

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 652 of 2018 (SB)

Waman Haribhau Hemane,
aged 57 years, Occ. Service,
(at present under suspension)
R/o Pragati Colony, Sakoli,
District Bhandara.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Additional Chief Secretary,
Home Department, Mantralaya, Mumbai.
- 2) Director General of Police,
Having its office near Regal Theater,
Kulaba, Mumbai.
- 3) Superintendent of Police,
Gondia.

Respondents.

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

Shri M.I. Khan, learned P.O. for respondents.

**Coram :- Hon'ble Shri Shree Bhagwan,
Member (A).**

JUDGMENT

(Delivered on this 25th day of September,2018)

Heard Shri S.P. Palshikar, learned counsel for the applicant and Shri M.I. Khan, learned P.O. for the respondents.

2. Applicant has approached this Tribunal challenging the order of suspension order no. ~~14 of 2017~~ [14 of 2017] issued by the respondent no.3, i.e., the Superintendent of Police, Gondia dated 13/12/2017 (Annex-A-1) passed by the respondent no.3, i.e., the Superintendent of Police, Gondia.

3. It would be useful to make a brief reference to the facts as pleaded by the applicant's counsel of the case:-

(i) Initially the applicant has entered into the service on 24th August, 1983 as a Police Constable and he was posted at Headquarter, Bhandara. Thereafter, in September, 2000 he was promoted as Naik Police Shipai. The next promotion is that of Police Sub Inspector (PSI) and for that purpose the applicant has appeared for examination conducted by MPSC and he has cleared the said examination in the year, 1998 and thereafter because of some technical problem he was actually joined the said post on 17th March, 2005. Thereafter, in the year 2011 he was promoted as Assistant Police Inspector (ASI) and thereafter in the year 2017 he was promoted as Police Inspector (PI).

(ii) While the applicant was working as Police Inspector (PI), Dawandiwada, District Gondia where he has joined some time in 2016 and at that time criminal case has been registered against him vide crime no.22/2017 under Sections 7,13 (1) (d) r/w Section 13 (2) of the Prevention of Corruption Act, 1988 and thereafter he was arrested on 2nd of December,2017 thereafter he was released on bail on 05/12/2017. Since the offence has been registered against the applicant, the respondent no.3, i.e. the Superintendent of Police, Gondia had issued impugned order of suspension dated 13/12/2017 (Annex-A-1) thereby he was kept under suspension from 2nd December,2017.

(iii) Thereafter the applicant has made representation to the respondent no.2 i.e. the Director General of Police, Mumbai on 04/04/2018 (Annex-A-2) mentioning that since the date of suspension i.e. 2nd December,2017,Case No.22/2017 under sections 7,13(1)(d)read with section 13(2). According to the applicant, even after receipt of the representation, he could not receive any reply against his representation. However, no departmental enquiry is initiated till date of filing of this O.A. or filing of reply of respondent No.3.

4. In affidavit-in-reply respondent no.3 has pointed details of applicant in para 2 and 3. In para 8 it has been further submitted that as per Circular dated 10/02/2016 review committee meeting took place on 18/06/2018 and issue was discussed thoroughly, however no documents were placed on record about minutes showing any valid recorded reasons for continuation of suspension.

5. According to the applicant, even after receipt of the representation, he could not receive any reply against his representation and therefore aggrieved by the impugned order of suspension dated 13/12/2017 (Annex-A-1) the applicant approached the Tribunal and prayed the following reliefs :-

“(i) Call for the entire original record regarding order of suspension from the office of the respondent no.2 and after perusal of the same further be pleased to quash and set aside the order of suspension dated 13/12/2017 as illegal, bad in law;

(ii) Further be placed to direct the respondents to reinstate the applicant forthwith as a Police Inspector by granting him all consequential and monetary benefits arising there from.”

6. The learned counsel for the applicant placed reliance on the Hon'ble Apex Court Judgment in **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Ano., (2015) (2) SCALE** delivered on 16/02/2015 in C.A.1912 of 2015 (arising out of SLP (C) No.31761 of 2013). In para no.14 it is mentioned that 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 / employees; if the Memorandum of charges / charge sheet is served a reasoned order must be passed for the extension of the suspension.

7. The learned counsel for the applicant has further put reliance on **Shri Naresh A. Polani Vs. The State of Maharashtra, O.A 611/2017**, continuance of suspension beyond 90 days is contrary to law laid down by the Hon. Supreme Court. It has been observed by the Hon'ble Supreme Court as follows :-

*“23.This Court in **Ajay Kumar Choudhary Vs.Union of India, (2015) 7 SCC 291** has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We*

reiterate the observation of the High Court that the Appellate State has the liberty to appoint the first respondent in a non sensitive post.”

8. Considering the rival contentions of the parties, this

Tribunal has to decide following questions:-

(a) Whether the action of the Department in neither reviewing nor revoking suspension after completion of 90 days is justified on facts.

9. In O.A. No. 35 of 2018 in Principal Bench of MAT Mumbai Bench the Hon'ble Chairman in para 23 has quoted as follows :-

“This Tribunal took a view in **Shri Naresh Alwandar Polani Vs. State of Maharashtra**, O.A 611 of 2017, by order dated 23.10.2017, relying on the judgment of Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India & Ors, (2015) 7 SCC 291** and also in view of observations contained in **Dr. Narender Omprakash Bansal Vs. The State of Maharashtra & Ors**, W.P.11987/2015 as follows:-

“9. It is now well settled by virtue of judgment in Ajay Kumar Choudhary (supra) that notwithstanding the language as may have been employed in the conditions of service, now it is not open to the

Government to continue the suspension beyond three months as a mandatory rule of precedent.”

10. On the basis of the material on record and the present O.A. in hand which is similar to above citations. This Tribunal is convinced that no useful purpose would be served by continuing the applicant under suspension any longer and revocation of his suspension order would not be a threat to a fair trial in the Case No.22/2017 under sections 7,13(1)(d) read with section 13(2) . As observed in para 9 views of Hon’ble Supreme Court. Posting of applicant in a non sensitive post can serve the purpose.

11. In view of discussion in forgoing paras, the impugned order no. i/svd/k/14@fo-pls@2017] i/syhl vf/kd{k} xkn; k ; kpsdk; ky;] i rak esitu Qypij] rk- ft- xkn; k dated 13/12/2017 requires to be revoked with immediate effect. Hence, the following order :-

ORDER

The O.A. is partly allowed.

- (a) Suspension of applicant vide order no. i/svd/k/14@fo-pls@2017] i/syhl vf/kd{k} xkn; k ; kpsdk; ky;] i rak esitu Qypij] rk- ft- xkn; k dated 13/12/2017 is revoked from the date of this order.
- (b) The respondent no.3 is at liberty to post the applicant at any non sensitive post.

(c) The suspension period will be decided on its own merits by the Department.

(d) No order as to costs.

Dated :- 25/09/2018.

**(Shree Bhagwan)
Member (A).**

dnk.