

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.78 OF 2020**

**DISTRICT : KOLHAPUR**

Shri Shrikant Sadashiv Khapale. )  
Age : 39 Yrs, Working as Police Naik )  
[now under suspension], R/o.733/8, )  
Flat No.305, Subal Shrushti Apartment, )  
Near Vimal English School, Nale Colony, )  
Sambhaji Nagar, Kolhapur. )...**Applicant**

**Versus**

1. Dr. Abhinav Deshmukh. )  
Superintendent of Police, Kolhapur, )  
having office at Kolhapur. )  
2. The State of Maharashtra. )  
Through Addl. Chief Secretary, )  
Home Department, Mantralaya, )  
Mumbai – 400 032. )...**Respondents**

**Mr. Arvind V. Bandiwadekar, Advocate for Applicant.**

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

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

**DATE : 12.02.2021**

**JUDGMENT**

1. The Applicant has invoked jurisdiction of this Tribunal under section 19 of the Administrative Tribunals Act, 1985 challenging the legality of suspension order dated 25.04.2019.

2. Shortly stated facts giving rise to the O.A. are as under :-

The Applicant was serving as Police Constable at Police Station Kale, District Kolhapur. While he was serving there, one news was published in Newspaper Dainik Sakal under the caption “कळेत बुकी चालकाला खाकीचा प्रसाद, पोलिसाचा प्रताप : मटक्याची उधारी बुडवण्यासाठी बुकीलाच दिला चोप”. The said news was widely circulated and the cognizance thereof was taken by Respondent No.1 – Superintendent of Police, Kolhapur in view of default report submitted by API Shri Desai, Police Station Kale, dated 28.02.2018. The S.P, Solapur ordered preliminary enquiry in the incident and directed API Shri Desai to conduct preliminary enquiry. Accordingly, he conducted preliminary enquiry and submitted report indicting the Applicant for grave misconduct. On receipt of preliminary enquiry report, the Respondent No.1 by order dated 30.05.2018 proposed regular departmental enquiry against the Applicant. However, before service of regular D.E, the Applicant objected the initiation of D.E. by his letter dated 08.06.2018 stating that preliminary enquiry was conducted by Shri Mangesh Desai, who himself had initially forwarded default report on 28.02.2018 against the Applicant and the same is impermissible in view of Circular issued by Inspector General of Police dated 01.04.2003. In view of objection and Circular dated 01.04.2003, the Respondent No.1 dropped and cancelled the D.E. as proposed by his earlier order dated 30.05.2018. Thereafter, the Respondent No.1 directed afresh preliminary enquiry through P.I, Karveer Police Station by order dated 06.07.2018. He accordingly conducted preliminary enquiry and submitted report against the Applicant. On receipt of report, having satisfied of the misconduct attributed to the Applicant, the Respondent No.1 issued fresh charge-sheet for regular D.E. by order dated 22.04.2019, which was served upon the Applicant on 08.05.2019. In the meantime, the Respondent No.1 suspended the Applicant by order dated 25.04.2019 invoking provisions of Rule 3 of Bombay Police (Discipline and Appeal) Rules, 1956 (hereinafter referred to as ‘Rules of 1956’ for brevity), which is under challenge in the present O.A.

3. Initially, the O.A. was filed on 23.01.2020 challenging the legality of suspension order as well as prolong suspension without taking any steps for completion of D.E. or for reinstatement of the Applicant. However, during the pendency of O.A, the Applicant has been admittedly reinstated in service on 03.06.2020, and accordingly, the Applicant resumed the duties. As such, the issue of reinstatement in service is over.

4. Shri A.V. Bandiwadekar, learned Advocate for the Applicant, however, sought to assail the legality of suspension order dated 25.04.2019 contending that the Applicant was already transferred from Police Station Kale after the publication of said news, and therefore, there was no necessity of suspension as the question of tampering of evidence was at bay. He further submits that in any case, in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**, the suspension beyond 90 days is impermissible, and therefore, after expiry of 90 days period, the Applicant deemed to have been reinstated in service and entitled for pay and allowances after expiration of the period of 90 days. He has further pointed out that, though D.E. was initiated on 22.04.2019, there is no progress in D.E. except recording evidence of one witness out of 16 witnesses cited in the charge-sheet. Whereas, D.E. ought to have been completed within six months in terms of provisions in Departmental Enquiry Manual as well as G.R. issued by the Government. He further sought to criticize that once initially D.E. was cancelled, there was no justification to initiate the D.E. again and any case, there could not have been suspension of the Applicant.

5. Per contra, Mr. A.J. Chougule, learned Presenting Officer sought to justify the impugned suspension order and pointed out that the D.E. proposed earlier was cancelled on technical ground and thereafter, fresh preliminary enquiry was carried out by another Police Official and in view of the preliminary enquiry report, having regard to grave misconduct viz.

indulging in gambling, assault and rude behaviour with public, particularly MLA and Police Patil, the suspension of the Applicant was found necessitated and there is no illegality in the suspension order dated 25.04.2019. He has further pointed out that, accordingly, regular departmental enquiry has been initiated and it is in progress and will be expedited. He further submits that since Applicant is already reinstated in service by order dated 03.06.2020, the O.A. is liable to be dismissed.

6. Thus, what gathers from the facts narrated above that this is a peculiar case where earlier D.E. was initiated but dropped albeit on technical ground and later afresh preliminary enquiry was conducted and regular D.E. was initiated by order dated 22.04.2019. It is after order of initiation of D.E, the Applicant has been suspended by order dated 25.04.2019 in terms of Rule 3(1-A) (i)(a) of 'Rules of 1956', the appointing authority is empowered to suspend Police Personnel where enquiry into his conduct is contemplated or is pending. As such, there is no bar to suspend Police Personnel after initiation of D.E, if the suspension is found necessary, having regard to the charges levelled against him.

7. At this juncture, it would be apposite to see the contents of suspension order dated 25.04.2019 which highlights the gravity of the charges levelled against the Applicant, which are also under enquiry in regular D.E. The contents of suspension order are material, which are as under :-

**“आ दे श -**

तुम्ही पोना/ ४६२ श्रीकांत खपले, नेम.अ.नै.मा.व्या.प्रति.कक्ष, कोल्हापूर तुमच्या संशयित गुंडगिरीचे, हेकेखोर व विपर्यस्त वर्तनामुळे दि. २३.२.२०१८ चे दैनिक सकाळ वृत्तामध्ये “**कळेत बुकी चालकाला खाकीचा प्रसाद, पोलीसाचा प्रताप : मटक्याची उधारी बुडवण्यासाठी बुकीलाच दिला चोप**” या मथळ्याखाली बातमी प्रसिद्ध झालेली असून, सदर चे वृत्त प्रसिद्ध होणे कामी प्रथमदर्शनी तुमची खालील प्रमाणे कसुरी दिसून येत आहे.

१) तुम्ही पो.ना. ४६२ खपले मटका जुगार खेळत असलेचे व राहुल कोळेकर यांचेकडे उधार स्वरूपात अवैध मटका जुगाराचा खेळ खेळून त्यातून मटका जुगाराचा खेळ लागल्यानंतर त्यातून मिळणा-या ५०,०००/- रुपये सर्वचे सर्व मिळावेत या कारणाकरिता राहुल कोळेकर यांच्याशी भांडण काढून त्याला मारहाण केल्याचे प्राथमिक चौकशीत निष्पन्न झालेले आहे.

२) राहुल कोळेकर याने उधारीच्या खेळाचे ५०,२००/- रु. वजा करून उरलेले ४००/- रु. दिलेनंतर तुम्ही राहुल कोळेकर याला भर रस्त्यात हाताने कानफटात चार ते पाच वेळा मारहाण केलेली आहे. तसेच पो.कॉ. अजिंक्य जाधव व होमगार्ड प्रकाश

परीट व विजय दळवी यांनी राहुल कोळेकर यांना तुमच्यापासून सोडवून घेऊन पो.कॉ. अजिंक्य जाधव याने परत त्यांचे मोटर सायकल वरून राहुल कोळेकर याला त्याचे घरी सोडलेचे प्राथमिक चौकशीमध्ये निष्पन्न झालेले आहे.

३) पो.ना. ४६२ खपले तुमच्या कळे पोलीस ठाणे येथील नेमणुकीच्या कालावधी मध्ये माहे जुलै/ २०१७ मध्ये पनोरे गावातील अवैध दारु व्यवसायाबद्दल ठाण्यात माहिती देण्याकरिता आलेल्या वेतवडे ता. पन्हाळा जि. कोल्हापूर या गावचे पोलीस पाटील श्री. नामदेव पांडुरंग पाटील यांना पो. ठाणे अंमलदार कक्षांमधील प्लास्टिकचे खुर्चीवर बसलेले असताना त्यांचे खुर्चीला लाथ घालून त्यांना तसेच त्यांचे सोबत गेलेले पनोरे गावचे पोलीस पाटील धनाजी गुरव यांना धमकावणेचा प्रयत्न करून पोलीस पाटील नामदेव पाटील व धनाजी गुरव हेच दारु पिलेले आहे असे भासवणे करिता त्यांचे तोंडात ब्रेथअॅनॅलायझर मशीन घालून तपासणी करण्याचा प्रयत्न केलेला आहे. त्या आधारे धमकावण्याचा प्रयत्न केलेला असून, तुमचे पो.ठाणे हद्दीतील पोलीस पाटील यांचे बरोबर उद्धटपणाचे व बेशिस्तपणाचे वर्तन केलेची बाब निष्पन्न झालेली आहे.

४) तुम्ही पो.ना. ४६२ खपले तुमची बदली होऊन देखील कळे पोलीस ठाणे हद्दीत व कळे गावांमध्ये वारंवार जाता व सदर घडलेल्या प्रकाराबाबत पिडीत राहुल कोळेकर व त्यांचे संबंधाने असणारे नागरिकांना भीती दाखवता तुमच्या अशा या गुंडगिरीचे वर्तनाला घाबरून नागरिकांमध्ये भीतीचे वातावरण निर्माण झाल्याची बाब प्राथमिक चौकशीत निष्पन्न झालेली आहे.

५) तुम्ही पो.ना. ६६२ खपले मटका जुगाराचे लागलेल्या खेळाचे पैसे मागणे करिता राहुल कोळेकर याला केलेले कॉल व त्याचे राहुल कोळेकर यांनी केलेले रेकॉर्डिंग व त्या बाबतचे संभाषण पाहता राहुल कोळेकर यांचा अवैध मटका जुगाराचा व्यवसाय होता व तुम्ही पोलीस दलामध्ये नोकरी करून अवैध मटका जुगारासारख्या अवैध धंद्याचे समूळ उच्चाटन करून कारवाई करण्याचे सोडून स्वतः मटका जुगाराचा खेळ खेळत असल्याचे प्राथमिक चौकशीत निष्पन्न झालेले आहे.

६) तुम्ही पो.ना. ४६२ खपले तुमच्या सदरच्या वर्तनाबाबत विद्यमान आमदार श्री. चंद्रदीप नरके यांनी त्यांना फोन करून समजवण्याचा प्रयत्न केलेला असताना त्यांच्याशी देखील बेशिस्तपणाचे व उद्धटपणा चे वर्तन केल्याची बाब प्राथमिक चौकशीत निष्पन्न झालेली आहे.’’

8. It is obvious that the charges attributed to the Applicant are grave, which may invite major punishment, if proved to the satisfaction of the disciplinary authority. Needless to mention whether facts and circumstances of the case warrants suspension is a matter which exclusively fall within the domain of the Government. The decision in this behalf is always left to the Government so as to exercise its power in given situation considering the facts of the matter. Normally, the adequacy or sufficiency of material before the Government at the time of taking decision does not fall within the scope and ambit of judicial review. In the present case, having regard to the serious charge of involment in gambling though it was his duty to prevent gambling and other charges, it cannot be said that there was no enough material to suspend the Applicant. The Applicant being Police Constable, it was highly unbecoming to indulge in such unlawful activities.

9. True, the incident had taken place while the Applicant was attached to Kale Police Station and later immediately by order dated 27.02.2011, he was transferred to Police Head Quarter, Kolhapur. Thereafter again, by order dated 26.07.11, he was transferred to Anti-

Human Trafficking Unit, Kolhapur. The submission advanced by the learned Advocate for the Applicant that once he was transferred from Kale, there was no necessity of suspension is totally misconceived. One need to consider, the gravity of alleged misconduct attributed and only because subsequently he was transferred from that place, it cannot be said that there was no necessity or requirement of suspension, as there was no possibility of tampering of enquiry in view of transfer from that place. The gravity of charge and necessity of suspension is also equally important and Applicant being employee in disciplined Police Force having regard to the serious misconduct attributed to him, it cannot be said that the suspension was inappropriate or without material.

10. Shri Bandiwadekar, learned Advocate for the Applicant sought to place reliance on the decision **1987 (3) BOM CR 327 (Dr. Tukaram Y. Patil Vs. Bhagawantrao Gaikwad & Ors.)** wherein it has been held as under :-

*“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 to be duly considered. Otherwise, it is a waste of public money and an avoidable torment to the employee concerned.”*

11. In the aforesaid case, the Petitioner therein was suspended on 10<sup>th</sup> July, 1986 in contravention of D.E, but no charge-sheet was served for long time. Later, charge-sheet was served on 8<sup>th</sup> April, 1987 and it was also kept pending without any progress. It is in that context, the Hon’ble High Court made the above observation. It is not clear what were the charges in the said matter. As such, this position is of little assistance in the present case in view of grave charges attributed to the Applicant. Apart, in the present case, the charge-sheet was already served upon the Applicant and later after three days, he was kept under suspension. Later, the Applicant was reinstated by order dated 03.06.2020. This being the factual aspects, the decision in **Dr. Tukaram Patil’s** case

(cited supra) is clearly distinguishable and is of no assistance to the Applicant in the facts and circumstances.

12. The submission advanced by the learned Advocate for the Applicant that once initially D.E. was dropped, the initiation of second D.E. is unwarranted is also devoid of any merit. As stated earlier, initially, the preliminary enquiry was assigned to Shri Desai, API of Kale Police Station, who himself had forwarded default report against the Applicant. It was objected by the Applicant on the ground of bias preliminary enquiry relying upon the Circular issued by Inspector General of Police dated 01/04/2003. The Respondent No.1, therefore, dropped that DE and ordered afresh preliminary enquiry to P.I, Karveer Police Station. He accordingly conducted fresh preliminary enquiry and on the basis of positive preliminary enquiry report, the Respondent No.1 took decision to initiate regular D.E. by order dated 22.04.2019 and after three days suspended the Applicant, having regard to the gravity of the charges attributed to the Applicant.

13. Relying on the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra), the learned Advocate for the Applicant emphasized that the suspension beyond 90 days is impermissible, and therefore, after expiration of 90 days, the Applicant deemed to have been reinstated in service and would be entitled for pay and allowances of the said period. He also referred to the decision rendered by this Tribunal in **O.A.35/2008 (Dilip J. Ambilwade Vs. The State of Maharashtra & Anr.) decided on 11.09.2011.**

14. True, in **Ajay Kumar Choudhary's** case, the Hon'ble Supreme Court held that the suspension beyond 90 days would be impermissible. In Para No.21, the Hon'ble Supreme Court held as under :-

*“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.”*

15. Now turning to the facts of the present case, the Applicant has been already reinstated in service on 03.06.2020. As stated above, the decision to initiate regular D.E. after preliminary enquiry was taken on 22.04.2019 and D.E. was accordingly initiated. It is on this background and having regard to serious misconduct attributed to the Applicant, he was suspended by order dated 25.04.2019 during the pendency of D.E. Now, D.E. is underway though there is no substantial progress therein.

16. At this juncture, it would be apposite to refer Rule 72(3) of Maharashtra Civil Services (Joining Time, Foreign Service and. Payments during Suspension, Dismissal and Removal) Rules, 1981 (hereinafter referred to as 'Rules of 1981' for brevity) which inter-alia provides that the competent authority is required to form opinion as to whether the suspension was wholly unjustified or otherwise and then to pass appropriate order about pay and allowances of the period of suspension to a Government servant. Whereas, Rule 72(5) provides where case does not fall in Rule 72(3) of 'Rules of 1981', the competent authority shall determine the issue of pay and allowances for the period of suspension after giving notice to the Government servant. As such, the Applicant's reinstatement which is obviously subject to final decision in DE, in my considered opinion, at this stage, in view of Rule 72(3) of



'Rules of 1981', the claim for full pay and allowances for the period of suspension is premature. These aspects need to be determined by the competent authority at appropriate time. Therefore, in the facts and circumstances of the case, the Applicant cannot be said entitled for pay and allowances after expiration of 90 days from the date of suspension automatically.

17. In so far as decision in O.A.No.35/2018 is concerned (cited supra), in that case, during the pendency of O.A, the D.E. was concluded resulting into punishment of compulsory retirement, and therefore, the question of reinstatement in service was out of question. There is no reference of Rule 72(3) of 'Rules of 1981' in the said decision. Therefore, the decision given in O.A.35/2018 in fact situation is of no help to the Applicant.

18. For the aforesaid discussion, it cannot be said that there was no sufficient material for suspension of the Applicant. On the contrary, having regard to serious misconduct, the disciplinary authority seems to have formed opinion that it would be deleterious to the maintenance of law and discipline to continue the Applicant in service. Later, he was reinstated in service. Therefore, it would be appropriate to let the law take its own course and to take D.E. to the logical conclusion. The direction, therefore, deserves to be given for expeditious completion of D.E. within stipulated period.

19. The Original Application is disposed of in following terms :

- (i) The claim of Applicant for pay and allowances immediately after expiration of 90 days from the date of suspension being premature is rejected.
- (ii) The legality of suspension order dated 25.04.2019 is upheld.
- (iii) The Respondents are directed to ensure completion of D.E. within three months including passing of final order from

today and the decision, as the case may be, shall be communicated to the Applicant.

- (iv) It is after the decision of D.E, the claim for pay and allowances for the period of suspension shall be decided in accordance to law.
- (v) No order as to costs.

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

Mumbai

Date : 12.02.2021

Dictation taken by :

S.K. Wamanse.

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