

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 916 of 2017 (S.B.)

Dhirendrasing Govindsing Bilwal,
Aged about 33 years,
Occupation : Service as Assistant Police Inspector,
Mehakar, Dist. Buldhana,
R/o Maa Jodhpur Sweet,
Jay Vishnubharti Colony, near Chetak Ghoda Chowk,
Aurangabad, Dist. Aurangabad.

Applicant.

Versus

- 1) The State of Maharashtra,
through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
- 2) The Special Inspector General of Police,
Amravati Region, Amravati.
- 3) The Superintendent of Police,
Buldhana, Dist. Buldhana.

Respondents

S/Shri V.A. Kothale, M.P. Gulhane, Advocates for the applicant.

Shri A.M. Ghogre, learned P.O. for the respondents.

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

JUDGMENT

(Delivered on this 16th day of March,2018)

Heard Shri V.A. Kothale, Id. counsel for the applicant and
Shri A.M. Ghogre, Id. P.O. for the respondents.

2. The applicant Shri Dhirendrasing G. Bilwal is an Assistant Police Inspector (API), Mehakar and is under suspension. He was kept under suspension vide order dated 17/03/2017 (Annex-A-1,P-13). The reason for suspension as shown in the order is that a crime bearing no. 53/2017 under sections 7&15 of the Prevention of Corruption Act,1988 was registered against him and therefore the general image of the police department has been lowered down in the public. It is alleged that the applicant has demanded bribe of Rs.5,50,000/- from one Rajesh Vasantryo Bendse for not transferring the custody of his friend one Shri Sadik Khan Islamoddin, Shri Moin Khan and Shri Arshad Khan and also helped them in obtaining bail.

3. Being aggrieved by the order of suspension dated 17/03/2017 the applicant filed O.A.No. 454/2017 challenging the suspension before this Tribunal at Nagpur Bench. In the said case this Tribunal vide order dated 31/10/2017 was pleased to pass following order :-

“The O.A. is partly allowed. The respondent no.3 is directed to take appropriate decision, as may be deemed fit in the given circumstances, on the representation filed by the applicant dated 17/3/2017 for his revocation of suspension (Annex-A-1,P-10). Such decision shall be taken on its own merits within one month from the date of this order and the same shall be communicated to the applicant in writing. No order as to costs.”

4. The respondent no.3 accordingly took action and passed the impugned order challenged in this O.A. on 18/11/2017 and vide said order

the respondent no.3, i.e, Superintendent of Police, Buldhana observed as under :-

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5. The learned counsel for the applicant submits that the respondent no.3 has not followed the orders passed by this Tribunal in O.A. 454/2017 in letter and spirit and in fact has simply avoided to take any decision and therefore the applicant's case has not been considered properly. According to the applicant, no inquiry is pending against the applicant nor has been initiated against the applicant by the department and therefore the suspension order is illegal. In any case the suspension should not have been beyond 90 days. It is further stated that mere pendency of the criminal case which has not reached to its finality is no ground to keep the employee under suspension for more than 90 days. It is further stated that the respondent no.3 is not competent authority to keep the API under suspension. No charge sheet has been filed against the applicant nor any departmental proceedings are initiated and therefore the

respondent no.3 ought to have applied the parameters of the case of **Ajay Kumar Choudhari Vs. Union of India & Ano. reported in (2015) 7 SCC,291.** It is therefore prayed that the suspension order dated 17/03/2017 (Annex-A-1,P-13) and order of retention of suspension dated 18/11/2017 (Annex-A-2,P-14) be quashed and set aside and the applicant be reinstated.

6. In the reply-affidavit the respondent no.3, i.e., the Superintendent of Police, Buldhana tried to justify the order. It is stated that as per the provisions of Mumbai Police (Punishment and Appeals Rules, 1956) Rule 3 (i) (a) (b) the applicant is suspended since the date of registration of the offence on 16/03/2017. The offences against him were harmful to the image of Police in public in general. As per the provisions of rule 437 (2) of the Bombay Police manual part I, Chapter 13, the S.P. including Wireless, Motor Transport and Principals of Police Training School may suspend any police officer below the rank of Police Inspector against whom an enquiry into a complaint is pending and therefore the Superintendent of Police has authority to suspend the applicant who is below rank of Police Inspector.

7. According to the respondents, the criminal case under the Prevention of Corruption Act is still under investigation against the applicant and the sanction to prosecute the applicant is awaited.

8. As regards direction in O.A. No.454/2017 passed by this Tribunal on 31/10/2017. It is stated that as per said direction the applicant's

matter was kept before Review Committee on 18/11/2017 and the Committee finds that as per the notification no. DGP/11/ 22/6/252/2012, dated 10/02/2016 accused, who are suspended for the serious offences including Prevention of Corruption Act, shall be kept under suspension and suspension shall only be revoked after filing of the charge sheet in the Court subject to departmental inquiry and therefore the Committee decided to consider the applicant's claim after filing of charge sheet.

9. As regards the direction given by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhari Vs. Union of India & Ano.** (cited supra) it is stated that the charge sheet is pending before the Anti Corruption Bureau, Buldhana and the respondent no.3 has no authority to direct the Bureau to investigate the matter expeditiously.

10. From the reply-affidavit filed on record, it is clear that respondent no.3 is well within the knowledge the case decided by the by the Hon'ble Apex Court in case of **Ajay Kumar Choudhari Vs. Union of India & Ano.** (cited supra). The learned counsel for the applicant submits that the impugned order whereby the respondent no.3 has decided to continue the applicant under suspension is without application of mind. The only decision taken by respondent no.3 in the impugned order dated 18/11/2017 is that the applicant's case for revocation will be kept before the revocation committee after filing of the charge sheet in the criminal case. It is, thus, clear that the respondent no.3 has not applied mind to the facts of

the case as well as to the Judgment delivered by the Hon'ble Apex Court in **Ajay Kumar Choudhari Vs. Union of India & Ano.** (cited supra).

11. Admittedly, in this case no departmental enquiry is yet initiated against the applicant nor there is any whisper about initiation of departmental enquiry. It is, however, admitted that criminal case under the Prevention of Corruption Act is under investigation in Crime no.53/2017. Admittedly the investigation is not yet completed and charge sheet is not filed in the Court. It is not known as to within how many days the charge sheet will be filed and therefore the question is whether merely because no charge sheet is filed against the applicant, the applicant can be continued under suspension.

12. The Hon'ble Apex Court has considered aforesaid aspects in the case of **Ajay Kumar Choudhari Vs. Union of India & Ano.** (cited supra) and the Hon'ble Apex Court has also considered the provisions under criminal procedure code as regards the custody of the accused and the period for such custody as well as personal freedom of the employee under suspension. Para nos. 13&14 of the said Judgment are self explanatory. The said paras are as under :-

"13 It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The [Cr.P.C.](#) of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in [Raghubir Singh vs. State of Bihar](#), 1986 (4) SCC 481, and more so of the Constitution Bench in [Antulay](#), we are spurred to

extrapolate the quintessence of the proviso of [Section 167\(2\)](#) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to [Section 167\(2\)](#) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

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.”

13. In the present case no charge sheet has yet been filed against the applicant nor any departmental enquiry is initiated against the applicant nor there is any whisper to show that the department wants to initiate any departmental enquiry against the applicant. In such circumstances continuation of the suspension merely on the ground that it will be considered after filing of the charge sheet is in fact no consideration at all. In fact the respondent no.3 has not at all considered the observations made by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhari Vs. Union of India & Ano.** (cited supra) in letter and spirit. In fact no reasons are given for extension of suspension period and truly speaking there was no application of mind at all to the applicant's case.

14. The learned P.O. has placed reliance on one circular issued by the Government of Maharashtra as regards periodical consideration of the cases of the employees under suspension for revocation. In fact said circular which was issued before the Judgement of the case of **Ajay Kumar Choudhari Vs. Union of India & Ano.** (cited supra) may not be useful to the respondent authorities in view of the observations made by the Hon'ble Apex Court in the said case. In the said case the Hon'ble Apex Court has directed that the currency of the suspension order should not extend beyond three months if within this period the memorandum of the charges / charge sheet is not served on the delinquent. Even if the memorandum of charges/ charge sheet is served, a reasoned order must be passed for extension of the suspension. The impugned order for extension of suspension is not at all reasoned order. On the contrary, it seems to be an order without application of mind. The respondent authorities ought to have considered the observations made in para nos. 13&14 of the Apex Court's Judgment in the case of **Ajay Kumar Choudhari Vs. Union of India & Ano.** (cited supra).

15. In view of the discussion in forgoing paras, I am therefore satisfied that the impugned order dated 18/11/2017 whereby the respondent no.3 has decided to consider the case of applicant after filing of the charge sheet is absolutely illegal and without application of mind. The same is therefore quashed and set aside. Consequently the suspension order dated 17/03/2017 whereby the applicant has been kept under suspension from 17/03/2017, i.e., for about 1 year without there being any

departmental enquiry initiated against the applicant or charge sheet in criminal case being filed is quashed and set aside. The respondent no.3 is directed to reinstate the applicant on the post of API and shall post him at a suitable place as per the administrative convenience. Such order shall be passed as early as possible and in any case within four weeks from the date of this order. No order as to costs.

Dated :- 16/03/2018.

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