

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.869 OF 2024**

**DISTRICT : THANE**

**Sub.:- Suspension Period**

Shri Yashavantrao B. Gavade.	)	
Age : 47 Yrs, Occu. Assistant Electrical	)	
Inspector, R/at B-1202, Athene,	)	
Lodha Paradise, Majiwada,	)	
Thane (W) – 400 601.	)	<b>...Applicant</b>

**Versus**

The State of Maharashtra.	)	
Through Additional Chief Secretary,	)	
Industries, Energy and Labour	)	
Department, Mantralaya,	)	
Mumbai – 400 032.	)	<b>...Respondent</b>

**Shri Sandip S. Dere, Advocate for Applicant.**

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

**CORAM : Shri M.A.Lovekar, Vice-Chairman**

**Reserved on : 24.03.2025**

**Pronounced on : 25.03.2025**

**JUDGMENT**

1. Heard Shri S.S. Dere, learned Advocate for the Applicant and Shri D.R. Patil, learned Presenting Officer for the Respondent.

2. Undisputed facts are as follows. The Applicant is working as Assistant Electrical Inspector. On 14.04.2011, Crime No.54/2011 was registered against him under Sections 7 and 13 of the Prevention of Corruption Act. He was arrested. By order dated 27.04.2011, he was placed under suspension w.e.f.14.04.2011. By letter dated 21.05.2013, Anti-Corruption Bureau (ACB) informed the then Secretary of the concerned Department that there was no sufficient material to proceed against the Applicant. As per opinion of the Law & Judiciary Department, the order of sanction to prosecute the Applicant was sent to ACB. Charge-sheet was filed against the Applicant in Special Court at Thane on 18.07.2014. Said Criminal Case is still pending. In the meantime, the Applicant made Representations dated 16.04.2018, 18.01.2021 and 21.12.2021. Ultimately, by order dated 02.05.2022, the Applicant was reinstated. The Applicant made Representations dated 17.08.2022, 15.05.2023 and 23.01.2024 to regularize the period of his suspension. He claimed that his suspension was wholly unjustified and at any rate, as per settled legal position, the period of his suspension beyond 90 days was required to be treated as 'Duty Period'. However, no order has been passed so far on any of these Representations. In these facts, the Applicant has sought following reliefs -

“(a) This Hon'ble Court may be pleased to pass an order that the prolonged suspension period of Applicant without review is wholly unjustified.

(b) This Hon'ble Court may be pleased direct the Respondent to pass an order within two weeks to regularize the suspension period of the Applicant as per Rule 72 sub rule (1), (3) and (4) treating suspension period deemed to be duty period with all consequential benefits.”

3. In his Reply, the Respondent has stated that on 26.02.2015, the establishment of Electrical Inspection Branch has been transferred from PWD to the Energy Department and accordingly, file of the Applicant is transferred to the Energy Department. The Suspension Review Committee directed the Energy Department to initiate Departmental

Enquiry against the Applicant which has been initiated by issuing a Charge-sheet dated 19.03.2021. Said enquiry is pending.

4. It is also not in dispute that Criminal Case against the Applicant under the Prevention of Corruption Act is still pending.

5. Learned PO has placed on the record communication dated 27.02.2025 received from Respondent No.1 which *inter-alia* states.-

“उपरोक्त वस्तुस्थिती म.ना.से. (पदग्रहण अवधी इ.) नियम, १९८१ मधील नियम ७२ (१) व (३) मधील तरतूदी व सामान्य प्रशासन विभाग व वित्त विभागाचे अभिप्राय विचारात घेऊन श्री.गावडे यांच्याविरुद्ध सुरु असलेली न्यायालयीन कार्यवाही व विभागीय चौकशीची कार्यवाही पूर्ण झाल्यानंतर प्राप्त होणा-या निष्कर्षाच्या आधारे श्री. गावडे यांचा निलंबन कालावधी नियमित करण्यासंदर्भात पूढील कार्यवाही करण्याचा सक्षम प्राधिकारी यांच्या मान्यतेने निर्णय घेण्यात आलेला आहे.”

6. The Applicant has relied on Judgment of this Tribunal dated 08.10.2021 in OA No.524/2020. In this case, it is held.-

“It is thus explicit particularly from Rule 72(6) of 'Rules of 1981' that suspension can be revoked pending finalization of the disciplinary or Court proceedings and any such order passed can be reviewed by the competent authority on its own motion after the conclusion of the proceedings by the competent authority. In other words, there is no need to wait for the decision in criminal case. In this behalf, the learned Advocate for the Applicant referred to the Judgment passed by this Tribunal in **O.A.No.1298/2010 (Innus H. Attar Vs. State of Maharashtra) decided on 07.03.2011** where in similar situation, directions were given to decide the nature of suspension without waiting for the decision in criminal case.

For the aforesaid reasons, the impugned order dated 22.12.2019 declining to decide the treatment to suspension period till the decision of criminal case is unjustified in law. The competent authority is required to decide the nature of period of suspension in the light of Rule 72 of 'Rules of 1981' in accordance to law.”

7. The Applicant has further relied on GR of GAD, Government of Maharashtra dated 09.07.2019 which states.-

“शासन निर्णय :-

निलंबित शासकीय अधिकारी / कर्मचा-यांच्या 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 (सिडिल 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.

“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 संदर्भातील तरतुदी सुधारण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :-

१. या अनुषंगाने शासकीय कर्मचा-यांच्या 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 प्राधिका-याच्या 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 लाविलेवपत प्रतिबंधक विभागाने संबंधीत प्रशासकीय विभागास उपलब्ध करून देणे आवश्यक राहिल.”

8. Rule 72 of the ‘MCS (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal), Rules, 1981’ which is relevant, reads as under :-

**“72.** Re-instatement of a Government servant after suspension and specific order of the competent authority regarding pay and allowances etc., and treatment of period as spent on duty.-(1) When a Government servant who has been suspended is reinstated or would have been so reinstated but for his retirement on superannuation while under suspension, the authority competent to order reinstatement shall consider and make a specific order -

(a) regarding the pay and allowances to be paid to the Government servant for the period of suspension ending with reinstatement or the date of his retirement on superannuation. as the case may be; and

(b) whether or not the said period shall be treated as a period spent on duty.

(2) Notwithstanding anything contained in Rule 68, where a Government servant under suspension dies before the disciplinary or Court proceedings instituted against him are concluded, the period between the date of suspension and the date of death shall be treated as duty for all purposes and his family shall be paid the full pay and allowances for that period to which he would have been entitled, had he not been suspended, subject to adjustment in respect of subsistence allowance already paid.

(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant shall, subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been suspended:

Provided that where such authority is of the opinion that the termination of the proceedings instituted against the Government servant had been delayed due to reasons directly attributable to the Government servant. it may, after giving him an opportunity to make his representation within sixty days from the date on which the communication in this regard is served on him and after considering the representation, if any, submitted by him, direct, for reasons to be recorded in writing that the Government servant shall be paid for the period of such delay only such amount (not being the whole) of such pay and allowances as it may determine.

(4) In a case falling under sub-rule (3), the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall, subject to the provisions of sub-rules (8) and (9), be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled, had he not been suspended, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him in that connection within such period which in

no case shall exceed sixty days from the date on which the notice has been served, as may be specified in the notice.

(6) Where suspension is revoked pending finalisation of the disciplinary or court proceedings, any order passed under sub-rule (1), before the conclusion of the proceedings against the Government servant, shall be reviewed on its own motion after the conclusion of the proceedings by the authority mentioned in sub-rule (1), who shall make an order according to the provisions of sub-rule (3) or (5), as the case may be.

(7) In a case falling under sub-rule (5), the period of suspension shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desires, such authority may order that the period of suspension shall be converted into leave of any kind due and admissible to the Government servant.

Note.- The order of the competent authority under the preceding proviso shall be absolute and no higher sanction shall be necessary for the grant of -

- (a) extraordinary leave in excess of three months in the case of a temporary Government servant; and
- (b) leave of any kind in excess of five years in the case of permanent Government servant.

(8) The payment of allowances under sub-rules (2), (3) or (5), shall be subject to all other conditions under which such allowances are admissible.

(9) The amount determined under the proviso to sub-rule (3) or (5), shall not be less than the subsistence allowance and other allowances admissible under Rule 68."

Rule 72(1) mandates that on reinstatement of suspended employee, the Competent Authority has to pass an order as to how period of suspension is to be treated. Under Rule 72(6), the order passed under Rule 72(1) before conclusion of proceedings has to be reviewed on conclusion of proceedings.

9. In view of admitted facts, the law laid down by Hon'ble Supreme Court and the view consistently taken by this Tribunal, the Original Application is allowed in the following terms. The Respondent is directed

to decide, in the light of **Ajay Kumar Choudhary** (supra) and 'Rule 72(1)' of 'The Maharashtra Civil Services (Joining Time, Foreign Service and Payments during Suspension, Dismissal and Removal) Rules, 1981', how period of suspension of the Applicant is to be treated, within three weeks from today. The decision so taken shall be communicated to the Applicant within seven days therefrom. No order as to costs.

Sd/-  
**(M.A. LOVEKAR)**  
**Vice-Chairman**

Mumbai

Date : 25.03.2025

Dictation taken by :

S.K. Wamanse.

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