

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

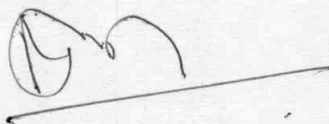
ORIGINAL APPLICATION NO.167, 168, 170 & 236 OF 2016

ORIGINAL APPLICATION No.167 OF 2016

Shri Anand Balkrishna Dalvi,)
Working as Sr. Clerk,)
Now under suspension,)
Mumbai Police Crime Branch (Cell),)
Having office in the belownamed)
Respondent No.1,)
R/o. E-5, Malad Swami Prasad CHSL,)
P.G. Road, Bhandarwada, Malad (W),)
Mumbai 64.) **...Applicant**

Versus

1. The Additional Commissioner of)
Police, Crime Branch Cell, 4th Floor,)
Traffic Office Building,)
Behind Byculla Police Station,)
Byculla, Mumbai - 8.)
2. The Commissioner of Police,)
Mumbai and having office at)
Mumbai Police Commissionarate,)



L.T. Marg, Opp. Crawford Market,)
 Fort, Mumbai - 400 001.)...**Respondents**

WITH

ORIGINAL APPLICATION No.168 OF 2016

Shri Shankar Ashok Jadhav,)
 Working as Jr. Clerk,)
 Now under suspension,)
 Mumbai Police Crime Branch (Cell),)
 Having Office in the office of the belownamed)
 Respondent No.1,)
 R/o. Room No.3079, Bhaskar Nagar,)
 Ambarnath (w), District Thane.)...**Applicant**

Versus

1. The Additional Commissioner of)
 Police & Anr.)...**Respondents**

WITH

ORIGINAL APPLICATION No.170 OF 2016

Shri Rajendra Baburao Pawar.)
 Working as Police Naik (Buckle No.28323),)
 Now under suspension,)
 Mumbai Police Crime Branch,)
 Having office in the belownamed)
 Respondent No.1,)
 R/o. New Police Line, 2nd floor,)



Room No.18, N.S. Road, Mulund (W),)
Mumbai 80.)...**Applicant**

Versus

1. The Additional Commissioner)
of Police & Anr.)...**Respondents**

AND

ORIGINAL APPLICATION No.236 OF 2016

Shri Santosh Gangaram Palande,)
Working as Clerk,)
Now under suspension,)
Mumbai Police Crime Branch (Cell),)
Having office in the belownamed)
Respondent No.1,)
R/o. A-Wing, Flat No.19,)
Maharashtra Unnati C.H.S.,)
Kurla (E), Mumbai 24.)...**Applicant**


Versus

1. The Additional Commissioner)
of Police & Anr.)...**Respondents**

Shri B.A. Bandiwadekar, Advocate for Applicants.

Ms. N.G. Gohad, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)



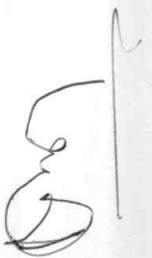
DATE : 15.10.2016

JUDGMENT

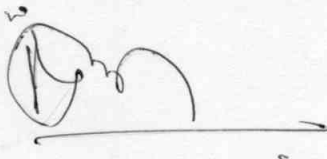
1. These four Original Applications (OAs) call into question the four orders thereby placing the Applicants under suspension in August, 2013 because a medical reimbursement related matter got escalated into a Police complaint. The matter stands there and it is a common ground that neither a charge-sheet has been laid before the competent Court of criminal jurisdiction nor has any departmental proceeding gone underway, but for the last three years, the Applicants are languishing under suspension.

2. I have perused the record and proceedings and heard Shri B.A. Bandiwadekar, the learned Advocate for the Applicants and Ms. N.G. Gohad, the learned Presenting Officer for the Respondents.

3. The facts are more or less identical warranting the disposal of all these four OAs by a common Judgment. The Applicant Shri R.B. Pawar in OA 170/2016 is a Police Naik. The other three Applicants are in the Clerical cadre of Senior Clerks (OA 167/2016) and Junior Clerks in OA

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168/2016 and 236/2016). It is not much in dispute that the Police Naik will be governed by the Disciplinary Rules applicable to the Police Personnel while the clerical members of the staff will be governed by the relevant Civil Service Rules. It would appear that, initially, an order came to be issued suspending the Applicants and for some technical flaw, it was recalled, but another communication producing the same result i.e. suspension came to be issued, and therefore, the net result is that the Applicants continued to be under suspension in so far as the 1st three OAs are concerned from 1st August, 2013 and in so far as OA 236/2016 is concerned, from 20.4.2013. The sum and substance of the impugned order is that the Applicants committed offences under various Sections of the Indian Penal Code (IPC) including Sections 409, 420, 465, etc. read with Section 34, and therefore, an offence came to be registered against them vide C.R. 133/2013 in OA 167/2016 and other similar Crime numbers in different matters. These complaints have been lodged in Azad Maidan Police Station. The allegations were about submission of medical reimbursement bills. The Applicants were informed that subject to the outcome of that criminal complaint, they had been placed under suspension. It bears repetition that this very order of suspension has continued to hold the ground till date.



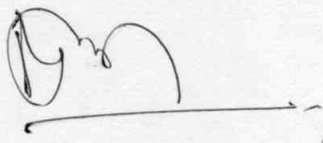
4. Mr. B.A. Bandiwadekar, the learned Advocate for the Applicants made a three-fold submissions. In the first place, according to him, the impugned orders having been issued by the Additional Commissioner (Crime), Bombay has been issued by an Officer who is not competent to place the Applicants under suspension. It appeared to be his case that such an order could have been made only by the Commissioner of Police, Mumbai who in case of the Applicants is the appointing authority. Secondly, according to the learned Advocate, prolonged suspension is oppressive and attracts the wrath of the various relevant constitutional provisions and it infringes the fundamental rights of the Applicants. In that connection, he also relied upon the Service Rules and a number of earlier orders made by this Tribunal and also in this very matter, some orders made by the Hon'ble Chairman. Pertinently, he relied upon **Ajay Kumar Choudhary Vs. Union of India (2015) 2 SCC (L & S) 455 = (2015) 7 SCC 291**. In my view, the present controversy is fully governed by the law laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary** (supra) and it indeed is a very apposite case law. Another aspect of Mr. Bandiwadekar's contention was that the Applicants are entitled to be compensated in as much as pending the period of suspension, they were made to report to the concerned Officer daily by incurring



expenditure, and therefore, at this stage itself, they should be compensated at the rate 3000/- p.m.

5. Ms. N.G. Gohad, the learned Presenting Officer (PO) countered all these submissions and *inter-alia* relied upon the fact that under the relevant provisions applicable herein, the authority issuing the orders of suspension was competent to do so and in that connection, she referred me to the relevant provisions of the Police Disciplinary Rules as well as Section 25 of the Maharashtra Police Act. On other aspects also, she made a reference to the serious allegations against the Applicants of they having criminally misused the medical reimbursement facility.

6. Now, as far as the first submission of the leaned PO is concerned, in my opinion, the provisions of the Maharashtra Police (Punishment and Appeal) Rules, 1956. Rule 3(1)-A(i) lays down that it will be the appointing authority or any authority to which it was subordinate or any other authority empowered by the State Government were an enquiry into his conduct was contemplated or pending. That is not the state of affairs here. A complaint having merely been lodged in the Police Station, there is no other material to show that the criminal offence was under investigation or trial. In as much as the charge-sheet has




not been laid, there is no question of trial having been even initiated. Assuming the authority other than the appointing authority were to issue the order of suspension, the proviso to the provision under consideration could show that in that event, the authority making such an order would forthwith report to the appointing authority, the circumstances in which the order of suspension was made. This quite clearly was not done and in so far as the Applicant Police Naik is concerned, there is no other go, but to hold that taking into consideration the totality of circumstances in the background of the said Rule, the impugned order against him is surely irretrievably susceptible.

7. In so far as the Applicants who are the Clerks are concerned, it may not be necessary for me to enter into a very detailed discussion because that controversy can be resolved by reference to an order dated 2.8.2016 made in these very OAs by the Hon'ble Chairman. It was pointed out to the Bench relying upon Para 6.8 of the OA that the Applicant was governed by the provisions of Maharashtra Civil Service (Discipline & Appeal) Rule, 1979. Rule 4(1)(c) would be relevant and thereunder, it will be only the appointing authority or any authority to which the appointing authority was subordinate or the disciplinary



authority or any other authority empowered in that behalf by the Governor by general or special order who might place the concerned public servant under suspension, and therefore, the authority issuing the order of suspension viz. "अप्पर पोलीस आयुक्त(गुन्हे), मुंबई" should support his action by the documents which he has not done. The Hon'ble Chairman was then pleased to refer to contents of the Affidavit-in-reply in Para 11 where it was admitted that the Clerk Applicants were governed by the MCS Rules above mentioned, but even in the cases like the present one, the authority issuing such an order was competent to do so provided he intimated that order to the appointing authority. Now, this is clearly the statement of principle or interpretation of the Rule, but the perusal of the record does not show that this duty was performed by the concerned authority. Reading the order of the Hon'ble Chairman under consideration herein, in Para 5, it was observed that the reply of the Respondent No.1 was evasive which amounts to an admission of Applicants' plea, and therefore, without touching all other issues involved in the matter, the OA will have to succeed, if Paragraph No. 6.8 was not properly answered, and therefore, the learned PO was called upon to address the Hon'ble Chairman on that point. The learned PO was not in a position to state that the Additional Commissioner of Police (Crime) who made

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the impugned order was equipped with the special empowerment by the Government under Rule 4(1) of the MCS (D & A) Rules. Time was taken, but there has been no improvement in the situations, and therefore, even in so far as the Applicants who are the members of the Clerical staff and are under suspension can safely take an advantage of this lacuna in the case of the Respondents.

8. Mr. Bandiwadekar, the learned Advocate relied upon a common order in OAs 300/2014 and 301/2014 made by the then learned Member (Administrative) on 26th February, 2014 from Para 16 onwards where on this aspect of the mater, the finding for the Applicants before the learned Member came to be entered. He also referred me to **OA 776/2008 (Jitendra V. Kadam Vs. State of Maharashtra, dated 7.5.2009)** for the same proposition wherein, the then Member (Judicial) was called upon to decide the same issue and which he decided in favour of the Applicant before him. The application for review failed. This order was carried to the Hon'ble Bombay High Court by way of **Writ Petition No.8632/2009 (The State of Maharashtra Vs. Jitendra V. Kadam, dated 8th October, 2009)**. The perusal of Para 4 would show that Their Lordships considered the two main points urged before the Hon'ble High Court. The first one was the competence of

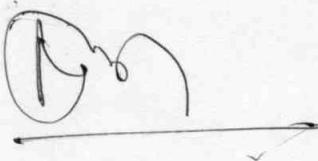
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the authorities issuing the order of suspension and second one was non-compliance with the Rule of the Bombay Police Punishment Rules above discussed of which the sister provision is Rule 4 of the MCS (D & A) Rules. The issue of delegation of power was also dealt with in the light of the earlier Judgment of the Hon'ble High Court in Writ Petition No.4050/2009 and the Writ Petition was dismissed. On more or less same aspect dealing with the same issue, I was referred to the Judgment of the Hon'ble Vice-Chairman in **OA 1027/2013 (Ramdas D. Kanase Vs. The Additional Commissioner of Police (Admn.), dated 23rd January, 2014).**

9. The above discussion based on the binding case law should in my view make it quite clear that orders herein impugned issued by the Additional Commissioner (Crime) are unsustainable in the context of the present facts and in the light of the relevant Rules. Therefore, on that point itself, these OAs deserve to be allowed.

10. However, I am very clearly of the view that I must discuss the authority of **Ajay Choudhary** (supra) which lays down the principles of law with regard to the issue of suspension in the facts and circumstances such as they are. Now, on facts, it is completely inexplicable as to why



for three long years, the case of the Applicants for revocation of suspension was not reviewed at all. The mandate of the Rules in that behalf was observed in complete breach. I cannot be ransomed into going along with the Respondents only on the basis of high sounding serious looking allegations. That is for the simple reason, that if the Applicants have committed such a grave offence, it must also constitute misconduct. No disciplinary proceeding has gone underway and no charge-sheet has been laid before the Court of competent criminal jurisdiction for three long years. In that event, can it be countenanced that the suspension continues as if forever and that precisely is taken care of fully and completely by **Ajay Choudhary's** case. Although basically it was a case of suspension preceding the initiation of departmental enquiry, but then there are observations there which would make it very clear that even in case of any suspension other than preceding the DE, even otherwise the judicial forum shall frown upon the fruitless prolongation of the agony of suspension. In fact, I am aware of my own Judgment in the matter of **OA 26/2015 (Shri Anil R. Parab Vs. The Government of Maharashtra and one another, dated 15.12.2015)** where a Range Forest Officer was placed under suspension and I relied upon and took guidance from **Ajay Choudhary** (supra) as well as from

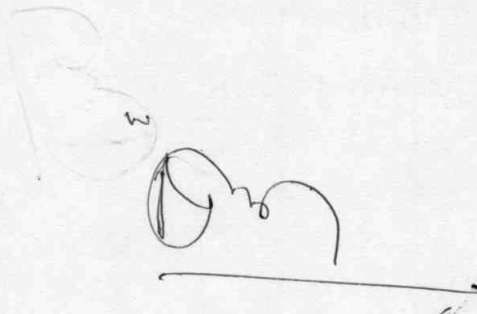


O.P. Gupta Vs. Union of India (1987) 4 SCC 328 and State of Andhra Pradesh Vs. N. Radhakrishna (1998) 4 SCC 154. Para 28 of my said Judgment reproduced the observations of the Hon'ble Supreme Court and I think, it will be most advantageous to reproduce the said Para 28.

“28. In the above background Their Lordships were pleased to make observations which are of great moment and education to all students of law. In that connection para nos. 11 and 12 (pages 297 and 298 of S.CC. need to be fully reproduced.

“11. 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.


12. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspension person suffering 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 now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right 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 grounds 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 prosecution the accused shall enjoy the right to a speedy and public trial."

11. It is, therefore, quite clear that in the actual fact and circumstances such as it is, the impugned orders are completely susceptible to judicial interference. I think I should straightway make an order in the line of the order made by the Hon'ble Vice-Chairman in **OA 504/2012 (Pravin G. Ahire Vs. Deputy Commissioner of Police, 24.01.2013)** and quash the impugned order and direct the reinstatement of the Applicants without prejudice to any

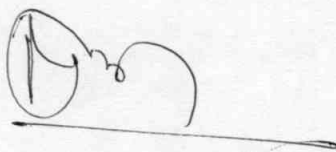
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action before the Court or the disciplinary action, if any taken.

12. Now, as far as the issue of compensation is concerned, the Hon'ble Vice-Chairman by his order dated 16.2.2016 made in this very fasciculus of OAs vacated the condition of daily reporting and then a regular administrative order was passed vacating that condition. Despite suspension, the Applicants nevertheless continued to be the Government servants and Mr. Bandiwadekar candidly conceded that they have been receiving Suspension Allowance. In that view of the matter, therefore, I do not think that I should exercise my discretion and award compensation which would be in the nature of damages. A case on facts in that behalf is not made out. The Applicants were not required to travel out of station daily, and therefore, I do not think I should enter into the academic consideration of the power and jurisdiction, etc. That aspect is left upon in so far as the legal position is concerned and on facts, I reject that part of the claim of the Applicants.

13. In view of the foregoing, the orders herein impugned placing the Applicants under suspension stand hereby quashed and set aside. The Applicants are hereby

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directed to be reinstated to the post and position that they had been suspended from within two weeks from today. This order shall be without prejudice to the rights and powers of the authorities to proceed further in the criminal complaints registered against the Applicants and initiate a departmental enquiry, if they are so minded. It is, however, made clear that I am not directing the initiation of DE or prosecution of the Applicants. That depends upon the facts and circumstances as envisaged by the authorities. The Original Applications are allowed in these terms with no order as to costs. The claim for compensation is rejected.

Sd/-

(R.B. Malik)
Member-J
15.10.2016

Mumbai

Date : 15.10.2016

Dictation taken by :

S.K. Wamanse.

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