

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NOS 596, 299 & 502 OF 2020

DISTRICT : PUNE

1) ORIGINAL APPLICATION NO. 596 OF 2020

Shri Dilip Bhalchandra SAwant)
Deputy Superintendent of Police)
[currently under suspension],)
Residing at 5, Meena Sai, Pushpak Park,)
I.T.I Road, Aundh, Pune 411 007.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai 400 032.)
2. Superintendent of Police,)
[Thane Rural],)
Air Marahsl Hemant Chitnis Marg,)
Court Naka, Kharkar Aali,)
Opp. Police School, Thane (W) 400601.)...**Respondents**

2) ORIGINAL APPLICATION NO. 299 OF 2020

Shri Ajay Ramdas Bhapkar)
Police Naik[currently under suspension],)
Chakan Police Station,)
Pimpri Chinchwad Police Commissionerate)

R/o: Green Estate, Flat No. 304, B-Block,)
Chakan, Pune.)...**Applicant**

Versus

The Commissioner of Police,)
Pimpri Chinchwad Police Commisssonerate,)
Pune.)...**Respondents**

3) ORIGINAL APPLICATION NO. 502 OF 2020

Shri Vishwanath Dnyandeo Ghanwat)
Senior Police Inspector, S.P Office, Sangli.)
R/at : Kharadkar Nagar, Survey No. 38,)
Near Reliance Mall, Wadgaonsheri, Pune-14.)...**Applicant**

Versus

The Special Inspector General of Police,)
Kolhapur Range, Kolhapur)...**Respondents**

Smt Punam Mahajan, learned advocate for the Applicant in O.A
596/2020.

Shri A.V Bandiwadekar, learned advocate for the applicant in O.A
299/2020.

Shri K.R Jagdale, learned advocate for the applicant in O.A 502/2020.

Shri A.J Chougule, learned Presenting Officer for the Respondents.

CORAM : **Justice Mridula R. Bhatkar (Chairperson)**

DATE : **15.02.2021**

J U D G M E N T

1. In all these three applications the issue of reinstatement of the Government servant after the suspension order, is involved. Therefore, all these O.As are decided by common order.

3. The applicant in O.A 596/2020 was suspended by order dated 17.6.2020 on account of criminal case. No charge sheet in criminal case is filed. However, the charge sheet in the Department Enquiry is served on the applicant on 19.11.2020.

4. Applicant in O.A 502/2020 was suspended by order dated 19.4.2017, as the FIR 49/2017 under sec 454, 380, 120(b), 166, 167 r/w 34 of IPC is filed and criminal case is pending. The charge sheet in criminal case was filed on 20.10.2017 and charges in the Departmental Enquiry was served on the applicant on 7.8.2020.

5. Applicant in O.A 299/2020 was suspended by order dated 1.10.2019. Neither charge sheet is filed in the criminal case nor Departmental Enquiry is initiated against the applicant.

6. All the applicants are from the Police Department and suspended for their misconduct or the criminal prosecution pending against them. In O.A 596/2020, the applicant is suspended since 1 ½ years, in O.A 299/2020, applicant is suspended for nearly 2 ½ years and in O.A 502/2020 applicant is suspended since 3 years and 10 months approximately. It was expected on the part of the Respondents to take review of their suspension and reinstate them as the case may be when such a long period of suspension is undergone by them. In view of the judgment of the Hon'ble S.C in the case of **Ajay Kumar Choudhary Vs. Union of India & Anr, (2015) 7 SCC 291**, the period of suspension should not be long and the Government servant should not be kept paid though partially without utilizing his services for long period. On perusal of the reply and the submissions made on behalf of the learned P.O it is

found that they are not consistent with the ratio laid down in the case of Ajay Kumar Choudhary's case (supra).

7. My attention is drawn to the Circular dated 14.6.2019 issued by Shri S. Jagannathan, Addl. D.G, wherein it is mentioned that the Police Personnel, who are prosecuted under the Prevention of Corruption Act or of disproportionate assets, murder, rape and like offences in breach of moral turpitude, if suspended then they are not to be reinstated till the Departmental Enquiry is over or the criminal case is decided.

8. Learned P.O has pointed out that the Respondents are following this Circular as the applicants are in the Police Department and therefore, they are not reinstated in service after such a long time.

9. Per contra, the G.R dated 9.7.2019, issued by the General Administration department is produced by the counsel for the applicants. This G.R stated that the policy of suspension and the decisions taken therein should be consistent with ratio in the case of Ajay Kumar Choudhary's case (supra). The memorandum of charges or charge sheet is also to be filed within 90 days from the date of suspension. The G.R prevails over the Circular of the Government as it has more authoritative force and we all are bound by the mandate of the Supreme Court.

10. Para 21 of the judgment in Ajay Kumar Choudhary's case, reproduced in G.R dated 9.7.2019, is very clear about the revocation of suspension and extension of the suspension period. It states as follows:-

“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.”

11. Thus, the Hon'ble Supreme Court has given a time frame of three months to file memorandum of charges in Departmental Enquiry or

charge sheet in the criminal case whatever case may be and it is to be served on the delinquent officer, who is suspended. It means that suspension order should not be extended beyond three months, if memorandum of charges or charge sheet is not served. Then the authority is expected to take review immediately and decide the issue of suspension when suspension is not a punishment. The Hon'ble Supreme Court has also considered the second situation, wherein memorandum of charges/charge sheet is served within 90 days, then reasoned order should be passed if the period of suspension is extended. The Hon'ble Supreme Court has also directed that each case is to be considered independently on the facts of each case, based on the gravity of the misconduct of the Delinquent Officer. The judgment of this Tribunal dated 28.7.2020 in the case of Shri Kiran R. Landge Vs. The Commissioner of Police & One Anr in O.A 1130/2019 and so also judgment dated 8.9.2020 in the case of Mr. Shrikant B. Vasave Vs. Chief Conservator of Forest (Territory) & one Anr in O.A 264/2020 are also relied on this point.

12. It is necessary to make it clear that the Respondent authority may not have any control over filing of the charge sheet, that is report under Sec 173 of Criminal Procedure Code in criminal case which is pending against the delinquent officer. The Investigating Agency may file the charge sheet even after three months. It doesn't mean that benefit of such delay should be enjoyed by the delinquent officer, who has really committed the offence of moral turpitude or is a cancer to the system. Under such circumstances, the Respondents authority is expected to initiate the Departmental Enquiry within three months and the memorandum of charges, i.e. statement of imputations to be served to the delinquent officer within 3 months from the date of his suspension. This will save the system. The Respondents can pass reasoned order justifying the extension of the period of suspension depending on each case, beyond three months, if charge sheet or memorandum of charges is filed. However, the period of suspension otherwise not to be extended longer than three months, the review is to be taken.

13. In view of the above, all the applications are disposed of with direction that the Respondents shall take the review of the period of suspension of all the three applicants within three weeks and the decision of the Review Committee is to be implemented immediately.

Sd/-
(Mridula Bhatkar, J.)
Chairperson

Place : Mumbai
Date : 15.02.2021
Dictation taken by : A.K. Nair.

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