

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.452 OF 2019

DISTRICT : THANE

Shri Sitaram V. Kataskar.)
Talathi [now under suspension],)
Saza Kariwali, Tal.: Bhiwandi, Dist : Thane)
R/o. Koliwali [Pada], Post Angaon,)
Tal.: Bhiwandi, District : Thane.)...Applicant

Versus

1. The Sub-Divisional Officer-cum-Sub)
Divisional Magistrate, Bhiwandi)
Division, Bhiwandi, Dist. : Thane.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Revenue Department, Mantralaya,)
Mumbai - 400 032.)...Respondents

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

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 19.08.2019

JUDGMENT

1. The Applicant has challenged the suspension order dated 25th March, 2019 whereby he was kept under suspension in view of registration of offence under Section 7 of Prevention of Corruption Act,

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1988 (hereinafter referred to as 'Corruption Act 1988' for brevity) against him.

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

The Applicant was working as Talathi in the Office of Tahasildar, Bhiwandi. By order dated 25.03.2019, he was kept under suspension invoking Rule 4(1)(c) read with Rule 4(2) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Discipline & Appeal Rules 1979' for brevity) in view of registration of Crime No.255/2019 for an offence under Section 7 of 'Corruption Act 1988'. He made representation dated 30.04.2019 stating that he is innocent and requested for reinstatement in service, but in vein. As the Applicant was subjected to prolong suspension without taking review of suspension, he has filed the present O.A. challenging the suspension order.

3. The Respondent No.1 filed Affidavit-in-reply stating that the Applicant has demanded bribe to Shri Ganesh Mhatre, but the trap could not be laid as the Applicant got became alert, and therefore, the offence under Section 7 of 'Corruption Act 1988' was registered vide Crime No.255/2019 for demand of bribe. Accordingly, he was suspended by order dated 25.03.2019. The Respondents thus sought to justify the suspension order and further stated that the Competent Authority will take review of the suspension at the earliest.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

5. Admittedly, till date, no charge-sheet is filed in Criminal Case in pursuance to crime registered against the Applicant under Section 7 of 'Corruption Act 1988'. Furthermore, no charge-sheet in D.E. is issued. Thus, the charge-sheet is neither submitted in Criminal Case

nor D.E. is initiated, but the Applicant is subjected to prolong suspension which is more near about five months till date.

(*)

6 (8) Normally, an adequacy of material before the authority at the time of taking decision in suspension does not fall within the scope and ambit of judicial review. Needless to mention that the question as to whether the facts of the case warrants suspension of a Government servant in contemplation of D.E. is a matter of exclusive domain of the employer and the decision has to be based on the objective satisfaction based on the record. Therefore, the question as to whether the suspension was justified cannot be gone into present set of facts. However, in the present set of facts, the important question is whether the suspension can be continued indefinitely without bothering to take follow-up action as mandated by G.R. dated 14th October, 2011 as well as the law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

(*)

7 (9) The legal position in respect of prolong suspension is no more *res-integrata* in view of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). 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

(*) correction is carried out as
Per order dt: 28/8/2019

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Registrar

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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."

8 (10) 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.

Correction is quoted as per order dt= 26/8/2019.

Registrar

28/8/19

9. In so far as the facts of present case are concerned, neither charge-sheet is filed in Criminal Case nor D.E. is initiated, but the Applicant is subjected to prolong suspension. In view of Judgment of Hon'ble Supreme Court, it is not open to the Government to continue the suspension of Government servant beyond three months, if charge-sheet is not served within 90 days and where charge-sheet is filed before completion of 90 days, the Competent Authority is required to take objective decision about the continuation or revocation of suspension. However, in the present case, no such decision is taken though the period of 90 days is already over. Here, it may be noted that the Government has also acknowledged this legal position in its G.R. dated 09.07.2019 wherein it is stated that in case of suspension of the Government servant, if the charge-sheet is not issued within 90 days, there would be no option except to reinstate the Applicant and directions were issued to make sure that the charge-sheet is filed within 90 days.

10. In view of above, the present O.A. deserves to be disposed of by giving suitable directions to the Respondents to take review on the suspension of the Applicant. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (*) (B) The Respondent No. 2 is directed to take decision about the continuation or revocation of suspension of the Applicant within six weeks from today and the decision, as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (C) If the Applicant felt aggrieved by the decision, he may avail further remedy, if so advised, in accordance to law.

Chakrabarty

(*) Correction is carried out as per order dt:- 26/8/2019.

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28/8/19
Registrar

(D) No order as to costs.

Sd/-

W
(A.P. KURHEKAR)
Member-J

Mumbai

Date : 19.08.2019

Dictation taken by :

S.K. Wamanse.

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