

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1300 OF 2022

DISTRICT : NASHIK

SUB : SUSPENSION

1. Shri Pradip Navnath Avhad)
Age : 36 Yrs, Occu.: Govt. Service,)
Working as Police Sub Inspector,)
P H Nashik.)
R/o. 301, C Wing, Atlantise Amrut-)
Dham, Nashik 422 003.)

2. Shri Sunil Himmatrao Padvi,)
Age : 43, Occ : Govt. Service, working)
as Police Naik,P H Nashik.)
R/o. Police Wasahat, Room No.9,)
84, Kholi Area, Malegaon Camp,)
At P. Tal. Malegaon, Dist. Nashik.)...**Applicants**

Versus

1. The State of Maharashtra.)
Through Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)

2. The Director General of Police,)
M.S, Shahid Bhagatsingh Marg,)
Coloba, Mumbai – 400 001.)

3. Special Inspector General of Police,)
Nashik Range, Gadkari Chowk,)
Nashik – 422 002.)

4. The District Superintendent of Police)
Nashik Rural, Adgaon Naka,)
Panchvati, Nashik – 422 003.)

5. The Director General, Anti Corruption)
6th Floor, Sir Pochkhanawala Road,)
Worli Police Camp, Worli,)
Mumbai – 400 030.)...**Respondents**

Mr. C.T. Chandratre, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 20.04.2023

JUDGMENT

1. Heard Shri C. T. Chandratre, learned Counsel for the Applicant and Shri A. J. Chougule, learned Presenting Officer for the Respondents.

2. The Applicants have challenged the suspension order dated 03.09.2021 issued by the Respondent No.4 - District Superintendent of Police, Nashik (Rural) mainly on the ground of prolong suspension invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunal Act, 1985.

3. The Applicant No.1 was API and Applicant No.2 was Police Naik and both were attached to Azad Nagar Police Station, District Nashik. On 08.08.2021 they allegedly demanded bribe of Rs.30,000/- in respect of which complainant approached the Anti-Corruption Bureau (ACB) and in sequel offence under Section 7 and 7A of the provisions of Prevention of Corruption Act, 1988 came be registered. Both the Applicants were arrested on 01.09.2021. Consequent to it, the Respondent No.4 - Superintendent of Police suspended the Applicants invoking Rules of Maharashtra Police (Punishment & Appeal), Rules 1956 by order dated 03.09.2021. The Applicants then made representations for reinstatement in service on the ground that ACB has not filed charge sheet in the criminal case nor department had initiated D.E. but they are subjected to prolong suspension. The Applicants further contend that though the department had taken review, the suspension was mechanically continued. They are under suspension for nearabout one year and eight months. On this background, they have filed this O.A. challenging prolong suspension and prayed for directions to reinstate them in service.

4. Shri C. T. Chandratre, learned Counsel for the Applicants submit that Applicants are subjected to prolong suspension without taking expeditious steps either in criminal case or in D.E. so as to take it to logical conclusion and the Applicants are kept away from duty for long period. He submits that since the period of one year and eight months is already over, there is no propriety to continue the suspension and they need to be instated on any suitable post.

5. Per contra, Shri A. J. Chougule, learned Presenting Officer sought to justify the suspension order as well as its continuation stating that in view of registration of crime under the provisions of Prevention of Corruption Act, the suspension was justified. He further pointed out that review committee has taken review of the suspension from time to time but having regard to the nature of offence, it was decided to continue the suspension.

6. The Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Ors.)** directed that currency of suspension order should not extend beyond three months, if within this period the memorandum of charges/charge-sheet is served upon the employee and if memorandum is served, a reasoned order needs to be passed for the extension of suspension. The said decision is arising from suspension in contemplation of D.E. Whereas in present case, the Applicants are suspended in view of registration of crime under the provisions of Prevention of Corruption Act. However, the question arises how long the Applicants could be continued under suspension when the period of one year and eight months is already over. Indeed, the Government by G.R. dated 14.10.2011 issued directions to take periodical review of suspension which *inter-alia* provides periodical review of suspension so that Government servant is not subjected to prolong suspension without just and valid reasons.

7. The submission advanced by learned P.O. that there could not be no reinstatement before expiration of two years period of suspension holds no water since Clause 4(b) of G.R. dated 14.10.2011 itself provides that where even if period of two years under suspension is not over, the Committee has to take objective assessment of the situation so that Government servant is not subjected to prolong suspension while taking decision of revocation of suspension. Following factors are required to be born in mind.

“**४(ब)** ज्या ठिकाणी न्यायालयात दोषारोप पत्र / अभियोग दाखल होऊन २ वर्षांचा कालावधी झालेला नसेल किंवा दोषारोप पत्र / अभियोग दाखल झालेला नसेल अशा प्रकरणी निलंबन आढावा समितीने खालीलबाबी विचारात घेऊन उचित शिफारस करावी.

- (i) विभागीय चौकशांतील / न्यायालयात दाखल झालेल्या दोषारोपपत्रातील दोषारोपाचे गांभीर्य, स्वरूप व व्याप्ती तसेच, तो सिध्द झाल्यास होऊ शकणारी कमाल शिक्षा.
- (ii) निलंबनाचा कालावधी.
- (iii) फौजदारी गुन्ह्याच्या संदर्भात सक्षम न्यायालयात अभियोग दाखल करण्याच्या प्रक्रियेची सद्यःस्थिती.
- (iv) संबंधिता विरुध्द चालू असलेली विभागीय चौकशी / न्यायालयीन कार्यवाही / दोषारोप पत्र सादर करण्याच्या कार्यवाहीत विलंबास संबंधित अपचारी जबाबदार आहे किंवा कसे
- (v) संबंधित अधिकारी / कर्मचा-यांच्या त्यापूर्वीचा सेवा तपशील व सक्षम प्राधिका-याचे मत.
- (vi) संबंधित अधिकारी / कर्मचा-यांस अदा करण्यात येणा-या निर्वाह भत्त्याची टक्केवारी व रक्कम.”

8. Suffice to say, the competent authority is required to take conscious decision which should be outcome of objective assessment of the situation and there should not be mechanical extension of the suspension. In present case, admittedly, till date ACB has not filed charge sheet in the court of law nor obtained sanction to the prosecution. The matter seems still under investigation with ACB. Secondly, no regular D.E. is initiated by the competent authority against the Applicants. In such situation, in my considered opinion, no useful purpose would be served by continuing the Applicants under suspension. They could be reinstated on non-executive post or any suitable post as Respondent No.4 deems fit.

9. As stated above, mere taking review without objective consideration of the matter is not enough. In present case, review was taken for five times. It was mechanically extended stating that offence registered against the Applicants is under provision of Prevention of Corruption Act. However, review committee completely ignored that ACB till date has not in position to file the charge sheet and department had also failed to initiate the D.E. against the Applicants, and Applicants fundamental right to speedy trial of criminal case and expeditious completion of D.E. is seriously affected.

10. Hon'ble Supreme Court in ***Civil Appeal No.2427-2428/2018 [State of Tamil Nadu Vs. Pramod Kumar] decided on 21.08.2018*** held that the suspension must be necessarily for short duration and if no useful purpose would serve by continuing employee under suspension and where reinstatement could not be threat or fair trial in criminal case or DE, then suspension should not continue further.

11. In this view of the matter, in my considered opinion, the Applicants suspension needs to be revoked and they are required to be reinstated in service on any non-executive or suitable post as Respondent No.4 deems fit. Hence, the following order:-

ORDER

- (A) Original Application is allowed partly.
- (B) The suspension of the Applicants is revoked and they be reinstated in service on any non-executive post or suitable post, as Respondent No.4 deems fit within four weeks from today.
- (C) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Place : Mumbai

Date : 20.04.2023

Dictation taken by : Vaishali Santosh Mane

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