

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.20 OF 2022

**DISTRICT: RAIGAD
SUBJECT : SUSPENSION**

Mr. Jairaj Ramdas Chhapriya,)
Aged 56 Yrs, (DOB : 01.09.1965))
Occ.: Suspended by order dated 30.07.2021)
from the post of Senior Police Inspector,)
Anti Narcotic Cell, Crime Branch, Navi Mumbai)
R/at. Sai Vihar, B Wing, Flat No.704, Sec16,)
CBD Belapur, Navi Mumbai.)...**Applicant**

Versus

The Commissioner of Police,)
Navi Mumbai.)...**Respondents**

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

Shri Ashok J. Chougule, learned Presenting Officer for the Respondents.

CORAM : M.A. Lovekar, Member (J)

RESERVED ON : 28.04.2022.

PRONOUNCED ON : 02.05.2022.

JUDGMENT

1. Heard Shri K.R. Jagdale, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondent.

2. Case of the Applicant is as follows:-

On 21.01.2021 the Applicant was transferred to Anti Narcotic Cell under Crime Branch in Navi Mumbai, Police Commissionerate. He was working as head of Anti Narcotic Cell. Crime No.181/2021 was registered against him and one Mr. Iqbal Bashir Shaikh, Police Head Constable under Sections 7 and 12 of

Prevention of Corruption Act, 1988 on 30.07.2021 (Exhibit A) at N.R.I. Sagari Police Station, Navi Mumbai. It was alleged that Mr. Iqbal Bashir Shaikh had accepted bribe from the complainant Mr. Mohammad Aftab Shabbir Ansari for himself and the Applicant. On the basis of registration of said F.I.R. the Respondent placed the Applicant under suspension by passing order dated 30.07.2021 (Exhibit B) by exercising power under Section 25 (2) of Maharashtra Police Act, 1951 and Rule 3 of Maharashtra Police (Discipline and Appeal) Rules, 1956, as well as G.R. dated 12.01.2011. On completion of period of 90 days of suspension the Applicant submitted representations dated 03.12.2021 and 14.12.2021 (Exhibit C collectively). On 20.12.2021 the review committee reviewed cases of 14 Police Personnel and passed an order (Exhibit D) of continuation of their suspension. No reasons were recorded as against individual cases of the employees by the review committee. Within the period of 90 days from the date on which the Applicant was placed under suspension, charge-sheet was not filed in the criminal case nor was departmental enquiry commenced. In the circumstances, in view of settled position of law, suspension of the Applicant deserves to be revoked at once. Hence, the Application.

3. Reply of the Respondent is at pages 34 to 47. It is his contention that immediately after registration of crime against the applicant preliminary enquiry was started against him on 02.08.2021 which was entrusted to DCP Zone-1, Navi Mumbai. Initially the Applicant sought time to file Reply but later-on he communicated that he did not wish to file any Reply. Because of dilatory tactics adopted by the Applicant the preliminary enquiry remained pending. During major part of pendency of this enquiry the Applicant remained absent. Thus, the Applicant himself was responsible for causing delay in conclusion of preliminary enquiry. In support of this contention the Respondent has attached to the Reply extract of attendance register (Exhibit 1) and, copy of

application dated 10.11.2021 filed by the Applicant seeking time to file Reply and letter dated 03.12.2021 (Exhibit R-3) stating that in the preliminary enquiry he did not desire to file any Reply.

4. However, contention of the Respondent is that the order of suspension was passed as per Rule 3(1)(A-2)(ii) of the Maharashtra Police (Punishment & Appeals) Rules, 1956 which mandates that a Police Officer who is detained in custody whether in a criminal case or otherwise for a period longer than 48 hours shall be deemed to have been suspended by the appointing authority in the said Rule.

5. According to the Respondent, the review committee considered individual cases in its meeting dated 20.12.2021 and took conscious decision by passing order (Exhibit R-4 collectively) that suspension of the Applicant was to be continued. In such circumstances the Applicant will not be entitled to take the benefit of ratio laid down in **“(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)”**

6. The only question which remains to be determined is whether suspension of the applicant beyond 90 days would be permissible under the law. This question will have to be answered in the negative in view of the following legal position which has been set out in GR dated 9.7.2019:

“ शासन निर्णय :-

निलंबित शासकीय अधिकारी/कर्मचा-यांच्या निलंबनाची कारणे व त्यांचे गांभीर्य यानुसार त्यांच्या प्रकरणांचा आढावा घेण्यासंदर्भात शासनाने वेळोवेळी वर संदर्भामध्ये दर्शविल्यानुसार शासन निर्णय निर्गमित केले आहेत. श्री.अजयकुमार चौधरी विरुद्ध युनियन ऑफ इंडिया (सिव्हील अपिल क्र.१९१२/२०१५) मध्ये मा. सर्वोच्च न्यायालयाने दि.१६/०२/२०१५ रोजी दिलेल्या निर्णयाच्या परिच्छेद १४ मधील आदेश खालीलप्रमाणे आहेत.

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 the 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.

२. मा.सर्वोच्च न्यायालयाने वरीलप्रमाणे दिलेल्या दि.१६/०२/२०१९ च्या निर्णयाने अनुषंगाने केंद्र सरकारचा दि.२३ ऑगस्ट, २०१६ रोजीचा कार्यालयीन आदेश सोबत जोडला आहे. मा. सर्वोच्च न्यायालयाचा निर्णय व केंद्र सरकारचा कार्यालयीन आदेश पाहता निलंबित शासकीय कर्मचा-यांना ९० दिवसांच्या मुदतीत दोषारोप पत्र बजावून त्यांच्या निलंबनाच्या आढाव्या संदर्भातील तस्तुदी सुधारण्याची बाब शासनाच्या विचाराधीन होती.

शासन निर्णय :-

१. या अनुषंगाने शासकीय कर्मचा-यांच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.

- i. निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेउन निलंबन पुढे चालू ठेवावयाचे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिका-यांच्या स्तरावर घेण्यात यावा.
- ii. निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरु करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरु करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता /खबरदारी घेण्यात यावी.

- iii. फौजदारी प्रकरणात विशेषतः लाचलुचपत प्रकरणी निलंबित शासकीय सेवकांवर विभागीय चौकशी सुरु करुन दोषारोप पत्र बजावणेबाबत आवश्यक तो अभिलेख लाचलुचपत प्रतिबंधक विभागाने संबंधीत प्रशासकीय विभागास उपलब्ध करुन देणे आवश्यक राहिल.”

7. The Respondent has placed on record minutes of meeting of review committee which was held on 20.12.2021 which state:-

“नमूद कसुरदार यांचे विरुद्ध दाखल गुन्हायाचा तपास पोलीस अधिक्षक अ.सी. बी. ठाणे यांचेकडे सुरु आहे. प्रस्तुत प्रकरणी कसुरदार यांनी दाखल गुन्हायाव्यतिरिक्त कर्तव्यात केलेल्या कर्तव्यात केलेल्या कृताकृत कसुरीबाबत प्रा.चौ.करणेकरीता पो.उप.परि. १ वाशी न.मुं सांना आदेश देण्यात आलेले असुन सदर प्राथमिक चौकशी अहवाल अदयाप प्राप्त नाही.”.

From the afore-quoted contents of the minutes of meeting of 20.12.2021 it can be gathered that the preliminary enquiry to which reference is made in his Reply by the Respondent is pertaining to some other incident and not connected with the criminal case registered against the Applicant. Therefore, pendency of said preliminary enquiry could not have prevented the Respondent from filing charge-sheet in the departmental enquiry based on the allegation made in Crime No.181/2021.

8. Clause (ii) of G.R. dated 09.07.2019 makes it clear that in connection with D.E., charge-sheet is to be issued within 90 days from the date of order of suspension. Clause (i) of said G.R. mandates recording of clear reasons for extending the period of suspension beyond 90 days. Order dated 20.12.2021 passed by the review committee holding that suspension of the Applicant was required to be continued does not satisfy this guideline as can be concluded from what the review committee stated in Para 4 of minutes.-

“सदर आढाव्यात निलंबनाधीन असलेल्या खालील नमूद ०६ पोलीस अधिकारी आणि ८ पोलीस अंमलदार असे एकुण १४ पोलीस अधिकारी / अंमलदार यांचे विरुद्ध गुन्हायाचे स्वरुप तसेच त्यांच्या कसुरीचे गांभीर्य पाहता, त्यांचे निलंबन तसेच पुढे सुरु ठेवणेबाबत निर्णय सदर बैठकीत घेण्यांत आला आहे.”

9. Discussion made so far would show that the impugned order (Exhibit B) qua the Applicant deserves to be quashed and set aside. Hence, the order.

ORDER

Original Application is allowed in the following terms:-

- A) The impugned order dated 30.07.2021 (Exhibit B) is quashed and set aside qua the Applicant.
- B) The Respondent shall pass consequential order within 30 days from the date of this order.
- C) No order as to costs.

**Sd/-
(M.A. Lovekar)
Member (J)**

Place: Mumbai
Date: 02.05.2022
Dictation taken by: N.M. Naik.

Uploaded on: _____