

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD**

**ORIGINAL APPLICATION NO.396 OF 2021
(Subject:- Suspension)**

DISTRICT:-JALNA

Vilas Dinkar Nikam,)
Age:- 57 years, Occ: Police Inspector)
posted at Mantha Police Station, Mantha, Jalna;)
R/o. Bhagyanagar, Jintur Road, Mantha,)
District. Jalna.)
Mob. No.7588591693)....**Applicant**

V E R S U S

- 1. The State of Maharashtra,**)
Through: The Secretary,)
Home Department,)
Mantralaya, Mumbai -400 032.)
- 2. The Superintendent of police, Jalna**)
District, Jalna.)...**Respondents**

APPEARANCE : Shri Joslyn Menezes, learned Advocate
for the Applicant.

: Shri N.U. Yadav, learned Presenting
Officer for the Respondent.

CORAM : **SHRI V.D. DONGRE, MEMBER (J)**

DATE : **01.02.2022**

O R D E R

1. By invoking the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 this Original

Application is filed challenging the impugned order of suspension of the applicant dated 18.03.2021 along with the corrigendum dated 19.03.2021 (Annex. 'A' collectively) passed by the respondent No.2 i.e. the Superintendent of Police, Jalna, District Jalna and further seeking direction to pay salary after deducting subsistence allowance which has already been paid for suspension period of the applicant.

2. **The facts in brief giving rise to this application can be summarized as follows:-**

- (i) The applicant was initially appointed on the post of Police Sub-Inspector (P.S.I.) pursuant to the recommendation dated 27.09.1987 (Annex. 'B') issued by the Maharashtra Public Service Commission (M.P.S.C.). Thereafter, as per order of promotion dated 24.04.2007 (Annex. 'C'), the applicant was promoted to the post of Police Inspector. He has worked as Police Inspector at different places. As per order dated 26.02.2019 (part of Annex. 'C' collectively) he was transferred to Jalna district. Thereafter, as per order dated 12.06.2019 (part of Annex. 'D' collectively), the applicant was given additional charge of Police Station, Mantha by the respondent No.2 i.e. Superintendent of Police, Jalna.
- (ii) The applicant has served in for almost 34 years and considering the exceptional work of the applicant, the

applicant has been given a Special Service award by the Department as per communication dated 22.01.2020 (part of Annex. 'D' collectively).

- (iii) It is further contended that while working on the abovesaid post of Police Inspector at Police Station Mantha, one Mohan Balasaheb Wayal filed Writ Petition No.1872/2019 in the Hon'ble High Court of Judicature at Bombay Bench at Aurangabad seeking directions to register FIR against the Panchayat members and officiating members of the National Drinking Water Scheme village Pangri (Bk), Tq. Mantha, District Jalna. As per order passed in the said Writ Petition dated 10.02.2020, the Hon'ble High Court directed the applicant to conduct the preliminary inquiry and submit report accordingly. As per the directions of Hon'ble High Court, the applicant conducted the preliminary enquiry and submitted the enquiry report. In view of the said report, the Hon'ble High Court by order dated 05.03.2020 took cognizance of the misappropriation which was to the tune of Rs.70,00,000/- under the scheme and directed to register FIR against the respondents in the said Writ Petition. One Dnayneshwar Narayan Wayal was one of the respondents in the said Writ Petition and was also President of the National Drinking Water Scheme. The said Dnayneshwar N. Wayal has filed Criminal Application No.984 of 2020 (Annex. 'F') for review of

the said order. The said Criminal Application is still pending.

- (iv) It is further contended that in view of abovesaid circumstances, the said Dnayneshwar N. Wayal was having grudge against the applicant. In view of that, on 16.03.2021 he hatched a conspiracy to implead the applicant in a false case of corruption and laid a so called trap for the applicant. Accordingly, FIR was registered against the applicant on 17.03.2021 (Annex. 'G') under Section 7 of the Prevention of Corruption Act, 1988. The applicant was arrested in the said criminal case and was released on bail immediately.
- (v) It is further contended that in the circumstances as above, the impugned suspension order of the applicant dated 18.03.2021 and corrigendum dated 19.03.20212 (Annex. 'A' collectively) came to be issued by the respondent No.2 i.e. Superintendent of Police, Jalna. Since then the applicant is under suspension.
- (vi) The applicant, thereafter, preferred representation dated 29.05.2021 (part of Annex. 'H' collectively) to the Commissioner of Police, Anti-Corruption Department, Mumbai to reinstate him in the service as he was facing financial crises on account of ensuing marriage of his daughter on 06.06.2021 and that he is falsely implicated in the said criminal case. After completion of three months of suspension order

when the departmental enquiry was not initiated against the applicant, he preferred representation dated 28.06.2021 to the respondent No.2 i.e. Superintendent of Police, Jalna as well as Special Inspector General of Police, Aurangabad Range, Aurangabad respectively and representation dated 05.07.2021 to the Director General of Police, Maharashtra State, Mumbai seeking revocation of suspension and reinstatement as suspension period cannot be extended beyond three months as per dictum of the Hon'ble Apex Court.

- (vii) In the circumstances as above, it is the contention of the applicant that when no memorandum of charges/chargesheet has been served upon the applicant in the departmental inquiry even after completion of more than three months from the date of suspension, the order of suspension deserves to be revoked in view of landmark judgment of Hon'ble Apex Court in case of **Ajay Kumar Choudhary Vs. Union of India and Ors. (AIR 2015 SC 2389)**. It is the matter of record that the applicant has been falsely implicated. In view of the same, the impugned order of suspension is liable to be revoked and the applicant is entitled for consequential relief of regularization and requisite salary and allowances. Hence, this Original Application.

3. Affidavit-in-reply is filed on behalf of the respondent Nos.1 and 2 by Shri Sanjay Murlidhar Vyas presently working as the

Home Deputy Superintendent of Police, Jalna, District Jalna. Thereby he has denied the adverse contentions raised in the Original Application. It is admitted that the applicant has been put under suspension in the background of the offence being registered against him vide Mantha Police Station C.R.No.63/2021 under Section 7 of prevention of Corruption Act. Investigation is still going on. Moreover preliminary enquiry about the misconduct of the applicant is also going on. In view of same, no chargesheet for departmental enquiry is yet filed against the applicant. The applicant is expected to prove his innocence during the trial of criminal case registered against him. Continuation of suspension order against the applicant is justifiable till the decision of the criminal case. In the circumstances, this Original Application is liable to be dismissed.

4. The respondents have placed reliance on the circular dated 14.06.2019 (Exh. 'R-1') issued by the Additional Director General of Police (Establishment), Mumbai laying down that "mere delay in conclusion of disciplinary proceedings or criminal cases or long period of suspension would not render the order of suspension invalid" based on the various decisions of the Hon'ble Supreme Court.

5. I have heard the arguments advanced by the Shri Joslyn Menezes, learned Advocate for the applicant on one hand and Shri N.U. Yadav, learned Presenting Officer for the respondents on other hand.

6. Perusal of the facts on record would show that as per order dated 12.06.2019 (page no.32 of the Paper Book) issued by the respondent No.2 i.e. Superintendent of Police, Jalna, the applicant has been given the additional charge of the Mantha Police Station. During his said tenure, the applicant came to be suspended vide order dated 18.03.2021 (Annex. 'A') issued by the respondent No.2 i.e. Superintendent of Police, Jalna in view of the arrest of the applicant in Mantha Police Station C.R.No.63/2021 registered against him on 17.03.2021 under Section 7 of prevention of Corruption Act, 1988. He is still under suspension.

7. Learned Advocate for the applicant submitted that as per the ratio laid down in the citation of the Hon'ble Apex Court reported in MANU/SC/0161/2015 equivalent to AIR 2015 SC 2389 in the matter **of Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr.** decided on 16.02.2015, if the Memorandum of Charges/Chargesheet in the disciplinary

action is not served upon the applicant beyond three months from the date of suspension, the currency of suspension period should not extend and the applicant is entitled for the relief of revocation of suspension and for consequential relief.

8. As against that the learned P.O. for the respondents submitted that the applicant is presently working in the rank of Police Inspector which is responsible post and in that regard guidelines mentioned in the circular dated 14.06.2019 (Exh. 'R-1') issued by the Additional Director General of Police (Establishment), Mumbai would be applicable wherein it is laid down that the officers in the rank of Police Inspector if involved in the case involving moral turpitude, corruption, murder, attempt to murder and rape, registered under the Prevention of Corruption Act, 1988, the suspension order should not be revoked until completion of departmental enquiry and criminal trial.

9. As absorbed earlier in the case in hand, the Original Application has filed after lapse of three months from the date of order of suspension. In such circumstances, the ratio laid down in the citation of **Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr. (AIR 2015 SC 2389)** would be

relevant. In paragraph No.14 of the said citation it is laid down as under:-

“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.”

10. Learned Advocate for the applicant has also placed reliance on the decision of the Coordinate Benches of this Tribunal in following two matters:-

- (1) *O.A.No.570 of 2020 in the matter of Vikas Shankarrao Totawar Vs. The State of Maharashtra & Ors. decided on 22.10.2020; and*
- (2) *O.A.No.611 of 2017 in the matter of Naresh Alwandar Polani Vs. The State of Maharashtra decided on 23.10.2017*

11. In both these matters as referred above, the ratio laid down in the citation of Hon'ble Apex Court the matter **of Ajay Kumar Choudhary Vs. Union of India and Ors.,** the suspension orders were revoked and the applicants were reinstated in service.

12. In this regard, learned Advocate for the applicant has also placed reliance on the requisite G.R. dated 09.07.2019 issued by G.A.D. (page no.73 of P.B.). The relevant portion of the said Government Resolution is as follows:-

“ **शासन निर्णय:-**

१. या अनुषंगाने शासकीय कर्मचाऱ्यांच्या निलंबनाचा आढावा घेण्यासंदर्भात पुढीलप्रमाणे सूचना देण्यात येत आहेत.

- i) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले आहे, अशा प्रकरणी निलंबन केल्यापासून ३ महिन्यात निलंबनाचा आढावा घेऊन निलंबन पुढे

चालू ठेवावयाचे असल्यास त्याबाबतचा निर्णय सुस्पष्ट आदेशासह (कारण मिमांसेसह) सक्षम प्राधिकाऱ्याच्या स्तरावर घेण्यात यावा.

ii) निलंबित शासकीय सेवकांच्या ज्या प्रकरणी ३ महिन्यांच्या कालावधीत विभागीय चौकशी सुरू करून दोषारोप पत्र बजावण्यात आले नाही, अशा प्रकरणी मा. सर्वोच्च न्यायालयाचे आदेश पाहता, निलंबन समाप्त करण्याशिवाय अन्य पर्याय राहत नाही. त्यामुळे निलंबित शासकीय सेवकांबाबत विभागीय चौकशीची कार्यवाही सुरू करून दोषारोप पत्र बजावण्याची कार्यवाही निलंबनापासून ९० दिवसांच्या आत काटेकोरपणे केली जाईल याची दक्षता/खबरदारी घेण्यात यावी.

iii) फौजदारी प्रकरणात विशेषतः लाचलुचपत प्रकरणी निलंबित शासकीय सेवकांवर विभागीय चौकशी सुरू करून दोषारोप पत्र बजावणेबाबत आवश्यक तो अभिलेख लाचलुचपत प्रतिबंधक विभागाने संबंधीत प्रशासकीय विभागास उपलब्ध करून देणे आवश्यक राहिल.

या आदेशातील तरतुदींमुळे या विषयावरील संदर्भ १ व २ येथील आदेशांतील तरतुदी या आदेशाच्या मर्यादित सुधारण्यात आल्या आहेत असे समजण्यात यावे.”

13. As stated earlier, as against that the learned P.O. relied upon the circular dated 14.06.2019 (Exh. 'R-1', page no.85 of P.B.) issued by the Additional Director General of Plice (Establishment), Mumbai. In the said circular there is no reference to the citation of the Hon'ble Apex Court reported in the matter **of Ajay Kumar Choudhary Vs. Union of India and Ors.** (cited supra). The circular would have the limited face value as against the principles laid in the matter of **Ajay Kumar Choudhary Vs. Union of India and Ors.** (cited supra) specifically dealing with the suspension beyond the period of

three months. In such circumstances as above, in my considered opinion, the ratio laid down in the citation of Hon'ble Apex Court in the matter **of Ajay Kumar Choudhary Vs. Union of India and Ors.** would be aptly applicable as undisputedly no Memorandum of charges/chargesheet in the departmental enquiry has been served upon the applicant though three months period beyond the suspension has passed on. In the circumstances, it is incumbent upon the respondents to seek review of the impugned order of the suspension of the applicant strictly within the parameters and principles as laid down in the paragraph no.14 of the said judgment and to take consequential appropriate steps. Accordingly, the present petition can be disposed of. I therefore, proceed to pass the following order:-

ORDER

The Original Application is disposed of in following terms:-

- (A) The respondents are directed to take review of the impugned suspension order of the applicant dated 18.03.2021 with the corrigendum dated 19.03.2021 (Annex. 'A' collectively) strictly in view of the law laid down by the Hon'ble Apex Court in the matter **of Ajay Kumar Choudhary Vs. Union of India and Ors.(AIR 2015 SC 2389)** as regards the revocation and reinstatement in accordance with law and also to consider to grant of consequential benefit of

regularization of suspension period as duty period and payment of salary and allowances thereof in accordance with law.

(B) The Original Application stands disposed of accordingly with no order as to costs.

(V.D. DONGRE)
MEMBER (J)

Place:- Aurangabad

Date :- 01.02.2022

SAS. O.A.No.396/2021. Suspension