

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
NAGPUR BENCH, NAGPUR.

ORIGINAL APPLICATION NO.25/2016.

Devsingh Mula Baviskar,
Aged about 52 years,
Occ-Service as Police Inspector
in the office of Superintendent of Police, Yavatmal.
R/o Gajanan Township, House No.164,
Potey Estate, Káthora Road, Amravati.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Home Department,
Mantralaya, Mumbai-32.
2. The Director General of Police (M.S.),
Mumbai.
3. The Spl. Inspector General of Police,
Amravati Range, Amravati.
4. The Superintendent of Police,
Yavatmal.

Respondents.

Shri V.A. Kothale, Ld. Advocate for the applicant.
Shri A.P. Sadavarte, Ld. P.O. for the respondents.

Coram:- B. Majumdar, Vice-Chairman

Dated:- 8th June, 2016.

Order

The applicant, a Police Inspector has filed this O.A.

as he is aggrieved that he has been placed under suspension and has
not been reinstated.

2. Sometime in 2014, an F.I.R. was registered against the applicant U/s 7 of the Prevention of Corruption Act. The Superintendent of Police, Yavatmal (R.4) on 12.12.2014 issued an order placing the applicant under suspension. The applicant has challenged this order in this O.A. On 15.12.2014, the Superintendent of Police, Yavatmal submitted the applicant's case for suspension to the Special Inspector General of Police, Amravati (R.3) for his approval. Respondent No.3 granted his approval vide his communication dated 22.12.2014 to respondent No.4. The Director General of Police (M.S.), Mumbai (R.2) on 10.2.2016 issued a Circular containing guidelines for review of all cases of suspension of police officers. Respondent No.3 on 19.3.2016 reviewed the applicant's case of suspension and issued the following order:

- (a) Till now, chargesheet has not been lodged in A.C.B. case.
- (b) The departmental enquiry—Charges have not been framed and served on D.M. Baviskar.
- (c) Hence suspension is continued.

3. The applicant submits that there is no case for continuing him to be placed under suspension. Respondent No.4 has no authority to place him under suspension. His representations have not been considered. Even though an F.I.R. has been lodged against

him, no action has been taken to prosecute him. No departmental proceedings have been initiated. Hence his prolonged suspension is not justified.

4. The Superintendent of Police, Yavatmal (R.4) in his affidavit in reply dated 11.3.2016 submits that a special case U/s 7 of the Prevention of Corruption Act (sic) regarding crime No. 3098/2014 is subjudice before the Special Court, Yavatmal. Respondent No.4 had passed the impugned order dated 12.2.2014. He further submits that the preliminary enquiry report was sent to respondent No.3 for further necessary action and orders for initiating departmental enquiry against the applicant are pending.

5. Respondent No.1 i.e. Secretary, Home Department, respondent No.2 Director General of Police (M.S.), Mumbai and respondent No.3 Special Inspector General of Police, Amravati in their reply submit as follow:

"The State Government had issued the G.R. dated 14.10.2011. In this G.R., it is specifically mentioned in clause-3 that the officer who has been suspended because of the criminal prosecution his suspension cannot be reviewed for one year and the same has been retreated (sic) by the another G.R. dated 30.10.2015 issued by the Home Department. They further submit that the impugned order of suspension issued by respondent No.4 has been granted approval by respondent No.3."

6. Thus according to the respondents, the applicant's case of suspension cannot be reviewed before a lapse of one year.

7. Shri V.A. Kothale, learned counsel for the applicant submitted that the applicant is under suspension for more than one year. Except for registration of an F.I.R., no other action, criminal or departmental, has been initiated against him. In terms of the order issued by the D.G.P. (M.S.), Mumbai vide his circular dated 10.2.2016 in case of a Police Inspector against whom there is a criminal case like corruption, his suspension should be reviewed after a chargesheet has been filed in the court as well as in departmental enquiry. This makes it obligatory for the respondents to register a criminal case in the court and initiate departmental enquiry expeditiously so that the delinquent officer is not required to be placed under suspension indefinitely. Thus, according to him, by delaying the process of criminal prosecution and departmental action, the respondents have decided to continue to keep the applicant under suspension, a practice that has been held by the Supreme Court as illegal. For this, he relies on **Ajay Kumar Choudhary V/s Union of India (2015 (7) SCC 291)** in which the Apex Court has clearly ruled that if no chargesheet is served, in no case suspension should be continued beyond three months.

8. Shri A.P. Sadavarte, learned P.O. for the respondents relied on the reply of the respondents and submitted that in terms of Circular of the D.G.P. (M.S.), Mumbai dated 10.2.2016, the applicant's case for reinstatement can be considered only after a chargesheet criminal / departmental case has been served on him.

9. I find that it is undisputed that the applicant was placed under suspension after he was taken into custody following registration of an F.I.R. under the Prevention of Corruption Act. No further action to file any criminal case in the court against the applicant or initiation of departmental proceeding has been taken by the respondents so far, as can be seen from the order of respondent No.3 in his review dated 19.3.2016. I may also state here that this order of respondent No.3 is contrary to the statement made by respondent No.4 in the affidavit (supra) stating therein that the applicant's criminal case No.3098/2014 is subjudice before the Special Court, Yavatmal.

10. Circular dated 10.2.2016 issued by D.G.P. (M.S.), Mumbai (R.2) is entitled as, "महाराष्ट्र पोलीस अधिनियम, १९५१, त्याअंतर्गत तयार करण्यात आलेले महाराष्ट्र पोलीस (शिक्षा आणि अपिले) नियम १९५६ च्या तरतुदीनुसार व महाराष्ट्र शासन गृह विभागाकडून निर्गमित केलेली अधिसूचना दिनांक १२ जानेवारी २०११ नुसार निलंबित करण्यात आलेल्या पोलीस निरीक्षक व त्याखालील दर्जाच्या पोलीस अधिकारी / कर्मचार्यांच्या निलंबन प्रकरणांचा आढावा घेण्यासाठी मार्गदर्शक सूचना . "

Para 1 of the Circular contains guidelines for reviewing the cases of suspension related to criminal cases which include corruption. The said para is reproduced below:

“(1) ज्या प्रकरणी पोलीस निरीक्षक व त्याखालील दर्जाच्या पोलीस अधिकारी / कर्मचार्यांच्या बेहिशोबी मालमत्ता, नैतिक अधःपतन, लाचलुचपत, खुन, खूनाचा प्रयत्न, बलात्कार व त्या सारख्या गंभीर प्रकरणात पौजदारी गुन्हा दाखल झाल्यामूळे किंवा गंभीर गैरवर्तन कसुरीमूळे निलंबनाची कारवाई करण्यात आली असेल, अशा प्रकरणी- (अ) त्यांच्या विरूद्ध संबंधीत न्यायालयात दोषारोप पत्र अभियोग / दाखल झाल्यानंतर व (ब) विभागीय चौकशीत दोषारोप बजावल्यानंतरच्या स्थितीत संबंधीत शिस्तभंगविषयक प्राधीकार्यांनी अशा प्रकरणातील निलंबित पोलीस निरीक्षक व त्याखालील दर्जाच्या पोलीस अधिकारी / कर्मचार्यांना त्यांच्या विरूद्ध सुरू असलेल्या न्यायालयीन कारवाई आणि विभागीय चौकशीच्या कारवाईच्या अधीन राहून निलंबनातून मूक्त करण्याबाबत किंवा निलंबन संपुष्टात आणण्याबाबतचा आढावा घ्यावा.”

11. In terms of the above guidelines, the Special Inspector General of Police, Amravati (R.3) took a review of applicant's case on 19.3.2016. I have gone through the proceedings of this review. The decision in review of respondent No.3 is already reproduced above. From this, it can be seen that respondent No.3 has interpreted clause-1 of the Circular to mean that a police officer should be continued to be placed under suspension till such time a criminal case is filed in the court and a chargesheet in departmental enquiry is served on him. Such an interpretation of the Circular, in my view, is certainly not in conformity with the Government's policy that a

criminal / departmental enquiry case should be expedited and the tendency to keep such an employee under suspension indefinitely needs to be avoided. Implicit in the DGP's Circular is a concern that keeping a police officer under suspension for a prolonged period is neither in public interest nor is it in the interest of administration.

12. In *Ajay Kumar Choudhary* (supra), the Supreme Court had ruled that a Government servant should not be continued under suspension beyond three months if a chargesheet is not served on him. Para 21 of the order, their Lordships have observed as follows:

"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 while the stage of his having to prepare 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."

13. I therefore hold that the respondents are required to *file* *in the court* ~~finalize~~ the criminal chargesheet against the applicant as also initiate a departmental enquiry against him, if deemed fit, expeditiously. As more than 17 months have lapsed since the applicant was under suspension, I direct that the respondents will reinstate the applicant within four weeks of receipt of this order. On reinstatement, the respondents are at liberty to post him to a place from where he will not be able to interfere or meddle with the enquiry to be instituted

against him. The O.A. stands disposed of in terms of the above directions with no order as to costs.

sd/-

(B.Majumdar)
Vice-Chairman

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