

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.611 OF 2017

DISTRICT : KOLHAPUR

Shri Naresh Alwandar Polani,)
Age 53 years, Inspector of Motor Vehicles)
(Under Suspension), Regional Transport Office,)
Nagala Park, Kolhapur)
R/o Punya – Pavitra CHS, Belbag, Mangalwar Peth,)
Kolhapur)..Applicant

Versus

The State of Maharashtra,)
Through the Principal Secretary (Transport),)
Home Department, Mantralaya, Mumbai 400032)..Respondent

Shri A.V. Bandiwadekar – Advocate for the Applicant

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

CORAM : Shri Justice A.H. Joshi, Chairman

DATE : 23rd October, 2017

J U D G M E N T

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondent.
2. By this OA the applicant has challenged the suspension order dated 21.10.2016.

3. Ordinarily this being a case arising out of order of suspension, OA could be entertained only when case for dispensation of alternative remedy is made out. The applicant has attempted to show the manner in which the department has taken vindictive approach did not serve charge sheet despite lapse of one year and even did not consider its own inability to serve the charge sheet. In all these background and premises applicant has prayed for dispensation of alternative remedy.

4. The OA is opposed by filing affidavit in reply. In the reply it is urged that the suspension is ordered in contemplation of disciplinary proceedings.

5. It is settled law that the suspension could be ordered and could be justified in case:-

- (a) Material is available before the competent authority on which it prima facie reveals/transpires that in the event the misconduct sought to be imputed against the delinquent, being eventually proved, it is likely to lead to imposition of major penalty.
- (b) In order to safeguard the public interest and in order to prevent the tampering of evidence etc. suspension was necessary.

6. In the present case since the suspension was ordered on 21.10.2016, it has to be believed that entire material which has led the competent authority to arrive at a conclusion that on what had appeared prima facie, the charges likely to be leveled against applicant if proved, are likely to lead a major penalty. Since suspension was ordered, it presupposes that entire material adequate enough for reaching a conclusion and for taking decision for suspension, was available before the disciplinary authority. This being the fact of the mater, in ordinary

course of official business, charge sheet/show cause ought to have been served on the delinquent within a week or two.

7. Admittedly till the date of hearing the charges are not framed and those are not served on the applicant.

8. For urging that the suspension be quashed at once, learned Advocate for the applicant has placed reliance on following two judgments:

- (i) Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr. (2015) 2 SCC (L&S) 455 : (2015) 7 SCC 291.
- (ii) Dr. Narender Omprakash Bansal Vs. The State of Maharashtra & Ors. Writ Petition No.11987 of 2015 decided on 11.3.2016 by the Hon'ble Bombay High Court.

9. It is now well settled by virtue of judgment in Ajay Kumar Choudhary (supra) that notwithstanding the language as may have been employed in the conditions of service, now it is not open to the Government to continue the suspension beyond three months as a mandatory rule of precedent.

10. Therefore, in the peculiar facts and circumstances recorded hereinbefore the alternative remedy is hereby dispensed with.

11. By following the precedent as laid down in Ajay Kumar Choudhary (supra) this Tribunal has no other choice but to quash and set aside the order of suspension dated 21.10.2016 which is at Exhibit 'A' page 18 of the OA.

12. Hence, the OA is allowed and the impugned suspension order dated 21.10.2016 is hereby quashed and set aside.

13. In so far as the aspect of cost is concerned the Ld. Advocate for the applicant argues that State Government ought to have withdrawn the suspension order at the earliest, suo motu, by takings review of suspension considering disciplinary authority's inability to serve charge sheet. The Government ought to have employed equal degree of expectation which was shown by disciplinary authority while issuing the order of suspension of the applicant. In this peculiar situation any highest and largest amount of costs too shall be inadequate to compensate the sufferance of the applicant. Therefore according to the Ld. Advocate for the applicant exemplary cost be ordered.

14. Ld. PO in reply submits that the action of the State is not by way of failure to take action but is a simple case of scrutiny decision and consideration of applicant's case on merits.

15. In the background that despite failure to serve charge sheet suspension is continued, it is not withdrawn by reviewing as regards need of its continuation, itself exhibits patent neglect and non application of mind by committee members who were adorning the seat in the review committee. The said committee had duty to judiciously decide the aspect of need of continuation of suspension, though not judicially. With the attitude that is exhibited, the State has failed to bring any extenuating circumstances to avoid the liability to payment of cost.

16. Hence, considering the dearness of cost of litigation, may be it will be on the lower side, but costs are quantified to Rs.20,000/- (Rupees twenty thousand only) to be paid to the applicant by the respondents.

17. In view that applicant's case is governed by judgment of the Hon'ble Supreme Court, the respondents are directed to comply with the direction

of reinstatement and to issue the order of consequential posting as per choice of the Government within three weeks from today.

18. Steno copy and hamdast is allowed. Ld. PO is directed to collect a copy and communicate this order to the respondents.

Sd/-
(A.H. Joshi, J.)
Chairman
23.10.2017

Dictation taken by: S.G. Jawalkar.

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