned party.

6. The basic issue is whether suspension of the Applicant could have been legally continued beyond 90 days in the prevailing facts and circumstances. It may be reiterated that the impugned order of suspension of the Applicant was passed on 19.10.2023. It is not the case of the Respondent that thereafter, within 3 months, review regarding revocation/extension of order of suspension of the Applicant was taken. As mentioned earlier, the Applicant was served with a Charge-sheet of Departmental Enquiry only on 26.06.2024. Considering these facts and the legal position laid down in **Ajay Kumar Choudhary Vs. Union of India & Anr. : (2015) 7 SCC 291**, suspension of the Applicant could not have been extended beyond 90 days. It would follow that the Applicant would be entitled to get full pay and allowances for the period of his suspension beyond 90 days. In Judgment of Nagpur Bench of Hon'ble Bombay High Court dated 21.03.2024 in **Writ Petition No.6304/2023 (Sonal D/o Prakashrao Gawande Vs. Municipal Council, Pandharkawada)**, it is 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 charge-sheet 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 charge-sheet 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.

14. The said Government Resolution was issued by the State of Maharashtra in view of the judgment of the Hon'ble Supreme Court of India dated 16th February, 2015 passed in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary and another¹, wherein it is held thus:

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 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 criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

7. In Judgment of Aurangabad Bench of this Tribunal dated 07.07.2021 in **OA No.69/2020 (Suresh S/o. Ghanshyam Tandale Vs. State of Maharashtra & 3 Ors.)**, it is held that on expiry of 90 days, the order of suspension ceases to exist if within this period charges/charge-sheet is not served and review is not taken.

In Judgment of the Principal Bench of this Tribunal dated 13.04.2023 in **OA No.1225/2022 (Ravindra M. Kadam Vs. Commissioner of Police, Pune City)**, it is held that the suspended employee is entitled to full pay and allowances on expiry of 3 months from the date of order of suspension, if within this period charges/charge-sheet is not filed/served and no review is taken.

8. So far as grievance of the Applicant regarding his Headquarter having been kept at Gadchiroli is concerned, the same does not receive support from the following observations made in the case of **Ajay Kumar Choudhary** (supra) :-

“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.”

9. In view of factual legal position discussed as above, the Original Application is allowed in the following terms :

- (a) The Respondent is directed to revoke the order of suspension of the Applicant within 10 days from today.
- (b) The Applicant is held entitled to full pay and allowances for the period of his suspension beyond 90 days. The same shall be paid to him (excluding amount of Subsistence Allowance already paid) within 2 months from today.
- (c) No order as to costs.

Sd/-
(M.A. Lovekar)
Vice-Chairman

Mumbai
Date : 05.03.2025
Dictation taken by :
S.K. Wamanse.

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