

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI**

**ORIGINAL APPLICATION NO.178 OF 2023**

**DISTRICT : NASHIK**

Shri Sachin Rajendra Pawar, )  
Age 29 years, Police Constable, Jaikheda Police Station) )  
Taluka Satana, District Nashik, Maharashtra, ) )  
Residing near Pimpaldar Hanuman Temple, ) )  
Taluka Satana, District Nashik, Maharashtra )..Applicant

Versus

1. The State of Maharashtra, )  
Through the Secretary, Home Department, )  
Mantralaya, Mumbai 400032 )
2. The Director General of Police, )  
S.B. Marg, Colaba, Mumbai 400001 )
3. Superintendent of Police, )  
Nashik Rural, Bhujbal Knowledge City, Adgaon, )  
Nashik 422207 )
4. The Director General, Anti Corruption Bureau, )  
6<sup>th</sup> Floor, Sir Pochkhanwala Chowk, )  
Worli Police Camp, Worli, Mumbai 400030 )..Respondents

Shri A.A. Gharte – Advocate for the Applicant

Shri A.J. Chougule – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)  
RESERVED ON : 12<sup>th</sup> September, 2023  
PRONOUNCED ON: 4<sup>th</sup> October, 2023

### **J U D G M E N T**

1. Heard Shri A.A. Gharte, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. The applicant challenges suspension order dated 20.8.2022 whereby applicant has been suspended in view of registration of crime under the provisions of Prevention of Corruption Act, 1988 invoking Rule 4(1) of MCS (Discipline & Appeal) Rules, 1979. While the applicant was working as a Police Constable at Jaikheda Police Station, Taluka Satana, District Nashik he allegedly demanded a bribe of Rs.30,000/- from one person for not impleading him as accused in FIR No.170/22 under Section 363 of IPC.

3. A trap was laid by respondent no.4 on 30.7.2022. The said person met the applicant and talked about the incident with a hidden voice recorder. It was alleged that the entire conversation between the applicant and person regarding bribe of Rs.30,000/- was recorded and handed over to the respondent no.4. As a result the said person filed an FIR against the applicant on 19.8.2022 and the applicant was arrested on the same day. By order dated 20.8.2022 respondent no.3 suspended the applicant from the post of Police Constable by invoking powers under Section 25(1) of the Maharashtra Police Act, 1951 r/w Rule 3 of Maharashtra Police (Punishment & Appeal) Rules, 1956 and Rule 2.1 of the Departmental Enquiry Manual, 1999. Thereafter applicant requested respondent no.3 to reinstate him into service after 3 months of suspension period was over.

4. Ld. Advocate for the applicant challenges the suspension order and pointed out that there is no certainty as to when the DE or criminal prosecution in the Court of law will get over and the applicant cannot be made to suffer prolonged suspension. He relies on the ratio laid down by the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291**. He further submits that it is a settled position of law that a Government servant should not be subjected to prolonged suspension where no fruitful purpose would be served by continuing suspension. He also relies on the GR dated 9.7.2019. He pointed out that contrary to the GR no review of suspension has been initiated by the respondents even after 90 days have passed. He also relied on the ratio laid down by the Hon'ble Supreme Court in **State of Tamil Nadu Vs. Pramod Kumar & Anr (Civil Appeal No.2427-2428 of 2018) dated 21.8.2018**.

5. Per contra Ld. PO relied on the affidavit in reply dated 2.5.2023 filed by Kavita Ganesh Phadtare, Sub Divisional Police Officer, Peth Division, Nashik Rural, on behalf of respondent no.3. She pointed out that preliminary enquiry is in progress and that respondent no.3 had placed the matter of applicant before the suspension review committee under Superintendent of Police, Nashik Rural on 13.9,2022, 30.9.2022, 16.11.2022 and 7.2.2023 and a decision was taken to continue the suspension of the applicant. She therefore states that the OA should not be allowed.

6. The legal position in respect of prolonged suspension is no more res integra in view of the judgment of the Hon'ble Supreme Court in *Ajay Kumar Choudhary* (supra). It is appropriate to reproduce paras 11, 12 and 21 of the said judgment, which reads as under:

*“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 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.*

21. *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.*

7. It is to be noted that the case of *Ajay Kumar Chaudhary* (supra) arises from suspension on account of DE whereas in the present case the applicant is suspended in view of registration of crime under the provisions of Prevention of Corruption Act. In this matter a periodic review has been taken of the suspension. There has not been any progress in the DE nor has been any charge sheet filed in the Court of law. In such a situation no fruitful purpose would be served by

continuing the applicant under suspension. The applicant can be posted on a non executive post or any other post as the respondents may deem fit.

8. In view of the above the OA deserves to be disposed of by giving suitable directions to the respondents to take review of the suspension of the applicant within stipulated period. Hence, the following order.

**ORDER**

(A) The Original Application is partly allowed.

(B) The Respondent No.2 is directed to take review of suspension of the applicant within four weeks from today in view of the above observations made by this Tribunal and decision be communicated to the applicant within one week thereafter.

(C) The Respondents are also directed to initiate and complete the Departmental Enquiry within a period of six months from today.

(D) No order as to costs.

**Sd/-**  
**(Medha Gadgil)**  
**Member (A)**  
**4.10.2023**

Dictation taken by: S.G. Jawalkar.