

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.973 OF 2021

DISTRICT : MUMBAI

Shri Sanjay Shrirang Thorat.)
Age : 56 Yrs, Occu.: Police Head Constable.)
R/at BDD Chawl No.65, Room No.3,)
Bhagoji Waghmare Marg, Worli,)
Mumbai – 400 018.)...**Applicant**

Versus

1. The Commissioner of Police for Gr.)
Mumbai, D.N. Road, Near Crawford)
Market, Mumbai.)
2. The Deputy Commissioner of Police.)
Special Branch-2, CID, Mumbai.)...**Respondents**

Mr. K.R. Jagdale, Advocate for Applicant.

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

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 24.02.2022

JUDGMENT

1. The Applicant has challenged suspension order dated 07.07.2017 issued by Respondent No.1 – Commissioner of Police, Mumbai invoking jurisdiction of this Tribunal under Section 19 of Administrative Tribunals Act, 1985.

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

The Applicant is serving as Head Constable on the establishment of Respondent No.1 – Commissioner of Police, Mumbai. He was posted in Bureau of Immigration at International Airport, Mumbai. On 09.05.2017, FIR No.136/2017 was registered against Smt. Komalben Dabgar under Sections 465, 468, 471, 420 and 34 of Indian Penal Code on the allegation that the said lady Smt. Komalben had obtained forged Passport to travel from Mumbai to Canada in the name of Tripti Kaur, but after reaching at Vencouver, Canada, her Passport found forged and she was deported back to Mumbai and arrived at Mumbai on 08.05.2017. Therefore, initially, offence came to be registered against Smt. Komalben and one Manjit Singh who allegedly procured forged Passport. During Investigation, several Police Personnel appointed in Immigration Bureau including Applicant were found involved in racket of helping passengers to travel abroad on the basis of forged Passport. Later, Applicant was arrested in the said crime and was released on bail on 26.09.2017.

3. It is on the above background, the Applicant was suspended by order dated 07.07.2017 on the allegation that he played active role in procuring false Passport of several passengers in connivance with Immigration Officials and thereby committed serious misconduct. The Applicant made various representations for reinstatement in service, but his suspension is continued. The competent authority has also taken review from time to time, but it opined for continuation of suspension. Insofar as criminal case is concerned, till date, no charge-sheet is filed in reference to FIR No.136/2017 registered against the Applicant and others. As regard departmental enquiry (DE), it was initiated by issuance of charge-sheet on 20.11.2017, but has not been finalized. Since Applicant is subjected to prolong suspension for near about 4 years and 9 months, the Applicant has filed the present O.A. for revocation of suspension and reinstatement in service.

4. Shri K.R. Jagdale, learned Advocate for the Applicant sought to assail the impugned order of suspension *inter-alia* contending that Applicant is subjected to prolong suspension of near about 4 years and 9 months without taking any sincere efforts of completion of DE or initiation of criminal prosecution which was the reason for suspension of the Applicant. He has pointed out that as admitted by the Respondents in reply, Applicant was not on duty from 24.08.2016 to 07.07.2017. Adverting to this aspect, he contends that involvement of Applicant in FIR dated 09.05.2017 is baseless. According to him, till date, prosecution could not collect enough evidence to file charge-sheet against the Applicant in the Court of law and it indicates that the suspension was based on unfounded ground. As regard review, he has pointed out that except passing mechanical order of continuation of suspension, there is no objective assessment of the situation for such prolong suspension. He sought to place reliance on the decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

5. Per contra, learned Presenting Officer sought to justify the suspension *inter-alia* contending that the Applicant was found active member of one racket involved in preparation of forged Passports and sending the passengers to abroad in connivance with Immigration officials deputed at International Airport, and therefore, having regard to serious charges, the Applicant was rightly suspended by the Department. On similar line, she submits that in view of serious allegation, the competent authority in its periodical review has decided to continue the suspension. As regard filing of charge-sheet in criminal case, she fairly states that till date, no charge-sheet is filed in the Court and matter is pending awaiting sanction for prosecution. Insofar as DE is concerned, it was initiated on 20.11.2017, but recently decision is taken to conduct *denovo* DE, since certain lacunas were noticed in the proceedings. On this line of submission, she submits that *denovo* DE would be completed soon and prayed to dismiss the O.A.

6. The general principle could be that ordinarily, the suspension should not be interfered with by the Tribunal, if the allegation made against a Government servant are of serious nature and on the basis of evidence available, there is *prima-facie* case for his dismissal or removal from service or where there is reason to believe that continuation of service of such a Government servant is likely to hamper the investigation of criminal case or DE. It has been often emphasized that suspension cannot be prolonged, if the enquiry is not completed within reasonable time. Suffice to say, a Government servant cannot be subjected to prolong suspension without taking positive and expeditious steps for completion of DE.

7. Indisputably, though period of more than 4 years and 9 months is over, till date, no charge-sheet is filed in criminal case which was the reason for suspension of the Applicant. As per the Annexures filed along with Affidavit-in-reply, the allegation against the present Applicant is that he was in constant touch with other accused who were arrested in the crime through his mobile as detected from call details obtained from service providers. As such, though Applicant appears to be not on duty at Immigration Centre from 24.08.2016 to 07.07.2017, he appears to be in touch with other co-accused. Be that as it may, there is no denying that till date prosecution could not file charge-sheet in the Court of law.

8. Apart, though DE was initiated on 20.11.2017, no such steps were taken to ensure its expeditious completion within reasonable time. In reply, it is stated that Commissioner of Police noticed lacunas in DE proceedings and decided to conduct the DE afresh. During the course of hearing, the learned P.O. has tendered letter dated 17.02.2022 issued by Joint Commissioner of Police directing Deputy Commissioner of Police to take necessary steps for *denovo* enquiry. Interestingly, in letter, it is stated as under :-

“सदर विभागीय चौकशी रद्द करण्यास आपण सक्षम प्राधिकारी आहात. तरी सदर प्रकरणी यापूर्वीची प्राथमिक /विभागीय चौकशी रद्द करून नव्याने प्राथमिक चौकशी आदेशित करण्याची कार्यवाही आपल्या स्तरावर करण्यात यावी.”

9. Thus, it appears from the said letter that now preliminary enquiry is ordered by cancelling regular DE, which was initiated by issuance of charge-sheet on 20.11.2017. It is not made clear what was the progress made in DE or what was the finding of Enquiry Officer. Be that as it may, there is no denying that even after lapse of 4 years and 9 months, DE is not finalized and now by letter dated 17.02.2022, the preliminary enquiry is ordered. This shows total laxity rather negligence on the part of concerned for not taking expeditious steps for completion of DE. In other words, seriousness of the charges levelled against the Applicant is only stated, but such seriousness is not perceived or shown by completing DE within reasonable time. Indeed, as per various Circulars issued by Government, the DE has to be completed within six months from the date of initiation of it and it is more so where a Government servant is kept under suspension. In criminal prosecution and in DE as well, a Government servant enjoys the right to speedy trial. The concept of speedy trial is recognized as an essential part of fundamental right to life and liberty guaranteed and preserved under Constitution of India.

10. It would not be out of place to mention here that Government of Maharashtra by issuance of G.Rs. dated 14.11.2011 and 31.01.2015 has directed for taking periodical review of suspension of Government servants, who are under suspension on account of registration of crime, so that they are not subjected to prolong suspension. The competent authority is required to take decision on objective assessment of the situation about the continuation or revocation of suspension having regard to the nature of charges, stage of criminal case, etc. As per Clause 4(b), where charge-sheet is not filed in the Court of law for a longer period, the competent authority is required to take decision on objective assessment of the facts about the revocation of suspension and to repost a Government servant on non-executive post, so that he is not

subjected to prolong suspension. Whereas, as per Clause 4(a), where charge-sheet is filed in criminal case but it is not decided in two years, in that event also, the competent authority is required to take appropriate decision about continuation or revocation of suspension. Whereas in the present case, though period of more than 4 years and 9 months is over, even charge-sheet itself is not filed in the Court of law.

11. The Review Committee has simply recommended to continue suspension solely stating that offences registered against the Applicant are serious in nature. The authority was oblivious of the fact that Applicant is subjected to prolong suspension of 4 years and 9 months without there being filing of charge-sheet in criminal case or finality in departmental proceedings. It is nowhere the case of the Department that if suspension is revoked, it would be threat to fair trial or departmental proceedings. The Applicant is getting 75% pay and allowances without doing any work. Suffice to say, the Respondents ought to have taken expeditious steps for completion of DE in view of serious charges levelled against the Applicant, but there is total laxity and negligence on the part of concerned, which has resulted in prolong suspension of the Applicant for more than 4 years and 9 months.

12. Indeed, Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case taking note of its various earlier decisions mandated that the currency of suspension order should not exceed beyond 3 months, if the memorandum of charges/charge-sheet is not served upon the delinquent and where memorandum of charges/charge-sheet is served within 3 months, in that event, reasoned order must be passed for extension of suspension. It would be useful to reproduce certain paragraphs from the decision in **Ajay Kumar Choudhary'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 prosequi, an indefinite but ominous and omnipresent postponement of civil or criminal prosecution in *Klapper 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.

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:

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 Raghbir 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.”*

13. Suffice to say, a Government servant cannot be subjected to prolong suspension. In view of above, there is no certainty of completion of DE, which are recently ordered for *denovo* proceedings and till date, no charge-sheet is filed in respect of offences registered against the Applicant, which was the reason for suspension. Even after filing of charge-sheet, one cannot predict how much time it will take for completion. As regard DE, it was certainly within the powers of disciplinary authority to get DE finished expeditiously, but the authority failed to do so resulting in prolong suspension of more than 4 years and 9 months. As such, no fruitful purpose would serve by continuing prolong suspension for years together. The suspension, therefore, deserves to be revoked and Applicant can be given suitable posting on non-executive post as competent authority deems fit.

14. The totality of aforesaid discussion leads me to sum-up that the suspension of the Applicant deserves to be revoked and he has to be reinstated in service. Hence, the order.

ORDER

- (A) Original Application is allowed partly.
- (B) The suspension of the Applicant stands revoked with immediate effect.
- (C) The Respondents shall reinstate the Applicant in service and are at liberty to give him suitable posting, as deems fit within a month from today.
- (D) The Applicant shall not tamper witnesses or evidence in criminal case or departmental proceedings.
- (E) The disciplinary authority shall ensure completion of DE within four months from today.
- (F) No order as to costs.

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

Mumbai

Date : 24.02.2022

Dictation taken by :

S.K. Wamanse.

D:\JUDGMENTS\2022\February, 2022\O.A.973.21.w.2.2022.Suspension.doc

Uploaded on