

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.532 OF 2021**

**DISTRICT: PUNE  
SUBJECT: SUSPENSION**

Shri Ibrahim Gani Shaikh, )  
Aged 54 yrs., Working as Police Constable )  
(now under suspension) attached to )  
Shirur Police Station, Tal Shirur, Dist. Pune, )  
R/o. Guruvihar Society, Vidyavihar Building, )  
Flat No.2, Pune- Nashik Road, Bhosari, Dist. Pune. )..**Applicant**

**Versus**

The Superintendent of Police, )  
Pune (Rural), Having Office at Chavan Nagar, )  
Pashan Road, Pune-8. )..**Respondent**

**Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.**

**Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.**

**CORAM : Shri A.P. Kurhekar, Hon'ble Member (J)**

**DATE : 21.10.2021.**

**JUDGMENT**

1. The Applicant has challenged suspension order dated 19.07.2021 on the ground that he is subjected to prolong suspension of more than 90 days in contravention of the Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

2. Shortly stated undisputed facts giving rise to this O.A. are as under:-

The Applicant is working as Police Constable on the establishment of Superintendent of Police, Pune (Rural). By order dated 19.07.2021, Respondent suspended him in contemplation of Departmental Enquiry (D.E.) invoking Section 25 (2) (a) of Maharashtra Police Act, 1951 read

with Rule 3[1-A] [i] of the Maharashtra Police (Punishments and Appeal) Rules, 1956. However, neither D.E. was initiated within a period of three months nor review has been taken to continue the suspension or otherwise.

3. The Applicant has therefore filed this O.A. challenging suspension order dated 19.07.2021 on the ground that he is subjected to prolong suspension in contravention of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra).

4. Learned P.O. all that submits that review will be taken soon. She fairly concedes that till date neither D.E. has been initiated against the Applicant nor review has been taken.

5. Thus, though the period of more than three months is over the Applicant is subjected to prolong suspension without taking any steps to review the suspension or to initiate D.E. as mandated in **Ajay Kumar Choudhary's** case (cited supra).

6. The legal position in respect of prolong suspension is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). It will be appropriate to reproduce Para Nos.11, 12 & 21 of the Judgment, which is as follows :

*“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.*

*12. Protracted period of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to*

*its culmination, that is, to determine his innocence or iniquity. Much too often this has become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that – “We will sell to no man, we will not deny or defer to any man either justice or right.” In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.*

**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.”*

7. 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.

8. In this behalf, it would be further apposite to refer G.R. dated 09.07.2019 issued by Government for compliance of the direction given

by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). In said G.R. it is instructed to Departments that in case of suspension of Government servant if the charge-sheet is not issued within 90 days there is no option but to reinstate the Government servant and directions were issued to make sure that charge-sheet is issued within 90 days period as indicated by Hon'ble Supreme Court.

9. Thus, in terms of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra) suspension should not exceed beyond three months. If within this period D.E. is not initiated and where D.E. is initiated within a period of 90 days reasoned order needs to be passed for extension of the suspension. However, in present case though period of all most 90 days is already over neither D.E. is initiated nor review is taken which was required to be taken in view of the pronouncement of Hon'ble Supreme Court.

10. In view of this, O.A. is disposed of with following directions.

**ORDER**

- A) O.A. is disposed of with direction to take review of suspension of the Applicant within two weeks from today and the decision thereon as the case may be shall be communicated to the Applicant.
- B) No order as to costs.

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 21.10.2021  
Dictation taken by: N.M. Naik.