

THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

**ORIGINAL APPLICATION NO. 333 OF 2019
(SUBJECT : SUSPENSION)**

Mr. Manohar Narayan Gawali,
Aged 57 yrs, Occu.: Assistant Commandant,
R/at : Temlai Vikram Nagar, Shivaji Chowk,
Paritekar Building, Vikram Nagar, Kolhapur.

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....Applicant

Versus

1. The State of Maharashtra,
The Secretary,
Home Dept., Mantralaya, Mumbai 32.

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2. The Director General &
Inspector General of Police, M.S. Mumbai,
O/at: Shahid Bhagatsingh Marg, Mumbai 39.

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)..Respondents.

**APPEARANCE : Shri K. R. Jagdale, Advocate for the Applicant
Smt. Archana B. K., Presenting Officer for the
Respondents.**

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 18.04.2018

J U D G M E N T

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Smt. Archana B. K., learned Presenting Officer for the Respondents.

2. In the present O.A., the challenge is to the suspension order dated 23.08.2018 whereby, the Applicant has been kept under suspension in view of registration of offence under provisions of Prevention of Corruption Act, 1988 invoking the Rule 4(2) (a) of Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. Being aggrieved by it, the Applicant has filed representation on 29.12.2018 as well as 18.03.2018 but in vain. The Applicant is due to retire at the end of May, 2019. He, therefore, contends that

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prolonged suspension without taking any steps to take review of the suspension is illegal.

3. Learned P.O. for the Respondents on instructions from Shri Deepak Pokale, Under Secretary, Home Dept., Mantralaya, Mumbai stated that the proposal will be submitted to Review Committee for revocation of suspension and appropriate decision will be taken soon.

4. The Applicant is presently posted as Assistant Commandant SRPF and due to retire at the end of May, 2019. This being the position, the decision about extension of suspension or its revocation needs to be taken by the Respondents before his retirement so that his retiral benefits can be processed accordingly.

5 Admittedly, in Criminal Case, the charge sheet is not yet filed neither charge sheet has been issued in Departmental Enquiry (D.E.). As such, without initiating any appropriate steps, the Applicant has kept under suspension from 23.08.2018. Till date, the period of more than seven months is over but the Applicant is continued under suspension.

6. The issue of prolonged suspension and its permissibility is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. The Hon'ble Apex Court held that the suspension should not exceed 90 days and where the charge sheet in Criminal Case or D.E. is filed within the period of 90 days, the concerned authority is required to take decision about continuation of suspension. Here, it would be apposite to refer Paragraph Nos.11, 12 and 21 of the judgment, which are as follows:-

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perform 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."

7. As such, in view of the law laid down by the Hon'ble Supreme Court, the Respondents are under obligation to take decision about the continuation or revocation of suspension of the Applicant which they failed to do though the period of 90 days is over long back.

8. In view of above, the present O.A. can be disposed of with suitable directions. Hence the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to place the matter of suspension before the Review Committee.
- (C) The Review Committee shall take the decision about the continuation of suspension or its revocation in the light of the judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (Cited Supra) before at least one week of retirement of the Applicant.
- (D) The decision, as the case may be, be communicated to the Applicant within two weeks thereafter.
- (E) If the Applicant feels aggrieved by such decision, he can avail the legal remedy in accordance to law. No order as to costs.
- (F) No order as to costs.

Sd/-

WVV

(A.P. KURHEKAR)
Member(J)

Place : Mumbai

Date : 18.04.2019.

Dictation taken by : V.S.MANE.