

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.294 OF 2019

DISTRICT : PUNE

Shri Rajendra G. Shendge.)
Office Superintendent, Residing at 647,)
Nana Peth, Near Famous Bakery,)
Pune - 411 002.)...Applicant

Versus

1. The State of Maharashtra.)
Through the Secretary,)
Social Justice & Special Assistance)
Department, Mantralaya, Mumbai – 32.)
2. The Commissioner.)
Social Welfare, M.S, Pune.)...Respondents

Mrs. Punam Mahajan, Advocate for Applicant.

Mrs. K.S. Gaikwad, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 11.06.2019

JUDGMENT

1. This is the second round of litigation challenging the impugned suspension order dated 14.04.2017 as well as the decision taken by the Respondents not to

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revoke the suspension invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. At the time of suspension, the Applicant was serving as Head Clerk. By suspension order dated 14.04.2017, he was kept under suspension in contemplation of Departmental Enquiry (D.E) invoking Rule 4(1) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as "Rules of 1979") alleging that he has committed major illegalities and made excess payment to the vendors. He claims to be innocent and sought to contend that he simply placed the note-sheet before his superior officials and he was not part of the decision making process. Despite the representations made by the Applicant, no step was taken to revoke the suspension and reinstatement him in service. Though the charge-sheet in D.E. was served on 19.06.2017, no further step was taken to complete the enquiry. Therefore, he had earlier filed O.A.1076/2018 challenging the prolong suspension which was partly allowed by this Tribunal on 30.01.2019 giving direction to Respondent No.2 – Commissioner, Social Welfare, Maharashtra State, is the disciplinary authority, to take decision about the revocation of suspension as contemplated in Clause 7(a) of G.R. dated 14th October, 2011 within a month from the date of decision. Despite the direction given by the Tribunal in O.A.1076/2018, by order dated 30.01.2019, no such decision was taken. The Applicant, therefore, filed the present O.A. He is due to retire at the end of June, 2019. He contends that he has been subjected to discrimination, as no such disciplinary action of suspension is taken against Shaikh Amina, Deputy Commissioner and he has been made scape-goat in the matter.

3. After filing the present O.A, the Respondent No.2 – Commissioner Social Welfare passed order dated 28.02.2019 informing the Applicant that he cannot be reinstated in service until the conclusion of D.E. The Applicant, therefore, amended the O.A. and challenged the order dated 28.02.2019 contending that the same is unsustainable in law and fact. No reasons much less justiciable are

forthcoming for continuation of suspension. He, therefore, prayed to set aside the suspension order dated 14.04.2017 and order dated 28.02.2019 and for reinstatement in service.

4. The Respondent No.2 resisted the application by filing Affidavit-in-reply (Page Nos.94 to 103 of the Paper Book) *inter-alia* denying that the suspension order suffers from any illegality. The Respondent No.2 sought to contend that in the period from 22.03.2012 to 03.07.2014 while working as head clerk was found involved in misappropriation of huge amount in the matter of supply of emblem and name-plates under Ramai Aawas Yojana. Excess payment was made to the suppliers without observing norms and policies of the Government. According to Respondents, the excess payment of Rs.18,86,62,500/- was made to the suppliers without the sanction of the Government. Therefore, he was suspended by order dated 14.04.2017 in contemplation of D.E. under Rule 4(1) of 'Rules of 1979'. In D.E, the charge-sheet has been issued on 19.06.2017 and the D.E. is in process. The Respondent No.2 thus sought to justify the suspension order dated 14.04.2017. The Respondent does not dispute that Shaikh Amina, Deputy Commissioner, who is also served with the charge-sheet in D.E. is not kept under suspension. The Respondent thus contends that until the conclusion of D.E, the Applicant cannot be reinstated in service having regard to the serious charges levelled against him. The Respondent thus sought to justify the suspension order dated 14.04.2017 as well as order dated 28.02.2019 whereby the Respondent No.2 refused to revoke the suspension.

5. Smt. Punam Mahajan, learned Advocate for the Applicant vehemently urged that the prolong suspension of the Applicant for more than two years is not at all justified and sustainable in law. She has pointed out that the Applicant has already submitted the reply to the charge-sheet on 10.07.2017 but thereafter, no step is taken by the Government for the completion of D.E. and it is simply pending without any progress. She has further stressed that Amina

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Shaikh, Deputy Commissioner who is also charge-sheeted in the D.E. was not subjected to suspension, but the lower grade employee has been made scape-goat. She has further pointed out that the Applicant is retiring on 30.06.2019 i.e. at the end of this month and he will be put to great hardship and irreparable loss, if no decision of revocation of suspension is taken at the earliest. She has further pointed out that in fact, the Respondent No.2 had recommended for the revocation of suspension, but the Government declined to do so for no justifiable reasons.

6. Per contra, Smt. K.S. Gaikwad, learned P.O. sought to contend that, in view of serious charges levelled against the Applicant in D.E, the decision of Respondents not to revoke the suspension cannot be faulted with.

7. Needless to mention that the adequacy of material before the disciplinary authority for suspension of the Government servant normally cannot be looked into by the Tribunal, as it falls within the province of disciplinary authority. The general principle could be that ordinarily, the suspension should not be interfered with, if the allegations made against the Government servants are of serious nature and on the basis of evidence available, there is *prima-facie* case for his dismissal or removal from service or there is reason to believe that his continuation in service is likely to hamper the investigation of the criminal case or D.E. However, at the same time, it is well settled that the suspension is not to be resorted to as a matter of rule and the employee should not be subjected to prolong suspension. It has been often emphasized that the suspension has to be resorted to as a last resort, if the enquiry cannot be fairly and satisfactorily completed without keeping the delinquent away from his post. At any rate, the employee shall not be subjected to prolong and unjustified continuous suspension without taking positive and expeditious steps for completion of D.E.

8. Now turning to the facts of present case, the Applicant is under suspension since 14.04.2017 and has completed more than 26 months under suspension. The charge-sheet was served on 19.06.2017 to which the Applicant had submitted reply on 10.07.2017. But, thereafter, no steps have been taken and the D.E. is simply pending without bothering to appoint Enquiry officer and to complete the same within stipulated period. Admittedly, the Applicant is due to retire at the end of this month.

9. It is frustrating and regrettable to note that, despite various Circulars and G.Rs. issued by the Government for completion of D.E. of the employees, who are due to retire or retired from Government service, there is total negligence on the part of concerned authority to ensure completion of D.Es within stipulated period and complete disregard to the various Circulars issued by the Government is writ at large.

10. In this behalf, it would be worthwhile to refer guidelines, Circulars and G.Rs. issued by the Government from time to time.

11. As per Clause 3.19 of Departmental Enquiry Manual, the D.Es need to be completed as expeditious as possible and in any case, it should be completed within six months from the date of issuance of charge-sheet. Here, it would be material to refer Clause 3.19 of Manual, which is as follows :-

"३.१९ विभागीय चौकशी पूर्ण करण्यासाठी कालमर्यादा.-- (१) विभागीय चौकशी शक्य तितक्या लवकर पूर्ण करण्यात याव्यात आणि कोणत्याही परिस्थितीत हा कालावधी विभागीय चौकशी करण्याचा निर्णय घेतल्याचा तारखेपासून सहा महिन्यांपेक्षा अधिक नसावा. चौकशीच्या निष्कर्षासंबंधीचे अंतिम आदेश काढल्यानंतरच ती पूर्ण झाली आहे, असे मानले जाईल.

(२) तथापि, काही प्रकरणामध्ये उचित व पुरेशा कारणांसाठी सहा महिन्यांच्या विनिर्दिष्ट काळामध्ये विभागीय चौकशी पूर्ण करणे शक्य नसेल विभागीय चौकशा पूर्ण करण्यासाठी असलेली ही कालमर्यादा वाढवून देण्याचे अधिकार परिशिष्ट ८च्या स्तंभ ३ व ४ मध्ये नमूद केलेल्या प्राधिकार्याला, त्या स्तंभाच्या शीर्षाखाली निर्देशलेल्या मर्यादित अधीन राहून द्यावेत असे शासनाने ठरविले आहे. विभागीय चौकशी मंजूर झाल्याच्या तारखेपासून ती पूर्ण करण्यासाठी एका वर्षांपेक्षा

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अधिक कालावधी वाढवून देण्यास मंत्रालयाच्या प्रशासकीय विभागाने सामान्य प्रशासन विभागाची विचारविनिमय करून अनुमती द्यावी.

(३) कालमर्यादेपेक्षा वाढीचा प्रस्ताव सादर करताना संबंधित चौकशी अधिकाऱ्याने आणि शिस्तभंगविषयक प्राधिकार्याने सक्षम प्राधिकार्यास परिशिष्ट ९ मध्ये अंतर्भूत असलेल्या प्रपत्रात माहिती द्यावी. कालमर्यादेची वाढ देण्यासाठी सक्षम असलेल्या प्राधिकार्याने प्रस्तावाची काळजीपूर्वक तपासणी करावी आणि कमीत कमी आवश्यक असलेल्या कालावधीची वाढ द्यावी."

12. Whereas following are the instructions issued by Circular dated 30th October, 2010.

"शासन असे आदेश देत आहे की, प्राथमिक चौकशीअंती तथ्य आढळलेल्या प्रकरणांत नजिकच्या सहा महिन्यांच्या काळात सेवानिवृत्त होणारा अधिकारी / कर्मचारी गुंतला असेल तर, अशा प्रकरणी एक विशेष बाब म्हणून प्राधान्याने संबंधित अधिकारी / कर्मचार्याच्या सेवानिवृत्ती पूर्वी किमान ३ महिने अगोदर विभागीय चौकशी सुरु होईल व शासन सामान्य प्रशासन विभाग परिपत्रक क्रमांक : सीडीआर-१०९७/१५६/प्र.क्र.१४/९७/अकरा, दि.२४ फेब्रुवारी, १९९७ नुसार एकुण चौकशीची कार्यवाही एका वर्षात पूर्ण होईल अशा रितीने कार्यवाही करण्याची दक्षता घ्यावी. प्रकरणाच्या कोणत्याही टप्प्यावर विलंब झाल्याचे निदर्शनास आल्यास, अशा विलंबाला जबाबदार असणाऱ्या अधिकारी / कर्मचार्यावर शिस्तभंगविषयक कारवाईचाही विचार करण्यात यावा."

13. Then again, in Circular dated 21.02.2015, the following instructions have been issued :-

"मा. लोक आयुक्त आणि मा. उप लोक आयुक्त यांनी शासनास सादर केलेल्या ४० व्या वार्षिक अहवालात सेवानिवृत्त शासकीय कर्मचार्यांच्या व निधन पावलेल्या शासकीय कर्मचार्यांच्या प्रलंबित विभागीय चौकशाची आणि त्यांच्या निलंबन कालावधीच्या नियमनाविषयीची प्रकरणे त्वरेने निकाली काढावीत अशी शिफारस केली आहे.

त्या शिफारशीच्या अनुषंगाने वरील संदर्भाधीन आदेशातील सूचनाकडे पुन्हा लक्ष वेधण्यात येत आहे. याबाबत शासन असेही आदेशित करित आहे की, ज्या कर्मचार्यांविरुद्ध ते सेवानिवृत्त होत असताना विभागीय चौकशी चालू आहे त्यांच्या विभागीय चौकशा प्राथम्याने आणि त्यांच्या सेवानिवृत्तीच्या दिनांकापासून कमाल ६ महिन्यात पूर्ण होतील याची दक्षता घ्यावी. ज्या कर्मचार्यांविरुद्ध ते सेवानिवृत्त झाल्यावर चौकशी सुरु करण्यात आली आहे, त्यांच्या विभागीय चौकशा प्राथम्याने आणि चौकशी सुरु केल्याच्या दिनांकापासून कमाल ६ महिन्यात पूर्ण होतील याची दक्षता घ्यावी. याबाबतीत विहित कालावधीत निपटारा करण्यात आलेल्या प्रकरणांचा विचार करून आस्थापनविषयक कामे पाहणारे उप सचिव / सह सचिव तसेच विभागीय चौकशी अधिकारी यांच्या गोपनीय अहवालत विशेष अभिप्राय नोंदवावेत."

14. It is thus quite clear that the D.E. needs to be completed within six months from the date of issuance of charge-sheet and in any case, maximum period for completion of D.E. should not exceed one year. In case, if the D.E. is not completed within six months, specific orders for extension of time are required to be passed. However, in the present matter, the period of two years is over from the issuance of charge-sheet, but till date, D.E. is pending without any progress therein. When the specific query was raised about the appointment of Enquiry Officer to the learned P.O, she was not able to tell as to whether the Enquiry Officer has been appointed in the matter. All these factors clearly spells that the Respondents did not bother to take any steps in pursuance of D.E. and the suspension of the Applicant is continued mechanically. As such, the prolong suspension without taking any steps in completion of D.E. rather exhibits negligence in complying various instructions issued in Departmental Enquiries Manual as well as G.R. and that itself is sufficient to revoke the suspension, particularly when the Applicant is retiring at the end of this month.

15. Secondly, the submission advanced by the learned Advocate for the Applicant that the Applicant has been subjected to discrimination cannot be repelled. Though the charge-sheet was issued to the co-delinquent Smt. Amina Shaikh, who was holding higher responsible post of Deputy Commissioner was not suspended for the reasons best known to Respondent No.1. In this behalf, no explanation much less plausible one is forthcoming. This being the position, there are reasons to say that the Respondents adopted policy of choose and pick, which is clearly discriminatory and in violation of Article 14 of the Constitution of India.

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16. The charges framed in the D.E. are as follows :-

“श्री. आर. जी. शेंडगे हे दि. २२.०३.२०१२ ते दि. ०३.०७.२०१४ या कालावधीमध्ये प्रमुख लिपिक (मावक शाखा), समाजकल्याण आयुक्तालय, पुणे येथे कार्यरत असतांना त्यांच्याकडून झालेल्या अनियमिततेबाबत त्यांच्यावर खालीलप्रमाणे आरोप ठेवण्यात येत आहे.

बाब एक

रमाई आवास योजनेतर्गत बांधकाम पुर्ण झालेल्या लाभार्थ्यांच्या घरावर विभागाचे बोधचिन्ह व नामफलक लावण्यासाठी विभागाने निश्चित केलेल्या उद्दिष्टांपेक्षा अतिरिक्त मागणी पुरवठादारास करून शासनाचे आर्थिक नुकसान केलेले आहे.

बाब दोन

श्री. शेंडगे यांनी शासनाने मान्यता दिलेल्या खर्चाच्या रक्कमे व्यतिरिक्त पुरवठादारांना अतिरिक्त पुरवठ्याचे आदेश देऊन पीएलए खात्यातून रक्कम आहेरीत करून पुरवठादारास रक्कम अदा करून शासनाचे आर्थिक नुकसान केलेले आहे.

बाब तीन

श्री. शेंडगे यांनी बोधचिन्ह व नामफलक याकरीता व्यवस्थापक, शासकीय कारागृह मुद्रणालय, येरवडा यांच्याशी करारनामा केला परंतु सदर कामाची रक्कम अन्य पुरवठादारास अदा करून शासनाची दिशाभूल केलेली आहे.

बाब चार

बोधचिन्ह व नामफलक याकरीता करण्यात आलेला खर्च मंजूर वित्तीय वर्षांपेक्षा पुढील वित्तीय वर्षातून करण्यात आलेला असून, या खर्चाचे देयक कोषागारास सादर न करता सदर रक्कम स्वीय प्रपंजी लेख्यातून (PLA) अदा करून वित्तीय अनियमितता करण्यात आलेली आहे.”

17. The period of alleged misconduct or misappropriation is of 2012 to 2014. The suspension order was passed belatedly on 14.04.2017. The charges levelled against the Applicant in D.E. as reproduced above are arising from record / documents in the custody of the Department, and therefore, there could be no apprehension of tempering of the evidence to be laid in D.E. I, therefore, see no justifiable reason to continue the prolong suspension. True, the charges framed in the D.E. against the Applicant seems serious but same seriousness was required to be exhibited by the Respondents in completion of D.E. which is completely missing. The alacrity shown in suspending the Applicant, later disappeared and the D.E. is kept in cold storage. No action muchless disciplinary action has been taken against official responsible for delay in terms of circular dated 30.10.2010.

18. No doubt, the Respondent No.2 by belated decision dated 28.02.2019 declined to revoke the suspension. However, at the same time, it is material to note that the Respondent No.2 again by his letter dated 05.03.2019 recommended Government for reinstatement of the Applicant in service. He opined that the Government is already paying 75% Subsistence Allowance to the delinquent and completion of D.E. will take much time. He, therefore, recommended for reinstatement of the Applicant in service. Suffice to say, the disciplinary authority itself is of the opinion that no purpose could be served by keeping the Applicant in prolong suspension and recommended for revocation of suspension of the Applicant.

19. At this juncture, it would be apposite to refer the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India (2015) 2 SCC (L & S) 455** wherein it has been held that the suspension beyond 90 days is unsustainable. In Para 21, the Hon'ble Supreme Court held as follows :-

"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 direction of the Central Vigilance Commission that pending a criminal

W. S. S.

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

20. The Judgment in ***Ajay Kumar Choudhary's*** case has been followed by Hon'ble Supreme Court in ***State of Tamil Nadu Vs. Pramod Kumar and Anr. (Civil Appeal Nos.2427-2428/2018) decided on 21st August, 2018*** wherein it has been reiterated that the suspension must be necessarily for a short duration and if no useful purpose would be served by continuing the employee for a longer period and where reinstatement could not be threat for fair trial or D.E, the suspension should not continue further.

21. In view of aforesaid discussion, the refusal of the Respondents to revoke suspension can hardly be termed reasonable, fair and just. No purpose would be served by continuing the Applicant under prolong suspension. The charges leveled against the Applicant are arising from the documentary evidence which is in the custody of the Department, and therefore, the question to tempering the evidence does not survive. The Applicant has been subjected to prolong suspension for more than two years and now retiring at the end of this month. He has also been subjected to discrimination by the Respondents. In this view of the matter, in my considered opinion, the suspension of the Applicant deserves to be revoked and necessary direction for completion of D.E. needs to be issued, so that the Applicant should get his retiral benefits within stipulated period, as per his entitlement subject to decision of D.E.

22. The necessary corollary of aforesaid discussion leads me to sum-up that further continuation of suspension is totally unwarranted and illegal. The suspension deserves to be revoked. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The suspension of the Applicant shall stand revoked with immediate effect.
- (C) The Respondents shall reinstate the Applicant within two weeks from today.
- (D) The Respondent No.1 is further directed to ensure the completion of D.E. proceedings within six months from today.
- (E) The Applicant is directed to cooperate for the expeditious disposal of D.E. proceedings.
- (F) Parties to bear their own costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 11.06.2019

Dictation taken by :

S.K. Wamanse.

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