

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.1057 OF 2018

DISTRICT : MUMBAI

Shri Bharat Atmaram Patil.)
Age : 45 Yrs., Occu.: Service as Under Secretary,)
Rural Development Department, Mantralaya,)
Mumbai – 400 032.)
R/at 11, Darshana, Dr. Annie Besant Road,)
Worli, Mumbai – 400 030.)...Applicant

Versus

The State of Maharashtra.)
Through the Secretary, Rural Development,)
Bandhkam Bhavan, Marzban Road, Fort,)
Mumbai – 400 001.)...Respondent

Mr. P.S. Bhavake, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 03.05.2019

JUDGMENT

1. In the present Original Application, the challenge is to the suspension order dated 18.05.2018 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

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2. Shortly stated facts giving rise to this application are as under :-

The Applicant is serving as Under Secretary, Rural Development Department, Mantralaya, Mumbai. By impugned order dated 18.05.2018, he was kept under suspension invoking Rule 4(1)(a) and 4(1)(c) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as "Rules of 1979") in contemplation of Departmental Enquiry (D.E.) as well as for his alleged involvement in Crime No.33/2018 registered in Nandurbar Police Station and in Crime No.48/2018 registered in Palghar Police Station. The Applicant claims to be innocent and denied to have committed misconduct attributed to him. He has made representation on 18.09.2018 contending that the suspension beyond 90 days is unsustainable in law and requested for revocation of suspension and reinstatement in service, but in vain. The Applicant contends that no offence has been registered against him, and therefore, Rule 4(1)(c) of "Rules of 1979" invoked for his suspension have no applicability in the present situation. He further contends that in so far as suspension in contemplation of D.E. under Rule 4(1)(a) is concerned, the charge-sheet was already served on 07.05.2018, but no promptness have been shown to complete the D.E. within stipulated period, and therefore, prolong suspension is unsustainable in law and facts. He contends that, though the period of near about one year is over from the date of suspension on the ground of alleged involvement in crime, till date, no offence has been registered against him, and therefore, the alleged involvement in Criminal Case is non-existent. In terms of G.R. dated 14.10.2011, the disciplinary authority was required to take review of his suspension after six months from the date of his suspension. However, no such review has been taken in terms of G.R. dated 14.10.2011. On this ground, he has filed the present O.A. to set aside the suspension order dated 18.05.2018.

3. During the pendency of the proceeding, the Respondent had taken review of the suspension in terms of G.R. dated 14.10.2011, but decided to continue the

suspension. The Applicant, therefore, amended the O.A. contending that the decision to continue his suspension without disclosing sufficient or cogent reasons is arbitrary and prolong indefinite suspension without taking any concrete steps to finalize the D.E. is illegal.

4. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.43 to 59 of Paper Book) *inter-alia* denying the entitlement of the Applicant to the relief claimed. The Respondent sought to justify the suspension contending that, in the matter of absorption of Teachers in Zilla Parishad, Palghar and Nandurbar, the appointments were made on forged orders purportedly issued from Mantralaya under the signature of the Applicant. The Economic Offence Wing of Palghar and Nandurbar Police Station have registered Crime No.48/2018 and Crime No.33/2018 against the persons who were found involved in the crime. In the said crime, there is complicity of the Applicant and the investigation is under progress. As he was found *prima-facie* involved in these offences, he came to be suspended invoking Rule 4(1)(c) of "Rules of 1979". Secondly, he allegedly forged bogus documents in the matter of his promotion and submitted the same in the Tribunal in O.A.No.462/2017 and on the basis of such forged documents claimed promotion. Accordingly, the D.E. was initiated by issuing charge-sheet dated 07.05.2018, and therefore, it was also one of the reason for suspension invoking Rule 4(1)(a) of "Rules of 1979". The Respondent contends that the Applicant has committed serious misconduct, and therefore, the suspension order cannot be faulted with.

5. As regard review of suspension, the Respondent contends that in terms of G.R. dated 14.10.2011, the review was taken by the Respondents on 26.12.2018, but having regard to the seriousness of the misconduct and the involvement of the Applicant in the offences registered against him, the suspension has been continued. With these pleadings, the Respondent sought to justify the suspension order and prayed to dismiss the O.A.

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6. Heard the Applicant in person as well as Shri A.J. Chougule, learned Presenting Officer for the Respondents.
7. The Applicant in person has pointed out that as per suspension order dated 18.05.2018, he was suspended for two reasons. First, initiation of D.E. by issuance of charge-sheet on 07.05.2018 and secondly, on the basis of alleged involvement in Crime No.48/18 and 33/18. He strenuously alleged that no steps have been taken by the Respondent to complete the D.E. within six months as mandated by G.R. dated 14.10.2011 and even no Enquiry Officer has been appointed which shows lethargy on the part of Respondent, and therefore, continuous suspension without taking appropriate steps for completion of D.E. is unsustainable. As regard second ground of alleged involvement of Criminal Offence, he submitted that it is mere speculation and till date, though the period of about one year is over, no crime has been registered against him nor Respondent could point out any material to show his complicity in the said crime. He further referred to the decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** as well as the Judgment passed by this Tribunal in **O.A.No.35/2018 (Dilip J. Ambilwade Vs. State of Maharashtra) decided by Hon'ble Chairman on 11.09.2018** and urged that the suspension beyond 90 days is illegal. As regard the decision of Review Committee to continue suspension, he urged that no reasons are recorded for continuation of suspension except stating that the matter is serious. With this submission, he prayed to set aside the suspension order.
8. Per contra, Shri A.J. Chougule, learned P.O. sought to support the impugned suspension order, but could not explain how the involvement of the Applicant in Crime No.48/18 and 33/18 is even *prima-facie* borne out, except stating that the matter is still under investigation of Police. As regard review, he submits that the disciplinary authority has taken review on 26.12.2018, but

thought it appropriate to continue suspension having regard to serious misconduct of the Applicant, and therefore, no fault can be found therein. With this submission, he tried to support the suspension order.

9. In this behalf, it would be material to note the instructions laid down in Departmental Manual laying down the principle to be borne in mind while placing the Government servant under suspension, which are as follows :

"2.1 When a Government Servant may be suspended.- Public interest should be the guiding factor in deciding to place a Government servant under suspension. The Disciplinary Authorities should not suspend a Government servant lightly and without sufficient justification. They should exercise their discretion with utmost care.

Suspension should be ordered only when the circumstances are found to justify it. The general principle would be that ordinarily suspension should not be ordered unless the allegations made against a Government servant are of a serious nature and on the basis of the evidence available there is a *prima facie* case for his dismissal or removal or there is reason to believe that his continuance in active service is likely to cause embarrassment or to hamper the investigation of the case. In other cases, it will suffice if steps are taken to transfer the Government servant concerned to another place to ensure that he has no opportunity to interfere with witnesses or to tamper with evidence against him.

(I) By way of clarification of the general principle enunciated above, the following circumstances are indicated in which a Disciplinary Authority may consider it appropriate to place a Government servant under suspension. These are only intended for guidance and should not be taken as mandatory :-

(i) Cases where continuance in office of a Government servant will prejudice the investigation, trial or any inquiry (e.g. apprehended tampering with witnesses or documents);

(ii) where the continuance in office of a Government servant is likely to seriously subvert discipline in the office in which the Government servant is working;

(iii) where the continuance in office of a Government servant will be against the wider public interest (other than the cases covered by (i) and (ii) above) such as, for instance, where a scandal exists and it is necessary to place the Government servant under suspension to

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demonstrate the policy of Government to deal strictly with officers involved in such scandals, particularly corruption;

(iv) where allegations have been made against a Government servant and the preliminary enquiry has revealed that *prima facie* case is made out which would justify his prosecution or his being proceeded against in departmental proceedings, and where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service.

In the first three circumstances enumerated above, the Disciplinary Authority may exercise his discretion to place a Government servant under suspension even when the case is under investigation and before a *prima facie* case has been established."

10. In continuation of the aforesaid guidelines, it would be useful to refer the observations made by Hon'ble Bombay High Court in **1987 (3) Bom.C.R. 327 (Dr. Tukaram Y. Patil Vs. Bhagwantrao Gaikwad & Ors.)**, which are as follows :

"Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned."

11. Similarly, reference was made to the Judgment of Hon'ble Supreme Court in **1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)**. It would be apposite to reproduce Para No.9, which is as follows :

"9. It is settled law by several judgments of this Court as well as the Apex Court that suspension is not to be resorted as a matter of rule. It is to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being away from the post."

12. Furthermore, reference was also made to Judgment of Hon'ble Supreme Court in **(2015) 7 SC 291 (Ajay Kumar Choudhary Vs. Union of India)** is imperative and the legal position is now no more *res-integra*. It will be

appropriate to reproduce Para Nos.11, 12 & 21 of the Judgment, which is 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, or 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 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

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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."

13. The Judgment in ***Ajay Kumar Choudhary's*** case was also followed by Hon'ble Supreme Court in ***State of Tamil Nadu Vs. Pramod Kumar and another (Civil Appeal No.2427-2428 of 2018) dated 21st August, 2018*** wherein it has been held that, suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee for a longer period and reinstatement could not be threat for fair trial or departmental enquiry, the suspension should not continue further.
14. Now, turning to the facts of present matter, the perusal of the suspension order reveals that the suspension was made on two grounds. First, pendency of D.E. on the ground of submission of forged documents in O.A.462/2017 and secondly, alleged involvement of the Applicant in Crime No.48/18 and 33/18.
15. In so far as the suspension during the pendency of D.E. is concerned, there is no denying that the charge-sheet was served upon the Applicant on 07.05.2018 or alleged misconduct viz. forgery of documents in the matter of getting promotion. Thus, the D.E. was already initiated even before the issuance of suspension order. At the time of issuance of charge-sheet in D.E, the Respondent perhaps did not think it necessary to suspend the Applicant during the pendency of D.E. Be that as it may, admittedly, the Applicant has submitted his reply to the charge-sheet on 04.06.2018. However, since then, no step is taken by the Respondent for completion of D.E. Even no Enquiry Officer has been appointed which shows inaction on the part of Respondent rather negligence to complete the D.E. within stipulated time. As a matter of fact, in terms of G.R. dated 14.10.2011 issued by the Government, the D.E. has to be completed latest within six months where the Government servant is kept under suspension.

However, in the present matter, even no step is taken to appoint Enquiry Officer and the matter is simply lying idle in defiance of Government's own instructions of completion of D.E. within stipulated period and the Respondent itself watered down the seriousness of the matter.

16. In so far as the alleged complicity of the Applicant in Crime No.48/18 and 33/18 as referred in suspension order is concerned, the perusal of FIR reveals that these offences were registered against the persons who got employment on the basis of alleged forged orders purportedly issued under the signature of the Applicant from Mantralaya. In Crime No.48/18, two employees of Zilla Parishad, Palghar have allegedly helped those persons to secure the job/absorption in service. It seems that though no such orders were issued by the Government, the forged orders were produced in Z.P. for appointment/absorption in service. Those orders were allegedly issued under the signature of the Applicant. Per-se, these allegations are very serious and invite criminal liability. But it must be demonstrated from record that *prima-facie* the case is made out to continue suspension. There has to be some kind of material in any form to infer the complicity of the Applicant. Strangely, no such material is forthcoming. Admittedly, the name of the Applicant does not figure in the FIR of Crime No.48/18 and Crime No.33/18, which are registered in February, 2018. In such situation, naturally, the question would come, what is the basis to show the alleged involvement of the Applicant in the said crime. However, though the period of more than 14 months is over from the date of registration of offence, there is no headway in the investigation, so as to show complicity or involvement of the Applicant in these crimes. The learned P.O. could not point out any material from the investigation papers even to pin-point *prima-facie* complicity of the Applicant in the said crime. He fairly admits that, till date, no offence has been registered against the Applicant. Thus, at the cost of repetition, it is necessary to point out that, though the period of 14 months is over from the date of registration of offence vide Crime No.48/18 and 33/18, the Investigation

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Officer or Government could not produce any incriminating material about the complicity of the Applicant in the said crime. Thus, it appears that it was only speculation and/or assumption of the Government that the Applicant is involved in the said crime, he came to be suspended.

17. True, the Government servant can be suspended in case of registration of offence against him or during the investigation of crime, as contemplated in Rule 4(1)(c) of 'Rules of 1979'. However, in the present case, admittedly, the name of the Applicant does not figure in FIR nor any incriminating material is surfaced during the investigation in last 14 months even to show *prima-facie* involvement or complicity of the Applicant in the said crime. Normally the adequacy of material before Disciplinary Authority for suspension cannot be questioned, but this is a case where Applicant is kept under suspension even if no offence has been registered against him on the date of suspension nor any kind of incriminating material could be collected within the span of one year even after suspension. The Government servant cannot be continued on suspension merely on such speculation or suspicion, particularly when, despite 14 months' period, the Respondent could not collect any material against the Applicant to show his *prima-facie* complicity in crime.

18. True, it seems that the matter was placed before the Disciplinary Authority for taking review of the suspension in terms of G.R. dated 14.10.2011, but the Hon'ble Minister continued the suspension of the Applicant by passing the following order:-

"Given serious charges against Mr. Bharat Patil, we must continue his suspension. This action has brought bad name for the department and evidences *prima facie* are very strong."

19. However, the Hon'ble Minister failed to see that despite submission of reply by the Applicant on 04.06.2018 to the charge-sheet dated 07.05.2018,

neither Enquiry Officer has been appointed nor any substantial step has been taken to complete the D.E. and also did not bother to see whether any discriminating material is collected against the Applicant in reference to Crime No.48/2018 and 33/2018. This being the position, it cannot be termed as a 'reasoned order' for objective assessment of the situation.

20. As stated above, the Applicant has been suspended for two reasons. First, issuance of charge-sheet in D.E. on the allegation of submission of forged documents in judicial matter pertaining to promotion and secondly, the alleged involvement in Crime No.48/2018 and 33/2018. Neither D.E. is progressing nor Respondent could collect any incriminating evidence against the Applicant as regard to the alleged complicity in crime No.48/2018 and 33/2018.

21. By G.R. dated 14.10.2011, the Government had issued instructions for taking review of the suspension of Government servant where he is suspended in contemplation of D.E. as well as in cases where the Government servant is kept under suspension due to registration of crime or involvement in Criminal Case. Where the Government servant is suspended only in contemplation of D.E, in that event, the Disciplinary Authority is under obligation to take review after three months from suspension and to take decision about the reinstatement on the merit of the case. It further provides that where the D.E. is not completed within six months, in that event, the Government servant can be reinstated in service by giving non-executive post. Whereas, where the suspension is on account of registration of crime or involvement in Criminal Case, the review needs to be taken by the Review Committee after one year from the date of suspension. It further provides that, after placing the matter before the Review Committee, it is only in case of any change of circumstances, the matter needs to be placed again before the Review Committee for appropriate decision else such matter should be placed before Review Committee or Disciplinary Authority after

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six months' period is over. Suffice to say, it provides for periodical review of suspension of the Government servant. Needless to mention that the Review Committee's decision should be based on the objective assessment of the situation. The Respondent is, therefore, now required to take review of the matter afresh in terms of G.R. dated 14.10.2011.

22. In so far as the D.E. is concerned, the directions need to be given to complete the same within stipulated period.

23. The totality of aforesaid discussion leads me to sum-up that the O.A. deserves to be allowed partly by giving suitable directions as discussed above. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent is hereby directed to take review of the suspension of the Applicant in terms of G.R. dated 14.10.2011 and factual as well as legal aspect noted in this order, within six weeks from today and to pass an appropriate order.
- (C) The decision, as the case may be, be communicated to the Applicant within two weeks thereafter.
- (D) The Respondent is further directed to complete the D.E. already initiated against the Applicant by issuing charge-sheet dated 07.05.2018, within four months from today in accordance to Rules.
- (E) The Applicant is also directed to cooperate for the expeditious completion of D.E.

(F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 03.05.2019

Dictation taken by :

S.K. Wamanse.

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