

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO.644 OF 2023

**DISTRICT: Suspension
Subject: Palghar**

Smt. Snehal Sudhakar Patil,)
Age: 28 years, serving as Woman Police)
Constable (Buckle No.513) attached to)
Vasai Police Station, Dist. Palghar.)
R/o. Buddhavihar Temburni Naka, A/P/)
T/D Palghar.)....**Applicant**

VERSUS

The Superintendent of Police, Palghar)
Having office at Central Administrative)
Building, Bidco Road, Palghar.).....**Respondent**

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, Vice-Chairman

Reserved on : 03.04.2025

Pronounced on: 15.04.2025

J U D G M E N T

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

2. When the Applicant was attached to Vasai Police Station as Police Constable, Crime No.0029/2021 came to be registered against her and Police Constable Vikas Pashte under Sections 302, 120 B read with 34 of IPC at Manor Police Station, District Palghar. In this Crime the Applicant was arrested on 03.03.2021. Since she remained in custody for more than 48 hours, she was placed under suspension w.e.f. 03.03.2021 by order dated 12.03.2021. By this order it was *inter-alia* directed that she shall attend Police Head Quarter, Palghar twice a day during her suspension period. On 31.05.2021 chargesheet was filed in Criminal Court at Palghar against the Applicant and the co-accused. By order dated 19.10.2022 she was directed to be released on bail by the Hon'ble Bombay High Court. After complying with the conditions of bail, the Applicant was released and she started giving attendance w.e.f. 07.11.2022. By order dated 08.12.2022 it was directed that the Applicant would be entitled to subsistence allowance from the date of giving attendance i.e. 07.11.2022. By order dated 12.05.2023 the Applicant was held entitled to get 55% of salary and allowance as subsistence allowance w.e.f. 08.02.2023 i.e. on completion of three months from the date on which she had started giving attendance. According to the Applicant, the impugned order of her suspension is bad in law, she be declared entitled to get subsistence allowance w.e.f. 03.03.2021 and on expiry of 90 days from 03.03.2021 she would be entitled to get subsistence allowance at appropriate rate and not equal to 55% as was directed by order dated 12.05.2023. Hence, this Original Application.

3. The Applicant has raised following contentions –

- (1) Her prolonged suspension is bad in law.

(2) At any rate, the period of her suspension beyond 90 days will have to be treated as duty period in view of ruling of the Hon' ble Supreme Court in **Ajay Kumar Choudhary V/s Union of India, (2015) 7 SCC 291.**

(3) So far departmental proceeding is not initiated against her.

(4) The Applicant could not have given attendance so long as she was in custody. Therefore, she would be entitled to get subsistence allowance from 03.03.2021 and not from 07.11.2022.

(5) Subsistence allowance should have been increased from 50% to 75% on expiry of period of 3 months from 03.03.2021.

(6) Condition of attendance twice a day during the period of suspension is bad in law.

4. So far as contention no.3 mentioned above is concerned, it may be stated that by order dated 14.07.2023, the Applicant has been dismissed by resorting to Article 311(2)(b) of the Constitution of India.

5. According to the Respondent, ruling in the case of **Ajay Kumar Choudhary** (supra) will not be applicable in this case because chargesheet was filed on 31.05.2021 and thereafter matter of suspension of the Applicant was reviewed from time to time. Further stand of the Respondent is that none of the impugned orders suffers from any infirmity.

6. In **Ajay Kumar Chowdhary** (supra), it is held –

“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.”

Record shows that the matter of suspension of the Applicant was reviewed on 09.07.2021, 13.10.2021, 01.11.2021, 25.01.2022, 09.04.2022, 27.05.2022, 05.08.2022, 01.02.2023, 27.04.2023 and 13.07.2023.

Thus, it is clear that the order of suspension dated 12.03.2021 cannot be quashed and set aside.

7. Next question to be determined is from which date the Applicant would be entitled to get subsistence allowance. She was arrested on 03.03.2021. She was placed under suspension w.e.f. 03.03.2021. She was directed to be released on bail by order dated 19.10.2022. After complying with bail conditions she came out of the jail and started giving attendance w.e.f. 07.11.2022. Under such circumstances, she should have been held entitled to get subsistence allowance from 03.03.2021 and not from 07.11.2022. By order dated 12.05.2023 it was directed that the Applicant would get 55% towards subsistence allowance from 08.02.2023. In fact, the Applicant should have been held entitled to get 75% towards subsistence allowance on expiry of 3 months/90 days from 03.03.2021.

8. According to the Applicant, condition of attendance twice a day during the period of suspension could not have been imposed for want of enabling provision. In support of this submission reliance is placed on **Bhabesh Kumar Paul V/s The State, AIR 1965 Cal 347**. In this case, it is held –

“I agree with Mr. Roy that an officer can be placed under suspension pending an enquiry and such suspension is not by way of punishment. But no other restriction can be placed on a suspended police officer because such other restriction will amount to punishment. But there can be no punishment before the officer is found guilty.”

The Applicant has further relied on **Nitin B. Vaychal V/s State of Maharashtra & 3 Ors. (judgment of this Tribunal dated 22.02.2001 in O.A.No.495 and 496/2000)**. In this case, it is held :-

“The entire intention of suspension is to keep the service of the government servant in abeyance. In such circumstances marking of attendance daily will be contrary to the purpose of suspension itself. There is no rule which authorizes imposition of such condition. Hence, it has to be held that the said condition is illegal and has to be struck down.”

9. The Applicant has further relied on common judgment of this Tribunal dated 11.04.2002 in O.A.Nos.1238 and 1239/2001. In this case, it is held :-

“However, the learned Counsel for the Applicants is right in submitting that no such condition can be put in the suspension order that employee should record or give his presence at the Police Station twice in a day. He is right in submitting that they are not in a position of accused who are grabbed conditional bail putting such condition. No such provision is pointed out which allows putting of such condition. Employee can only be asked to remain at a headquarter or at the place of service.”

10. For the reasons and law discussed hereinabove, the Original Application is allowed in the following terms. The condition of giving attendance twice a day at Police Headquarter, Palghar attaching to the order of suspension of the Applicant is held to be bad in law. The Applicant is held entitled to get subsistence allowance @ 50% for 1st three months of suspension beginning from 03.03.2021 and @ 75% for subsequent period. No order as to costs.

Sd/-

(M. A. Lovekar)
Vice-Chairman

Place: Mumbai

Date: 15.04.2025

Dictation taken by: V. S. Mane

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