

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL

MUMBAI

ORIGINAL APPLICATION NO.505 OF 2023

DISTRICT : NASHIK

Shri Abhijeet Kachru Ugalmugale,)
Age 32 years, Police Constable, HQ, Nashik)
R/o Vitthal Nagar, A.P. Kotamgaon, Tal. Yeola,)
District Nashik 423401)..Applicant

Versus

1. The State of Maharashtra,)
Through Secretary, Home Department,)
Mantralaya, Mumbai 400032)
2. Special Inspector General of Police,)
Nashik Range, Gadkari Chowk, Nashik-2)
3. The District Superintendent of Police,)
Nashik Rural, Adgaon Naka, Panchvati, Nashik-3)..Respondents

Shri C.T. Chandratre – Advocate for the Applicant

Smt. K.S. Gaikwad – Presenting Officer for the Respondents

CORAM : Smt. Medha Gadgil, Member (A)

RESERVED ON : 31st August, 2023

PRONOUNCED ON: 13th September, 2023

J U D G M E N T

1. Heard Shri C.T. Chandratre, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. The applicant challenges the order dated 14.9.2022 issued by respondent no.3 suspending the applicant from service because of lodging of FIR No.288/2022 dated 13.9.2022 for the offence committed under Section 7 and 12 of the Prevention of Corruption Act, 1988.

The brief facts of the case are as follows:

3. The applicant was working as Police Constable at Nandgaon Police Station, Taluka Nandgaon, District Nashik. On 27.7.202 one Mr. Ashok Sherekar lodged a complaint against PSI Shri Waghmare, PC Suresh Sangle and the applicant with the ACP stating that they had demanded Rs.35,000/- for releasing his tractor which had been confiscated by the Police. Consequent to this applicant was suspended on 14.9.2022 by the Superintendent of Police, Nashik (Rural).

4. Ld. Advocate for the applicant submits that applicant has filed representations dated 11.11.2022 and 20.1.2023 against the suspension to respondent no.3. However, no action has been taken and the representations are still pending and therefore the applicant has approached this Tribunal by filing the present OA. He submits that period of one year is almost over.

5. Ld. Advocate for the applicant refers to para 2 of the GR dated 14.10.2011 which speaks about constituting the committees for reviewing the order of suspension. He further refers to para 5 of the GRs dated 12.2.2013, 31.2015 and 9.7.2019 in this regard. He further states that

charge sheet has not been filed before the competent Court. He submits that sanction for prosecution in the criminal case has not been granted.

6. He refers to and rely on the decision of the Hon'ble Supreme Court in **Ajay Kumar Choudhary Vs. Union of India & Anr. (2015) 7 SCC 291** and the 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.**

7. He also refers to affidavit in reply dated 8.7.2023 filed by Nitinkumar Nilkanth Gokave, Dy. Superintendent of HQ, Nashik Rural, Nashik. He submits that Departmental Enquiry (DE) was conducted after his suspension and minor punishment was imposed of withholding of one increment for one year. He submits that suspension is after lodging of the FIR under Prevention of Corruption Act and that in the case of DE in which minor punishment is awarded has no connection with the present case. He further submits that once the DE has been challenged there will be no purpose served in continuing the suspension. He submits that stereotype reasons are given while taking review by the committee on 30.9.2022, 16.11.2022, 7.2.2023 and 10.5.2023 and the applicant is continued under suspension. He submits that the committee has referred to the circular dated 27.9.2021 issued by the Director General of Police, which is generic in nature. He therefore prays that suspension order may be revoked and the applicant may be reinstated in service by giving posting on a non-executive post.

8. Ld. PO opposes the submissions advanced by the Ld. Advocate for the applicant and submits that periodic reviews have been taken as per GR dated 9.7.2019 and reasons have been mentioned for continuation of the suspension. Ld. PO states that considering the charges leveled

against the applicant the competent authority has taken a decision not to reinstate the applicant in service in view of the pending criminal case.

9. In this case it is admitted fact that applicant has been subjected to suspension of about one year. It is seen that there is no progress in the DE and no charge sheet has been filed before the competent court. As a result the applicant's fundamental right of speedy trial and expeditious disposal of DE is frustrated. In the Anti Corruption case The Anti Corruption Bureau has not filed the charge sheet.

10. The Hon'ble Supreme Court in *Ajay Kumar Chaudhary* (supra) mandated that the currency of suspension order should not exceed beyond three months, if within this period the memorandum of charges/charge sheet is not served on the delinquent officer/employee; in that event, reasoned order must be passed for extension of suspension. Para 14 of the judgment in *Ajay Kumar Choudhary* (supra) reads as under:

“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.”

11. *Ajay Kumar Chaudhary* (supra) arose from a DE. However, an employee cannot be subjected to prolonged suspension without taking a review. It is seen that the committee has taken a review on 30.9.2022, 16.11.2022, 7.2.2023 and 10.5.2023 and the applicant is continued under suspension. It appears that the same reasons are given for continuing with the suspension. The Hon'ble Supreme Court in the case of **State of Tamil Nadu Vs. Pramod Kumar & Anr (Civil Appeal No.2427-2428 of 2018) dated 21st August, 2018** held that where reinstatement of an employee is not a threat to trial and where no fruitful purpose will be served by continuing with the suspension, the employee can be reinstated on a suitable post.

12. Looking into this case it does not appear that there is any threat to the criminal trial and hence there is no fruitful purpose in continuing with the suspension.

13. 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 six weeks from today.
- (C) The decision be communicated to the Applicant within two weeks thereafter.
- (D) No order as to costs.

Sd/-
(Medha Gadgil)
Member (A)
13.9.2023

Dictation taken by: S.G. Jawalkar.