

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.101 OF 2024

DISTRICT : SOLAPUR

Shri Appasaheb Shivaji Tondase,)
Age 56 years, Naib Tahasildar (under suspension),)
Office of the Sub-Divisional Officer, Pandharpur,)
District Solapur R/at Sant Peth, Bhai-Bhai Chouk,)
Pandharpur, District Solapur)..Applicant

Versus

1. The State of Maharashtra,)
Through the Additional Chief Secretary,)
Revenue & Forest Department,)
Mantralaya, Mumbai 400032)
2. The Divisional Commissioner, Pune Division,)
Vidhan Bhavan, Pune 411001)..Respondents

Smt. Punam Mahajan – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 28th June, 2024

PRONOUNCED ON: 10th July, 2024

J U D G M E N T

1. The applicant who is working as Naib Tahsildar in the office of Sub Divisional Officer, Pandhapur challenges his suspension order dated 27.9.2023 from the date of his arrest from 18.8.2023 with retrospective effect.

2. The applicant was allegedly caught red handed by the Anti-Corruption Bureau (ACB) on 17.8.2023 while accepting the bribe of Rs.15,000/- from S/Shri Tukaram Kadam and Sachin Burande, and Vitthal Machindra Chavan and after the Panchanama an offence was registered by FIR dated 18.8.2023 at the Pandharpur Police Station in CR No.529/2023 under Section 7 and 12 of the Prevention of Corruption Act, 1988.

3. Ld. Advocate for the applicant prays that the applicant is under suspension from 18.8.2023 and the period of three months got over on 17.11.2023. She further pointed out that the applicant has undergone Angioplasty Surgery and is suffering from heart disease. He is facing financial problems and is going to superannuate on 31.7.2025. She refers to GR dated 19.7.2019 issued by the GAD wherein when the Government servant is placed under suspension, the order should not extend beyond three months, if within this period the charge sheet is not served on the charged officer. She relied on the judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291** and **State of Tamil Nadu Vs. Promod Kumar IPS & Anr.** She pointed out that case of the applicant was not placed before the suspension review committee. Furthermore the charge sheet in the criminal case against the applicant is not yet filed and there is no DE against the applicant.

4. Ld. PO opposes the submissions made by the Ld. Advocate for the applicant. She relied on the affidavit in reply dated 26.2.2024 filed by Rohini N. Shinde, Tahsildar (Revenue) in the office of Divisional Commissioner, Pune. She pointed out that the contentions of the applicant are not totally true. She states that the charge sheet of DE under Section 8 of MCS (Discipline & Appeal) Rules, 1979 dated 16.1.2024 has been served on the applicant on 29.1.2024. She pointed out that the applicant was awarded two days police custody because of the offences registered by the ACB, Solapur under Section 7 and 12 of the Prevention of Corruption Act, 1988 vide CR No.529/2023. She pointed out that the Hon'ble High Court granted bail to the applicant on 13.9.2023 which means that he has got bail after 27 days of his arrest in the matter. Ld. PO further pointed out that the offence committed by the applicant is very serious in nature and required detailed investigation. Therefore, as per the provisions of GR dated 9.7.2019 the suspension of the applicant is liable to be extended beyond 90 days.

5. I have considered the submissions of both the sides. In this case I may refer to the case of *Ajay Kumar Choudhary* (supra). It would be appropriate to produce paras 11, 12 and 21 of the said judgment which reads 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 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.”

6. However, in this case it is seen that while *Ajay Kumar Choudhary's* case (supra) refers to matter based on DE, this case is on account of registration of crime under the Prevention of Corruption Act, 1988. It is also a fact that respondent has issued the charge sheet of DE under Section 8 of the MCS (Discipline & Appeal) Rules, 1979 which was served on the applicant on 29.1.2024. It is also noted that in this case the applicant's case has not been placed before the suspension review committee. In view of the facts and circumstances of the case, I pass the following order.

ORDER

- (i) The Original Application is partly allowed.
- (ii) The Respondent no.2 is directed to review the suspension of the applicant within a period of six weeks from today and communicate the decision to the applicant within two weeks thereafter.
- (iii) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
10.7.2024

Dictation taken by: S.G. Jawalkar.