

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.119 OF 2021

DISTRICT : PUNE

Shri Raju Trimbak Kedari.)
Age : 52 Yrs., Working as Police Constable,))
Residing at 12/1, Kaverinagar Police))
Colony, Wakad, Pune.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.))
2. Commissioner of Police.)
Pimpri Chinchwad, Premlok Park,)
Chinchwad, Pune – 411 033.)...**Respondents**

Mrs. Punam Mahajan, Advocate for Applicant.

Ms. N.G. Gohad, Presenting Officer for Respondents.

CORAM : SHRI A.P. KURHEKAR, MEMBER-J

DATE : 23.07.2021

JUDGMENT

1. The Applicant has challenged the suspension order dated 01.12.2018 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Shortly stated facts giving rise to this application are as under :-

While Applicant was serving as Police Constable on the establishment of Respondent No.2 – Commissioner of Police, Pimpri-Chinchwad, an offence under Sections 384, 85, 341, 323 r/w 34 of Indian Penal Code came to be registered vide Crime No.112/2018 and consequently, he came to be suspended by order dated 01.12.2018 invoking Rule 3(1-A) of Maharashtra Police (Discipline & Appeal) Rules, 1956. Since then, the Applicant is under prolong suspension.

3. Smt. Punam Mahajan, learned Advocate for the Applicant sought to assail the suspension order on the following grounds :-

(i) Though the applicant came to be suspended in view of registration of crime, till date, no charge-sheet in criminal case is filed to substantiate the involvement of the Applicant in the crime.

(ii) The prolong suspension which is now more than two and half year is impermissible in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

(iii) In view of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary** (cited supra), the Charge-sheet in D.E. ought to have been issued within 90 days, but in the present case, the D.E. has been initiated by issuance of Charge-sheet belatedly after about two years on 15.06.2020, but it is not progressing, and therefore, prolong suspension is not permissible.

(iv) In the matter of co-delinquent and co-accused viz. Kiran K. Landge, Police Head Constable who was also suspended by order dated 13.03.2019, his suspension has been revoked by the Tribunal by Judgment dated 28.07.2020 in O.A.No.1130/2019.

(v) Though matter was placed before the Review Committee for revocation of suspension, the Committee continued his suspension

solely on the ground that offences registered against the Applicant are serious without taking objective decision.

4. Per contra, Ms. N.G. Gohad, learned Presenting Officer sought to justify the suspension order reiterating the grounds raised in reply that in view of registration of crime, the suspension as well as its continuation is justified. She fairly admits that D.E. which was initiated belatedly is still incomplete.

5. 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.

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

7. 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 पूर्ण करण्यासाठी कालमर्यादा.-- (१) विभागीय चौकशी शक्य तितक्या लवकर पूर्ण करण्यात याव्यात आणि कोणत्याही परिस्थितीत हा कालावधी विभागीय चौकशी करण्याचा निर्णय घेतल्याचा तारखेपासून सहा महिन्यांपेक्षा अधिक नसावा. चौकशीच्या निष्कर्षासंबंधीचे अंतिम आदेश काढल्यानंतरच ती पूर्ण झाली आहे, असे मानले जाईल.

(२) तथापि, 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 शीर्षाखाली निर्देशलेल्या मर्यादित अधीन राहून द्यावेत असे शासनाने ठरविले आहे. विभागीय चौकशी मंजूर झाल्याच्या तारखेपासून ती पूर्ण करण्यासाठी एका वर्षापेक्षा अधिक कालावधी वाढवून देण्यास मंत्रालयाच्या प्रशासकीय विभागाने सामान्य प्रशासन विभागाची विचारविनिमय करून अनुमती द्यावी.

(३) कालमर्यादेपेक्षा वाढीचा प्रस्ताव सादर करताना संबंधित चौकशी अधिकाऱ्याने आणि शिस्तभंगविषयक 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.”

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

“शासन असे आदेश देत आहे की, प्राथमिक चौकशीअंती तथ्य आढळलेल्या प्रकरणांत नजिकच्या सहा महिन्यांच्या काळात सेवानिवृत्त होणारा अधिकारी / कर्मचारी गुंतला असेल तर, अशा प्रकरणी एक विशेष बाब म्हणून प्राधान्याने संबंधित अधिकारी / कर्मचार्याच्या सेवानिवृत्ती पूर्वी किमान ३ महिने अगोदर विभागीय चौकशी सुरु होईल व शासन सामान्य प्रशासन विभाग परिपत्रक क्रमांक : सीडीआर-१०९७/१५६/प्र.क्र.१४/९७/अकरा, दि.२४ फेब्रुवारी, १९९७ नुसार एकुण चौकशीची कार्यवाही एका वर्षात पूर्ण होईल अशा रितीने कार्यवाही करण्याची दक्षता घ्यावी. प्रकरणाच्या कोणत्याही टप्प्यावर विलंब झाल्याचे निदर्शनास आल्यास, अशा विलंबाला जबाबदार असणाऱ्या अधिकारी / कर्मचार्यावर शिस्तभंगविषयक कारवाईचाही विचार करण्यात यावा.”

9. Now turning to the facts of the present case, in so far as D.E. is concerned, no D.E. was initiated within 90 days, as held by Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. The D.E. was initiated belatedly on 15.06.2020, but till date, it is not completed.

Though it ought to have been completed expeditiously maximum within a period of one year.

10. As regard Charge-sheet in Criminal Case, admittedly, till date, no Charge-sheet is filed in Criminal Case and matter seems to be still under investigation. Why investigation agency took such a long period of two and half year for completing investigation and collection of evidence is inexplicable. In this behalf, there is absolutely no explanation from the Respondents.

11. 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.”*

12. 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.

13. 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.”

14. 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.”

15. 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 are 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 can recommend for reinstatement of the Government servant on non-executive post. Whereas, as per Clause 4(b) of G.R., where no charge sheet is filed for two years, in that event also, the Review Committee can make recommendation for revocation of suspension and to reinstate a Government servant in service.

16. True, the Review Committee seems to have taken review of suspension of the Applicant, but recommended for continuation of suspension stating that the offence registered against the Applicant are serious and possibility of tampering of witnesses cannot be ruled out. No doubt, the offence prima-facie seems to be serious, but Review Committee forgot to consider that despite lapse of two and half year, no Charge-sheet is filed by Investigating Agency in the Court of law. As regard possibility of tampering of witnesses, it is nothing but assumption

recorded only to continue the suspension without any evidence or material to that effect. Suffice to say, there is no objective assessment of the situation by Review Committee and Review Committee seems to have been swayed away only because of registration of offence against the Applicant. Indeed, in terms of Circular dated 14.10.2011 where no Charge-sheet is filed in Criminal Case for two years, the Review Committee is empowered to revoke the suspension. In the present case, admittedly, no Charge-sheet is filed in the Criminal Case. The Review Committee has completely ignored this material aspect. Suffice to say, the reasons mentioned by Review Committee are superficial and it should not come in the way of Applicant for revocation of suspension.

17. As rightly pointed out by the learned Advocate for the Applicant that suspension of co-accused/co-delinquent namely Kiran R. Landge has been already revoked by this Tribunal by Judgment dated 28.07.2020 in O.A.No.1130/2019 and the same has been implemented by the Respondents by reinstating him in service. I, therefore, see no reason to take different view in the present matter.

18. At this juncture, it would be apposite to refer the Circular issued by Government of Maharashtra dated 28.03.2018 which is based on the observations and findings recorded by this Tribunal in O.A.No.1023/2017. In this O.A, the Tribunal observed that often prolong suspensions are continued by the Review Committee without there being objective decision and has laid down certain instructions for guidance of Review Committee, which are as under :-

“1. It is a matter of genuine application that while deciding to continue or to revoke the suspension, the record relating to criminal case is really not studied and the decision to continue the suspension is taken subjectively than objectively.

2. It is, therefore, considered necessary that this fact needs to be brought to the notice of the Chief Secretary for issue of directions to the Committee Members that whenever review of suspension is to be done in the background of criminal case, the documents such as stage of investigation, Case Diary, statement of witnesses and other evidence

gathered by the Police be attended to and whenever it be a case other than suspension on account of a criminal case, all relevant papers must be examined and objective satisfaction must be recorded.

3. *The Committee Members and the officer functioning as Secretary of the Committee should be cautioned that if such matters of deficient consideration comes before this Tribunal apart from personal liability towards costs of cases, serious view as regards failure to perform duty by the officers concerned could be taken by this Tribunal, apart from any liability towards disciplinary action.*

4. *Therefore, Chief Secretary is directed to issue proper order and necessary guidelines within two months from the date of receipt of this order.*

महाराष्ट्र प्रशासकीय न्यायाधीकरणाने दिलेले आदेश विचारात घेता असे नमूद करण्यात येते की, ज्यावेळी फौजदारी प्रकरणाच्या अनुषंगाने शासकीय कर्मचा-याच्या निलंबनाचा आढावा घेण्यात येतो त्यावेळी प्रकरणाशी संबंधीत सर्व कागदपत्रे (पोलीस तपासाशी संबंधीत सद्यस्थिती, केस डायरी, साक्षीदारांचे जबाब आणि पोलीसांनी गोळा केलेले अन्य पुरावे) तपासून घ्यावीत व त्याबाबतची वस्तुस्थिती निलंबन आढावा समितीने सर्वेक्षणपणे विचारात घ्यावी, तदनंतरच निलंबन समाप्त करावे की पुढे चालू ठेवावे याबाबत जाणीवपूर्वक निर्णय घेऊन समितीने सुयोग्य कारणमिमांसेसह शिफारस करावी.''

19. Thus, it was obligatory on the part of Review Committee to peruse the record of Criminal Case for arriving at objective decision. Whereas, in the present case, in fact, no Charge-sheet has been filed in Criminal Case, but Review Committee mechanically continued his suspension even without bothering to see the progress, if any, in investigation of Criminal Case.

20. The Applicant is already getting Subsistence Allowance without rendering any service, which is nothing but loss of public money. His prolong suspension without taking expeditious steps for completing investigation in Criminal Case and for completion of D.E. is not at all permissible in law. As reiterated by Hon'ble Supreme Court that suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee under suspension for a longer period, the suspension has to be revoked. All that, care can be taken to reinstate the Applicant on any non-executive/suitable post.

21. The totality of aforesaid discussion leads me to sum-up that prolong suspension of the Applicant is not permissible and he deserves to be reinstated in service. Hence, the following order.

ORDER

- (A) The Original Application is partly allowed.
- (B) The suspension of the Applicant is revoked and he be reinstated in service on non-executive post/suitable post as Respondent No.2 – Commissioner of Police, Pimpri-Chinchwad deems fit within two weeks from today.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 23.07.2021

Dictation taken by :

S.K. Wamanse.

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