IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI

ORIGINAL APPLICATION NO.408 OF 2020

DISTRICT : RAIGAD

Shri Nishikant K. More.)
Age : 54 Yrs, Occu.: Working at Pune as)
Deputy Inspector General of Police,)
Motor Transport Section, Pune and)
R/at 602/13, KH4, Celebration, Sector 17,)
Kharghar, Navi Mumbai.)**...Applicant**

Versus

The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya, Mumbai.)**...Respondent**

Mr. K.R. Jagdale, Advocate for Applicant
Mrs. K.S. Gaikwad, Presenting Officer for Respondent

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

DATE : 12.05.2021

JUDGMENT

1. This is second round of litigation challenging suspension order 09.01.2020 whereby Applicant was kept under suspension in view of registration of offences against him as well as in contemplation of D.E. under Rule 4(1) of Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules of 1979').

2. Briefly stated facts giving rise to this application are as under :-

The Applicant was serving as Deputy Inspector General of Police, Motor Transport Section, Pune. On 05.06.2019, the Applicant had visited the house of one girl (victim) to attend celebration of her birth day. Victim's father and Applicant had very cordial relations and Applicant used to visit girl's house frequently. During celebration of her birth day, victim's parents, her brother, Applicant, Applicant's wife and son were also present. Both the families were on visiting terms since 2014. It is during the celebration of birth day, the family members of victim's smeared her face with cake. The Applicant allegedly removed cake by his finger from her face and ate it by leaking fingers. The piece of cake had fallen on her chest. The Applicant allegedly touched her chest and removed the piece of cake and tried to eat, but it fell down. The said incident was video recorded in mobile. Though incident occurred on 05.06.2019, the FIR was lodged by the victim on 26.12.2019 with Taloja Police Station. In sequel, Crime No.260 of 2019 was registered for the offences under Section 354A(1)(i), 506 of IPC read with Section 8, 9(A)(iv) and 10 of Protection of Children from Sexual Offences Act, 2012 (POCSO). In view of registration of crime, the Government by order dated 09.01.2020 suspended the Applicant invoking Rule 4 of 'Rules of 1979' (suspension order is silent as to under which clause of Rule 4(1), suspension is ordered and there is only reference of Rule 4 in the order. As such, it is the incident dated 05.06.2019 which resulted into suspension of the Applicant.

3. The Applicant had filed Criminal Application No.132/2020 before Hon'ble High Court for grant of anticipatory bail and by order dated 22.01.2020, he was granted anticipatory bail. Later, the Applicant made representation to the Government on 10.04.2020 for revocation of suspension and reinstatement on the ground of protracted suspension without initiating D.E. but in vain. In so far as offence registered against the Applicant are concerned, the charge-sheet came to be filed within 90 days from the date of suspension and the Criminal Case is subjudice.

4. The Applicant had, therefore, initially challenged the suspension order in first round of litigation i.e. in O.A.No.238/2020 which was disposed of on 11.06.2020 giving direction to the Respondent to take review of suspension of Applicant in terms of G.R. dated 09.07.2019 as well as in the light of decision of Hon'ble Supreme Court in ***(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)***.

5. Accordingly, in terms of decision given by the Tribunal, the Government had taken review but decided to continue the suspension solely on the ground that offences registered against the Applicant are serious.

6. It is on the above background, the Applicant has again filed the present O.A. challenging suspension order dated 09.01.2020 *inter-alia* contending that prolong suspension beyond 90 days without initiating D.E. is unsustainable in view of decision of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case (cited supra) and the decision to continue the suspension taken by Review Committee is arbitrary, unreasoned and mechanical and the same is unsustainable in law.

7. The Respondent opposed the O.A. by filing Affidavit-in-reply *inter-alia* justifying the suspension contending that in view of registration of serious crime, it is legal and vaild. The Respondent further contends that in terms of direction given by the Tribunal in O.A.No.238/2020, the review was taken and Committee having regard to the nature of offences registered against the Applicant decided to continue the suspension. As regard initiation of DE, the Respondent contends that initiation of DE is under consideration.

8. Shri K.R. Jagdale, learned Advocate for the Applicant sought to contend that in view of inordinate delay of six months in lodging FIR as well as observations made by Hon'ble High Court while granting anticipatory bail that *prima-facie* material does not reflect alleged offending act, the suspension was not at all justified. As regard review,

he has pointed out that no reasoned order is passed for continuation of suspension except stating that offences registered against the Applicant are serious. He has point out that the Review Committee has completely ignored the important observations made by Hon'ble High Court while granting anticipatory bail and mechanically continued the suspension. He referred to the decision of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case and submits that suspension beyond 90 days is impermissible. He has further pointed out that till date, the period of more than 15 months is over but no DE is initiated by the Respondent nor there is any progress in the Criminal Case. On this line of submission, he submits that in the peculiar facts and circumstances of the case, such prolong suspension is unsustainable and Applicant be reinstated at any other suitable place.

9. Per contra, Mrs. K.S. Gaikwad, learned Presenting Officer submits that *prima-facie* the Applicant had indulged in serious misconduct and committed offences punishable under Section 354A(1)(i), 506 of IPC read with Section 8, 9(A)(iv) and 10 of Protection of Children from Sexual Offences Act, 2012 (POCSO). She has pointed out that in terms of decision of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case, the charge-sheet filed in Criminal Court within 41 days from the date of suspension, and therefore, the question of violation of decision of Hon'ble Supreme Court in ***Ajay Kumar Choudhary's*** case does not survive. She has further pointed out that twice review was taken by the Committee constituted for this purpose, but having regard to the facts and serious and nature of offence, the Committee decided to continue his suspension. She fairly concedes that till date, no DE is initiated against the Applicant.

10. At this juncture, it would be apposite to see the observations made by Hon'ble High Court in Criminal Application No.132/2020 while granting anticipatory bail by order dated 22.01.2020. The Hon'ble High Court observed that there were close acquaintance between the Applicant

and victim's family as well as there were monetary transactions in between victim's father and the Applicant. It is further observed that the Applicant had participated in birth day celebration along with wife and son. As regard alleged incident recorded in Mobile, the Hon'ble High Court observed as under :-

> "The screen shot shows birthday celebration, cake on face of victim and presence of applicant, victim and other family members. The last screen shot according to the prosecution relates to the incident as alleged which had occurred while picking up the piece of the cake from the chest of the victim. The said screen shot in the form of photographs do not clearly show the alleged acts of outraging modesty. Considering version of complainant, *prima-facie*, the said picture do not appear to be reflecting alleged offending act. Admittedly, all the family members were present at the place of incident."

11. As such, notably Hon'ble High Court has expressed serious doubt about the commission of offences registered against the Applicant and accordingly granted anticipatory bail. It is on this background, one need to see whether prolong suspension is valid and justified.

12. Needless to mention that the adequacy of material before the disciplinary authority for suspension of the Government servant normally cannot be looked into by the Tribunal, as it falls within the province of disciplinary authority. The general principle could be that ordinarily, the suspension should not be interfered with, if the allegations made against the Government servants are of serious nature and on the basis of evidence available, there is *prima-facie* case for his dismissal or removal from service or there is reason to believe that his continuation in service is likely to hamper the investigation of the criminal case or D.E. However, at the same time, it is well settled that the suspension is not to be resorted to as a matter of rule and the employee should not be subjected to prolong suspension. It has been often emphasized that the suspension has to be resorted to as a last resort, if the enquiry cannot be fairly and satisfactorily completed without keeping the delinquent away from his post. At any rate, the employee shall not be subjected to prolong and unjustified continuous

suspension without taking positive and expeditious steps for completion of D.E.

13. In this behalf, it would be worthwhile to refer guidelines, Circulars and G.Rs. issued by the Government from time to time.

14. As per Clause 3.19 of Departmental Enquiry Manual, the D.Es need to be completed as expeditious as possible and in any case, it should be completed within six months from the date of issuance of charge-sheet. Here, it would be material to refer Clause 3.19 of Manual, which is as follows :-

> "**३.१९** विभागीय चौकशी पूर्ण करण्यासाठी कालमर्यादा.-- (१) विभागीय चौकशी शक्य तितक्या लवकर पूर्ण करण्यात याव्यात आणि कोणत्याही परिस्थितीत हा कालावधी विभागीय चौकशी करण्याचा निर्णय घेतल्याचा तारखेपासून सहा महिन्यांपेक्षा अधिक नसावा. चौकशीच्या निष्कर्षासंबंधीचे अंतिम आदेश काढल्यानंतरच ती पूर्ण झाली आहे, असे मानले जाईल.
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> (२) तथापि, काही प्रकरणामध्ये उचित व पुरेशा कारणांसाठी सहा महिन्यांच्या विनिर्दिष्ट काळामध्ये विभागीय चौकशी पूर्ण करणे शक्य नसेल विभागीय चौकशा पूर्ण करण्यासाठी असलेली ही कालमर्यादा वाढवून देण्याचे अधिकार परिशिष्ट ८च्या स्तंभ ३ व ४ मध्ये नमूद केलेल्या प्राधिकाऱ्याला, त्या स्तंभाच्या शीर्षाखाली निर्देशलेल्या मर्यादित अधीन राहून दयावेत असे शासनाने ठरविले आहे. विभागीय चौकशी मंजूर झाल्याच्या तारखेपासून ती पूर्ण करण्यासाठी एका वर्षापेक्षा अधिक कालावधी वाढवून देण्यास मंत्रालयाच्या प्रशासकीय विभागाने सामान्य प्रशासन विभागाची विचारविनिमय करून अनुमती दयावी.
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> (३) कालमर्यादेपेक्षा वाढीचा प्रस्ताव सादर करताना संबधित चौकशी अधिकाऱ्याने आणि शिस्तभंगविषयक प्राधिकाऱ्याने सक्षम प्राधिकाऱ्यास परिशिष्ट ९ मध्ये अंतभूर्त असलेल्या प्रपत्रात माहिती दयावी. कालमर्यादेची वाढ देण्यासाठी सक्षम असलेल्या प्राधिकाऱ्याने प्रस्तावाची काळजीपूर्वक तपासणी करावी आणि कमीत कमी आवश्यक असलेल्या कालावधीची वाढ दयावी.''

15. 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."

16. Similarly, reference of the Judgment of Hon'ble Supreme Court in ***1999(1) CLR 661 (Devidas T. Bute Vs. State of Maharashtra)*** is necessary. 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."

17. On the above background and legal scenario in ***Ajay Kumar Chaudhary's*** case, the Hon'ble Supreme Court after taking note of its earlier decisions mandated that the currency of suspension order should not exceed beyond three months if the memorandum of charges/charge-sheet is not served upon the delinquent and where the Memorandum of charges/charge-sheet is served within three months, in that eventuality, a reasoned order must be passed for the extension of suspension. It would be useful to reproduce certain Paragraphs from the decision of ***Ajay Kumar Chaudhary's*** case, which are as under :-

8. 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.

9. Protracted periods 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 misdemeanour, 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 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. Article 12 of the Universal Declaration of Human Rights, 1948 assures that - "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time...." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

10. The Supreme Court of the United States struck down the use of *nolle persequi*, an indefinite but ominous and omnipresent postponement of civil or criminal prosecution in Klapfer v. State of North Carolina 386 U.S. 213 (1967). In Kartar Singh v. State of Punjab MANU/SC/1597/1994 : (1994) 3 SCC 569 the Constitution Bench of this Court unequivocally construed the right of speedy trial as a fundamental right, and we can do no better the extract these paragraphs from that celebrated decision –

> 86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.
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> 87. This Court in Hussainara Khatoon (I) v. Home Secretary, State of Bihar while dealing with Article 21 of the Constitution of India has observed thus:
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> > No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no

> doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21.

11. The legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental inquiries has been emphasised by this Court on numerous occasions. The Constitution Bench in Abdul Rehman Antulay vs. R.S. Nayak, 1992 (1) SCC 225, underscored that this right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Cr.P.C., 1973; that it encompasses all stages, viz., investigation, inquiry, trial, appeal, revision and re-trial; that the burden lies on the prosecution to justify and explain the delay; that the Court must engage in a balancing test to determine whether this right had been denied in the particular case before it.

13. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghubir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

14. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent

> officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 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 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.

18. 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.

19. Thus, in nutshell, if there is prolong suspension for indeterminate period, the fulcrum of which itself is very shaky and no useful purpose would be served by continuing the suspension, in such situation, to avoid further ignominy to Government servant, the suspension will have to be revoked so as to reinstate a Government servant in service subject to final outcome of D.E. or criminal prosecution.

20. Now turning to the facts of the present case, the incident which gives rise to the suspension is already narrated above. Significantly, while considering anticipatory bail application of the Applicant, the Hon'ble High Court made a very important observation about the

commission of offences registered against the Applicant. The Hon'ble High Court has specifically observed that "considering version of complainant, *prima-facie*, the said picture do not appear to be reflecting alleged offending act. Admittedly, only family members were present at the place of incident. In other words, the Hon'ble High Court has expressed serious doubt about the commission of offences and sustainability of the charge meaning thereby culmination of criminal prosecution in conviction is doubtful. It is clarified that these are *prima-facie* observation from the point of validity of prolong suspension and should not be construed affecting merits of criminal case. If this would be the scenario, no purpose would be served by continuing the suspension of the Applicant. Till date, the period of more than 16 months is over. The criminal prosecution is simply pending without any substantial progress.

21. Admittedly, till date, the Respondent has not initiated D.E. against the Applicant. It seems that because of pendency of criminal prosecution, the Respondent abstain itself from initiating D.E. However, there is no bar for initiation of D.E. since standard of proof required to prove charge in criminal case and standard of proof in D.E. are altogether different. In criminal case, proof beyond reasonable doubt is the rule whereas in D.E, the charge needs to be considered on the basis of preponderance of probabilities. Indeed, the Hon'ble Supreme Court in ***Ajay Kumar Chaudhary's*** case in Para No.14 clearly stated that the direction of Central Vigilance Commission that pending criminal investigation, the departmental proceedings are to be held in abeyance stands superseded in view of stand adopted by us. As such, the Respondent ought to have initiated and concluded D.E. to take the matter to the logical conclusion. However, the Respondent chooses not to initiate D.E. and at the same time continued the prolong suspension simply on the ground that the offences registered against the Applicant are serious in nature. This could hardly be the reason for prolong suspension in view of observations made by Hon'ble High Court while

granting anticipatory bail to the Applicant that the commission of offending act is *prima-facie* doubtful.

22. The Review Committee has recommended to continue the suspension solely stating that offences registered against the Applicant are serious in nature. The seriousness is only shown and not perceived neither acted upon by initiating D.E. The period of more than 16 months under suspension is admittedly over. The criminal case is not progressing. The commission of offences registered against the Applicant itself is doubtful in view of observations made by Hon'ble Supreme Court as well as facts and circumstances leading to the incident. The prosecution should not be allowed to become persecution. The Applicant is already getting Subsistence Allowance at the rate of 75% without rendering any service. Criminal case will take it's own time for conclusion.

23. In view of above, in my considered opinion, no fruitful purpose would be served by continuing the prolong suspension which has already completed more than 16 months. The Applicant, therefore, needs to be reinstated with liberty to Respondent to post him at any other suitable place.

24. At this juncture, it would be also apposite to note that the Government itself has taken decision by issuing G.Rs. dated 14.10.2011 and 31.01.2015 for taking periodical review of suspension of Government servants who are suspended by registration of crime against him so that they are not subjected to prolong suspension. In present case, there is no threat to the criminal trial, if the Applicant is reinstated in service.

25. The necessary corollary of aforesaid discussion leads me to conclude that prolong suspension of the Applicant is not justified and Applicant deserves to be reinstated in service. Hence, the following order.

O R D E R

(A) The Original Application is allowed partly.

(B) The suspension of the Applicant stands revoked with immediate effect.

(C) The Respondent shall reinstate the Applicant in service and is at liberty to give him suitable posting as it deems fit within three weeks from today.

(D) The Applicant shall not tamper witnesses or evidence in criminal case subjudice against him.

(E) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member-J

Mumbai
Date : 12.05.2021
Dictation taken by :
S.K. Wamanse.
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