

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 11966 OF 2018

Ayub Khan S/o. Noor Khan Pathan .. **Petitioner**

Versus

The Aurangabad Municipal Corporation,
Aurangabad, Through the Municipal Commissioner,
Aurangabad .. **Respondent**

Mr. Avinash S. Deshmukh, Advocate for the
Petitioner.

Mr. Ajay S. Deshpande, Advocate for the
Respondent-Sole.

CORAM: S. V. GANGAPURWALA &
A. M. DHAVALA, JJ.

DATE: 8th JANUARY, 2019

PER COURT :

1. Mr. Deshmukh, learned Advocate for the petitioner submits that the petitioner is placed under suspension w.e.f. 27.10.2017, one year has lapsed. The same was pursuant to the criminal case filed against the petitioner. The charge-sheet in the the criminal case was served upon the petitioner after seven months and in the departmental enquiry the charges are served

recently. The petitioner relies on the judgment of the Apex Court in a case of **Ajay Kumar Choudhary Vs. Union of India and others** reported in **2015 (7) SCC 291**.

2. The learned Advocate for the petitioner further submits that he is due to retire on 31.01.2019. He further submits that the decision taken by the Establishment Board is also *per se* illegal. It does not take into consideration that one year has lapsed so suspension has to be reviewed.

3. Mr. Deshpande, learned Advocate for the respondent-sole, submits that the Establishment Board has reviewed the suspension and has negatived request of the petitioner for revision of suspension. The departmental enquiry is pending, so also, the criminal case.

4. Now the charges have been served upon the petitioner, in the criminal case, also the charge-sheet has been filed. The Government Resolution

dated 14.10.2011 requires review of the suspension after a period of six months, so also, in case where the charge-sheet is filed in the Court the same can be reviewed after two years.

5. The Establishment Board decision suggests that they had negatived request of the petitioner for revision of suspension only on the ground that one year has lapsed.

6. It is fact that for one year after suspension the petitioner was not served with the charges in the departmental enquiry, and even in the criminal case the charge-sheet was filed after seven months. All these aspects were required to be considered by the Establishment Board while taking the decision, the same does not seem to have been done.

7. In the light of above, we pass the following order.

8. The Establishment Board of the respondent

shall re-consider the request of the petitioner for revocation of the suspension on its own merits and also considering the merits of the contentions of the petitioner. The same shall be re-considered by 20.01.2019.

9. The writ petition is accordingly disposed of.
No costs.

[A. M. DHAVAL, J.] [S. V. GANGAPURWALA, J.]

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