

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.568/2017.

(S.B.)

Nitin Devidas Dandale,
Aged about 36 years,
Occ- Service as Police Sub-Inspector,
R/o New Matru Smruti Nagar,
Khat Road, Bhandara.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. Special Inspector General of Police,
Nagpur Range, Nagpur,
Sadar, Nagpur.
3. The Superintendent of Police,
Bhandara.
4. The Police Inspector,
Police Station, Bhandara.

Respondents

ORIGINAL APPLICATION NO.569/2017.

Raju Popat Gaikwad,
Aged about 33 years,
Occ- Service as, Police Sub-Inspector,
R/o State Bank of India Colony,
Shastri Nagar, Bhandara.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Secretary,
Department of Home,
Mantralaya, Mumbai-32.
2. Special Inspector General of Police,
Nagpur Range, Nagpur,
Sadar, Nagpur.
3. The Superintendent of Police,
Bhandara.
4. The Police Inspector,
Police Station, Bhandara.

Respondents

Shri O.Y. Kashid, the Ld. Advocate for the applicants.

Shri M.I. Khan & V.A. Kulkarni, the Ld. P.Os for respondents.

Coram:-Shri J.D. Kulkarni,
Vice-Chairman (J)

JUDGMENT

(Delivered on this 28th day of June 2018.)

Heard Shri O.Y. Kashid, the learned counsel for the applicants and Shri M.I. Khan & V.A. Kulkarni, the learned P.Os for the respondents.

2. The applicant in O.A. 568/2017 Nitin Devidas Dandale is a Police Inspector whereas the applicant in O.A. 569/2017 Raju Popat Gaikwad is a Police Sub-Inspector. Vide respective

applications, they have challenged the impugned order of their suspension dated 20.6.2017. In the suspension orders, it has been stated that Nitin Devidas Dandale, Police Inspector had been to Saoji Bhojanalaya at Bhandara city while patrolling. Police Sub-Inspector Shri Raju Popat Gaikwad also accompanied him. During the said patrolling, both the applicants had drinks in Saoji Bhojanalaya at Bhandara city in presence of public in general. This act on the part of both the applicants was not befitting to a public servant, especially the police officers. Considering their misconduct of grave nature, they were kept under suspension vide two separate orders and such orders have been challenged in these O.As.

3. The learned counsel for the applicants submits that both the applicants have been kept under suspension by the Superintendent of Police, Bhandara and the Superintendent of Police, Bhandara is not the appointing authority of the applicants and he has also not obtained approval of the higher authority for keeping the applicants under suspension. It is further stated that even though, suspension order has been served on 20.6.2017 and till today, no charge-sheet has been filed against the applicants and, therefore, such suspension is against the provisions of rules and guidelines

issued by the Hon'ble Apex Court and, therefore, the suspension order be quashed and set aside.

4. The respondent No.3, i.e. the Superintendent of Police, Bhandara has taken preliminary objection to the effect that the applicants were having opportunity under Rule 6 of the Bombay Police (Punishment and Appeal) Rules, 1956 and should have applied for revocation of suspension order. It is further stated that as per the G.R. dated 10.2.2016, the applicants ought to have approached the Review Committee and since they have not approached the Review Committee, the petition before this Tribunal is not maintainable. It is further stated that the conduct of the applicants was serious in nature. They were consuming liquor while on uniform and duty and this fact was noticed by the respondent No.4 when he was on patrolling duty. It is further stated that the explanation was sought from the applicants. But the same was not found satisfactory. The respondents, in short, defended the action. It is stated that, the Saoji Bhojanalaya was serving liquor without permit and the applicants should have taken action against the said Bhojanalaya. The enquiry could not be completed due to non co-operation on the part of the applicants.

5. The learned counsel for the applicants submits that as per the provisions of the Bombay Police (Punishment and Appeal) Rules, 1956, action of suspension as well can be in the form of punishment or non punishment. As per Rule 3 (1-A) (i) of the Bombay Police (Punishment and Appeal) Rules, 1956, a Police Officer can be imposed with punishment and suspension and if an officer is kept under suspension by way of punishment, he has a right to file an appeal against such punishment as per Rule 6 of the Bombay Police (Punishment and Appeal) Rules, 1956. Action in the present case is not by way of punishment, but it is as per Rule 3 (1-A) of the Bombay Police (Punishment and Appeal) Rules, 1956 and the said rule reads as under:-

“Rule 3 (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 enquiry into his conduct is contemplated or 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, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made.

6. In the present case, both the applicants are not appointed by the Superintendent of Police and their appointing authority is the Director General of Police. Therefore, the persons i.e. the Superintendent of Police who has kept the applicants under suspension is subordinate authority to the appointing authority. There is nothing on record to show that the provisions of Rule 3(1-A) (i) of the Bombay Police Act, 1956 have been followed.

7. Apart from the aforesaid fact, admitted fact is that both the applicants have been kept under suspension w.e.f. 20.6.2017. It is stated that only preliminary enquiry has been initiated against the applicants and the same also is not completed, since the applicants have not co-operated. The document on record, however, shows that the applicants have submitted their reply in the preliminary enquiry. But the same was rejected on the ground that it was typed from outside and the applicants did not give oral statement. Whatever may be the cause, the fact remains that till today no charge-sheet is filed against the applicants nor any departmental enquiry is initiated against them nor any criminal case is initiated or charge-sheet is filed against the applicants.. Aspect of non filing of the charge-sheet / disciplinary proceedings has been dealt with by the Hon'ble

Supreme Court in case of **Ajay Kumar Choudhari V/s Union of India and another reported in (2015) 7 SCC-291.** This Tribunal has also dealt with similar aspect in **O.A. No. 916/2017 in case of Dhirendrasingh Govindsingh Bilwal V/s State and two others.** While delivering judgment on 16th March 2018, it has been observed in the said judgment in para Nos. 11 to 14 as under :-

“11. Admittedly, in this case no departmental enquiry is yet initiated against the applicant nor there is any whisper about initiation of departmental enquiry. It is, however, admitted that criminal case under the Prevention of Corruption Act is under investigation in Crime no.53/2017. Admittedly the investigation is not yet completed and charge sheet is not filed in the Court. It is not known as to within how many days the charge sheet will be filed and therefore the question is whether merely because no charge sheet is filed against the applicant, the applicant can be continued under suspension.

12. The Hon'ble Apex Court has considered aforesaid aspects in the case of Ajay Kumar Choudhari Vs. Union of India & Ano. (cited supra) and the Hon'ble Apex Court has also considered the provisions under criminal procedure code as regards the custody of the accused and the period for such custody as well as personal

freedom of the employee under suspension. Para nos. 13&14 of the said Judgment are self explanatory. The said paras are as under :-

”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 7 O.A. No. 916 of 2017 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.”

13. In the present case no charge sheet has yet been filed against the applicant nor any departmental enquiry is initiated against the applicant nor there is any whisper to show that the department wants to initiate any departmental enquiry against the applicant. In such circumstances continuation of the suspension merely on the ground that it will be considered after filing of the charge sheet is in fact no consideration at all. In fact the respondent No.3 has not at all considered the observations made by the Hon'ble Apex Court in the case of **Ajay Kumar Choudhari Vs. Union of India & Ano.** (cited supra) in letter and spirit. In fact no reasons are given for extension of suspension period and truly speaking there was no application of mind at all to the applicant's case. 8 O.A. No. 916 of 2017 .

14. The learned P.O. has placed reliance on one circular issued by the Government of Maharashtra as regards periodical consideration of the cases of the employees under suspension for revocation. In fact said circular which was issued before the Judgment of the case of **Ajay Kumar Choudhari Vs. Union of India & Ano.** (cited supra) may not be useful to the respondent authorities in view of the observations made by the Hon'ble Apex Court in the said case. In the said case the Hon'ble

Apex Court has directed that the currency of the suspension order should not extend beyond three months if within this period the memorandum of the charges / charge sheet is not served on the delinquent. Even if the memorandum of charges/ charge sheet is served, a reasoned order must be passed for extension of the suspension. The impugned order for extension of suspension is not at all reasoned order. On the contrary, it seems to be an order without application of mind. The respondent authorities ought to have considered the observations made in para nos. 13&14 of the Apex Court's Judgment in the case of Ajay Kumar Choudhari Vs. Union of India & Ano. (cited supra).

8. In view of the aforesaid discussion, I am, therefore, satisfied that the impugned orders of suspension dated 20.6.2017, whereby the applicants have been kept under suspension are illegal. The competent authority has not considered the guidelines issued by the Hon'ble Supreme Court in **Ajay Kumar Choudhari V/s Union of India and another reported in (2015) 7 SCC-291** (supra) and without application of mind, has refused to revoke the suspension only on the ground that the O.As are pending before this Tribunal.

Such approach is not proper. Hence, I proceed to pass the following order:-

ORDER

- (i) The O.A. Nos.568/2017 and 569/2017 are allowed.
- (ii) The suspension order dated 20.6.2017 in respect of both the applicants stands quashed and set aside.
- (iii) The respondents are directed to reinstate the applicants forthwith. The respondents, however, will be at liberty to post applicants at any suitable post and place as per administrative convenience, if they find it not proper to place them at their previous posting so as to avoid intervention in the proposed enquiry.
- (iv) No order as to costs.

(J.D.Kulkarni)
Vice-Chairman(J)