

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.753 OF 2023

DISTRICT : RAIGAD

Shri Suresh Shankarrao Bawulgave,)
Age 50 years, Assistant Fisheries Development Officer,)
Additional Charge of Fisheries Training Officer, Raigad)
Alibaug (Now under suspension),)
The office of Wani Ali, Near Gandhi Statute, Uran,)
District Raigad under the office of the Assistant)
Commissioner, Fisheries, Alibag, District Raigad,)
R/o Ganesh Apartment, Mothe-Nagaon, Tal. Uran,)
District Raigad)..Applicant

Versus

The Commissioner of Fisheries,)
(MS), Mumbai)..Respondent

Shri A.V. Bandiwadekar – Advocate for the Applicant
Smt. Archana B.K. – Presenting Officer for the Respondent with
Shri A.P. Jadhav – Special Counsel for the Respondent

CORAM : Smt. Medha Gadgil, Member (A)
RESERVED ON : 13th June, 2024
PRONOUNCED ON: 19th June, 2024

J U D G M E N T

1. The applicant challenges the impugned order dated 14.6.2023 by which he was placed under suspension in contemplation of Departmental Enquiry for the alleged misconduct mentioned therein. The applicant was working as Assistant Fisheries Development Officer, Uran, District Raigad.

2. Ld. Advocate for the applicant pointed out that the applicant was transferred from Uran prematurely by order dated 31.5.2023 and the same was stayed by order dated 6.6.2023 passed by this Tribunal in OA No.631/2023. Ld. Advocate for the applicant alleges malafide and states that the suspension of the applicant is fallout of his transfer. Ld. Advocate for the applicant pointed out that the allegation against the applicant in the order of suspension is to the effect that it was his responsibility alone to preserve in proper condition the National Flag on the Government Boat viz. "Matsya Prabodhini". There was an allegation that the National Flag was not being maintained in proper condition on the Government Boat by the Contractor. Thus, the main object is to keep vigil in the high seas within the boundaries fixed by the respondents. Ld. Advocate for the applicant pointed out that the Government Boat was given on contract basis to one M/s. Ekveera Marine Services up to May, 2023 as per order dated 30.3.2023 passed by the Assistant Commissioner. This was on account of non-availability of trained Drivers and Khalasis appointed by the State Government. He thus pointed out that it is not as if the said Government boat was being run by the Government employees or by the applicant. Ld. Advocate for the applicant pointed out that the applicant could not be held to be responsible for the disrespect to the National Flag as the boat had been contracted out to a private party.

3. The matter was referred to the Uran Police Station when the Senior Police Inspector issued notice to the Assistant Commissioner of Fisheries.

Further till date there is no crime registered against the applicant. He, therefore, prays that the impugned order be set aside.

4. Ld. Special Counsel for the respondent-State along with Ld. PO opposed the submissions of the Ld. Advocate for the applicant. He pointed out that on 29.4.2023 the respondent received a complaint with Training-cum-Patrolling Vessel that vessel by name Matsya Prabodhini was carrying a torn and battered Flag. The applicant was holding additional charge of Fisheries Training Officer, Uran and first charge of Licensing Officer, Uran. He further pointed out that it was the responsibility of the applicant to maintain this vessel and he denied that the maintenance of the National Flag on the boat in question was the responsibility of the contractor appointed by the Government. Ld. Special Counsel produced photos showing that the condition of the National Flag was not good. This caused tremendous humiliation to and lowered the image of Government and particularly the Fisheries Department. He further pointed out that the applicant failed to keep proper check and administer control over the fishing boats illegally using purse seine net with LED which is completely banned for the purpose of catching the fish at Karanja, Uran. The said method of fishing causes ecological imbalance of overall marine life.

5. The respondents issued show cause notice to the applicant on 12.5.2023 to which he did not file any response and was subsequently suspended.

6. I have carefully considered the submissions of both the sides. The legal position of prolong suspension is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291**. It would be apposite to reproduce Para Nos.11, 12 and 21, 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 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. It is well settled position that Government servants should not be subjected to prolong suspension where no fruitful purpose would serve by continuing the suspension. The Government has issued various GRs from time to time for taking periodical reviews of suspension of a Government servant. In this case it is seen that neither charge sheet has been served nor review been taken of his suspension which is a statutory requirement

as per GR dated 9.7.2019. In this case I rely on para 1(ii) of the GR dated 9.7.2019 issued by the GAD, which reads as under:

“१. या अनुषंगाने शासकीय कर्मचाऱ्यांचा निलंबनाचा आढावा घेण्यासंदर्भात पुढील प्रमाणे सूचना देण्यात येत आहेत.

ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरु करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता / खबरदारी घेण्यात यावी. ”

8. In this matter the Enquiry Officer submitted his report dated 22.12.2023 holding that the charges against the applicant are not proved and the applicant was exonerated. However, the disciplinary authority i.e. the Commissioner, Fisheries did not agree with the report of the enquiry officer and issued notice to the applicant asking him to give reply within 15 days. The applicant has submitted his reply. However, no decision has been taken in the matter. Furthermore it is to be noted that no review has been taken in the case of suspension.

9. Therefore, in my considered opinion, no fruitful purpose would be served by continuing the applicant in further suspension. The suspension, therefore, deserves to be revoked and he has to be reinstated in service by giving suitable posting as competent authority deems fit. Hence, the following order.

ORDER

- 1) Original Application is allowed.

- 2) The suspension of the applicant stands revoked with immediate effect.
- 3) The respondents shall reinstate the applicant in service and are at liberty to give him suitable posting, as deem fit, within a month from today, subject to outcome of OA.631/2023 filed by the applicant regarding transfer of the applicant.
- 4) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
19.6.2024

Dictation taken by: S.G. Jawalkar.

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