

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1225 OF 2022

**DISTRICT: PUNE
SUBJECT : SUSPENSION**

Shri Ravindra Mansing Kadam,)
Age:- 49 yrs, Occ. Police Inspector attached to)
Riot Control Squad, Shivaji Nagar Pune City,)
R/at Krushna Nagar, Mamta Sweet Chowk,)
B-1, Dighi, Pune 15.)... **Applicant**

Versus

The Commissioner of Police, Pune City, having)
office at 2, Sadhu Waswani Road, Camp, Pune 1.)...**Respondents**

Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.
Shri A. J. Chougule, learned Presenting Officer for the Respondent.

CORAM : A.P. Kurhekar, Member (J)

DATE : 13.04.2023.

ORDER

1. The Applicant has challenged the suspension order dated 04.11.2012 issued by the Respondent /C.P., Pune in contemplation of D.E. invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

2. The facts leading to suspension order are somewhat unusual. All that it happened, the Applicant was transferred by order dated 27.10.2022 from Chandannagar Police Station to Riot control force by C.P. Pune. He challenged the transfer order by filing O.A. No.1084/2022 before this Tribunal. The O.A. was taken up for admission by the then Administrative Member in Diwali vacation on 02.11.2022 since the Applicant had prayed for interim relief. However, at the stage of admission itself learned Administrative Member disposed of the O.A.

with observation that the Applicant was transferred in administrative exigency invoking Rule 22N(2) of Maharashtra Police Act. When the matter was argued, learned P.O. made a submission that Applicant has proceeded on sick leave from 31.10.2022 but he was present in the Tribunal and Tribunal took cognizance of it in its order. In this behalf, para no.10, 11 and 12 of the order dated 02.11.2022 are material which are as under :-

"10. On perusal of the impugned order it is amply clear that transfer order has been issued by invoking provisions of Section 22N(2) and therefore minutes of PEB at Commissionerate level were referred to a copy of which has been submitted by the Ld. P.O. On perusal of the same it is evident that PEB at Commissionerate level has deliberated upon the reports submitted by the Sr.PI, Chandan Nagar Police Station dated 13.06.2022 and Additional Commissioner of Police, Eastern Region, Pune city addressed to Police Commissioner, Pune and therefore on the face of the record, it is evident that transfer order has been issued by Police Commissioner, Pune who is competent authority, on recommendation of PEB at Commissionerate level on the ground of administrative exigencies.

11. Cognizance is also taken of the fact that applicant is very much present before the Tribunal, who is on sick leave i.e he is confident of procuring medical certificate of sickness for remaining absent from duty of discipline Police Force which reflects on his conduct and attitude which, prima facie, amounts to misconduct and which needs to be further investigated by the competent authority by drawing suitable disciplinary proceedings under Maharashtra Police Act, 1951 and Bombay Police Manual, 1959.

12. Considering all the facts before me, I am of the considered opinion that applicant has not come with clean hands before this Tribunal. A serious note has been taken of his presence before the Tribunal by remaining absent from duty on the ground of sickness which shows his lack of sincerity and devotion to official duty expected of a Police Personnel of the rank of Police Inspector, without which he cannot maintain discipline in the police personnel of subordinate ranks in the police force whom he is required to lead and manage. Therefore, I am not inclined to grant any relief at the stage of admission of OA itself, and following order is passed :-

ORDER

- (A) The Original Application is dismissed.
- (B) No order as to costs."

3. It is on this background, the Applicant is suspended by order dated 04.11.2022 in contemplation of D.E. In suspension order, it is stated that Tribunal passed serious strictures upon the conduct of the Applicant, and therefore, D.E. was contemplated.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicant sought to assail the suspension order dated 04.11.2022 *inter-alia* contending that in fact there was no such directions of the Tribunal for suspension of the Applicant and secondly it was not at all a case warranting the suspension. He has further pointed out that though the period of more than three months from the date of suspension is over, the Applicant is subjected to prolong suspension without taking review or initiating D.E. and it is in blatant contravention of the decision of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. He, therefore prayed to set aside the suspension order and to reinstate the Applicant.

5. Per contra, Shri A. J. Chougule, learned P.O. sought to justify the suspension order *inter-alia* contending that in view of observations made by the Tribunal, the D.E. was initiated and in contemplation of D.E. Applicant was rightly suspended. As regard review or initiation of D.E., he fairly stated that till date neither review is taken nor D.E. is initiated. However, according to him some preliminary enquiry was proceeded.

6. In my considered opinion without touching other aspects of legality of suspension order or otherwise, the O.A. can be disposed of since admittedly though the period of more than three months is over neither review is taken nor D.E. is initiated.

7. While I am dictating the order, at this stage learned P.O. stood up and stated that just now he has received instructions that review was taken on 11.04.2023 and decision has been taken to reinstate the Applicant. Even if it is so, in that event also, the fact remains there was no review of suspension within three months nor there was initiation of D.E. against the Applicant.

8. The legal position in respect of prolong suspension is no more *res-integra* in view of the Judgment of Hon'ble Supreme Court In **Ajay Kumar Choudhary's** case (supra). It would be apposite to reproduce Para Nos.11, 12 and 21, which are 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."

9. In view of the aforesaid discussion obviously the prolong suspension of the Applicant is totally impermissible in law and he has required to be reinstated in service immediately. He is also entitled to full pay and allowances after expiration of three months from the date of suspension and it be paid accordingly. Hence, the following order :-

ORDER

- (A) The Original Application is allowed partly.
- (B) The Applicant's suspension is revoked with immediate effect and he be reinstated in service within a week from today and be paid pay and allowances after expiration of period of three months from the date of suspension order. It be paid within a month from today.
- (C) No order as to costs.

Sd/-

(A.P. Kurhekar)
Member (J)

Place: Mumbai

Date: 13.04.2023

Dictation taken by: Vaishali Santosh Mane

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