

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.29 OF 2017**

**DISTRICT : MUMBAI**

Mr. Ganpati S. Salamwade. )  
Age : 55 Yrs, Occu.: Police Sub Inspector )  
R/at : A-5/402, Saraf Chandhni Nagar, )  
Thakur Complex, Kandivali (E), )  
Mumbai 400 101. )...**Applicant**

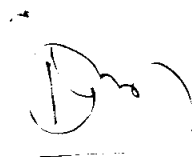
**Versus**

1. The State of Maharashtra. )  
Through the Secretary, )  
Home Department, Mantralaya, )  
Mumbai - 400 032. )
2. The Director General of Police. )  
Colaba, M.S, Mumbai. )
3. The Commissioner of Police for )  
Greater Mumbai. )...**Respondents**

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

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

**P.C. : R.B. MALIK (MEMBER-JUDICIAL)**



**DATE : 18.08.2017**

**JUDGMENT**

1. The Applicant, a Police Sub Inspector (PSI) questions the order dated 2<sup>nd</sup> November, 2015 whereby he was placed under suspension because of filing of an FIR No.60 of 2015 on 6.10.2015 at which time, it appears that he was P.H.C. Buckle No.11241. The allegations against him were that he had accumulated assets disproportionate to the known sources of income which attracted Section 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988 (P.C. Act hereinafter).

2. I have perused the record and proceedings and heard Mr. K.R. Jagdale, the learned Advocate for the Applicant and Mr. A.J. Chougule, the learned Presenting Officer (PO) for the Respondents.

3. The FIR is at Exh. 'A' (Page 12 of the Paper Book (PB)). Mr. Sandip Vedpathak, a Police Inspector is the complainant. The wife of the Applicant was also made what can be described as co-accused. The Applicant alleges that, it was the handy work of an anonymous complainant. The record shows that the Applicant has



submitted a detailed explanation with regard to the various properties that according to the ACB are ill-gotten. The scrutiny of the said complaint with a view to determine the truism or otherwise of the said complaint is outside the ambit of this OA. I would only proceed on the basis that a Police Agency has initiated action against the Applicant by recording the FIR for the alleged amassing of the assets disproportionate to the known sources of income and thereupon, by an order of 2.11.2015, the Applicant has been placed under suspension. The record shows that the review of the suspension was taken and by a communication of 6.4.2017. It was conveyed that the said reviews were taken on 13.5.2016 and 19.12.2016 and thereafter, on 5.4.2017, it was decided that the suspension should be continued. The sole ground on which the suspension has been continued apparently is the fact that the above referred FIR was registered against the Applicant. Till date, no departmental enquiry (DE) has been initiated and no charge-sheet has been laid before the Court of competent criminal jurisdiction.

4. There is a material on record adduced by the Applicant to show that, in other Districts, even pending prosecution, the concerned Police Personnel have been reinstated, in which connection, reference could be had to



Para 6.8 (Page 3 of the PB and Pages 35, 36, 39, 41 to 57 of the PB). All that has been said as and by way of reply in the Affidavit-in-reply is that, the facts were different.


5. The Applicant may have been suspended immediately after registration of crime against him, but then the crucial issue is as to whether the continuation thereof for this length of period is justified. There are binding precedents and law laid down by the Hon'ble Supreme Court which governs such matters which I shall be presently considering. But before I did that, I find that, there is a Circular of 10.2.2016 issued by the Director General of Police, M.S. It seeks to achieve consistency of action in matters of similar nature (suspension) when the allegations were of amassing of wealth disproportionate to the known sources of income and such heinous offences. It is observed that, periodical review must be taken and the period mentioned in Clause 2 is three months and if it was found that continued suspension was unwarranted, then he may be reinstated and posted on a non-executive post and/or the post, he would not come in contact with the public.

6. Now, in the Affidavit-in-reply, Para 19 (Page 81 of the PB), the case of the Respondents appears to be that,



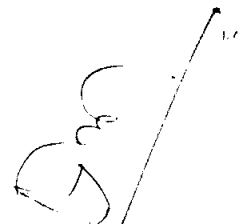
this Circular could be considered only after the charge-sheet was laid before the Court. I do not find any justification for such constriction. In my opinion, the Circular would apply regardless of whether charge-sheet is laid or not and why, in this matter itself, the charge-sheet has not so far been laid, and therefore, it cannot be an endless process.

7. I may now turn to the case law on the subject which is binding on all concerned. I had occasions to deal with the same aspect of the matter in **OA 1096/2016 (Shri Anandkumar S. More Vs. The State of Maharashtra and one another, dated 21.4.2017)**, **OA 214/2017 (Shri Jahur Ahmed Tajuddin Pirjade Vs. The State of Maharashtra & 5 Ors, dated 27.4.2017)** and **OA 256/2017 (Shri Rajendra K. Shirsath Vs. The State of Maharashtra, dated 10.08.2017)**. In those OAs, I relied upon a number of Judgments of the Hon'ble Supreme Court and the Hon'ble Bombay High Court in **Cap. Paul Anthony Vs. Bharat Gold Mines Limited : 1999 SCC (L & S) 810**, **O.P. Gupta Vs. Union of India : (1987) 4 SCC 328**. Para 8 from **Anandkumar More** has the quotes from these Judgments of the Hon'ble Supreme Court which I may reproduce.



“8. Mr. C.T. Chandratre, the learned Advocate for the Applicant in this behalf relied upon **Cap. Paul Anthony Vs. Bharat Gold Mines Limited : 1999 SCC (L & S) 810**. Although Their Lordships in that matter were dealing with the Civil Services Rules applicable to the Central Government employees, but it is very clear that the principles laid down therein are applicable to all such service matters where the issue was just as the present one which arises for determination. Their Lordships relied upon **O.P. Gupta Vs. Union of India : (1987) 4 SCC 328** in **Paul Anthony** (supra), Their Lordships denounced the tendency of some of the Officers to place their subordinates under suspension even over trivial lapses. The issue of simultaneous continuation of the DE as well as the Criminal Proceeding was also considered by Their Lordships in Paul Anthony (supra). Para 29 of **Paul Anthony** (supra) in fact needs to be fully reproduced wherein a passage from **O.P. Gupta** (supra) has also been quoted.

“29. Exercise of right to suspend an employee may be justified on the facts of a particular case.



Instances, however, are not rare where officers have been found to be afflicted by a "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of subsistence allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilised and the salary is also paid to him at a reduced rate under the nickname of "subsistence allowance", so that the employee may sustain himself. This Court, in O.P. Gupta Vs. Union of India made the following observations with regard to subsistence allowance: (SCC p.340, para 15).

"An order of suspension of a government servant does not put an end to his service under the Government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in Khem Chand Vs. Union of India is that he continues to be

1  


a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance- generally called subsistence allowance - which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'subsist' as given in shorter Oxford English Dictionary, Vol. II at p.2171 is 'to remain alive as on food; to continue to exist'. 'Subsistence' means- means of supporting life, especially a minimum livelihood."


8. Another Judgment of the Hon'ble Supreme Court was **Ajay Kumar Choudhary Vs. Union of India : (2015) 2 SCC (L & S) 455 = (2015) 7 SCC 291.** Paras 11 and 12



from Ajay Kumar Choudhary (supra) can be quoted as I did in More's matter.

**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 periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspension person suffering 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 now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right 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 grounds 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 prosecution the accused shall enjoy the right to a speedy and public trial.”


9. I also relied upon a Judgment of a Division Bench of the Hon'ble Bombay High Court in **Madanlal Sharma Vs. The State of Maharashtra and others, 2004 (1) MLJ 581** with particular reference to Paras 13 and 15. Reliance was further placed on **State of Maharashtra and others Vs. Shivram S. Sadawarte : 2001 (3) Mh.L.J.**



**249.** Para 10 thereof from Mh.L.J. was quoted in **More's** matter and the same course of action needs to be adopted herein.

“**10.** There can be dispute that a Government servant cannot be kept under suspension indefinitely or for an unreasonably long period and the same is not contemplated under Rule 4 of the Rules as well. A provision is made empowering the Government to review or revoke such an order of suspension in appropriate cases. If the employee approaches the State Government requesting to revoke the suspension order under Rule 4(5) of the Rules and the said request is declined or remains undecided beyond a reasonable period, undoubtedly the delinquent employee has the right to challenge the Government's decision before a competent Court and the Court will have the powers of judicial review of such an order. The scheme of the rules is clear and does not call to be restated time and again. The delinquent's approach can be at any time and the same is required to be considered by the competent authority within a reasonable period.”

10. Para 30 of **More's** matter may also be quoted with advantage because it seeks guidance from **O.P. Gupta**



---

(supra) which is the Judgment of the Hon'ble Supreme Court.

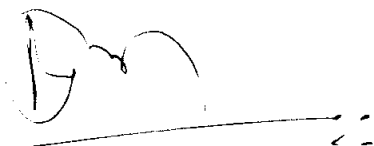
“30. In Para 15 of O.P. Gupta (supra), the Hon'ble Supreme Court was pleased to observe that there was no presumption that the Government always acted in the manner which was just and fair, and therefore, on mere expression of apprehensions, the judicial forum cannot mechanically uphold an order of suspension. Be it under Rule 4 of the D & A Rules here or for that matter, under any of the sister provisions of any other set of Rules or instruments. Even within the circumscribed jurisdiction, the judicial forum must make sure that the order of suspension is really merited. A whimsical move or a preconceived or may be unfounded notion and sometimes individual predilections may become the foundation for such an order and when it is placed before the judicial forum, it has to closely examine the matter and arrive at a proper conclusion. I need not repeat, but I have already mentioned hereinabove the distinction between exoneration



finding of guilt, conviction or acquittal, which may be recalled.”

11. Next Judgment relied upon was in **Kalabharati Advertising Vs. Hemant Vimalnath Narichania & Ors. : AIR 2010 SC 3745**. Para 25 whereof was quoted by me in **More's** Judgment and the said Para 25 is reproduced hereinbelow.

“25. The State is under obligation to act fairly without ill will or malice- in fact or in law. “Legal malice” or “malice in law” means something done without lawful without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is a deliberate act in disregard to the rights of others. Whether malice is attributed to the State, it can never be a case of personal ill will or spite on the part of the State. It is an act which is taken with an oblique or indirect object. It means exercise of statutory power for purpose foreign to those for which it is in law intended.” It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to



disregard the rights of others, which intent is manifested by its injurious acts.”

12. In **Madanlal Sharma's** case, the Hon'ble Bombay High Court was pleased to hold that the order of suspension cannot be issued as a matter of routine and it has to be resorted to as a course of action of last resort. In Para 15, Their Lordships were pleased to make the following observations.

“**15.** Indefinite continuation of suspension has always been declared invalid by a catena of decisions where it was demonstrated that for continuation of the suspension, the employee was not responsible. In addition, if the disciplinary authority did not proceed by issuing chargesheet and appointing the Enquiry Officer so as to initiate departmental proceedings within a reasonable period from the date of suspension, such suspension order continued for years together, gets vitiated and, therefore, it is required to be declared as invalid as well as illegal. We may in this regard refer to the decision of the Apex Court in the case of **K.**



**Sukhendar Reddy v. State of A.P. and Anr.,**  
**MANU/SC 0272/1999 : (2000) ILLJ 474 SC.”**

The legal position has thus become quite clear. Several Judgments of this Tribunal were also cited in which guidance was taken from the Judgments of the Hon'ble Supreme Court and the Hon'ble Bombay High Court.

13. In this particular matter, it is very clear that, although ritualistically it might be contended that the Applicant would tamper with evidence, I even within my circumscribed jurisdiction would unhesitatingly record my complete disagreement. The Agency investigating into the allegations against the Applicant is an independent Agency. As is the common knowledge, the material has to be collected in good measure from the accused only and to say that, he would be using his post as a ground of defense is absolutely unacceptable. I am, therefore, very clearly of the view that, bound as I am and everyone including the concerned authorities herein are, by the Judgments of the Hon'ble Constitutional Courts to which references have been made above, the mere fact of the registration of FIR is not sufficient for the continued suspension of the Applicant and he would have to be reinstated though in the matter of

posting the authorities may consider the said aspect of the matter in accordance with the facts.

14. The Respondents are directed to convene the meeting of Suspension Review Committee within a period of four weeks from today and take a decision in accordance with the observations herein made based on the Judgments of the Hon'ble Supreme Court and the Hon'ble Bombay High Court and re-consider the case of the Applicant in the matter of reinstating him by revoking of suspension. The outcome of the meeting be conveyed to the Applicant within a period of one week ~~from~~ thereafter. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**18.08.2017**

10017

Mumbai

Date : 18.08.2017

Dictation taken by :

S.K. Wamanse.