

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.443 of 2019

Shri Vinod Shripati Ballal,)
Age : 40 years, Occ : Police Sub Inspector,)
(now under suspension),)
R/at. Railway Police Quarters,)
Ghatkopar, Mumbai 75.)...**Applicant**

Versus

- 1) The Deputy Commissioner of Police,)
Holding additional charge of the post of)
Additional Commissioner of Police (Crime))
Mumbai, O/at Campus of the Commissioner)
Of Police officer, opp. Crawford Market)
Fort, Mumbai 400 001.)
- 2) The State of Maharashtra, through)
Additional Chief Secretary, Home Dept.)
O/at. Mantralaya, Mumbai 32.)...**Respondents**

Shri A. V. Bandiwadekar, Advocate for the Applicant.

Ms N. G. Gohad, Presenting Officer for the Respondents.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 26.08.2019.

ORDER

1. The issue posed for consideration in the present O.A. is whether the suspension order dated 15.04.2019 is sustainable in law.
2. The Applicant has challenged the suspension order dated 15.04.2019 issued by the Additional Commissioner of Police (Crime), Mumbai purportedly issued exercising the powers under Section 25 (without specifying its sub-clause) of Maharashtra Police Act, 2015. The Applicant was serving on the post of PSI and Criminal case No.63/2019 for the offence under Section 354 (A), 354(D) of

I.P.C. was registered against him on the complaint lodged by complainant Smt. Priyanka Bhoir. In sequel, the Applicant was arrested on 15.04.2019 and by impugned order dated 15.04.2019, he is placed under suspension. The relevant portion of the suspension order is material to appreciate the submission advanced at a bar which is as follows:-

“ फिर्यादी नामे श्रीमती प्रियांका अमर भोई याचे जबाबावरून पोलीस उप निरीक्षक विनोद श्रीपती बल्लाळ यांचेविरुद्ध आझाद मैदान पोलीस ठाणे येथे गु.र.क्र.६३/२०१९ कलम ३५४(अ), ३५४(ड) भा.द.वि.स. अन्वये गुन्हा नोंद करण्यात आला. गुन्हा दाखल करून पोलीस उप निरीक्षक विनोद श्रीपती बल्लाळ, श्वानपथक यांना सी.आर.पी.कलम ४१(अ) अन्वये नोटीस देण्यात आली. गुन्हाचे तपासकामी ताब्यात घेऊन तपास केला असता त्याचा गुन्हात सहभाग निष्पन्न झाल्याने पोलीस उप निरीक्षक विनोद श्रीपती बल्लाळ, श्वानपथक यांना दि.१५.०४.२०१९ रोजी नमूद गुन्हात अटक करण्यात आली.

श्वानपथक, गुन्हे शाखा येथे नेमणुकीस असलेले पोलीस उप निरीक्षक विनोद श्रीपती बल्लाळ यांनी त्यांचे पदाचा गैरवापर केला असून त्याचे उपरोक्त वर्तन हे अत्यंत बेजबाबदारपणाचे, अशोभनीय, बेशिस्त व शिस्तप्रिय पोलीस दलाची प्रतिमा मलीन करणारे आहे.

यास्तव महाराष्ट्र पोलीस अधिनियम १९५१ मधील नियम २५ अन्वये प्रदान करण्यात आलेल्या अधिकाराचा वापर करून पोलीस उप निरीक्षक विनोद श्रीपती बल्लाळ, श्वानपथक यांचे विरुद्ध घेण्यात येणा-या प्राथमिक/विभागीय चौकशीच्या तसेच त्यांच्याविरुद्ध दाखल गुन्हाच्या अधीन राहून त्यांना गुन्हात अटक केलेल्या दिनांकापासून म्हणजेच दि.१५.०४.२०१९ पासून सेवेतून निलंबित करण्यात येत आहे.’’

3. Shri A.V. Bandiwadekar, learned Counsel for the Applicant assailed the impugned suspension order mainly on the ground that the Additional Commissioner of Police who has passed impugned order is not Competent Authority for the suspension of the Applicant. According to him, the Applicant being promoted to the post of PSI, the Director General of Police is the only Competent Authority for his suspension. He has further pointed that as per Notification dated 12.01.2011 only the Commissioner of Police are empowered to suspend the police officers of and below rank of Police Inspectors. He, therefore, submits that impugned order is without jurisdiction. In the second

limb of submission, he urged that suspension order has been passed by purportedly exercising the powers under Section 25 of Maharashtra Police Act which pertains to powers of punishment and in the present case, there being no enquiry before passing the impugned order, the same is *non est* in law.

4. Per contra, Ms N. G. Gohad, learned Presenting Officer for the Respondents sought to contend that as per suspension order, the Additional Commissioner of Police has exercised the powers under Section 25 of Maharashtra Police Act, 1951 and therefore, suspension cannot be faulted with. She has pointed out that under Section 25 (2)(a) of 'Act 1951', the Additional Commissioner of Police is one of the Competent Authority to impose punishment, and therefore, the impugned suspension order cannot be faulted with.

5. Perusal of suspension order as reproduced above makes it explicit that it is by way of punishment because of alleged serious misconduct of the Applicant and registration of crime against him. Indeed, learned P.O. fairly concedes on instructions that the impugned suspension is by way of punishment. At the same time, she try to contend that as per Paragraph No.4 of the suspension order (as reproduced above) the enquiry was contemplated and suspension was in pursuance of crime registered against the Applicant as well as subject to preliminary/departmental enquiry.

6. Indeed in this behalf, the reply filed by the Respondent No.1 is self contradictory. In Para No.9, it is stated - "I say and submit that petitioner is involved in the criminal case. Misconduct of petitioner is punishable u/s 25 of 'Act 1951'. The Applicant's misbehavior comes under moral turpitude." Whereas surprisingly in Para No.7(5) as well as Para No.10(1), it is stated that the Respondent No.1 followed the provision of Maharashtra Civil Services (Discipline & Appeal) Rules 1979. The Applicant being police personnel is governed by the Maharashtra Police Act and Maharashtra Police (Punishment and Appeals) Rules,

1956 and there is no question of application of MCS (D & A) Rules 1956. Be that as it may, the Respondent No.1 himself appears not sure about the correct legal position applicable to the matter.

7. If the impugned suspension order is in contemplation of D.E. then it should be under Rule 3(1)(A)(i)(a) of Maharashtra Police (Punishment & Appeal) Rules 1956 and in that situation, powers of suspension are with the appointing authority or any Authority to which it is subordinate or any other authority empowered by the State Government in this behalf. However, in the present case, admittedly, there is no such empowerment in favour of the Additional Commissioner of Police as contemplated in the above rules. Notification dated 12.01.2011, empowers only Commissioner of Police and not Additional Commissioner of Police. Apart, there has to be compliance of proviso to Rule 3(1)(A) (i)(a) of the 'Rules 1956' which inter-alia provide that where the order of suspension is made by an Authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension has been made. However, admittedly in the present case, no such report to the appointing authority justifying circumstances, in which the order of suspension has been made, is forthcoming. This being the position, even assuming for a moment that the impugned suspension is under Maharashtra Police (Punishment & Appeals) Rules 1956, in that event also it being not passed by the appointing authority or any other authority empowered by the State Government as well as for non compliance of the proviso of submission of report forthwith to the appointing authority, the suspension is unsustainable.

8. Now, turning to Section 25 of Maharashtra Police Act, as stated above, in suspension order, the Additional Commissioner of Police invoked the power under Section 25 (without specifying clause of Section 25). Perusal of Section 25 (1), 25(2)(A) of Maharashtra Police Act reveals that it pertains to punitive powers

and suspension is also one of the punishment as per Section 25(B) of Maharashtra Police Act whereas as per Section 25(2)(a), the Director General and Inspector General including Additional Director General, Special Inspector General, Commissioner including Joint Commissioner, Additional Commissioner and Deputy Inspector- General shall have authority to punish an Inspector or any member of the subordinate rank under sub section 1 or (1A). Thus, there is no denying that Section 25(1) as well as 25(2)(a) provides for punitive powers of the authorities mentioned therein and the Additional Commissioner is one of them.

9. No doubt, under Section 25(2)(a), Additional Commissioner of Police is one of the Authority but in that event such suspension by way of punishment has to be followed by enquiry and there could be no such punishment without enquiry. In this behalf, Section 26 of Maharashtra Police Act specifically provides that except in cases referred to clause (2) of article 311 of the Constitution of India, no order of punishment under sub-section (1) of 25 shall be passed unless the prescribed procedure is followed. In the present matter, however, admittedly no such enquiry has been conducted nor any such opportunity of hearing was given to the Applicant before passing order of suspension.

10. In view of above, examining the matter from both the angles, the suspension order is *ex-facie* unsustainable in law. In this behalf, learned Counsel for the Applicant rightly referred to the decision of this Tribunal in ***O.A.No.48/2010 (Shrinivas Dosari V/s. Additional Superintendent of Police) decided on 27.04.2010.*** In that case, Police Official was suspended by way of punishment without issuance of show cause notice or opportunity of hearing. This suspension order held *ex-facie* unsustainable and accordingly quashed.

11. Admittedly, till date no charge sheet has been issued to the Applicant in proposed D.E. In so far as Criminal Case is concerned, the charge sheet is recently filed in the court and the matter is sub judice. As such, the Applicant is subjected to prolong suspension and the period of more than 90 days is over.

The Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)** held that suspension should not exceed 90 days. If the charge sheet in D.E. is not issued within 90 days, the Competent Authority is required to take review of the suspension which is not undertaken in the present matter. Apart, the suspension order being issued by way of punishment in exercise of power under Section 25 of Maharashtra Police Act in absence of inquiry is clearly unsustainable in law.

12. The totality of aforesaid discussion leads me to sum up that the suspension order dated 15.04.2019 in present situation is *ex-facie* unsustainable in law and the same is liable to be set aside for the reasons stated above. However, Respondent No.1 will be at liberty to pass further order of suspension, afresh, if permissible in accordance to law. Hence the following order.

ORDER

- (A) Original Application is allowed.
- (B) Impugned suspension order dated 15.04.2019 is quashed and set aside.
- (C) The Respondent No.1 is directed to reinstate the Applicant within two week from today.
- (D) No order as to costs.

Sd/-

**(A.P. KURHEKAR)
MEMBER (J)**