

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.182 of 2019

DISTRICT: SANGALI

Shri Dnyandev Ramu Madake,)
R/at. F-3, Pratik – Plaza, Shivaji Nagar,)
Miraj, Dist. Sangli.)....Applicant

Versus

1.The Divisional Commissioner,)
Pune Division, Pune, having O/at. Old)
Council Hall (EGS Branch), Pune -1.)

2. State of Maharashtra, through the Principal)
Secretary, Rural Development Department,)
Mantralaya, Mumbai 400 032.)...Respondents

Shri A.V. Bandiwadekar, Advocate for Applicant.

Smt. Archana B. K., Presenting Officer for the Respondents.

CORAM : SHRI A. P. KURHEKAR , MEMBER (J)

DATE : 14.03.2019

JUDGMENT

1. Heard Shri K. R. Jagdale, learned Advocate for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondent

2. In the present O.A., the challenge is to the impugned suspension order dated 24.03.2017 whereby the Applicant was kept under suspension in view of the registration of crime invoking the Rule 4(1) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The Applicant made representation on 29.12.2017 for revocation of suspension and reinstatement in service but it was simply ignored. Therefore, the Applicant has filed the present Original Application to challenge the suspension order on the ground that

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continuous and prolonged suspension without taking any steps for initiation of D.E. or progress in Criminal Case is illegal.

3. Shri A. V. Bandiwadekar, learned Advocate for the Applicant submitted that from the date of suspension till date the period of near about two years is over but no steps has been taken to review the suspension nor charge-sheet in D.E. is issued. He, therefore, contends that the suspension without progress in Criminal Case or initiation of D.E. is illegal and sought to place reliance on the judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**.

4. Learned P.O. for the Respondents is present and stated that she has not received instructions from the department. Pertinent to note that on 27.02.2019, this Tribunal has passed specific order that there is no compliance of G.R. dated 14.10.2011 and she was directed to take instructions from the Respondents about compliance of the G.R. and to apprise the Tribunal today.

5. Learned P.O. for the Respondents submitted that the Respondent No.1 had issued a letter dated 11.03.2019 addressed to Respondent No.2 to take necessary action of revocation and reinstatement of the Applicant in terms of G.R. dated 14.10.2011. Thus, despite letter dated 11.03.2019, no further action is taken by the Respondent No.2.

6. The issue of continuous suspension and it's legality is not open to debate in view of law laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's case** (cited supra). It will be appropriate to reproduce Paragraph 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, are 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 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."

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7. Furthermore, in terms of G.R. dated 14.10.2011 where the Government servant is placed under suspension in view of the registration of crime, the Competent Authority i.e. the Committee nominated in this behalf needs to take periodical review of the suspensions of the Government employees. As per Clause '3' of the G.R. dated 14.10.2011, the Committee is required to take decision about the revocation of suspension within one year from the date of suspension. However in the present case, admittedly, no such periodical review is taken by the Committee. As per Clause '5' of G.R. having regard to the facts and circumstances, the Committee can recommend for revocation of suspension and for reinstatement on non-executive post. Though, as per G.R. dated 14.10.2011, the review has to be taken on completion of one year from the date of suspension now in terms of judgment of the Hon'ble Supreme Court which mandates the maximum time limit of suspension up to 90 days only the Competent Authority is required to take decision about the revocation of suspension even without waiting the period of one year.

8. So far as the facts of the present case are concerned, the period of two years from the date of suspension is about to over in next week. As per law laid down by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case, the suspension for more than 90 days is unsustainable.

9. Admittedly, no D.E. is initiated though the Applicant was kept under suspension for two years. Criminal Case is also not progressing. This being the position, the Applicant cannot be subjected to indefinite suspension, in view of law laid down in ***Ajay Kumar Choudhary's*** case as well as in terms of G.R. dated 14.10.2011, the Respondents failed to discharge their statutory obligation to take review of the suspension. Inaction and non compliance of the mandate of Supreme Court is obvious.

10. In view of above, the O.A. can be disposed of with suitable direction. Hence the following order.

ORDER

- (A) Original Application is allowed partly.
- (B) The Respondents are directed to take review of the suspension of the Applicant and to take appropriate decision 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 within six weeks from today and the decision, as the case may be, be communicated to the Applicant within a week thereafter.
- (C) If the Applicant feels aggrieved by such decision, he can avail the legal remedy in accordance to law.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Place : Mumbai

Date : 14.03.2019

Dictation taken by : V.S. Mane

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