

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.246 OF 2023

DISTRICT : NASHIK

Shri Karbhari Bhila Yadav,)
Age 52 years, Police Hawalkar, Police HQ, Nashik,)
R/o Row House No.47, Om Shanti CHS,)
Narhari Nagar, Pathadi Phata, Nashik 422010)..Applicant

Versus

1. The State of Maharashtra,)
Through the Secretary,)
Home Department, Mantralaya, Mumbai)
2. Director General of Police,)
Shahid Bhagatsingh Marg, Colaba, Mumbai)
3. Special Inspector General of Police,)
Nashik Range, Gadkari Chowk, Nashik 422002)
4. The District Superintendent of Police,)
Nashik Rural, Adgaon Naka, Panchavi, Nashik)
5. The Director General, Anti Corruption,)
Sixth Floor, Sir Pochkhanwala Road,)
Worli Police Camp, Worli, Mumbai 400030)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

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

CORAM : Smt. Medha Gadgil, Member (A)
RESERVED ON : 28th November, 2023
PRONOUNCED ON: 8th December, 2023

J U D G M E N T

1. By invoking Section 19 of the Administrative Tribunals Act, 1985 the applicant challenges his suspension order dated 14.6.2022 passed on the basis of FIR No.214/2022 which was registered against him for offences committed under Section 7 of the Prevention of Corruption Act, 1988.

2. While the applicant was working as Police Hawaldar at Ozar Police Station the complainant who was accused in case filed against him under Section 138 and against whom arrest warrant was issued alleged that applicant had demanded Rs.2000/- (Rupees two thousand only) from him for preventing his arrest. The complainant thereafter approached the Anti Corruption Bureau (ACB) and lodged a complaint. Accordingly, a trap was arranged on 12.6.2022. The amount of bribe put by the complainant was found in the gap of the headlight of applicant's motor cycle. FIR was lodged against the applicant on 12.6.2022 and he was suspended on 14.6.2022.

3. The applicant made representations on 18.10.2022, 1.11.2022, 5.12.2022, 10.1.2023 and 31.1.2023 to respondent no.4 to revoke his suspension since three months period has lapsed and he should be reinstated in service. The matter was placed before the suspension review committee on 30.6.2022, 13.9.2022, 30.9.2022, 11.11.2022, 16.11.2022, 7.2.2023 and 10.5.2023 and a decision was taken to continue the applicant under suspension.

4. Ld. Advocate for the applicant pointed out that no charge sheet or criminal case has been filed. Moreover, preliminary enquiry has been conducted by the Sub Divisional Police Officer (SDPO), Kalwan. Respondent no.4 has given the final order of stoppage of two increments to the applicant on 6.6.2023.

5. Ld. Advocate for the applicant states that his suspension has been continued without any objective assessment and without application of mind and hence suspension deserves to be revoked. He relied on the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291.**

6. Ld. PO opposes the submissions of Ld. Advocate for the applicant and pointed out that periodic review have been taken as per GR dated 9.7.2019 and the reasons have been mentioned for continuation of suspension. He relied on the affidavit in reply dated 23.6.2023 filed by Nitinkumar Nilkanth Gokave, Dy. S.P., H.Q., Nashik Rural. He pointed out that applicant is a member of disciplined force and morality and integrity are ingredients of discipline in employment particularly of the uniformed force. The criminal case registered against the applicant is under investigation. He pointed out that the matter has been considered by the suspension review committee and a decision was taken to continue him under suspension.

7. The legal position in respect of prolong suspension is no more *res-integra* in view of the Judgment of Hon'ble Supreme Court In **Ajay Kumar Choudhary's** case (supra). It would be apposite to reproduce Para Nos.11, 12 and 21, which are as follows:

“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 period 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 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 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/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet 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 person concerned 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 prepared 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 the 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.”*

8. In this case it is seen that the applicant has been under suspension for a period of more than one year and the DE has been completed and punishment of stoppage of increment for 2 years has been imposed. In this case there does not appear to be threat to the criminal trial and hence no fruitful purpose would be served by continuing the Applicant in further suspension. Hence the following order.

ORDER

- (1) Original Application is allowed partly.
- (2) Respondents are directed to take review of suspension of the Applicant afresh within four weeks from today in view of the observations made by the Tribunal above and the decision as the case may be shall be communicated to the Applicant within a week thereafter.
- (3) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
8.12.2023

Dictation taken by: S.G. Jawalkar.