

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1077 OF 2023

DISTRICT : PUNE

SUB : Suspension

Shri Sarfraj Turab Deshmukh, Aged 37 Years,)
Worked as Talathi (under suspension), Saze)
Shirur, Tal. Shirur, Dist. Pune.)
R/o. Shivkrupa Society, A/P/T Shirur, Dist.)
Pune.)... **Applicant**

Versus

The Sub Divisional Officer, Pune Sub-)
Division, having office at Pune.)....**Respondent**

Shri A. V. Bandiwadkar, learned Advocate for the Applicant.

Smt. Kranti Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Vice-Chairman

Reserved on : 22.01.2025

Pronounced on : 24.01.2025

JUDGEMENT

Heard Shri A. V. Bandiwadkar, learned Advocate for the Applicant and Smt. Kranti Gaikwad, learned Presenting Officer for the Respondent.

2. The Applicant was working as 'Talathi'. Crime No.292/2022 was registered against him at Bund Garden Police Station, Pune City under Sections 7, 7A and 12 of the Prevention of Corruption Act. In connection with this Crime, he was arrested on 28.11.2022. He was remanded to police custody till 02.12.2022. By order dated 22.12.2022, he was placed under suspension w.e.f. 28.11.2022. He was directed to be released on bail by order dated 03.12.2022.

3. It is the contention of the Applicant that period of 90 days of his suspension came to an end on 28.02.2023, his further suspension was bad in law and for the period of suspension beyond 90 days, he would be entitled to get full pay and allowances.

4. In her reply, the Respondent has stated that the matter of suspension of the Applicant is before the Review Committee and the Review Committee was expected to take a decision about reinstatement or continuation of suspension of the Applicant, within 15 days.

It may be observed that the Respondent filed her reply containing aforesaid pleading, on 25.10.2023. As per communication dated 18.12.2024 placed on record by learned P.O., the Review Committee had recommended reinstatement of the Applicant as Government had refused to grant sanction for prosecution of the Applicant under the Prevention of Corruption Act. The said order refusing sanction passed by the Government is dated 08.11.2024.

5. By prayer (b) of the O.A., the Applicant has claimed relief of reinstatement. The Review Committee has recommended his reinstatement. No document is placed before the Tribunal to show whether or not he is infact reinstated pursuant to said recommendation. Prayer (b) of the O.A. reads as under :-

“ By a suitable order/direction, this Hon’ble Tribunal may be pleased to treat the period beyond 90 days of suspension with effect from 1.3.2023 till the Petitioner is actually reinstated in service, after revocation the order of suspension, as the duty period for all purposes and accordingly the Respondent be directed to grant to the Petitioner all the consequential service benefits.”

In support of aforequoted prayer (b), the Applicant has relied on the judgment of this Tribunal dated 10.01.2025 in **O.A.No.1016/2023 (Shri Sachin C. Tamkhede V/s State of Maharashtra)**. In this judgment, it is observed –

“ 7. The Applicant in support of his contention that the period of suspension beyond 90 days has to be treated as duty period entitling him to full salary and allowances, has relied on following judgments :-

(A) Judgment of the Aurangabad Bench of this Tribunal dated 07.07.2021 in **O. A. No.69/2020 (Suresh S/o. Ghanshyam Tandale V/s State of Maharashtra & 3 Ors.)**. In this case, it is held that on expiry of 90 days order of suspension ceases to exist.

(B) Judgment of the Principal Bench of this Tribunal dated 13.04.2023 in **O.A.No.1225/2022 (Shri Ravindra Mansing Kadam V/s the Commission of Police, Pune City)**. In this case, it is held that suspended employee is entitled to full pay and allowances on expiry of three months from the date of order of suspension.

(C) Judgment of the Nagpur Bench of the Hon'ble Bombay High Court, dated 21.03.2024 in **W.P. No.6304/2023 (Sonal D/o Prakashrao Gawande V/s Municipal Council, Pandharkawada)**. In this case, it is held –

“13. It is imperative to note that on 9th July, 2019 the State Government issued instructions as regards the suspension and thereby it was directed that in a case when the departmental inquiry has been initiated and the chargesheet is served upon the delinquent within three months from the date of suspension, a review shall be made about the continuation of order of suspension and a clear decision shall be taken in this respect. The said Government Resolution further says that where in a case after suspension within three months the departmental inquiry has not been initiated or the chargesheet is not served upon the delinquent, as per the judgment of the Hon'ble Supreme Court of India, the only option left is to cancel the suspension.

14. The said Government Resolution was issued by the State of Maharashtra in view of the judgment of the Hon'ble Supreme Court of India dated 16th February, 2015 passed in the case of Ajay Kumar Choudhary Vs. Union of India through its Secretary and another¹, wherein it is held thus:

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 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 criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.”

6. It may be observed that subsequent decision of the Government not to accord sanction to prosecute shall not render the impugned order of suspension of the Applicant *void-ab-initio*.

7. In view of factual and legal position discussed above, the Original Application is allowed in the following terms :-

ORDER

(A) In case the Applicant is not reinstated pursuant to recommendation of the Review Committee in its meeting dated 12.12.2024 (communicated by letter dated 18.12.2024), he shall be reinstated within two weeks from today.

(B) The Applicant is held entitled to full pay and allowances for the period of his suspension beyond 90 days. The same shall be paid to him within one month from today.

(C) No order as to costs.

**Sd/-
(M. A. Lovekar)
Vice-Chairman**