

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.238 of 2020**

Shri Nishikant K. More )  
Occ : Deputy Inspector General of Police, )  
Motor Transport Section, Pune, )  
R/at. 602/13, KH4, Celebration, Sector 17, )  
Kharghar, Navi Mumbai. )...**Applicant**

**Versus**

The State of Maharashtra, )  
Through the Additional Chief Secretary )  
Home Department, Mantralaya, )  
Mumbai- 400 032. )...**Respondent**

Shri K. R. Jagdale, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent.

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

DATE : 11.06.2020.

**ORDER**

1. Heard Shri K. R. Jagdale, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

2. The Applicant has challenged the suspension order dated 09.01.2020 whereby he was kept under suspension in contemplation of D.E.

3. Shortly stated facts giving rise to the Original Application is as under:-

The Applicant was serving as Deputy Inspector General of Police, Motor Transport Section, Pune. The F.I.R. was registered against the Applicant on 26.12.2019 vide Crime No.260/2019 registered in Taloja Police Station, Navi Mumbai for the offences punishable u/s 354 A (1)(I), 506 of I.P.C. r/w Section 8, 9(a) (iv) and 10 of the Protection of Children from Sexual Offences Act, 2012

('POSCO ACT'). In view of the registration of crime, the Government by order dated 09.01.2020 suspended the Applicant in contemplation of D.E. The Applicant had filed the criminal application No.132/2020 before the Hon'ble High Court wherein as per order dated 22.01.2020, he was granted anticipatory bail. The Applicant later made representation to the Government on 10.04.2020 for revocation of suspension and reinstatement in service on the ground of protracted and prolong suspension without initiating the D.E. against him but in vain. The Applicant has, therefore, filed the present O.A. contending that prolong suspension is unsustainable in law particularly on account of the failure of the Government to initiate the D.E. within 90 days in terms of G.R. dated 09.07.2019.

4. Shri K.R.Jagdale, learned Counsel for the Applicant submits that prolong suspension of the Applicant beyond 90 days is unsustainable in law in view of the decision of the Hon'ble Supreme Court in **(2015) 7SCC 291 (Ajay Kumar Chowdhary V/s Union of India & Ors.)** He has also pointed out that in terms of G.R. dated 09.07.2019, D.E. ought to have been initiated within 90 days from the date of suspension and it being not done so, the Applicant is entitled for reinstatement in service.

5. Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent tendered the Government communicated dated 10.06.2020. It is taken on record and marked by letter 'X'. Adverting to communication dated 10.06.2020, learned P.O. submits that in Criminal Case, charge sheet is filed vide Criminal Case No.33/2020 and the same is sub judice in court. As regard review of suspension, she submits that the process to place the matter before the Review Committee is underway. She fairly concedes that no D.E. is initiated in terms of G.R. dated 09.07.2019.

6. Perusal of suspension order dated 09.01.2020 reveals that suspension was ordered consequent to registration of crime against the Applicant. However, as pointed out by the learned Counsel for the Applicant, observations made by the Hon'ble High Court while deciding the application for anticipatory bail are material. While granting anticipatory bail, the Hon'ble High Court observed as follows:-

“The last screen shot according to the prosecution relates to the incident as alleged which had occurred while picking up the piece of the cake from the chest of the victim. The said screen short in the form of photographs do not clearly show the alleged acts of outraging modesty. Considering version of complainant, *prima facie*, the said picture do not appear to be reflecting alleged offending act.”

In the aforesaid observation, the Hon'ble High Court was pleased to grant anticipatory bail. Be that as it may, now the question is whether in the facts and circumstances of the present case, the prolong suspension is justified.

7. Needless to mention that the adequacy or sufficiency of material before the disciplinary authority for suspension of a Government employee, normally cannot be interfered with by the Tribunal in its limited jurisdiction. However, at the same time, it is well settled that the Government servant cannot be subjected to prolong or continued suspension indefinitely. Indeed, in terms of various G.Rs, the Government had issued instructions to complete the D.E. in six months were the Government servant is kept under suspension.

8. The Applicant was suspended by order dated 09.01.2020 in contemplation of D.E. but admittedly till date no charge sheet has been served upon the Applicant though the period of more than five months is over. The

representation made by the Applicant for revocation of suspension and reinstatement in service in terms of G.R. dated 09.07.2019 is not responded.

9. In so far as the period of suspension is concerned, the issue is no more *res-integra* in view of the judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary V/s Union of India & Ors)**, the Hon'ble Supreme Court in para no.21 held as follows:-

*“ 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.”*

10. The Judgment in **Ajay Kumar Choudhary's** case was also followed by Hon'ble Supreme Court in **State of Tamil Nadu Vs. Pramod Kumar and another (Civil Appeal No.2427-2428 of 2018) dated 21<sup>st</sup> August, 2018** wherein it has been held that, suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee for a longer period and reinstatement could not be threat for fair trial or departmental enquiry, the suspension should not continue further.

11. As such, in view of law laid down by Hon'ble Supreme Court, the suspension should not exceed 90 days and where charge-sheet in criminal case or in D.E. has been initiated within 90 days, then the concerned authority is required to take decision about extension or revocation of suspension. The concerned authority needs to take objective decision as to whether the continuation of suspension is warranted in the facts of the case. However, in the present case, admittedly, no such exercise has been undertaken by the disciplinary authority or Review Committee.

12. Indeed, the Government of Maharashtra had issued G.R. dated 09.07.2019 consequent to the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary's case** (cited Supra) acknowledging the legal position that where charge sheet is not issued within three months, the suspension cannot be continued. The Government, therefore, issued direction that Competent Authority should ensure that the charge sheet is issued in D.E. within 90 days from the date of suspension.

13. However, in the present case, admittedly, no charge sheet in D.E. has been issued though the period of five months is over. Indeed, the Hon'ble Supreme Court made it clear that currency of suspension should not extend beyond three months if within this period the memorandum of charges/charge sheet is not served upon the delinquent officer/employee and if the memorandum of charges/charge sheet is served in that event, the disciplinary authority is under obligation to passed reasoned order about the extension or revocation of the suspension, as the case may be.

14. In the present case, there is complete failure on the part of Respondent to adhere the G.R. dated 09.07.2019.

15. In view of above, Original Application can be disposed of with suitable directions. Hence, the following order.

**ORDER**

- (A) Original Application is allowed partly.
- (B) The Respondent is directed to take review of the suspension of the Applicant in terms of G.R. dated 09.07.2019 in the light of observation made by the Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case and shall pass appropriate order within four weeks from today.
- (C) The decision as the case may be, shall be communicated to the Applicant within two weeks thereafter.
- (D) If the Applicant felt aggrieved by the decision, he may avail further remedy in accordance to law.
- (E) No order as to cost.

Sd/-  
**(A.P. KURHEKAR)**  
**MEMBER (J)**