

MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI
BENCH AT AURANGABAD

ORIGINAL APPLICATION NO. 149 OF 2021

DIST. : AHMEDNAGAR

- (1) Mr. Sunil Haribhau Suryawanshi,)
Age. 52 years, Occ. Police Sub Inspector,)
R/at Surya Nagar, Plot No. 9,)
Vasant Tekdi, Ahmednagar.)
)
- (2) Mr. Bharat Charan Dangore,)
Age. 50 years, Occ. Police Head Constable,)
R/at Vijay Nagar, Bhingar,)
Ahmednagar.)
)
- (3) Mr. Ganesh Nivrutti Dahale,)
Age. 45 years, Occ. Police Head Constable,)
R/at Laxmi Nagar, Plot No. 24, Savedi,)
Ahmednagar.)
)
- (4) Mr. Sandip Gulab Dhamne,)
Age. 38 years, Occ. Police Naik,)
R/at Sai Plaza Apartment, Gawde Mala,)
Pipeline Road, Ahmednagar.)
)
- (5) Mr. Ajit Bajirao Ghule,)
Age. 36 years, Occ. Police Naik,)
R/at at post Dolewadi, Post Rajuri,)
Tq. Jamkhed, Dist. Ahmednagar.)
)

-- **APPLICANTS**

VERSUS

- (1) The Superintendent of Police, Ahmednagar,)
State Highway 60, near DSP Chowk,)
Mukundnagar, Ahmednagar 414 001.)
)
- (2) The Director General of Police, Lion Gate,)
Fort, Mumbai – 400 001.)
)

-- **RESPONDENTS**

APPEARANCE :- Shri V.B. Wagh, learned Advocate holding
for Shri K.R. Jagdale, learned Advocate for
the applicants.
: Shri S.K. Shirse, learned Presenting Officer
for the respondents.

CORAM : **Hon'ble Shri V.D. Dongre, Member (J)**
DATE : **10th May, 2021**

ORDER

1. Challenge in this Original Application is made to the suspension order dated 28.10.2020 (Exh. C paper book page 57 of O.A.) in respect of each of the applicants issued by the respondent no. 1 – the Superintendent of Police, Ahmednagar.

2. The facts in brief relevant to dispose of this O.A. can be summarized as follows :-

(i) The applicants are Police officials. At present the applicant nos. 1 to 3 are working in the cadre of Police Head Constables and applicant nos. 4 & 5 are working in the cadre of Police Naik in District Ahmednagar.

(ii) The respondent no. 1 – the Superintendent of Police, Ahmednagar - by the order dated 27.10.2020 (Exh. A paper book page 16 of O.A.) formed a special squad / unit to curb

the illegal activities. The applicants were working in the said Prevention of Illegal Transaction Unit. As per the oral order of the Additional Superintendent of Police, Ahmednagar the applicants were sent for investigation of contaminated kerosene which was being transported in a tanker unauthorizably and without license. C.R. No. 2795/2020 dated 27.10.2020 u/s 3 & 7 of Essential Commodity Act & u/s 285 of I.P.C. was registered. The applicant no. 1 accordingly intimated about it to the Supply Officer / Inspector. The said authority, however, replied that it's office does not have infrastructure with them to test the contamination of the diesel and hence he asked the applicant no. 1 to investigate at his level. Thereafter the applicants approached to the Additional Superintendent of Police and submitted representation. However, the respondent no. 1 - the Superintendent of Police, Ahmednagar - by the impugned order dated 28.10.2020 (Exh. C paper book page 57 of O.A.) put the applicants under suspension alleging that the applicants registered the crime late and before registering the crime the applicants tried to settle the case with the accused and kept discrepancy in the paperwork and also not used the proper procedure of law and tried to help the accused. Since then

the applicants are kept under suspension on the false allegations and without any proof or evidence. The applicants have been suspended contemplating the appropriate disciplinary action against them.

3. It is further contention of the applicants that in spite of lapse of more than 90 days from the date of the impugned suspension order, no any departmental action by way of departmental enquiry is initiated against any of the applicants. No action is initiated by the respondents to revoke the suspension of the applicants and reinstate them in service till today. The said inaction of the respondents is contradictory to the law laid down by the Hon'ble Supreme Court in case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr. [(2015) 7 SCC 291]**. On the basis of the guidelines given by the Hon'ble Supreme Court in the said case the State Government has issued Government Resolution dated 9.7.2019 (Exh. E paper book page 80 of O.A.) inter alia provides that, if the charge sheet is not served upon the Government servant within 90 days from the date of passing of suspension order, then concerned Government employee is entitled for reinstatement in service by revoking his suspension order. The respondents failed to follow the said G.R.

4. In view of above, the prolonged suspension is bad in law and is not sustainable in the eyes of law and is liable to be quashed and set aside. The applicants are entitled to be reinstated on the post on which they were working before passing of the impugned suspension order with all consequential benefits.

5. Affidavit in reply is filed by Shri Suhas s/o Bhaurao Chavan, Police Inspector (E.O.W.) working in the office of the Superintendent of Police, Ahmednagar on behalf of the respondent no. 1. The respondents have justified the suspension order of the applicants in view of the serious inaction and lapses and illegalities committed by the applicants in registration of C.R. No. 2795/2020 dated 27.10.2020 u/s 3 & 7 of Essential Commodity Act & u/s 285 of I.P.C. against the accused. According to them the suspension is in accordance with law. The O.A. is devoid of merits and without any foundation and therefore it is liable to be dismissed.

6. I have heard the arguments advanced by Shri V.B. Wagh, learned Advocate holding for Shri K.R. Jagdale, learned Advocate for the applicants and Shri S.K. Shirse, learned Presenting Officer for the respondents, at length.

7. Learned Advocate for the applicants strenuously urged before me that the impugned suspension order passed by the respondent no. 1 in respect of the applicant nos.1 to 5 is not sustainable in the eyes of law. No any disciplinary action is initiated against the applicants in spite of lapse of more than 90 days period from the date of passing of the impugned suspension order. The said inaction of the respondents is contrary to the guidelines given by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr.** (supra) and also against the provisions of the G.R. dated 9.7.2019 (Exh. E paper book page 80 of O.A.) issued by the State of Maharashtra. According to him, the present O.A. can be disposed of by directing the respondents to take the review of the impugned suspension order of the applicants. To support his said submissions, the learned Advocate for the applicants relies on the following judgments delivered by the principal seat of this Tribunal at Mumbai in similar cases :-

- (1) O.A. No. 238/2020 (Shri Nishikant K. More Vs. the State of Maharashtra & Ors.) dated 11.6.2020
- (2) O.A. No. 264/2020 (Mr. Shrikant B. Vasave Vs. the Chief Conservator of Forest (Territory), Kolhapur & Anr) dated 8.9.2020.

8. Learned Presenting Officer for the respondents opposed the submissions advanced by the learned Advocate for the applicants and submitted that appropriate and necessary order can be passed in the present matter.

9. Upon perusal of respective suspension orders dated 28.10.2020 (Exh. C paper book page 57 of O.A.) of the applicant Nos. 1 to 5 it would be seen that they all have been put under suspension in view of certain serious omissions and lapses committed by them while registering the crime No. 2795/2020 dated 27.10.2020 u/s 3 & 7 of Essential Commodity Act & u/s 285 of I.P.C. with a view to help the accused and consequential departmental action was contemplated. It is a fact that even after lapse of 6 months from the date of suspension, no any charge-sheet or departmental action has been initiated by the respondents against the applicants.

10. The adequacy and sufficiency before the authority for suspension of the applicants normally cannot be interfered with by the Tribunal in its limited jurisdiction, but various case laws settled the position that the Government servants cannot be subjected to prolonged suspension indefinitely.

11. Perusal of record would show that the applicants made representations dated 27.11.2020 for revocation of their suspension. The said representations have not been responded by the respondents nor any departmental action has been initiated by the respondents against the applicants.

12. So far as the period of suspension is concerned, the learned Advocate for the applicants has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr. [(2015) 7 SCC 291]** (supra). In para 21 of the said judgment Hon'ble Supreme Court held as follows :-

"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.”

13. It is a matter of record that in view of the ratio laid down by the Hon'ble Supreme Court in the above said case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr.** (supra) a separate Government Resolution dated 9.7.2019 (Exh. E paper book page 80 of O.A.) is issued by the Government of Maharashtra acknowledging the legal position that where the charge sheet is not issued within 3 months from the date of suspension order, the said suspension cannot be continued. The Government of Maharashtra, therefore, directed that the competent authority should ensure that charge sheet should be issued in the departmental enquiry within 90 days from the date of passing of suspension order.

14. It is a fact that in the present case admittedly no charge sheet in the departmental enquiry has been issued in spite of lapse of about 6 months' period from the date of suspension of the applicants. Hon'ble Supreme Court is pleased to make it clear that currency of suspension should not extend beyond three months if within this period the memorandum of charges/charge

sheet is not served upon the delinquent officer/employee and if the memorandum of charges/charge sheet is served in that event, the disciplinary authority is under obligation to passed reasoned order about the extension or revocation of the suspension, as the case may be.

15. In the present case the Government has failed to adhere to the said guidelines of the Hon'ble Supreme Court and consequential G.R. dated 9.7.2019.

16. In a similar situation, the learned Principal Bench of this Tribunal at Mumbai in following two cases relied upon by the learned Advocate for the applicant held that the Original Application can be disposed of by giving suitable direction to the respondents to take review of the suspension of the concerned applicants in terms of G.R. dated 9.7.2019 in the light of observation made by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case in prescribed time limit.

- (I) Original Application No. 238 of 2020 in the matter of Shri Nishikant K. More Vs. The State of Maharashtra decided on 11.06.2020.
- (II) Original Application No. 264 of 2020 in the matter of Mr. Shrikant Bharshing Vasave Vs. The Chief Conservator Forest (Territory) and another decided on 08.09.2020.

17. In view of above, the present Original Application can be suitably disposed of with necessary directions to the respondents. Hence, I proceed to pass the following order :-

ORDER

- (i) Original Application is allowed partly.
- (ii) The Respondents are directed to take review of the suspension of the applicant Nos. 1 to 5 in terms of G.R. dated 9.7.2019 in the light of observation made by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary Vs. Union of India thorough its Secretary & Anr. [(2015) 7 SCC 291]** (supra) and shall pass appropriate order within 2 months from the date of this order and the decision as the case may be, shall be communicated to the applicant Nos. 1 to 5 in writing within a month thereafter.
- (iii) If the applicant Nos. 1 to 5 felt aggrieved by the said decision of the respondents, they may avail further remedy in accordance to law.

There shall be no order as to cost.

(V.D. DONGRE)
MEMBER (J)

Place : Aurangabad
Date : 10th May, 2021