

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.1016 OF 2023

**DISTRICT : PUNE
SUB : Suspension**

Shri Sachin C. Tamkhede, Aged 37 Years,)
Occ. Assistant Commissioner/Chief Officer,)
Group-B (now under suspension), Pune)
Municipal Corporation, Kothrud Ward Office,)
Pune.)
R/o. A-606, Sai Roya Society, Jagtap Chowk,)
Wanwadi, Pune 40.) ... **Applicant**

Versus

The State of Maharashtra, through the Principal)
Secretary, Urban Development Department,)
Having office at Mantralaya, Mumbai 400 032.)...**Respondents**

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

Shri A. J. Chougule, learned Presenting Officer for the Respondents.

CORAM : Hon'ble Shri M. A. Lovekar, Hon'ble Member (J)

Reserved on : 08.01.2025

Pronounced on : 10.01.2025

JUDGEMENT

Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.

2. In Crime No.92/2022 registered at Kothrud Police Station, Pune under Sections 7 & 12 of the Prevention of Corruption Act, 1988, the Applicant was arrested on 12.04.2022. He remained in police custody for more than 48 hours. By the impugned order dated 06.12.2022 (Exhibit A), he was placed under suspension w.e.f. 12.04.2022 under Rule 4(2) of

the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979. He was reinstated by order dated 16.08.2024. The charge sheet dated 17.02.2023 of departmental enquiry was served on him.

3. It is the contention of the Applicant that since the impugned order simply stated that the Applicant was to remain under suspension “until further orders”, it will have to be treated to be non-est.

4. Further contention of the Applicant is that the period of suspension of the Applicant beyond 90 days, has to be treated as ‘duty period’ in view of settled legal position.

5. Stand of the contesting Respondent is that the Applicant was deemed to be under suspension from 12.04.2022 and his actual suspension came into effect on the date of order i.e. 06.12.2022. This submission cannot be accepted. It may be stated that the Applicant was paid subsistence allowance not from 06.12.2022 but from 12.04.2022.

6. Contention of the Applicant that the impugned order was *void ab initio* cannot be accepted. The Applicant was arrested, he was in police custody for more than 48 hours and hence, the order of his deemed suspension was rightly passed as per Rule 4(2) of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979.

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.

8. The learned P.O. on the other hand has relied on the judgment of the Hon'ble Supreme Court in **(Union of India & Ors. V/s Jaipal Singh) AIR 2004 Supreme Court 1005** delivered on 03.11.2003. In this case, on facts, it was observed-

“On a careful consideration of the matter and the materials on record, including the judgment and orders brought to our notice, we are of the view that it is well accepted that an order rejecting a special leave petition at the threshold without detailed reasons therefore does not constitute any declaration of law by this Court or constitute a binding precedent. Per contra, the decision relied upon for the appellant is one on merits and for reasons specifically recorded therefore and operates as a binding precedent as well. On going through the same, we are in respectful agreement with the view taken in [1996] 11 SCC 603 (supra). If prosecution, which ultimately resulted in acquittal of the person concerned was at the behest or by department itself, perhaps different considerations may arise. On the other hand, if as a citizen the employee or a public servant got involved in a criminal case and it after initial conviction by the trial court, he gets acquittal on appeal subsequently, the department cannot in any manner be found fault with for having kept him out of service, since the law obliges, a person convicted of an offence to be so kept out and not to be retained in service. Consequently, the reasons given in the decision relied upon, for the appellants are not only convincing but are in consonance with reasonableness as well. Though exception taken to that part of the order directing re-instatement cannot be sustained and the respondent has to be re-instated, in service, for the reason that the earlier discharge was on account of those criminal proceedings and conviction only, the appellants are well within their rights to deny back wages to the respondent for the period he was not in service. The appellants cannot be made liable to pay for the period for which they could not avail of the services of the respondent. The High Court, in our view, committed a grave error, in allowing back wages also, without adverting to all such relevant aspects and considerations. Consequently, the order of the High Court in so far as it directed payment of back wages are liable to be and is hereby set aside.”

The facts of the case sought to be relied upon by the learned P.O. are clearly distinguishable. On the other hand, the rulings relied upon by the Applicant specifically deal with the issue of suspension beyond 90 days and how such period of suspension is to be treated. This Tribunal has held that for the period of suspension beyond 90 days, the employee would be entitled to full pay and allowances.

9. For the reasons discussed hereinabove, the Original Application is allowed in following terms -

- (A) 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.
- (B) No order as to costs.

Sd/-
(M. A. Lovekar)
Member (J)

Place: Mumbai
Date: 10.01.2025
Dictation taken by: V. S. Mane
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