

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

**ORIGINAL APPLICATION NO.899 OF 2019
With
ORIGINAL APPLICATION NO.900 OF 2019**

DISTRICT : NASHIK

ORIGINAL APPLICATION NO.899 OF 2019

Shri Suresh S. Sapkale)
Age : 54 years, Police Inspector (Now -)
Under suspension) Deola Police Station.,)
Dist. Nashik.)
R/at Amrutdhara Apartment, Gayake)
Colony, Near Taran Talav, Nashik Road,)
Nashik.)...**Applicant**

Versus

1. The Special Inspector, Genera of)
Police, Nashik Range, Nashik.)
2. The State of Maharashtra,)
Through Additional Chief)
Secretary, Home Department,)
Mantralaya, Mumbai 32.)...**Respondents**

ORIGINAL APPLICATION NO.900 OF 2019

Rajesh S. Shirsath,)
Age : 49 years, Police Inspector (Now -)
Under suspension), Economic Offences)
Wing, Nashik (R), Adgaon, Nashik.)
R/at Ganesh Gouri Apartment, Ayodhya)
Nagar, Gangapur Road, Nashik.)...**Applicant**

Versus

1. The Special Inspector, Genera of)
Police, Nashik Range, Nashik.)
2. The State of Maharashtra,)
Through Additional Chief)
Secretary, Home Department,)
Mantralaya, Mumbai 32.)...**Respondents**

Shri A. V. Bandiwadekar , Advocate for Applicants.

Ms S. P. Manchekar, Chief Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 06.01.2020.

JUDGMENT

1. The Applicants have challenged the suspension orders invoking the jurisdiction of this Tribunal under Section 19 of Administrative Tribunal Act, 1985. The challenge being on common ground, both the Original Applications are decided by common order.

2. Shortly stated facts giving rise to the Original Applications are as under:-

The Applicant in O.A. No.899/2019 was serving as Police Inspector at Deola Police Station, Nashik (R). He was placed under suspension by Respondent No.1-Special Inspector General of Police by order dated 21.02.2019 invoking Section 25 of Maharashtra Police Act r/w Section 3(1-A)(i)(b) of Maharashtra Police (Punishment & Appeals) Rules, 1956 (herein after referred to as 'Rules 1956') in view of registration of offence under provisions of Prevention of Corruption Act against him. In O.A. No.900/2019, the Applicant was serving as Police Inspector, Economic Offences Wing, Nashik (R). He was placed under suspension by order dated 17.11.2018 in view of registration of crime under provisions of Prevention of Corruption Act invoking Section 25 of 'Rules, 1956' r/w Section 3(1-A) of 'Rules 1956'. The Applicants claim to be innocent and challenged the legality of suspension orders contending that they are subjected to prolong suspension. Their main contention is that the Appointing Authority is Director General of Police but they have been suspended by Respondent No.1 – Special Inspector General of Police. However, there is no compliance of proviso to 'Rules, 1956', and therefore, suspension orders are illegal. The impugned suspension order is

further challenged on the ground that it is punitive and not sustainable in law. The Applicants further contend that though the period of more than 90 days has been over long back, the Respondents have not taken review of suspension in terms of judgment of the Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)** and G. R. dated 14.10.2011. The Applicants, therefore, prayed to set aside the impugned suspension orders.

3. Respondent No.2 resisted the application by filing Affidavit-in-Reply inter-alia denying that impugned order suffers from any illegality. The Respondents sought to justify the suspension orders in view of registration of crime under the provision of Prevention of Corruption Act against them. The Respondents denied that the suspension orders are punitive and further denied that there is no compliance of proviso to Rule 3(1-A) of 'Rules, 1956'. In this behalf, Respondents sought to contend that the orders of suspension were self explanatory and it was immediately forwarded to Director General of Police, and it is not necessary to submit another report.

4. Shri A. V. Bandiwadekar, learned Counsel for the Applicants assails the suspension orders mainly on the following grounds:-

- (A) In the impugned order, Respondent No.1 invoked Section 25 of Maharashtra Police Act. It being without inquiry, the same is punitive.
- (B) Suspension order being issued by the Authority (Respondent No.1) other than Appointing Authority, the same is unsustainable in law for want of compliance of proviso to Rule 3(1-A) of 'Rules, 1956'.
- (C) In terms of mandate of the Hon'ble Supreme Court in **Ajay Kumar Chowdhary's Case**, suspension beyond 90 days without taking any steps of review is illegal.

5. Per contra, Ms S.P. Manchekar, learned Chief Presenting Officer has pointed out that though there is a reference of Section 25 of Maharashtra Police Act in the impugned suspension orders, in reply filed by the Respondents made it clear that suspension orders are not punitive but the same is under Rule 3 of 'Rules, 1956'. As regard compliance of proviso to Rule 3(1-A) of 'Rules 1956', learned C.P.O. submits that suspension order itself is self explanatory, and therefore, there was no need to submit special report to Director General of Police as the copy of suspension orders were immediately forwarded to him. As regard, review of suspension order, she submits that the same will be taken in due course in accordance to G.R. dated 14.10.2011.

6. As to ground (A) :-

True while issuing the suspension order, the Respondent No.1 invoked both the provisions i.e. Section 25 (without specifying sub section) of Maharashtra Police Act as well as Rule 3(1-A)(i)(b) of 'Rules, 1956'. However, mere reference of Section 25 of Maharashtra Police Act which inter-alia provides for the punishment would not render the suspension orders as of punishment orders in view of clear stand adopted by the Respondent No.1 in reply in this behalf. Respondent No.1 specifically pleaded that the suspension orders are being issued in view of registration of offence under provisions of Prevention of Corruption Act, 1988 exercising the powers under Rule 3 (1-A) of 'Rules 1956' which inter-alia provides for suspension where the criminal offence against the concerned is under investigation or trial. True, as per Section 25, suspension is one of the punishments. However, its proviso makes it clear that suspension of Police Officer, pending an enquiry into his conduct or investigation of a complaint against him of any criminal offence shall not be deemed to be

punishment under Section 25(b). There is no denying that offence under provisions of Prevention of Corruption Act, 1988 were registered against Applicants. This being the position, it is explicit that the suspension order is not by way of punishment but it has been issued, exercising the powers under Rule 3(1-A)(i)(b) of Rules 1956. I, therefore, see no substance in the submission of learned Counsel for the Applicants that suspension orders are punitive.

7. As to ground (B) :-

Indisputably the Appointing Authority of both the Applicants are Director General of Police and it is the Respondent No.1 who has issued the suspension orders. Respondent No.1 is Special Inspector of General of Police, Nashik Range and subordinate to the Appointing Authority. Respondent No.1 has exercised the powers under Rule 3 (1-A)(i) of Rules 1956 which is as under:-

“(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.”

8. Furthermore, Notification dated 12.01.2011 referred in suspension order also makes it quite clear that where the order of suspension is passed 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 in terms of Rule 3(1-A) (i) of ‘Rules 1956’.

Relevant portion of Notification dated 12.01.2011 is material which is as follows :-

“उपरोक्तप्रमाणे निलंबनाचे आदेश नियुक्ती प्राधिका-यांपेक्षा कनिष्ठ दर्जा असलेल्या प्राधिका-याने काढले असतील तर असा प्राधिकारी, मुंबई पोलीस (शिक्षा आणि अपील) नियम, १९७६ यांच्या नियम ३, पोट-नियम (१-अ), खंड (एक) च्या परंतुकानुसार ज्या परिस्थितीत निलंबनाचे आदेश देण्यात आले ती परिस्थिती नियुक्ती प्राधिका-यास ताबडतोब कळवील.”

9. As such, there is no denying that Respondent No.1 being an Authority lower in rank than the Appointing Authority, it was mandatory on the part of Respondent No.1 to comply the proviso to Rule 3(A-1)(i) of 'Rules 1956' reproduced above.

10. Learned C.P.O. sought to canvass that the suspension order itself is detailed and self explanatory, and therefore, forwarding of suspension orders itself to Director General of Police is sufficient compliance of the proviso.

11. Whereas, Shri A. V. Bandiwadekar , learned Counsel has pointed out that mere forwarding of suspension order is not tantamount to the compliance of proviso whereby obligation was cast upon the Respondent No.1 to submit the report forthwith to the Appointing Authority about the circumstances in which order of suspension was made. He emphasized that compliance of proviso in view of use of word 'shall' is mandatory and mere forwarding the copy of suspension report cannot be treated as a compliance of mandatory requirement of law. I find merits in his submission in this behalf.

12. True, it appears from the suspension order that it's copy was marked to Director General of Police. However, admittedly, no separate report as contemplated in proviso of Rule 3 (A-1) is forwarded to the Director General of Police. Perusal of proviso and note below Notification dated 20.01.2011 makes it quite clear that where suspension order is passed by an Authority lower than the rank than the Appointing Authority then in that event it is mandatory

on the part of such authority to forward the report forthwith to the Appointing Authority stating and explaining the circumstances in which the order of suspension is made. It is mandatory requirement and not mere formality. Respondent No.1 was therefore required to explain as to why the suspension was urgently necessitated in the given set of facts instead of making reference to the Appointing Authority for passing suspension order. Needless to mention when law requires to do a particular thing in particular manner only then such requirement has to be followed in that manner only, and therefore, there could be no latitude to the concerned authority. In other words, compliance of proviso is *sine-qua-non* for sustainability of the suspension order in the eye of law. Respondent No.1 was required to explain what prevailed him to pass suspension order without awaiting the orders from Director General of Police or what was the extreme urgency to exercise the powers of suspension by forwarding the report to that effect forthwith to Director General of Police. This intent of legislative could not be said achieved by mere forwarding the copy of suspension to the Director General of Police. Learned C.P.O. could not point out any decision or authority in support of her submission that forwarding of suspension order itself is sufficient compliance of the proviso.

13. Insofar as the self explanatory nature of the suspension order is concerned, all that the suspension order relate to the event of registration of crime against the Applicants and issuance of suspension order invoking Section 25 of Maharashtra Police Act r/w Rule 3 of 'Rules 1956'. These are usual contents of suspension orders. What proviso to Rule 3(1-A) requires is submission of report forthwith to the Appointing Authority about the circumstances in which the order of suspension was made. As such, it is not mere formality.

14. Suffice to say, mere forwarding of copy of suspension order to Director General of Police for information can clearly be said compliance of proviso of Rule 3 (1-A) of 'Rules 1956' in the eye of law. There being admittedly no such compliance of forwarding report, the suspension order is not sustainable in law.

15. As to ground(C):-

Admittedly though the period of 90 days is over, the Respondents have not taken review of suspension nor passed any order of continuation of the suspension as directed by the Hon'ble Supreme Court in **Ajay Kumar Chowdhary's case** (cited supra). In O.A.No.899/2019, the period of more than 10 months is over from the date of suspension. Whereas in O.A.No.900/2019, the period of more than 13 months is over from the date of suspension.

16. In so far as initiation of D.E. is concerned, admittedly no D.E. is initiated against any of the Applicants. As regard filing of charge sheet in criminal case, the same is filed in Special Court on 12.12.2019 pertaining to O.A.No.899/2019. Whereas in O.A.No.900/2019, no charge sheet is filed in the Criminal Case and the matter seems to be still under investigation.

17. It is rightly pointed out by the learned Counsel for the Applicant that Tribunal has taken consistent view that where there is no compliance of forwarding of report to the Appellate Authority, explaining the circumstances in which suspension is made, it renders the suspension unsustainable in law. In this behalf, he referred to decision delivered by this Tribunal in **O.A.No.1007/2018 (Himmat Vasant Sapale V/s Chief Conservator of Forest & Ors)**, decided on 16.12.2019, **O.A.No.769/2018 (Namdeo Sopan Shinde V/s. Commissioner of Police)** decided on 17.05.2019 and **O.A.No.950/2018 (Rajesh S. Devare v/s Special Inspector General**

of Police) decided on 30.01.2019. He has further pointed out that all these decisions were implemented and has attained finality.

18. At this juncture, it would be apposite to reproduce the relevant para of judgment in Ajay Kumar Case (cited supra) which are as follows:-

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perform 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.”

19. 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.

20. Now, turning to the facts of present case, admittedly though the period of 90 days is over, no steps are taken to place the matter before the Review Committee nor any such order has been passed for extension or continuation of the suspension after 90 days period is over. As per mandate of the Hon’ble Supreme Court in **Ajay Kumar Chowdhary’s** case (cited supra), currency of suspension should not extend beyond 3 months, if within the period of 3 months charge sheet is not served upon the delinquent and where the charge sheet is served or filed, reasoned order must be passed for extension of the suspension.

21. It is also imperative to take note of instructions contend in G.R. dated 14.10.2011 which obliged Review Committee to take review of suspension. By the said G.R., exhaustive instructions have been issued with an object that Government servant should not be subjected to prolong suspension. As per Clause 2(c) of G.R., meeting

of Review Committee is required to be taken quarterly. Whereas, as per Clause 3 of the G.R, in case where the Government servant is kept under suspension on account of registration of serious offence under Prevention of Corruption Act or Indian Penal Code, such matter should be placed before the Review Committee after one year from the date of suspension to take decision about the continuation or revocation of suspension. Whereas, as per Clause 4(a) of G.R, if the Criminal Case is not decided within two years from the date of filing of charge-sheet, in that event, the Committee can revoke the suspension and can recommend for reinstatement of the Government servant on non-executive post.

22. In the present case, admittedly no effort was made to place the matter before Review Committee though the period of more than one year is over in O.A.No.900/2019. Insofar as O.A.No.899/2019 is concerned, the period of more than 10 months is over from the date of suspension. Indeed, in terms of judgment of the Hon'ble Supreme Court in **Ajay Kumar Chowdhary's** case, the Competent Authority is required to pass the order about continuation or revocation of suspension if no charge sheet is filed within 90 days. The Competent Authority is required to pass reasoned order for extension of suspension. In such situation ordinarily, the Tribunal ought to have directed the Respondents to place the matter before Review Committee. However, in the present case, there being no compliance of mandatory requirement namely submission of report forthwith to the Appointing Authority about circumstances in which order of suspension has been made the said material illegality renders the suspension order, unsustainable in law. Undoubtedly, the scope of judicial review in case of suspension is limited as suspension order is of administrative nature and it is not a punishment. Suspension is a device to keep the delinquent out of the mischief range so that D.E. or Criminal Case is completed unhindered. However, where suspension order is found not by the Authority competent in law but by the

Authority lower in rank than the Appointing Authority and there is no compliance of mandatory requirement of law then such suspension order not being in accordance to law deserves to be quashed. However, liberty needs to be granted to the Respondents to post the Applicants on any suitable posts as they deem fit having regard to the fair trial of D.E., if any or criminal proceeding.

23. The totality of aforesaid discussion leads me to sum-up that the impugned suspension orders not being in compliance of proviso to Rule 3(1-A) of 'Rules 1956', the same is unsustainable in law. Original Application deserves to be allowed. Hence, the following order.

ORDER

- (A) Both Original Applications are allowed.
- (B) Impugned suspension orders dated 21.02.2019 and 17.11.2018 are quashed and set aside.
- (C) The Respondents are directed to reinstate the Applicants in service on any suitable post as deems fit having regard to the fair trial of D.E., if any, as well as criminal proceeding within two weeks from today.
- (D) No order as to cost.

Sd/-

(A.P. KURHEKAR)
Member-J