

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.41 of 2019

DISTRICT : NASHIK

Abasaheb M. Wakchoure)
R/at. Plot No. 16, Near State Bank Colony,)
Shivajjinagar, Nashik Pune Road, behind Sunny)
Plaza Apartment, Nashik 6.)....**Applicant**

Versus

1. State of Maharashtra, through the Secretary,)
Agriculture, Dairy Devlp. Department, Animal)
Husbandry and Fishereis Department,)
Mantralaya, Mumbai 400 032.)
2. The Divisional Joint Director of Agriculture,)
Krishi Bhavan, Wagle Industrial Estate, beside)
Ashar IT Park, Thane West, Thane 400604.)
Konkan Division, Thane.)...**Respondents**

Shri S.S. Dere, Advocate for Applicant.

Smt. Kranti Gaikwad, Presenting Officer for the Respondents.

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

DATE : 05.04.2019

JUDGMENT

1. Heard Shri S.S.Dere, learned Advocate for the Applicant and Smt. Kranti Gaikwad., learned Presenting Officer for the Respondents.

2. In the present O.A., the Applicant has challenged the suspension order dated 30.06.2018 whereby he was kept under suspension under Rule 4(2) (a) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

3. Shri S.S.Dere, learned Advocate for the Applicant submitted that though the applicant has kept under suspension by order dated 30.06.2018, the Respondents have not decided the representations made by the Applicant on

Wakchoure

18.09.2018, 22.10.2018 and 03.12.2018, therefore, the continuous suspension is illegal in view of the judgment passed by the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** He further canvass that as per judgment of the Hon'ble Bombay High Court **2001(3) Mh.L.J.249 State of Maharashtra V/s. Shivram S. Sadawarte**, the Respondents were under obligation to consider the representation within the period of 2-3 months and to pass appropriate order. He, therefore, prayed that the continuous suspension is illegal, it be quashed and the Applicant be reinstated in service. In alternate submission, he prayed that the Respondents be directed to take review of the suspension within stipulated period.

4. Per contra, the learned P.O. sought to contends that the Applicant was kept under suspension in view of the registration of crime under Prevention of Corruption Act, 1988 and, therefore, in terms of G.R. dated 14.10.2011 the review can be taken only after the period of one year from the date of suspension. On the line of submission, the learned P.O. submitted that the review will be taken in due course of time as well as representations pending will also be considered appropriately.

5. Though the Applicant has been kept under suspension because of registration of crime against him, admittedly till date no charge sheet has been filed against him. Furthermore, admittedly, the charge sheet in D.E. is also not issued. This being the position, the Applicant is continued under suspension for longer period without initiating due process of law either of filing charge sheet in criminal case or by initiating D.E. against him though, the period of more than nine months is over from the date of suspension.

6. As pointed out by the learned Advocate for the Applicant the suspension beyond 90 days is unsustainable in view of the law laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhay's case (cited Supra)**.

7. At this juncture, it would be apposite to reproduce para Nos.11, 12 and 21 in Ajay Kumar Choudhary's case which are 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

W. S. V.

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. Further, it would be useful to refer the judgment of the Hon'ble High Court **2001(3) Mh.L.J.249 in Shivram Sadawarte's case**, wherein the Hon'ble High Court summarized the legal position and the Government's obligation to deal with the suspension matter as follows:-

"14. In the premises, we hold as under :

- (a) The order of suspension issued under Rule 4 of the rules can be sought to be reviewed or revoked by the suspended employee by way of representation under Sub-rule 5 thereof, (b) Such a representation can be filed at anytime and rejection of a representation may not operate as a bar in filing a subsequent representation for review/revocation,
- (b) The representation so filed ought to be decided within a reasonable period of two to three months and by taking into consideration the nature of charges, progress in enquiry, investigations/ trial as the case may be including the reasons for delay and other attending circumstances in each case as well as policy decision of the State Government,
- (c) Challenge to the order of suspension should not be ordinarily entertained by the Tribunal/Court directly unless the remedy as provided under Rule 4(5) is exhausted by the delinquent employee.
- (d) If the representation filed by the delinquent employee under Rule 4(5) of the Rules is not decided within a period of two to three months or if the same is rejected, the employee has the right to approach the Tribunal and the order of the Government is subject to the judicial review.
- (e) An order of suspension issued pending enquiry, investigation or trial, as the case may be, shall continue to operate till such enquiry, investigation and/or trial is completed and the suspension order cannot be quashed and set aside by the Tribunal on the basis of the circular dated September 18, 1974 or the resolutions dated December 14, 1995 and June 14, 1996. The order of suspension is subject to a judicial review by the Tribunal depending upon the facts and merits of each case,
- (f) The State Government / competent authority ought to review the pending suspension cases every quarter and take the requisite steps to conclude the enquiry, investigation / trial as early as possible.

9. Here reference of G.R. dated 14.10.2011 could be also useful which provides periodical review of the suspension where the Government servant is placed under suspension in contemplation of D.E. or registration of criminal offence against him. As per the said G.R., where the Government servant is placed under suspension, review needs to be taken after one year from the date of the suspension to find out whether extension of suspension is justified. It further provides when Criminal Case is not decided within two years from the date of filing of charge sheet, the Review Committee can revoke the suspension by reinstating the Applicant on suitable post. As regards suspension in contemplation of D.E., it provides periodical review after three months and second review after six months from the suspension. If the D.E. is not completed within six months then the Disciplinary Authority is empowered to revoke the suspension and to reinstate the Government servant on non existence post. In the present matter, the Applicant is kept under suspension because of registration of Criminal Case against him. In reference to G.R. dated 14.10.2011, learned P.O. sought to contend that the review cannot be taken before one year as the Applicant is suspended because of registration of offence against him. This submission runs counter to the ratio laid down by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's case***.

10. In Para No.21 of the judgment of the Hon'ble Supreme Court category held that currency of suspension should not exceed beyond three months, if within this period the charge sheet is not served upon the delinquent officer and where memorandum of charge / charge sheet is served, a reasoned order must be passed for the extension of suspension.

11. Thus, in view of the law laid down by the Hon'ble Supreme Court, the Government servant cannot continued under prolonged suspension without taking review on completion of 90 days. Therefore, the contention raised by the learned P.O. that review can be taken only after one year from the date of suspension has to be rejected and the Respondents are in obligation to follow

the law laid down by the Hon'ble Supreme Court and to take review of suspension after completion of 90 days from the date of suspension which they failed to do in the present matter. Despite representation made by the Applicant, the Respondents did not bother to decide the same and simply kept it pending which is also in contravention of direction issued by the Hon'ble Bombay High Court in ***Shivaram Sadawarte's case (Cited Supra)***

12. In view of aforesaid legal position, the present O.A. needs to be disposed of with suitable directions to the Respondents. Hence the following order.

ORDER

- (i) The Original Application is allowed partly.
- (ii) Respondents are directed to take review of the suspension of the Applicant within six weeks from today in view of the law laid down by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's case (cited supra)***.
- (iii) The decision, as the case may be, be communicated to the Applicant within a week thereafter.
- (iv) If the Applicant felt aggrieved by such decision, he can avail the legal remedy in accordance to law.
- (v) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)