

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH NAGPUR**  
**ORIGINAL APPLICATION NO. 18 of 2018 (S.B.)**

Santosh Vithalrao Vairagade,  
Aged about 47 years,  
Occ. Service at present under suspension,  
R/o 404, Daffodil Building,  
Lifestyle Society, Wadi, Nagpur.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Additional Chief Secretary,  
Home Department having its office at  
Mantralaya, Mumbai-400 032.
- 2) Director General of Police,  
having its office at near Regal Theatre Colaba,  
Mumbai.
- 3) The Superintendent of Police,  
Nagpur District (Rural),  
Nagpur.

**Respondents**

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**Shri S.P. Palshikar, Advocate for the applicant.**

**Shri S.A. Sainis, learned P.O. for the respondents.**

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**Coram :- Hon'ble Shri J.D. Kulkarni,  
Vice-Chairman (J)**

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**JUDGMENT**

**(Delivered on this 3<sup>rd</sup> day of April,2018)**

Heard Shri S.P. Palshikar, Id. counsel for the applicant  
and Shri S.A. Sainis, Id. P.O. for the respondents.

2. Applicant, a Police Inspector has claimed that his suspension vide order dated 17/10/2017 be quashed and set aside and the respondents be directed to allow him to resume duties as a Police Inspector at Police Station, Kuhu and further direction to allow him to complete his tenure at Kuhu.

3. The applicant was kept under suspension on 17/10/2017 (Annex-A-1). The reason for keeping the applicant under suspension in the form of allegations against him is as under :-

*^vki .k Jh-l arsk' o'f kxMj i ksyhl fujh{k.k] i ksLVs dgh] ftYgk ulxi ij xteh.k ; fks ue.kpdl vl w ekst k i kpxk vMokuh /kkck ; fks?MMyS; k Ok; jhaxP; k ?KVusd calkh vi - dz265@2017 dye 307]323]34 Hkknfo l g dye 3]25 Hkkjrh; gR; kj dk; nk l gdye 135 eq kcdk vll; sxhlgk nk [ky >kY; kus?KVuLkGh i ksyhl fujh{kcd okgrnd gsgtj >kysgkrs R; kkk vkEgh xhlg; krhy vkjki h vki Y; k rlc; kr ns; kl l kachryso vki Y; kyk OkuOnkjsl njhy xhlg l onu'khy vl Y; kusrkrdkG rlc; kr vl ysysvkjki h vVd dj.; kl l kachrysgkrs Ok; jhax l kj [kk xhlgk ?MMyk vl rkuk l qnk vki .k vR; r fu"dkGthi .ksri kl d#u vki Y; k rlc; krhy vkjki h ejyhl/kj mQZegny fo".kqvMokuh] o; 26 o"kg jk-cMdl plkd] egky] ulxi ij gk i ksLVs ; fksu oMhykph vksk/kh ?ks; kl kBh R; koGd vki .k R; kl l kMysvl svki .k vkEgk fnukad 16@10@2017 jkst h nq kjh 12-30 okt rk vkEgh elakG ; fky ernku dmr HkV fnY; koj vkEgh xhlg; kph i xrh cnny elfgrh fopkjY; ko#u l kachryso l njhy ed; vkjki h ejyhl/kj mQZegny fo".kqvMok.kh o; 26 o"kg gk i ksyhl LVs ku ; fksu vki Y; k j [kokyhrw i Guu xS; kpsfu"i Uu gkrs ; kckcr vki .k ofj "Bkuk elghrh fnyh ukgh- \*\**

4. The applicant denied the allegations against him. According to the applicant, since the date of suspension neither the applicant has been charge-sheeted nor any criminal case is filed against him and therefore the continuation of suspension is illegal. It is stated that 90 days period of suspension has ended on 17/01/2018 and till today no charge

sheet is filed and therefore the applicant is entitled to be reinstated in view of the directions in the Judgment of the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Ano.,2015 (2) SCALE,432.**

5. The respondent no.3 has filed reply-affidavit and tried to justify the order of suspension. According to the respondents, the Police Establishment Board is formed and assigned with certain responsibilities. The applicant has not approached before such Establishment Board and straight away approached the Tribunal and therefore on this count alone the application is liable to be dismissed.

6. The respondent no.3 further stated that the applicant had joined the services in 1995 as Police Sub-Inspector and was promoted as Police Inspector in June,2016. While working as Police Inspector at Police Station, MIDC, Hingana. District Nagpur one local MLA Shri Sameer Meghe made a complaint to the Chief Minister against the applicant as regards increase of illegal business and criminal activities and therefore people were feeling unsecured. The applicant's explanation was also called in this regard. In the meantime the post of Police Incharge at Police Station, Kuhi was vacant and therefore the Committee vide order dated 11/07/2017 transferred the applicant from MIDC, Hingana to Police Station, Kuhi.

7. On 15/10/2017 the incidence of opening fire took place at the Restaurant Adwani Dhaba situated at Mouza Pachgaon within the

jurisdiction of Police Station, Kuhu and the offences were registered under sections 307 & 323 r/w section 34 of the IPC and Section 25 of Indian Arms Act r/w Section 236 of Bombay Police Act, vide crime no.205/2017. In the said crime main accused fly away from the custody of applicant. However, this fact was never informed by the applicant to the higher authorities and therefore he was charged for negligence. Earlier also the applicant has released the accused for bringing medicines of his father. The aforesaid negligence and irresponsible behaviour was serious in nature and since it creates doubt on the integrity of the applicant and hence he was kept under suspension. He has committed serious lapses whereby the accused escaped from the custody. Preliminary inquiry has been initiated against applicant in this regards.

8. It is further stated that the case of the applicant has been kept before the Review Committee on 24/11/2017 and it was decided to continue the suspension in view of serious charges against the applicant. Thereafter the Review Committee also considered the applicant's case on 03/03/2018 and a conscious decision was taken that considering the gravity of the misconduct, it was decided not to revoke the suspension before completing the preliminary inquiry.

9. The learned counsel for the applicant invited my attention to the Judgment delivered by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary &**

**Ano.,2015 (2) SCALE,432.** In the said case the Hon'ble Apex Court has observed in para no. 14 as under :-

*“ 14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 prepare 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 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.”*

10. From the aforesaid observations, it will be clear that the Hon'ble Supreme Court has clearly directed that the currency of suspension order should not extend beyond three months, if within this period the Memorandum of charges / chargesheet is not served

on the delinquent officer/ employee. In the present case the suspension order has been issued on 17/10/2017 and till today the applicant is under suspension and admittedly no charge sheet has been served nor memorandum of charges have been served on the applicant. The applicant's case therefore falls under these observations of the Hon'ble Apex Court that currency of suspension should not extend beyond three months, if within this period the memorandum of charges/ charge sheet is not served on the delinquent officer/ employee.

11. The Hon'ble Apex Court has observed that even if the charge sheet is served / memorandum of charges has been served within three months, a reasoned order must be passed for extension of the suspension. The learned P.O. tried to point out that a conscious decision was taken to extend the suspension of the applicant by the competent authority. He invited my attention to Annex-R-1 dated 24/11/2017 at P.B. page nos. 41 to 44 (both inclusive). As per that decision it has been simply stated that the suspension of the applicant shall be continued. Thereafter the Committee has again considered the revocation of the applicant vide Committee's meeting dated 03/03/2018 and decided to continue suspension. The decision in this regard is at Annex-R-3 at P.B. page nos. 46 to 49 (both inclusive). In respect of the applicant it was

observed that the preliminary inquiry's report is awaited and charges are serious and therefore the applicant shall be continued under suspension. From the said statement, it seems that only the report of preliminary inquiry was awaited and admittedly no charge sheet was served on the applicant nor memorandum of charges were served on him. In such circumstances, the respondents ought to have reviewed the order of suspension. As already observed by the Hon'ble Apex Court in para no.14 as stated supra in the case of **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Ano.,2015 (2) SCALE,432**, the Government will be free to transfer the applicant 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 and the Govt. may also prohibit the applicant from contacting any person or handling records and documents till the stage of his having to prepare his defence. However suspension is not the remedy.

12. The learned counsel for the applicant also placed reliance on the Judgment delivered by this Tribunal at its Aurangabad Bench in the case of **Ghansham S/o Rambhau Palwade Vs. State of Maharashtra & Ors.**, in O.A.No. 665 of 2016 delivered on 02/12/2016. In the said case the applicant, a Police Inspector was kept under suspension by the Superintendent of Police. Admittedly, the Superintendent of Police was not Appointing Authority of the then applicant. In the present

case also the applicant is a Police Inspector and his Appointing Authority is the Government and not the Superintendent of Police. The observations in para nos.15 and 16 of the said Judgment are relevant in this case as stated by the learned counsel for the applicant and said observations are as under :-

*“15. One more legal factor to be considered in this case is that the applicant is a Police Inspector and the Government of Maharashtra is his appointing authority. The impugned order of suspension dated 09/08/2016 has been passed by the Additional Director General of Police (Administration), Maharashtra State, Mumbai who has admittedly not by the Appointing Authority and in other words it is the subordinate authority to the appointing authority. As per Bombay Police (Punishment and Appeals) Act, 1956 Police officials can be dealt with for suspension in 2 manners; (1) suspension as punishment, and (2) suspension when the enquiry is contemplated or pending or complaint against the officer of any criminal offence is under investigation or trial. In the present case, impugned punishment order is not by way of punishment but it seems to be in view of the contemplated departmental enquiry. Rule 3(1-A)(i) of the Bombay Police (Punishment and Appeal) Rules, 1956 reads as under:*

*“3.(1).....*

*(1-A) (i) The appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place, a Police Officer under suspension where -*

*(a) an enquiry into his conduct is contemplated or is pending, or*



*(b) a complaint against him of any criminal offence is under investigation or trial:*

*Provided 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 was made.*

***Explanation***, - *The suspension of a Police Officer under this sub-rule shall not be deemed to be a punishment specified in clause (a-2) of sub-rule (1)."*

*16. From the plain reading of the aforesaid provisions, it will be clear that whether the order of suspension is passed by authority lower in rank than the appointing authority, such authority, shall forthwith report to the appointing authority circumstances in which the order of suspension was passed. In the present case, as already stated, the order of suspension has been passed by Additional Director General of Police (Administration). He has forwarded copy of the said order to Special Inspector General of Police (Administration). Though it is stated that the copy was forwarded to Desk Officer, circumstances under which the applicant was kept under suspension or was required to be kept under suspension have not been brought to the notice of the appointing authority i.e. Government or even to the Special Inspector General (Administration). On this count also the impugned order seems to be illegal."*

13. I fully agree with the aforesaid observations and the contention of the learned counsel for the applicant that the respondent no.3 should have complied the provisions of rule 3 (1-A) (i) of the Bombay Police (Punishment and Appeal) Rules, 1956. This

rule is analogous to the provisions of suspension under the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. The said rule has not been complied with in this O.A. and therefore on this count also the suspension is required to be quashed and set aside. I, therefore, pass the following order :-

**ORDER**

The O.A. is partly allowed in terms of clause 8 (i). The order of suspension dated 17/10/2017 in respect of applicant is quashed and set aside. The respondents are directed to reinstate the applicant to resume his duty, but not as Police Inspector at Police Station, Kuhi. The respondents authorities will be at liberty to act as per the directions of the Hon'ble Apex Court as observed in para no.14 as above and will be free to transfer the applicant as mentioned in the said para after reinstatement. No order as to costs.

**Dated :- 03/04/2018.**

**(J.D. Kulkarni)  
Vice-Chairman (J).**

dnk.