

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.73 OF 2023

DISTRICT : MUMBAI
Sub.:- Suspension

Shri Sunil Bhagwantrao Toke.)
Age : 57 Yrs, Occu.: Assistant Police)
Sub-Inspector, Main Control Room,)
Mumbai and residing at Room No.57,)
2nd Floor, Chawl No.72, BDD Chawl,)
Babuji Waghmare Marg, Worli,)
Mumbai – 400 018.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through its Addl. Chief Secretary,)
Mantralaya, Mumbai – 400 032.)
2. Brihanmumbai Police through its)
Police Commissioner, having Head)
Office at Police Headquarter,)
Opposite to Crawford Marker, Fort,)
Mumbai – 400 001.)...**Respondents**

Mr. M.B. Kadam, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 23.01.2023

JUDGMENT

1. Heard and decided at the stage of admission.

2. The Applicant has challenged the suspension order dated 20.01.2022 whereby he was suspended in contemplation of departmental enquiry (DE). The perusal of record reveals that DE was initiated has been completed long back, and thereafter, Show Cause Notice was also given to the Applicant on 04.10.2022 as to how he should not be dismissed from service. The Applicant has submitted detail report on 28.10.2022 denying the charges. However, regret to note that though period of more than three months is over, no final order is passed in DE and on the other hand, Applicant is subjected to prolong suspension. Thus, inaction and indecisiveness is writ at large on the part of concerned.

3. Despite queries, the learned P.O. on instructions from Shri S. Jayakumar, Joint Commissioner of Police (Admin) all that submits that file is under process. It is very difficult to understand why final order takes more than three months.

4. The Respondent No.2 – Commissioner of Police, Mumbai by order dated 20.01.2022 suspended the Applicant exercising powers under Rule 3 of Maharashtra Police (Discipline and Appeal) Rules, 1956 attributing allegation that Applicant is in habit to lodge complaints against the senior Police Officers and circulated false news for publicity and thereby maligned the image of Police in public and thereby committed misconduct. The Applicant allegedly filed false PIL about the alleged corruption in Traffic Police and sent e-mails to various authorities to expose alleged corruption. It needs to be clarified that here, the question is restricted to the prolong suspension of the Applicant and not about the sufficiency of material for suspension.

5. Indisputably, charge-sheet was issued to the Applicant on 09.05.2022 i.e. after expiration of 90 days from the date of suspension, but suspension continued, which is in blatant contravention of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar**

Choudhary Vs. Union of India & Anr.) Learned P.O. on instructions further fairly concedes that no review was taken within 90 days from the date of suspension. This being the admitted position, the continued suspension beyond 90 days is totally impermissible in law as mandated in **Ajay Kumar Choudhary's** case.

6. All that, review was taken much belatedly after expiration of six months from the date of suspension. Review was taken on 27.07.2022 and 12.10.2022 and suspension is mechanically continued in derogation of law. This is clearly borne out from the record tendered by learned P.O. for perusal.

7. The issue of prolong suspension is no more *res-integra* in view of decision of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case in which it has been held as under :-

“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.”*

8. Indeed, Government through GAD also issued G. R. dated 09.07.2019 and brought the Judgment of Hon’ble Supreme Court to the notice of various Departments for its scrupulous implementation, but no avail. Thus, despite clear mandate of Hon’ble Supreme Court and the obligation on the part of Respondent No.2 – Commissioner of Police, Mumbai, he failed either to issue charge-sheet or to take review of suspension within 90 days which is outer limit for suspension. This being the position, the suspension beyond 90 days’ period will have to be held bad in law.

9. Insofar as DE is concerned, the Respondents are at liberty to take decision in accordance to law, but there is no escape from the legal consequences that the suspension beyond 90 days is totally impermissible. The Applicant is, therefore, required to be reinstated in service. Hence, the following order.

ORDER

(A) The Original Application is allowed partly.

- (B) The suspension beyond 90 days is declared impermissible and the Applicant deemed to have been reinstated in service after expiration of 90 days' period and will be entitled for pay and allowances.
- (C) The Applicant be reinstated in service within seven days from today.
- (D) The Respondents are at liberty to proceed in accordance to law in pending DE.
- (E) No order as to costs.

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

Mumbai

Date : 23.01.2023

Dictation taken by :

S.K. Wamanse.

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