

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO. 757 of 2018

- 1) Shri Prashant U. Nikalje,)
R/o. Anuradha Hosg. Soc., Plot No.C-2,)
Near Aantrolkar Nagar, Civil Line,)
Soapur – 413 003.)...Applicant

Versus

- 1) The Commissioner, State Excise Dept.)
2nd floor, Old Custom House, Sahaid Bhagat)
Singh Road, Fort, Mumbai 400 023.)
2) The Assistant Commissioner, (Admn.),)
State Excise, 2nd floor, Old Custom House,)
Sahaid Bhagat Singh Road, Fort,)
Mumbai 400 023.)
3) The Superintendent of State Excise Dept.)
Solapur, Dist. Solapur.)
4) The Superintendent of State Excise, 14 A,)
Sadhuvaswani Road, in front of Aamir Hotel)
Pune 411 001.)
5) The Chief Secretary, State Excise Dept.)
Mantralaya, Mumbai 32.)...Respondents

Shri N. P. Dalvi with Shri P.D. Shelake, learned Advocate for the Applicant.
Ms N. G. Gohad, learned Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 04.04.2019

ORDER

1. Heard Shri N.P. Dalvi with Shri P.D. Shelake, learned Advocate for the Applicant and Ms N. G. Gohad, learned Presenting Officer for the Respondents.

Ms. N. G. Gohad

2. In the present matter, the Applicant has challenged the suspension order issued by the Respondent No.1 in July, 2018 (without mentioning the specific date) invoking the Rule 4(1) (a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 which provides for suspension where the disciplinary proceeding against the Government servant is contemplated or is pending.

3. Learned Advocate for the Applicant sought to contend that the suspension order is by way of punishment in view of contents of the suspension order and absence of the specific mention that the Departmental Enquiry (D.E.) is contemplated.

4. In view of above, the directions were given to the Respondents to clarify their stand by filing Affidavit as to whether the impugned suspension order is in contemplation of D.E. or by way of punishment. Accordingly, the Respondents have filed Affidavit of Shri Shankar Jagtap, Deputy Commissioner in the office of Commissioner of State Excise Dept. (Page Nos.82 to 84) stating that the suspension order is in contemplation of D.E or not by way of punishment.

5. In fact, the care should have been taken by the Disciplinary Authority while issuing the suspension order with specific mention that the suspension is made in contemplation of D.E. Be that or it may, now it is made clear that the suspension order is not by way of punishment but in contemplation of D.E.

6. The Applicant is under suspension from July, 2018 and the period of nine months is over. When the specific query was raised to the learned P.O. about the status of D.E., the learned P.O. stated that she has no instructions about the status of D.E.

7. Whereas the learned Advocate for the Applicant stated that the charge sheet in D.E. has been served on 11.10.2018 but there is no further progress in D.E.

8. Pertinent to note that in terms of G.R. dated 14.10.2011, periodically review needs to be taken by the Disciplinary Authority about suspension of Government employees. As per Clause 7(a) of G.R. dated 14.10.2011, the D.E. needs to be completed within six months and if it is not completed within stipulated period, the Disciplinary Authority is obliged to consider the issue of revocation of suspension and can reinstate such Government servant on non executive post. However, these instructions of G.R. dated 14.10.2011 are not followed in the present matter.

9. Furthermore, as per law laid down by the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**, the suspension beyond 90 days is not permissible. The Disciplinary Authority is required to consider the issue of continuation of suspension after filing of charge sheet in D.E. In the present case, though the charge sheet has been served upon the Applicant on 11.10.2018, the Disciplinary Authority did not even bother to consider the issue of revocation or continuation of suspension of the Applicant.

10. It be noted that in the present matter, the suspension has been ordered only because of non- joining of the Applicant at the place where he has been transferred by the order dated 08.05.2018. This could hardly be the ground to continue suspension for a long period. Thus, the continuous suspension of the Applicant for the said reason is unsustainable in view of the law laid down by the Hon'ble Supreme court.

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

ORDER

- (A) The Original Application is allowed partly.
- (B) The Disciplinary Authority is directed to take review of the suspension of the Applicant within one month from today in terms of Clause 7(a) 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*** (cited supra).
- (C) The decision, as the case may be, be communicated to the Applicant within a month thereafter.
- (D) The Disciplinary Authority is also directed to complete the D.E. within three months from today by passing final order therein.
- (E) The Subsistence allowance, if not paid, be paid forthwith.
- (F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)