

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.196 OF 2021

DISTRICT : MUMBAI

Shri Prakash Gokul Soude.)
Age : 54 Yrs., Occu.: Police Naik (Driver),)
MT Department, Nagapada and residing at)
A Block, 40, Dr. D.B. Marg, Police)
Quarters, 1st Floor, Lamington Road,)
Mumbai – 400 007.)...**Applicant**

Versus

1. The Commissioner of Police for)
Greater Mumbai, D.N. Road,)
Near Crawford Market, Mumbai.)
2. The Additional Commissioner of)
Police, Motor Transport Section,)
Shepherd Road, Nagpada,)
Mumbai.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

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

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

DATE : 17.09.2021

JUDGMENT

1. The Applicant has challenged the suspension order dated 30.04.2012 on the ground that he is subjected to prolong suspension *dehors* the law 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 :-

The Applicant was serving as Police Naik (Driver) on the establishment of Motor Transport Department headed by Respondent No.2 – Additional Commissioner of Police (Motor Transport Section), Mumbai. On 11.03.2012, he was arrested in Crime No.13/2010 registered under Section 302, 324, 143, 145, 147, 148, 149 read with 34 of Indian Penal Code and under Section 135 of Maharashtra Police Act. The said offence was registered against 7 persons including the Applicant. In view of registration of crime and arrest, he came to be suspended by order dated 30.04.2012 subject to initiation of D.E. as well as decision in criminal case. The Applicant thereafter made various representations for reinstatement in service, but in vain. Review was taken but suspension was continued solely on the ground that offences registered against the Applicant are serious. Ultimately, the Applicant filed this O.A. challenging the prolong suspension.

3. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned suspension order *inter-alia* contending that in view of recent Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**, the suspension beyond 90 days is not permissible. Whereas in the present case, the Applicant is subjected to suspension for almost 9 years, which is totally unsustainable and bad in law. He has further pointed out that the Department had initiated the departmental proceedings on similar charges and punishment of withholding increment for two years without cumulative effect has been imposed by order dated 17.06.2021. Adverting to this aspect, he submits that now, there is no point to continue the suspension awaiting the decision in criminal case which is still subjudice and may take years together for decision on merit.

4. Per contra, the learned P.O. submits that the Applicant has been rightly suspended in view of registration of serious crime of murder and

for 18 times review was taken but the authority decided to continue the suspension in view of serious crime registered against the Applicant. He, therefore, sought to justify the suspension as well as continuation of the suspension.

5. As stated above, the Applicant was suspended by order dated 30.04.2012 in contemplation of D.E. as well as subject to decision in criminal case. Admittedly, criminal case (Case No.529/2012) is still pending. The decision of criminal case may take years together and there is no certainty of its conclusion in near future since the period of 9 years from the date of filing criminal prosecution is already over. As such, it would be futile to wait for the decision of criminal case and continue further suspension.

6. Indisputably, the D.E. was initiated earlier in 2013 but it was cancelled on the ground of similarity of charges in criminal case. However, later in 2019-20, the D.E. was again initiated for the same charges and Applicant is subjected to punishment of withholding increment for two years without cumulative effect. Thus, once D.E. is concluded on the same charges and Applicant is already subjected to prolong suspension, in my considered opinion, further continuation of suspension will not serve any purpose would be uncalled for.

7. The law as regard suspension is well settled. The adequacy or sufficiency of material before the competent authority for suspension cannot be normally assessed by the Tribunal. However, it is well settled that suspension should not be for a longer period and if no fruitful purpose would serve, the suspension should come to an end. The object behind keeping a Government servant under suspension is to protect the witnesses from the influence of a delinquent. In the present case, since witnesses are already examined in D.E. and order of punishment is issued, the question of interference with the witnesses does not survive. True, the criminal case is still pending but it would be totally unjust to

continue the suspension awaiting the decision of criminal case. The Applicant is already getting 75% Subsistence Allowance, which is loss of public exchequer and his services can be now utilized by reinstating him on any suitable post, as Respondents deem fit.

8. 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.”

10. 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.

11. 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.”

12. 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.”

13. 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 like murder, corruption 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.

14. In view of aforesaid decisions, it is no more res-integra that a Government servant cannot be subjected to such prolong suspension. The Applicant has already undergone suspension of 9 years, and therefore, further continuation of suspension would be totally unwarranted being against the principles of law.

15. True, as pointed out by the learned P.O. that the matter was placed before the Review Committee year to year for 18 times, but it was continued solely on the ground that offence registered against the Applicant is serious without bothering to find out the progress of criminal case as well as departmental proceedings. The Review Committee continued the suspension mechanically and no such objective

decision is taken. Suffice to say, the decision of Review Committee to continue the suspension is arbitrary and totally unsustainable in law.

16. In the light of aforesaid discussion, in my considered opinion, no fruitful purpose would serve by continuing the Applicant under suspension, since he has already subjected to suspension for 9 years and already subjected to punishment in departmental enquiry. The suspension, therefore, deserves to be revoked and Applicant needs to be reinstated in service on any suitable post, as Respondents may deem fit. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The suspension of the Applicant shall stand revoked with immediate effect.
- (C) The Respondents shall reinstate the Applicant on any suitable post, as they deem fit within two weeks from today.
- (D) The Applicant shall not tamper the witnesses cited in criminal case.
- (E) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai
Date : 21.09.2021
Dictation taken by :
S.K. Wamanse.

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