

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.478/2018.

(S.B.)

Prashant Gangadhar Sagale,
Aged about 47 years,
Occ-Service,
R/o Quarter No.S-3, Building No.2,
Police Centre Motor Transport, 50,
Quarters, Katol Road, Nagpur

Applicant.

-Versus-

- 1) The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-400 032.
- 2) The Director General of Police,
Near Regal Talkies, Shahid Bhagatsingh Marg,
Colaba, Mumbai-01.
- 3) The Special Inspector General of Police,
Motor Transport, (M.S.), Pune.
- 4) The Dy. Superintendent of Police,
Police Centre Motor Transport Workshop,
Nagpur.

Respondents

Shri M.R. Khan, the learned Advocate for the applicant.
Shri P.N. Warjekar, the learned P.O. for the respondents.

Coram:-The Hon'ble Shri Justice A.H. Joshi,
Chairman

JUDGMENT

(Reserved on 28.1.2019)

(Pronounced on 30th day of January 2019.)

1. Heard Shri M.R. Khan, the learned Advocate for the applicant Shri P.N. Warjekar, the learned P.O. for the respondents. Perused the record.

2. Applicant has approached his Tribunal with following prayers:-

- (i) Quash and set aside the impugned order dated 5.1.2018 issued by Special Inspector General of Police, Motor Transport, (M.S.), Pune (A-1) wherein the applicant has been placed under suspension, in the interest of justice;
- (ii) Issue an appropriate order or directions to respondent No.3 to reinstate the applicant in service with full back wages and continuity in service, in the interest of justice and place the matter before the review committee.
- (iii) Issue an appropriate order or directions to the respondent No.2 to decide the representation made by the applicant on 15.1.2018, forthwith, in the interest of justice.”

(Quoted from page 10 of O.A.)

3. Foundation of prayers is seen on the O.A. in para No. 6.14, 6.15 and 6.16 which read as follows:-

6.14:- Thus having left with no other alternative and efficacious remedy the applicant was constrained to make a detailed and comprehensive representation / appeal to the respondent No.2 on 15.1.2018 for redressal of his grievance, but to no avail. The representation made by the applicant on 15.1.2018 has not yet been decided by the respondent authorities. The copy of the representation dated 15.1.2018 has been placed on record and marked as Annexure A-10.

6.15:- It is submitted that in pursuance of the judgment delivered by the Hon'ble Supreme Court reported in 2015 (2) SCALE 432 (Ajay Kumar Choudhary V/s Union of India and another). The Hon'ble Supreme Court held that protracted period of suspension repeated renewal thereof regretted the norm and not the exception that they ought to be and the suspension period should not be for indefinite period beyond the period of 90 days. The copy of the judgment delivered by the Hon'ble Supreme Court reported in 2015 (2) SCALE 432 (Ajay Kumar Choudhary V/s Union of India and another) has

been placed on record and marked as Annexure A-11.

6.16:- It is submitted that the impugned suspension order issued by the respondent No.3 on 15.1.2018 is illegal, bad in law and as such liable to be quashed and set aside. Almost 6 months period has already been elapsed, the suspension order of the applicant has not been revoked and the applicant has not been reinstated in service. The applicant has suffered irreparable loss and untold hardships and has been deprived of his legitimate right. The action on the part of the respondent authorities is illegal, bad in law and against the principles of natural justice and amounting to colourable exercise of the powers vested in them. The action on the part of the respondent authorities is in flagrant violation of Article 14 and 16 of the Constitution of India.”

4. Respondents have opposed O.A. by pleading that the suspension is / was justified due to averments contained in para Nos. 4 to 13 of the affidavit in reply.

5. Applicant's entire thrust of reliance is based on judgments of the Hon'ble Supreme Court reported in **2015 (2) SCALE, page 432 in case of Ajay Kumar Choudhary V/s Union of India through its Secretary and another** and the judgment of this Tribunal rendered in **O.A. No.35/2018 in case of Dilip Jagannath Ambilwade V/s State of Maharashtra and one another, delivered by Principal Seat of this Tribunal at Mumbai on 11.9.2018.**

6. The learned P.O. has placed reliance on a judgment of this Tribunal in **O.A. No.269/2018 in case of Hiralal Rama Jadhao V/s State of Maharashtra decided at Mumbai on 16.10.2018** to urge that competent authority has power to continue the suspension.

7. Now this Tribunal has to consider as to whether:

- (i) Is suspension liable to be regarded as unjust with reference to the date when it was issued.
- (ii) Is it necessary to set aside and reverse the order of suspension.

8. Insofar as the aspect as to whether suspension is justified with reference to the date on which it was ordered, this Tribunal has to bear in mind that ordinarily justness of order of suspension is always open for review by the competent authority at the time of closing of the departmental enquiry, when the competent authority is bound to record a finding as to the manner in which the period of suspension be dealt with, i.e., by treating it as a duty period or as suspension, depending on the findings of Enquiry Officer as to misconduct and consequential finding as to justness of suspension upon its overview at that stage.

9. Any finding of this Tribunal as to justness of suspension even for the purpose of decision of this O.A. may necessarily result in influencing the decision making process by the competent authority. Therefore, in all fairness, it is necessary that this Tribunal ought to refrain from recording any finding and passing any order as regards justness of the suspension with reference to the date when it was ordered. This view of this Tribunal of holding hands from recording of findings will also be in the interest of the applicant.

10. Now coming to the second point of question as to whether suspension should be set aside, shall be dealt with hereinafter. It is seen that this Tribunal has taken a view in O.A. No.269/2018 in case of **Hiralal Rama Jadhao V/s State of Maharashtra** (decided at Mumbai on 16.10.2018), that automatic revocation of suspension as has been ruled in this Tribunal in **O.A.**

No.35/2018 in case of Dilip Jagannath Ambilwade V/s State of Maharashtra and one another (*supra*), has to be read with an exception of a rider as discussed in case of **Hiralal Rama Jadhao V/s State of Maharashtra** (*supra*).

11. In the result, the Tribunal has taken a view that the power of State to take a review and continue the suspension is saved.

12. In the present case, admittedly review has not been taken by the competent authority within 90 days.

13. However, present is not a case where review is not at all taken. On the facts of the present case it is shown during hearing that review has been taken though, it belatedly taken on facts of the case and the decision is adverse to the applicant, it would be unjust to take a very highly technical view and interfere in the order of suspension particularly when admittedly the departmental enquiry has been completed and findings are not only arrived at but the charge-sheet has reached the stage of show cause which is also replied by the applicant.

14. Therefore, on facts of the case, this Tribunal is of the view that interest of justice does not warrant interference in the decision of the competent authority taken in the process of review of suspension period that the suspension deserves to be continued.

15. Hence, this Tribunal concludes that, on facts of the case, it is not necessary to grant any indulgence and interfere in the decision of the competent authority to continue suspension by issuing a direction to revoke the suspension.

16. Hence, the O.A. is dismissed.
17. Parties are directed to bear their own costs.

(Justice A.H.Joshi)
Chairman

Dt. 30.1.2019.
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