

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.379 OF 2017

DISTRICT : PUNE

Shri Ajit Dhondiram Dalvi.)
Age : 52 Years, Occu.: Assistant Police Inspector,)
Dehu Road Police Station, Pune (Rural), Pune)
and R/o. 783, Kharal Wadi, Near Anand Lodge,)
Pimpri, Pimpri Chinchwad, Pune – 18.)...**Applicant**

Versus

1. The Superintendent of Police.)
Pune (Rural), Pune and having office at)
Dr. Homi Bhabha Road, Pune – 8.)
2. The State of Maharashtra.)
Through Principal Secretary,)
Home Department, Mantralaya,)
Mumbai – 400 032.)...**Respondents**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Mrs. A.B. Kololgi, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 02.04.2019

JUDGMENT

1. In the present Original Application, the challenge is to the suspension order date 18.03.2017 as well as Corrigendum Order dated 12.05.2017 whereby the Applicant was kept under suspension.

2. The issue posed for consideration in the present O.A. is whether the suspension order dated 18.03.2017 and Corrigendum suspension order dated 12.05.2017 are legal and valid ?

3. The factual matrix is as follows :

The Applicant was posted as Assistant Police Inspector (API), Dehu Road Police Station, Pune (Rural). By order dated 18.03.2017, the Respondent No.1 – Superintendent of Police suspended the Applicant invoking Section 25 of Maharashtra Police Act, 2015 (hereinafter referred to as 'Act 2015') read with Rule 3(a-2) of Maharashtra Police (Punishment and Appeal) Rules, 1956 (hereinafter referred to as 'Rules 1956') in view of contemplated Departmental Enquiry (D.E.). The Applicant contends that the suspension order is totally illegal being of punishment without due process of law.

4. During the pendency of this O.A, the Respondent No.1 issued Corrigendum order dated 12.05.2017 and sought to correct the provisions referred in first suspension order dated 18.03.2017. In first suspension order, he invoked Section 25 of Maharashtra Police Act read with Rule 3(a-2) of 'Rules 1956' whereas by Corrigendum dated 18.03.2017 he replaced it by Section 25(2)(a) of 'Act 2015 read with Rule 3(1-A)(i) of 'Rules 1956'. It would be useful to reproduce the relevant extract of Corrigendum dated 18.03.2017.

“-:शुध्दीपत्रक:-

सहायक पोलीस निरीक्षक, अजीत धोंडीराम दळवी, नेमणुक देहुरोड पोलीस ठाणे ग्रामीण यांना उपरोक्त नमुद दिनांक १८.०३.२०१७ रोजीच्या आदेशान्वये निलंबित केले आहे. सदर आदेशातील द्वितीय परिच्छेद ओळी क्र.१३ ते १६ खालीलप्रमाणे वाचण्यात यावे.

त्याअर्थी मी, मो.सुवेज हक, पोलीस अधीक्षक, पुणे ग्रामीण मुंबई पोलीस अधिनियम १९५१ मधील कलम २५ आणि मुंबई पोलीस (शिक्षा व अपिले) नियम, १९५६ मधील नियम ३(अ-२) अन्वये प्रदान केलेल्या शक्तीचा वापर करून याद्वारे सहायक पोलीस निरीक्षक, अजीत धोंडीराम दळवी, नेमणुक देहुरोड पोलीस ठाणे, पुणे ग्रामीण यांना शिस्तभंगविषयक कार्यवाहीच्या अधीन राहून सेवेतून तात्काळ निलंबित करित आहे

या ऐवजी

त्याअर्थी, मी, मो.सुवेज हक, पोलीस अधीक्षक, पुणे ग्रामीण, महाराष्ट्र पोलीस अधिनियम १९५१ मधील कलम २५(२) (२)(a) आणि मुंबई पोलीस (शिक्षा व अपिले) नियम १९५६ मधील नियम ३ (1-A)(1) अन्वये प्रदान केलेल्या शक्तीचा वापर करून याद्वारे सहायक पोलीस निरीक्षक, अजीत धोंडीराम दळवी, नेमणूक देहुरोड पोलीस स्टेशन पुणे ग्रामीण यांना शिस्तभंगविषयक कार्यवाहीच्या अधीन राहून सेवेतून तात्काळ निलंबित करित आहे असे वाचावे.

आदेशातील अन्य तपशिल /मजकूर यामधे कोणताही बदल नाही.

सही
पोलीस अधीक्षक, पुणे ग्रामीण”

5. The Applicant accordingly amended the O.A. and challenged the order dated 18.03.2017 issued by way of Corrigendum contending that it has retrospective effect, and therefore, the same is unsustainable in law.

6. Shri A.V. Bandiwadekar, learned Advocate for the Applicant vehemently urged that the suspension order dated 18.03.2017 is *ex-facie* illegal being passed under Section 25 of 'Act 2015' read with Rule 3(a-2) of 'Rules 1956' which provides suspension by way of punishment. He, therefore, urged that, without following the prescribed procedure as contemplated under Section 26 of 'Act 2015', the suspension by way of punishment is not sustainable in law. In the second limb of submission, he contends that there is no compliance of proviso to Rule 3 of 'Rules 1956', which inter-alia provides that where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority, the circumstances in which the order of suspension was made. He further pointed out that, in view of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, the suspension beyond 90 days is illegal.

7. Per contra, Smt. A.B. Kololgi, learned Presenting Officer submitted that having noticed quoting of wrong provisions in suspension order dated 18.03.2017, the Respondent No.1 had issued Corrigendum on 18.03.2017 and thereby corrected the provisions mentioned in suspension order dated 18.03.2017. She, therefore, sought to contend that, in view of Corrigendum, the

suspension is legal and valid. As regard compliance of proviso to Rule 3 of 'Rules 1956', she submits that the copy of suspension order was forwarded to the appointing authority i.e. Director General of Police, and therefore, the challenge to the suspension order is devoid of merit.

8. The learned P.O. has further pointed out that, during the pendency of this O.A, the D.E. initiated against the Applicant was completed wherein punishment of stoppage of next two increments was imposed by order dated 30.10.2018. In the meantime, the applicant was reinstated in service on 22.02.2018.

9. As stated above, during the pendency of this application, the Applicant has been reinstated in service in view of completion of D.E, and therefore, the issue remains to the legality of suspension order only.

10. It may be noted that Section 25(1), (1-A)(2-A) provides for the punishment of the members of subordinate rank of the Police Force as well as punitive powers of Director General or Inspector General, etc. What is significant to note that the suspension is also one of the punishment, as prescribed under Section 25(1)(b) of 'Act 2015'. Whereas, Section 26 of 'Act 2015' specifically provides that except in cases referred in second proviso to Clause 2 of Article 311 of Constitution of India, no order of punishment under Sub-Section 1 of Section 25 shall be passed unless prescribed procedure is laid down in 'Rules 1956'. At the same time, under Rule 3(1)(a-2) also, the suspension is one of the punishment. In this context, Rule 4 specifically provides that, no punishment specified in Clauses (a-2) (i)(i-a)(ii)(iii) of Sub-Rule 1 of Rule 3 shall be imposed on any Police Officer unless the D.E. into his conduct is held and note of the enquiry with reasons for passing an order imposing the said punishment is made in writing under his signature. Here, we are concerned with Clause (a-2) of Rule 3(1) where suspension is one of the punishment. As such, reading of all these provisions makes it quite clear that the suspension is also one of the punishment and for

such punishment of suspension also, there has to be enquiry as contemplated in 'Rules 1956'.

11. Now, turning to the facts of the present case, by order dated 18.03.2017, the Respondent No.1 invoked Section 25 of 'Act 2015' read with Rule 3(a-2) of 'Rules 1956' and suspended the Applicant with immediate effect. As such, it is explicitly clear that the said suspension order has been issued by way of punishment exercising these powers of punishment.

12. Later, the Respondent No.1 issued Corrigendum on 12.05.2017 as reproduced above. By the said Corrigendum, the Respondent No.1 sought to rectify the mistake of quoting of the provisions. However, by Corrigendum also, the suspension is given with retrospective effect i.e. from 18.03.2017.

13. In view of above, now let us see the stand taken by Respondent No.1 in reply. Significant to note Paras No.45 and 47 of reply, which are as follows :

45. With reference to Para 6.36(G), I say as follows: The averments are also denied in totality. The Respondent No.1 had issued Corrigendum dated 12.05.2017 to punish the delinquent Applicant and to effect the said suspension order in legal framework as clarified above and not to fill up the so called loopholes and was never an afterthought. Hence the Original Application being infructuous and illegal is liable to be rejected with exemplary costs.

47. With reference to para 6.36(I), I say as follows: The averments are altogether denied as the same is patently illegal. The Respondent No.1 had issued Corrigendum dated 12/05/2017 to punish the delinquent Applicant and to effect the said suspension order in legal framework as clarified above. Hence the same being the part of the procedure of suspension it has to be done with immediate effect so as to conduct the further procedure without any unnecessary delay. Hence there is not a iota of truth in the contention of the Applicant."

14. Thus, in reply filed by Shri Mohd. Suvez Haque, Superintendent of Police, who himself is the signatory to the suspension order as well as Corrigendum order again reaffirmed and maintained his stand that the order dated 12.05.2017

had been issued to punish the delinquent. As such, despite issuance of Corrigendum, still Respondent No.1 is maintaining his stand that the suspension is by way of punishment. If this be so, the same is *ex-facie* illegal. The law does not permit for suspension by way of punishment without enquiry contemplated in 'Rules 1956'.

15. Apart by Corrigendum dated 18.03.2017, in an attempt to correct or rectify the mistake again the effect to the suspension has been given retrospectively i.e. from 18.03.2017. The suspension order dated 18.03.2017 being specifically passed under Section 25 of 'Rules 1956' is *ex-facie* illegal. Whereas, by another order i.e. Corrigendum dated 12.05.2017 instead of giving prospective effect, it has given retrospective effect stating that it be read to have passed under Section 25(2-a) read with Rule 3(1)(a), (1) of 'Rules 1956'. Rule 3(1-A)(i) of 'Rules 1956' provides for suspension in contemplation of D.E. or in reference to registration of criminal offence against the Police Officer. Thus, such order of suspension in contemplation of D.E. or in reference to the registration of criminal offence is always with prospective effect and it cannot be with retrospective effect. However, in the present matter, by Corrigendum dated 18.03.2017 again suspension has been imposed with retrospective effect which at the most could have been prospective i.e. from the date of Corrigendum, and therefore, despite the Corrigendum, it renders the suspension illegal.

16. Furthermore, there is no compliance of proviso to Rule 3(1-A)(i) of 'Rules 1956' which is as follows :

“(1-A) (i) The appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place, a Police Officer under suspension where—

(a) an inquiry into his conduct is contemplated or is pending,
or

(b) a complaint against him of any criminal offence is under investigation or trial:

Provided that where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made.”

17. In the present case, admittedly, the appointing authority of the Applicant is Director General of Police. Therefore, the suspension order being passed by Superintendent of Police being lower in rank than the appointing authority, the said authority was obliged to report the appointing authority, the circumstances in which the order of suspension has been made. As such, the emphasize is on submission of report highlighting the circumstances in which the order of suspension has been passed and mere forwarding the copy of suspension order to appointing authority is not in compliance of the requirement of proviso, which is mandatory and not directory.

18. The learned P.O. all that sought to contend that the copy of suspension order dated 18.03.2017 as well as Corrigendum dated 12.05.2017 were forwarded to the appointing authority. The perusal of orders dated 18.03.2017 as well as 12.05.2017 reveals that there is endorsement of simple forwarding the copies to various authorities including Director General of Police. Significantly, no material is placed on record to show that, in fact such copy was forwarded to Director General of Police. Even assuming that the copy of suspension order was forwarded to the appointing authority, mere forwarding of the copy of suspension order is hardly compliance of the proviso reproduced above. The Respondent No.2 was obliged to forward the report to the appointing authority specifying and highlighting the circumstances in which he has passed the order of suspension. However, in the present case, no such compliance is made. This being the position, on this ground also, the suspension order is not sustainable in law.

19. Apart, the legal position in respect of prolong suspension is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**. In the present matter, the Applicant was suspended by order dated 18.03.2017 and was reinstated on 22.02.2018. Thus, he was under suspension for about 11 months. Whereas, in **Ajay Kumar Choudhary's** case, the Hon'ble Supreme Court directed that the currency of suspension should not extend beyond three months. 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.”

20. 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.

21. True, during the pendency of O.A, the D.E. has been completed and punishment of stoppage of next two increments has been imposed upon the Applicant. However, in so far as legality of suspension is concerned, in view of aforesaid discussion, it will have to be held that the suspension order suffers from material illegality and deserves to be quashed.

22. The totality of aforesaid discussion leads me to sum-up that the suspension order dated 18.03.2017 as well as Corrigendum dated 12.05.2017 is not sustainable in law and deserves to be quashed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The suspension order dated 18.03.2017 as well as Corrigendum dated 12.05.2017 are hereby quashed and set aside.
- (C) The Applicant is, therefore, entitled to the consequential service benefits.
- (D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 02.04.2019

Dictation taken by :

S.K. Wamanse.

D:\SANJAY WAMANSE\JUDGMENTS\2019\4 April, 2019\O.A.379.17.w.4.2019.Suspension.doc