

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.137 OF 2023

DISTRICT : NASHIK

Shri Sureshkumar Tarachand Ghusar,)
Age 51 years, Suspended Police Inspector,)
Malegaon City Police Station, Nasik Rural, Nasik)..Applicant

Versus

1. The Special Inspector General of Police,)
Nasik Range, Dakshata Building,)
Gadkari Chowk, Nasik-2)
2. The Superintendent of Police,)
Nasik Rural, Adgaon Police Headquarter,)
Near Bhujbal Knowledge City, Nasik)..Respondents

Smt. V.K. Jagdale – Advocate for the Applicant

Smt. Archana B.K. – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 6th November, 2023

PRONOUNCED ON: 29th November, 2023

J U D G M E N T

1. The applicant is challenging the impugned suspension order dated 4.10.2022 issued by the respondent no.1. The applicant was suspended from the date of his arrest w.e.f. 1.10.2022 as per Section 25 of the

Maharashtra Police Act, 1951, GR of Home Department dated 12.1.2011 and as per Rule 3(1-a)(1)(a) and (b) of Maharashtra Police (Punishment & Appeal) Rules, 1956.

2. The applicant was working as Police Inspector was posted at Malegaon City Police Station in Nashik Rural. On 30.9.2022 FIR No.192/2022 under Section 7(a) and 12 of the Prevention of Corruption Act, 1988 was registered against the applicant. It was alleged by a private person that applicant has demanded illegal gratification for not taking any legal action against complainant's brother Mr. Mohammed Faizan and to free him from custody. Accordingly the applicant was arrested on 1.10.2022 and released on bail on 11.10.2022. In view of the registration of the said FIR the applicant was suspended on 4.10.2022 by respondent no.1 from the date of his arrest i.e. w.e.f. 1.10.2022 as per Section 25 of the Maharashtra Police Act, 1951, GR dated 12.1.2011 and as per Rule 3(1-a)(1)(a) and (b) of Maharashtra Police (Punishment & Appeal) Rules, 1956. The applicant was released on bail on 11.10.2022 and he submitted a representation before the respondents to set aside the suspension on 8.11.2022.

3. Ld. Advocate for the applicant points out that this is a case of prolonged suspension since he was suspended on 4.10.2022 w.e.f. 1.10.1022. Ld. Advocate for the applicant admits that review has been taken in this case on 18.2.2023 and 25.4.2023 and he was continued under suspension. However, he pointed out that no reasons have been mentioned for continuation of his suspension. Ld. Advocate for the applicant also admits that DE has been initiated on 30.3.2023 and the final statement of the applicant has been submitted on 19.6.2023. Ld. Advocate pointed that no charge sheet has been served on the applicant in the criminal case.

4. Ld. Advocate for the applicant relies on the following judgments:

(1) Judgment and order dated 21.10.2022 passed by this Tribunal in OA No.724 of 2022 Shri Milind Murlidhar Navgire Vs. The State of Maharashtra & Ors.

(2) Judgment and order dated 13.10.2022 passed by this Tribunal in OA No.131 of 2022 & 345 of 2022 Shri Pankaj Prakash Mahajan Vs. Director General of Police, Mumbai & Anr.

5. Per contra Ld. PO opposed the contentions raised by the Ld. Advocate for the applicant. She relied on the affidavit in reply dated 17.3.2023 filed by Pushkraj Govindrao Suryawanshi, Sub Divisional Police Officer, Malegaon Rural Sub Division, Nashik Rural and more particularly paras 15, 15.1, 15.2, 17.1 & 17.2 which reads as under:

“15. With reference to contents of paragraph 7.4, I submit that the applicant deliberately mislead Hon’ble Tribunal by mentioning GR dated 9.7.2019. The GR dated 9.7.2019 issued in accordance with GR dated 14.10.2011 and 31.1.2015 of GAD of Maharashtra State. Hence, it is mandatory to read GR dated 9.7.2019 with GR dated 14.10.2011 and 31.1.2015.

15.1 GR dated 9.7.2019 modifies only limited provisions of GR dated 14.10.2011 and 31.1.2015 and not superseded the same GRs. Provisions made in paragraph No.(i) and (ii) of GR dated 9.7.2019 are about officers and men who are placed under suspension due to departmental proceedings and not about officers and men who are placed under suspension due to criminal offence registered against them.

15.2 As mentioned supra, the applicant was placed under suspension not only for departmental proceedings ordered against him but also in accordance with the criminal offence registered against him. Hence, provisions of GR dated 9.7.2019 are not applicable for the applicant. It is clearly mentioned in paragraph no.3 in GR dated 14.10.2011 that,

'In cases where suspension action has been taken against the government officer/employee for serious criminal cases such as un accounted assets, moral turpitude, bribery, murder, attempted murder, rape etc., such cases shall be submitted to the relevant suspension review committee for consideration after one year from the date of suspension.'

17.1 The ratio laid down in the *Ajay Kumar Choudhari Vs. Union of India* (2015) 7 SCC 291 is a judgment of Hon'ble Division Bench of the Hon'ble Supreme Court and while issuing the said judgment the Hon'ble Supreme Court has not taken into consideration the larger Bench judgments issued by the Hon'ble Constitutional Bench in the matters of (1) *Khem Chand* (2) *V.P. Gindroniya* (3) *R.P. Kapur* (4) *Ashok Kumar Aggrawal* (5) *Sanjiv Ranjan* (6) *Srinivasan* (7) *Deepak Kumar Bhole*.

17.2 In fact, on the same ground the Hon'ble Andhra Pradesh High Court, 2015 SCC Online Hyd. 183 in the matter of *Buddana Venkata Murli Krishna Vs. State of A.P.* (W.P. No.7618 of 2015) dated 1.6.2015 has observed in third and second last paragraph as under:

'The attention of the Supreme Court in Ajay Kumar Choudhary, was not drawn to its earlier judgments in Ashok Kumar Aggarwal; Sanjiv Rajan; L. Srinivasan; and Deepak Kumar Bhole, wherein it was held

that mere delay in conclusion of disciplinary proceedings or criminal cases or long period of suspension would not render the order of suspension invalid.

This Court may not, therefore, be justified in quashing the order of suspension following the judgment of the Supreme Court in Ajay Kumar Choudhary, as that would require it to ignore the Constitution bench judgments of the Supreme Court in Khem Chand, R.P. Kapur and V.P. Girdroniya; as also the other judgments of the Supreme Court in Ashok Kumar Aggarwa; Sanjiv Rajan; L. Srinivasan; and Deepak Kumar Bhola. The order of the Tribunal does not, therefore, necessitate interference.'

6. Ld. PO also pointed out that the following serious misconducts on the part of the applicant were noticed in the preliminary enquiry conducted against the applicant which is as follows:

“(I) Following crime and application enquiries were pending with the applicant since long time while he was working at Malegaon City Police Station, Nashik Rural.

A) Para I to V

Sr. No.	Crime Register No.	Sections	Registered date
1	86/2022	IPC Section 354 (C), 292, 293 with IT Act Section 67(A)	15.5.2022
2	114/2022	IPC Section 429, 420 with IT Act 66(C), 66 (D)	16.6.2022

B) Para VI

Sr. No.	Crime Register No.	Sections	Registered date
1	35/20219	The Drugs & Cosmetics Act, 1940 & 1945 Section 18C, 18A, Punishment Section 27(B)(ii) & 28	10.5.2019
2	446/2020	IPC 188, 323, 504, 506, 354(A), 143, 147, 148, 148 with Anti Superstition and Black Magic Act 2013 Sec 3	21.5.2020

C) Application Inquiry

Sr. No.	Application No.	Received on Date	Applicant Name
1	33/2020	9.11.2020	Firojmiya Bismilla Khan Islampura
2	120/2021	18.12.2021	Jahid Akhtar Nisar Ahmed

(II) Crimes bearing CR No.87/2022, IA Act Sec.4/25, IPC Sec 34 with Maharashtra Police Act, 1951 Section 135 and CR No.77/2021 IPC 353, 294, 323, 504, 506 were handed over to PN/2493 Atmaram Kashinath Patil (who is co-accused in an offence bearing CR No.192/2022 with the Applicant) for investigation even though a police officer of the rank of Police Naik did not have the authority to investigate such crimes.

(III) Prior to registration of said offence under Anti-Corruption Act against the applicant's application against the applicant regarding demand of Rs.1,00,000/- from another person named Yusuf Sulman Khan, Res at Malegaon is also been received to the Additional Superintendent of Police, Malegaon."

7. Ld. PO pointed out that on 30.9.2022 after action was taken against the applicant by the Anti-Corruption Bureau he was kept in a confidential cell at Malegaon City Police Station instead of being kept in lockup due to his suffering as taking advantage of it on 1.10.2022 at around 4.30 p.m. the applicant called private person named Isam Ansari Mudassir Aklak Ahmed to the police station and asked him to destroy all the CCTV camera footages installed at the police station from 2.9.2022 to 5.9.2022.

8. Ld. PO pointed out that the applicant never conducted inspection of PN/2493 Atmaram Kashinath Patil, who is co-accused with the applicant in offence bearing CR No.192/2022 for the offences punishable under Section 7(a) and 12 of the Prevention of Corruption Act, 1988 (as amended in 2018) with IPC Section 201.

9. Ld. PO refers to the said affidavit in reply dated 17.3.2023 and relies on the following judgments:

(1) Civil Appeal No.3116 of 2022 para 6.1 which reads as under:

“An employee in the uniformed service presupposes a higher level of integrity as such a person is expected to uphold the law and on the contrary any act in deceit and subterfuge cannot be tolerated.”

(2) Civil Appeal No.2707 of 2022 Anil Kumar Upadhay Vs. The Director General, SSB & Others, para 9, which reads as under:

“As observed by this Court in the case of Diler Singh, a member of the disciplined force is expected to follow the rules, have control over his mind and passion, guard his instincts and feelings and not allow his feelings to fly in a fancy.”

10. I have considered the submissions of both the sides. In matters of suspension we need to consider the facts of each case and there is no straight jacket formula for the same. In this case it is seen that though applicant was suspended on 1.10.2022 his case has been considered for review on 18.2.2023 and 25.4.2023 and due consideration has been given to the seriousness of the charges against him. It is seen that in addition to this case other criminal cases as mentioned above have been registered against the applicant. It is important to note that when the applicant was in custody in a Confidential Cell he has asked private person to destroy the CCTV camera footages installed at the police station from 2.9.2022 to 5.9.2022. I take note of the apprehension of the respondents that the applicant may tamper with the record if he is reinstated from suspension before completion of the investigation of crime registered against him and the disciplinary proceedings pending against him. It is seen that the criminal case registered against the applicant is currently under investigation and departmental proceedings ordered against the applicant have been initiated but not yet completed.

11. Hence, I feel that the OA is devoid of merit and liable to be dismissed. Original Application is dismissed. No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
29.11.2023

Dictation taken by: S.G. Jawalkar.