IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.172 OF 2019

DISTRICT : RAIGAD

Shri Dattatray Malu Dore)
Age : 56 Yrs., Occu.: Deputy Supt. Of Land)
Record, in the office of District Supt. Of Land)
Records, Pen, Dist. Raigad.)...**Applicant**

Versus

1. The Settlement Commissioner & the)
Director of Land Records, (M.S.) Pune,)
Having office at Pune.)
2. The State of Maharashtra, though)
Principal Secretary (Revenue), Revenue)
& Forest Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.04.2019

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondent.

2. In the present Original Application, the challenge is to the suspension order dated 27th April, 2018, whereby the Applicant was kept under suspension

invoking Rule 4(1)(c) and 4(2)(a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 in view of registration of crime u/s 7 , 13(1) (d) and 13(2) pf the Prevention of Corruption Act, 1988. The Applicant has made representation dated 05.11.2018 which was not responded by the Respondents and, therefore he has filed the present O.A. contending that the prolong suspension for about one year is unsustainable in law and facts.

3. Shri A. V. Bandiwadekar, learned Advocate for the Applicant referred to the judgement passed by the Hon'ble Supreme Court in ***(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)*** and G.R. dated 14.10.2011 which provides for review of the suspension on completion of one year.

4. Per contra, the learned P.O. submitted that the charge sheet in D.E. has been served upon the Appliant on 13.12.2018 and also submitted that review will be taken in terms of G.R. dated 14.10.2011 in due course.

5. Though, the charge sheet in D.E. has been served on 13.12.2018, it is not progressing. Admittedly, no charge sheet is filed in Criminal Case. The Applicant is under suspension for near about one year. This being the position, the Respondents are required to take review of the suspension in terms of G.R. dated 14.10.2011 as well as the law laid down by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case and the Applicant cannot be subjected to prolong suspension without passing appropriate order about extension of suspension or its revocation.

6. At this juncture, It would be apposite to reproduce Para Nos.11, 12 and 21, which are 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 memarandum of charges, and eventually culminate after even longer delay.

12. *Protracted period af suspension, repeated renewal thereof, have regrettably become the norm and not the exceptian that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derisian 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 factars are legal ground norms, are inextricable tenets of Cammon 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 suspensian 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 to 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 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."*

7. 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.

8. As such, in view of law laid down by Hon'ble Supreme Court, the suspension should not exceed 90 days and where charge-sheet in criminal case or in D.E. has been initiated within 90 days, then the concerned authority is required to take decision about extension or revocation of suspension. The concerned authority needs to take objective decision as to whether the continuation of suspension is warranted in the facts of the case. However, in the present case, admittedly, no such exercise has been undertaken by the disciplinary authority or Review Committee.

9. True, as per G.R. dated 14.10.2011, where the Government servant is kept under suspension in view of registration of crime under Prevention of Corruption Act, I.P.C, etc., the Review Committee needs to take decision about the continuation or revocation of suspension after one year from the date of suspension. However, in view of law laid down by Hon'ble Supreme Court, the review needs to be taken after filing of charge-sheet either in criminal case or in D.E. and in no case, the suspension should go beyond 90 days. Therefore, the stand taken by the Government that the review can be taken only after one year from suspension is indeed in contravention of the Judgment of Hon'ble Supreme Court. Suffice to say, the stand taken by the Respondent in this behalf cannot be accepted and Review Committee is obliged to take review in view of filing of charge-sheet in criminal case as well as in D.E.

10. In view of above, the present Original Application can be disposed of with suitable directions. Hence, the following order.

ORDER

(A) The Original Application is allowed partly.

(B) The Respondent is directed to place the matter before the Review Committee and Review Committee shall take appropriate decision about extension or revocation of suspension in view of Judgment of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case within six weeks from today.

(C) The decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.

(D) The Subsistence Allowance, if not paid, be paid regularly.

(E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 24.04.2019
Dictation taken by : VSM
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