

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.247 OF 2023

DISTRICT : NASHIK

Shri Raman Tulshiram Gaikwad,)
Age 48 years, Police Hawaldar, Police HQ, Nashik,)
R/o Block No.10, Room No.1, Police Colony,)
Adgaon, Nashik 422003)..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 : 1st December, 2023
PRONOUNCED ON: 14th 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 9.5.2022 passed on the basis of FIR No.55/2022 which was registered against him on 5.5.2022 for offences committed under Section 7 of the Prevention of Corruption Act, 1988 and also continuation of his suspension after 90 days without periodical objective review of the suspension.

2. The applicant who was working as Police Hawaldar at Nashik was suspended pursuant to FIR No.55/2022 registered on 5.5.2022. While the applicant was working as Hawaldar he allegedly accepted bribe of Rs.2000/- for closure of case between one Shri Sanjay and his relative viz. Shri Kashinath.

3. Ld. Advocate for the applicant sought to assail the suspension on the ground that this is a case of prolonged suspension. He further relied on GRs dated 14.10.2011, 20.2.2013, 31.1.2015 & 9.7.2019 which lay down the guidelines for revocation of suspension and the time limit for ordering the sanction or rejection to the prosecution. He relied on the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291**. He pointed out that though more than one year and seven months have lapsed and without any objective assessment his suspension has been continued.

4. Per contra Ld. PO submitted that the charges leveled against the applicant are serious and the suspension cannot be unjustified. Ld. PO relied on the affidavit in reply dated 23.6.2023 filed by Nitinkumar Nilkanth Gokave, Dy. S.P., H.Q., Nashik Rural. Ld. PO pointed out that preliminary enquiry in this case has been completed and 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.

5. The Hon'ble Supreme Court in *Ajay Kumar Choudhary's case*, taking note of its earlier decision mandated 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 within three months, a reasoned order must be passed for the extension of the suspension. It would be apposite to reproduce Para Nos.14 of the judgment which is as follows:

"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. 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.”

6. This is a matter of prolonged suspension as the applicant was suspended on 9.5.2022. The Hon'ble Supreme Court in **State of Tamil Nadu Vs. Pramod Kumar and another (Civil Appeal No.2427-2428 of 2018) dated 21st August, 2018** held that, where reinstatement of employee is not threat to trial and where no fruitful purpose would serve by continuing suspension, the employee can be reinstated on suitable post. In present case, I see no such threat to criminal trial and no fruitful purpose would served by continuing prolong suspension.

7. No doubt, as per G.R. dated 14.10.2011, where delinquent is accused in serious offence under IPC for provisions of Corruption Act, such matters are to be placed before the Review Committee after one year from suspension. But at the same time, in view of the decision of the Hon'ble Supreme Court in *Ajay Kumar Choudhary's case*, which is subsequent to G.R. dated 14.10.2011, review needs to be taken and in absence of review, prolong suspension is impermissible.

8. In this view of the matter, the Original Application deserves to be disposed of with suitable directions. Hence, the following order:-

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondents are directed to take review of suspension of the Applicant and for his reinstatement in the light of observation made above within four weeks from today.
- (C) The decision be communicated to the Applicant within one weeks thereafter.
- (D) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
14.12.2023

Dictation taken by: S.G. Jawalkar.