

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1130 of 2019

Shri Kiran Rohidas Landge)
Age 45 years, Occ : Police Head Constable,)
(under suspension), R/at. Room No.35, Body)
Gate Police Line, Aundh, Pune -7.) **...Applicant**

Versus

1. The Commissioner of Police, Pimpri)
Chinchwad, Near Swatantryaveer Sawarkar)
Garden, Premlok Park, Chinchwad, Pune.)

2. The Additional Commissioner of Police,)
Pimpari Chinchwad, Near Swatantrayveer)
Sawarkar Garden, Premlok Park, Chinchwad)
Pune.) **...Respondent**

Shri K. R. Jagdale, learned Advocate for the Applicant.
Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent.

CORAM : Shri A.P. Kurhekar, Member-J

DATE : 28.07.2020.

J U D G M E N T

1. The Applicant has challenged the suspension order dated 13.03.2019 whereby he was kept under suspension in contemplation of Departmental Enquiry (D.E.) invoking Rule 3(1A) of Maharashtra Police – (Disciplinary & Appeal) Rules, 1956 invoking the jurisdiction of this Tribunal u/s 19 of the Administrative Tribunal Act, 1985.

2. Briefly stated facts giving rise to the present O.A. are as under:-

The Applicant was working as Police Head Constable and attached to Crime Branch, Pimpari-Chinchwad, Pune. On 27.11.2018, one scrap dealer namely Shri Ishtiya Khan has lodged report with Police

Commissioner, Pimpri-Chinchwad, Pune alleging that Head Constable Shri Ramesh Nale and four others police personnel of Crime Branch Unit No.1, Pimpri-Chinchwad had come to his shop on 20.11.2018 and ransacked his shop alleging that he is dealing with sale and purchase of stolen goods. The Head Constable Shri Ramesh Nale and four other police personnel allegedly demanded the bribe of Rs.10 lakhs threatening that if demand is not fulfilled, they would involved him in false offences. Police personnel allegedly beaten up complainant Iftiyak Khan and his servants. Complainant further alleged that he coughed up Rs.8,50,000/- to police personnel. On receipt of this complaint lodged by Iftiyak Khan, F.I.R. was registered vide Crime No.1112/2018, u/s 384, 385, 341, 323 r/w 34 of IPC against the Head Constable Ramesh Nale and four others. Thereafter, on 02.12.2018, complainant again approached Police for recording his additional statement and that time for the first time stated before Police that present Applicant was also accompanied with Head Constable Ramesh Nale and was involved in the incident occurred on 20.11.2018. Thus, for the first time in supplementary statement dated 02.12.2018, the complainant Iftiyak Khan made reference of the involvement of the Applicant. In view of supplementary statement of the complainant, present Applicant was arrested on 13.12.2018 and later released on bail on 01.01.2019 by the Additional Sessions Judge, Pune. The Applicant claims to be innocent and made various representations on 11.07.2019, 24.07.2019, 14.08.2019 and 18.09.2019 for revocation of suspension and reinstatement in service but in vain. Ultimately the Applicant has approached this Tribunal by filing present O.A. challenging the suspension order inter-alia contending that prolong suspension without initiation of D.E.by filing of charge-sheet in criminal case amongst other grounds, is illegal and prayed for reinstatement in service.

3. Learned P.O. resisted the O.A. by filing Affidavit-in-Reply inter-alia contending that in view of registration of offences for serious crimes, the suspension of the Applicant is justified and prayed to dismiss the O.A.

4. Heard Shri K.R. Jagdale, learned Counsel for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

5. In view of the pleadings and submissions following factors emerges as uncontroverted facts :-

(A) There was no reference of the name of the Applicant as accused/offender in the complaint lodged by Iftiyak Khan on 27.11.2018.

(B) For the first time, the name of the Applicant was figured in supplementary statement of Iftiyak Khan recorded on 02.12.2018.

(C) At the time of alleged incident, the Applicant was attached to Crime Branch and by order dated 03.12.2018, he was transferred to Control Room, Pimpri-Chinchwad from Crime Branch.

(D) No disciplinary action of suspension is taken against the Head Constable Ramesh Nale or other police personnel referred in complaint dated 27.11.2018.

(E) No charge sheet is filed against the Applicant or anybody else in pursuance of offences registered against the Applicant and others u/s 384, 385, 341 r/w 34 of IPC.

(F) No charge sheet is issued against the Applicant in D.E. for which the Applicant was suspended by order dated 13.03.2019.

(G) Review of suspension was undertaken by the Committee headed by the Commissioner on 04.10.2019 but suspension of the Applicant was continued solely on the ground that investigation of Crime No.1112/2018 is still in progress.

6. Shri K.R. Jagdale, learned Counsel for the Applicant adverting to the admitted facts referred to above submits that prolong suspension of the Applicant without initiation of D.E. as well as filing of the charge-sheet in Criminal Case is unsustainable in law. In this behalf, he placed reliance on the decision of the Hon'ble Supreme Court in **(2015) 7SCC**

291 (Ajay Kumar Chowdhary V/s Union of India & Ors.). He has further pointed out that no reasons much less cogent are recorded by the Committee while continuing suspension of the Applicant. He, therefore, made fervently submits that prolong suspension is illegal and liable to be quashed.

7. Per contra, Smt. Kranti Gaikwad, learned P.O. sought to justify the suspension order contending that in view of registration of serious crime, it is justified. In this behalf, learned P.O. referred to the decision of the Hon'ble Supreme Court in **1994 AIR SCC (4) 2296 State of Orissa V/s Bimal Kumar Mohanty**. She referred to Para No.13 of the judgment which is as follows:-

“13. It is thus settled law that normally when an appointing authority or the disciplinary authority seeks to suspend an employee, pending inquiry or contemplated inquiry or pending investigation into grave charges of misconduct or defalcation of funds or serious acts of omission and 5 1993 Supp (3) SCC 483: 1994 SCC (L&S) 67: (1993) 25 ATC commission, the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of office or post held by him. In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had the opportunity in office to impede the progress of the investigation or inquiry etc. But as stated earlier, each case must be considered depending on the nature of the allegations, gravity of the situation and the indelible impact it creates on the service for the continuance of the delinquent employee in service pending inquiry or contemplated inquiry or investigation. It would be another thing if the

action is actuated by mala fides, arbitrary or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

8. Needless to mention that the adequacy of material before the disciplinary authority for suspension of the Government servant normally cannot be looked into by the Tribunal, as it falls within the province of disciplinary authority. The general principle could be that ordinarily, the suspension should not be interfered with, if the allegations made against the Government servants are of serious nature and on the basis of evidence available, there is *prima-facie* case for his dismissal or removal from service or there is reason to believe that his continuation in service is likely to hamper the investigation of the criminal case or D.E. However, at the same time, it is well settled that the suspension is not to be resorted to as a matter of rule and the employee should not be subjected to prolong suspension. It has been often emphasized that the suspension has to be resorted to as a last resort, if the enquiry cannot be fairly and satisfactorily completed without keeping the delinquent away from his post. At any rate, the employee shall not be subjected to prolong and unjustified continuous suspension without taking positive and expeditious steps for completion of D.E.

9. In this behalf, it would be worthwhile to refer guidelines, Circulars and G.Rs. issued by the Government from time to time.

10. As per Clause 3.19 of Departmental Enquiry Manual, the D.Es need to be completed as expeditious as possible and in any case, it should be completed within six months from the date of issuance of charge-sheet. Here, it would be material to refer Clause 3.19 of Manual, which is as follows :-

“३.१९ विभागीय चौकशी पूण करण्यासाठी कालमयादा.-- (१) विभागीय चौकशी शक्य तितक्या लवकर पूण करतात याव्यात आणि कोणत्याही परिस्थितीत हा कालावधी विभागीय चौकशी

करण्याचा निणय घेतल्याचा तारखेपासून सहा महिन्यांपेक्षा अधिक नसावा. चौकशीच्या निष्पत्तीसंबंधीचे अंतिम आदेश काढल्यानंतरच ती पूर्ण झाली आहे, असे मानले जाईल.

(२) तथार्थाप, काही प्रकरणामध्ये उचित व पुरेशा कारणांसाठी सहा महिन्यांच्या विनिर्दिष्ट काळामध्ये विभागीय चौकशी पूर्ण करणे शक्य नसेल विभागीय चौकशा पूर्ण करण्यासाठी असलेली ही कालमर्यादा वाढवून देण्याचे अधिकार परिशिष्ट ८च्या स्तंभ ३ व ४ मध्ये नमूद केलेल्या प्राधिकार्याला, त्या स्तंभाच्या शीषाखाली निदर्शिलेच्या मर्यादित अधीन राहून द्यावेत असे शासनाने ठरविले आहे. विभागीय चौकशी मंजूर झाल्याच्या तारखेपासून ती पूर्ण करण्यासाठी एका वर्षापेक्षा अधिक कालावधी वाढवून देण्यास मंत्रालयाच्या प्रशासकाय विभागाने सामान्य प्रशासन विभागाची विचारविनिमय करून अनुमती द्यावी.

(३) कालमर्यादेपेक्षा वाढीचा प्रस्ताव सादर करताना संबंधित चौकशी अधिकार्याने आणि शिस्तभंगाविषयक प्राधिकार्याने सक्षम प्राधिकार्यास परिशिष्ट ९ मध्ये अंतर्भूत असलेल्या प्रपत्रात माहिती द्यावी. कालमर्यादेची वाढ देण्यासाठी सक्षम असलेल्या प्राधिकार्याने प्रस्तावाची काळजीपूर्वक तपासणी करावी आणि कमीत कमी आवश्यक असलेल्या कालावधीची वाढ द्यावी.”

11. Whereas following are the instructions issued by Circular dated 30th October, 2010.

“शासन असे आदेश देत आहे की, प्रार्थामक चौकशीअंती तथ्य आढळलेल्या प्रकरणांत नजिकच्या सहा महिन्यांच्या काळात सेवानिवृत्त होणारा अधिकारी / कमचारी गुंतला असेल तर, अशा प्रकरणी एक विशेष बाब म्हणून प्राधान्याने संबंधित अधिकारी / कमचार्याच्या सेवानिवृत्ती पूर्वा किमान ३ महिने अगोदर विभागीय चौकशी सुरु होईल व शासन सामान्य प्रशासन विभाग परिपत्रक क्रमांक : सीडीआर-१०९७/१५६/प्र.क्र. / / , फि. ब्र ।, । फि । प क्ष ष प्र च कोणत्याही प फि ल फि ल फि शिस्तभंगाविषयक । फि प

12. Then again, in Circular dated 21.02.2015, the following instructions have been issued :-

“ क फि व ल व फि फि त । कमचार्यांच्या फि ल । कमचार्यांच्या प्र फि फि फि त च फि च नियमनाविषयीची प्र त फि । फि ।

त फ च ा न क्ष
 ष ा फ ा ा, ज कमचाऱ्याविरूध्द
 फ त् फ त च फ
 प्र म् फ त्यांच्या सेवानिवृत्तीच्या फ फ न
 क्ष ष . ज कमचाऱ्याविरूध्द फ त् ल रूप
 ा , त च फ प्र म् फ रू ल च फ
 फ न क्ष ष . विहित फ
 ष ल प्र फ रू स् फ फ /
 फ फ फ ा च फ फ प्र
 फ .

13. As such, there is no denying that D.E. needs to be completed within six months from the date of issuance of charge sheet and in any case, it should not exceed the period of one year. In case, D.E. is not completed within six months, the specific orders for extension of period are required to be passed. While in the present case, till date though the period of sixteen months are over, D.E. itself not initiated by issuance of charge sheet. Furthermore, no charge sheet is filed in criminal offences against the Applicant and other police personnel. In other words, the Respondents did not appear to take suitable steps in pursuance of various circulars referred to above and the suspension of the Applicant is continued mechanically.

14. 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.”*

15. 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 21st 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.

16. In continuation of the aforesaid guidelines, it would be useful to refer the observations made by Hon'ble Bombay High Court in **1987 (3) Bom.C.R.327 (Dr. Tukaram Y. Patil Vs. Bhagwantrao Gaikwad & Ors.)**, which are as follows :

“Suspension is not to be resorted to as a matter of rule. As has been often emphasized even by the Government, it has to be taken recourse to as a last resort and only if the inquiry cannot be fairly and satisfactorily completed unless the delinquent officer is away from his post. Even then, an alternative arrangement by way of his transfer to some other post or place has also to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned.”

17. Similarly, reference was made to the Judgment of Hon'ble Supreme Court in **1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)**. It would be apposite to reproduce Para No.9, which is as follows :

“9. It is settled law by several judgments of this Court as well as the Apex Court that suspension is not to be resorted as a matter of rule. It is to be taken as a last resort and only if the inquiry cannot be fairly and satisfactorily completed without the delinquent officer being away from the post.”

18. At this juncture, it would be material to note that the Government had issued detailed instructions from time to time by G.R. dated 14.10.2011, 31.01.2015 and 09.07.2019 for taking review of the suspension of the government Servant so that they have not subjected to prolong suspension. As per G.R. dated 14.10.2011, the Review Committee is under obligation to take periodical review after every three months. Clause 4(a) of G.R. states that where the government servant is suspended in view of registration of serious crime against him and the

criminal Case is not decided within two years from the date of filing of charge sheet then the Review Committee may recommend for reinstatement of the government servant on non-executive post. Whereas, as per Clause 4(b) of G.R., where the period of two years from filing of charge sheet is not over or where no charge sheet is filed, in that event also, the Review Committee can make recommendation for revocation of suspension and to reinstate the government servant in service.

19. Later, by G.R. dated 31.01.2015, the Government had again issued clarification which inter-alia empowers the Review Committee to take review of suspension where D.E. is already initiated and the period of one year of suspension is over and sanction for prosecution is already granted.

20. Recently, again the Government had issued G.R. dated 09.07.2019 thereby acknowledging the mandate laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case that suspension beyond 90 days would be impermissible and instructions are issued to all the departments to ensure initiation of D.E. within 90 days.

21. Despite the aforesaid decisions and various G.R.s issued by the Government, admittedly neither D.E. is initiated nor charge sheet is filed in Criminal Case in reference to criminal offences registered against the Applicant and other police personnel, though the period of more than 16 months from the period of suspension is over. At the time of suspension, the Applicant was serving at Crime Branch and in view of registration of crime, he was transferred to Control Room.

22. Admittedly, the Respondents have not taken similar action of suspension against other police personnel against whom the F.I.R. is registered. No satisfactory explanation for such selective approach is

forthcoming. All that it is stated in reply that necessary action against other police personnel could be taken in due course.

23. True, the Review Committee in its meeting dated 14.10.2019 seems to have taken the review of suspension and continue the suspension. As seen from extract of meeting (Page Nos.97 and 98 of P.B.) all that it is stated that the Criminal Case is under investigation, and therefore, suspension be continued. These are the only reasons mentioned by the Committee which is hardly enough to continue the suspension without any progress in investigation of crime or without taking any steps for initiation of D.E. It seems that investigating officer in criminal offence is not in position to collect any other evidence except belated supplementary statement of complainant Iftiyak Khan. Indeed, the complainant has not named the Applicant in F.I.R. lodged on 27.11.2018. The Review Committee did not bother to see whether there was any sufficient material other than belated statement of the complainant to justify continuation of the suspension. There is no objective decision of Review Committee. The Review Committee mechanically continued the suspension unmindful of settled legal position.

24. True, the action of suspension seems to have taken in view of registration of crime against the Applicant on the basis of supplementary belated statement of the complainant Iftiyak Khan. However, material question is that how long the Applicant could be continued under suspension without further progress in criminal offence or proposed D.E.

25. In my considered opinion, in the light of the decisions referred to above no fruitful purpose would serve by continuing the Applicant under suspension. Except passing suspension order, the Respondents did not bother to take the matter to the logical end. Suffice to say, though the initiation suspension of the Applicant was supported by adequate material, continuous suspension which is not more than 16 months is

not sustainable in law. It is no where the case of the Respondent that in case of revocation of suspension there are chances of tampering of the evidence by the Applicant or to delay departmental proceeding which is in fact not initiated till date. Therefore, considering peculiar circumstances of matter, suspension needs to be revoked.

26. The necessary corollary of the aforesaid discussion leads me to sum up that Original Application deserves to be allowed partly. Hence the following order:-

ORDER

- (A) Original Application is allowed partly.
- (B) Suspension of the Applicant shall stands revoked with immediate effect.
- (C) The Respondents shall reinstate the Applicant within two weeks from today.
- (D) The Applicant shall not tamper witnesses or hamper the investigation of the criminal offences registered against him.]
- (E) No order as to cost.

Sd/-
(A.P. KURHEKAR)
MEMBER (J)

Date : 28.07.2020
Place : Mumbai
Dictation taken by : Vaishali Mane