

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.769 OF 2018

DISTRICT : THANE

Shri Namdeo Sopan Shinde.)
Reserve Police Inspector, Control Room,)
Thane City Police Commissionerate and)
Residing at Bhaskar Tower, 1003, Police)
Vasahat, Court Naka, Thane (W).)...Applicant

Versus

The Commissioner of Police.)
Thane City Police Commissionerate, Thane.)...Respondent

Mr. A.V. Bandiwadkar, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondent.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 17.05.2019

JUDGMENT

1. In the present Original Application, the challenge is to the suspension order dated 1st February, 2018 invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. Briefly stated facts giving rise to this application are as under :-

10/05/2019

The Applicant joined service as Police Constable in 1987 and thereafter, he was promoted up to the post of Police Inspector. In July, 2014, he was posted as Reserved Police Inspector at Police Head Quarter, City Police Commissionerate, Thane. He is in control of subordinate staff consists of male and female Police Personnel. He contends that a lady Police Constable viz. Smt. Sonali Marathe (hereinafter referred to as 'complainant') was not satisfied with the assignment of duty allotted to her. He contends that she nurtured grievance against him which ultimately culminated in lodging of false complaint against him. The complainant had lodged FIR against the Applicant in Thane City Police Station on 24.01.2018 and in sequel offences under Section 354, 354-A, 506 and 509 of Indian Penal Code has been rejected against the Applicant vide Crime No.17/2018. The Applicant approached Sessions Court and secured anticipatory bail. In view of registration of crime against the Applicant, the Respondent – Commissioner of Police suspended him by order dated 1st February, 2018 exercising powers under Section 25 of Maharashtra Police Act and Maharashtra Police (Discipline and Appeal) Rules, 1956 read with Rule 3(1-A)(i)(b) (hereinafter referred to as 'Rules of 1956'). The Applicant contends that the suspension order is punitive and *ex-facie* illegal. He made representation on 30.05.2018 for revocation of suspension and reinstatement in service, but the same came to be rejected. The Applicant, therefore, filed the present O.A. challenging the suspension order dated 1st February, 2018 contending that the same is illegal being punitive without giving opportunity of hearing, on the ground of want of competency of Commissioner of Police to suspend him, absence of Notification dated 12.01.2011 in Official Gazette and non-compliance of proviso of Rule 3 of 'Rules 1956'. He further contends that the prolong suspension for more than one year without any progress in Departmental Enquiry (D.E.) or Criminal Trial is unsustainable in law and prayed to set aside the same.

3. The Respondent resisted the application by filing Affidavit-in-reply (Page Nos.38 to 53 of Paper Book) *inter-alia* denying that the suspension order suffers from any infirmity or illegality. The Respondent sought to justify the suspension order contending that, in view of registration of F.I.R. under Sections 354, 506 and 509 of Indian Penal Code against the Applicant and having regard to the serious misconduct attributed to him, the suspension order dated 01.02.2018 cannot be faulted with. On the point of competency, the Respondent contends that, in view of Notification dated 12.01.2011, the Commissioner of Police is empowered to suspend the Applicant and the ground of incompetency raised in this behalf, is without substance. As regard compliance of proviso to Rule 3(1-A)(i) of 'Rules 1956', the Respondent contends that the report was submitted to Director General of Police and there is enough compliance of law. In D.E, a charge-sheet has been issued for serious misconduct i.e. sexual harassment of woman at work place. In terms of G.R. dated 14.10.2011, a review was taken thrice but having regard to the serious misconduct of the Applicant, the suspension has been continued. With this pleading, the Respondent prayed to dismiss the O.A.

4. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Ms. S.T. Suryawanshi, learned Presenting Officer for the Respondents.

5. The challenge to the suspension order is mainly on the following grounds :

(i) Absence of publication of Notification dated 12.01.2011 in the Official Gazette whereby the Commissioner of Police is empowered to suspend the Police Personnel up to the post of Police Inspector or below the post of Police Inspector.

(ii) The suspension order dated 01.02.2018 is punitive, and therefore, in absence of opportunity of hearing, the same is illegal.

(iii) There is no compliance of proviso to Rule 3(1-A)(i) of 'Rules 1956'.

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(iv) The prolong suspension without taking any positive steps for completion of D.E. or Criminal Prosecution is unsustainable in view of the law laid down by Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**.

6. Before dealing with the ground of challenge to the suspension order, it would be worthwhile to see the nature of allegations made by the complainant. On 24.01.2018, the complainant who is lady Police Constable working under the Applicant lodged FIR in Thane City Police Station. As per FIR, in the period starting from August, 2017 till the lodging of FIR on various occasions, the Applicant behaved inappropriately, passed lewd remarks, caught her hand and made sexual advances despite strong protest by the complainant. It is further alleged that the Applicant is in habit of behaving in such pervert manner with other lady Constables. Thus, according to complainant, on various occasions, the Applicant molested her modesty whenever the Applicant got an opportunity to do so. She further alleged that when she protested the Applicant, later threatened to terminate her services. As per narration, she was physically and mentally abused. Ultimately, having fed-up with the alleged torture, the complainant lodged complaint with Police on 24.01.2018. In sequel, the Police registered offence under Sections 354, 506 and 509 of I.P.C. against the Applicant vide Crime No.17/2018. Thus, the allegations are *prima-facie* very serious. True, the FIR seems to have been filed belatedly, but *prima-facie*, if allegations found proved in trial or departmental proceedings, it may invite serious action. However, in this proceeding, the Tribunal is required to confine itself to the grounds raised to challenge the suspension order, dispassionately, and to see whether suspension order is legal and let the law to take its own course about the veracity of allegations and its penal consequences.

7. Needless to mention that adequacy of material before the disciplinary authority for suspension of the delinquent normally does not fall with the jurisdiction of the Tribunal. This is not a forum to make any comment upon the veracity of the allegations made in the complaint, as the same is required to be determined by the concerned authority. I, therefore, proceed to deal with the grounds raised in support of challenge to the suspension order.

8. **As to Point No.(i) :-**

The learned Advocate for the Applicant sought to contend that the Applicant's appointing authority is Director General of Police, and therefore, the Commissioner of Police, Thane is not competent to suspend him. Whereas, the learned P.O. has pointed out that by Notification dated 12.01.2011 issued by the Government, the Police Commissioners are empowered to suspend Police Personnel up to the rank of Police Inspectors. The copy of Notification is also placed on record (Page No.112 of P.B.). However, the learned Advocate sought to assail the Notification contending that, unless the same is published in Official Gazette, it cannot be acted upon legally and in absence of any such publication in Official Gazette, the suspension order is illegal. I find no substance in this behalf in the submission advanced by the learned Advocate for the Applicant.

9. The perusal of Notification dated 12.01.2011 reveals that the Government in exercise of powers under Section 25 of Maharashtra Police Act read with Rule 3(1-A)(i) of 'Rules 1956' conferred the power of suspension on various authorities. By the said Notification, the Commissioner is also empowered to suspend Police Personnel up to the rank of P.I. within his range. Here, it may be noted that Rule 3(1-A)(i) itself provides that the State Government may empower any other authority to place Police Personnel under suspension and there is no

See rule

such requirement of its publication in Official Gazette in Rule 3(1-A)(i) of 'Rules 1956'.

10. Apart, the perusal of Notification dated 12.01.2011 itself makes it clear that it was published on website of Government of Maharashtra. This being the position, the publication of such Notification has to be construed as sufficient compliance of the publication of Notification having regard to the provisions of 'Information of Technology Act, 2000'. As per Section 2(s) 'Electronic Gazette' is defined as "Official Gazette published in the electronic form". This being the position, the publication of Notification on website has to be construed publication equal to publication in Official Gazette. I, therefore, see no infirmity on the point of competency and empowerment of Commissioner of Police to issue suspension order as well as on the point of publication in Official Gazette. Suffice to say, the submission advanced by the learned Advocate for the Applicant in this behalf holds no water.

11. **As to Point No.(ii) :-**

As regard the nature of suspension order, the leaned Advocate for the Applicant was very much emphatic and pointed out that the impugned suspension order dated 01.02.2018 is not interim measure but it is by way of punishment as contemplated under Section 25(1) and 25 (2)(a) of Maharashtra Police Act. For this purpose, he has invited my attention to the impugned suspension order as well as the stand taken by the Respondent in Affidavit.

12. In so far as the impugned suspension order is concerned, it has been issued invoking Section 25 (without specifying its sub-clauses) of Maharashtra Police Act read with Rule 3(1-A)(i) of 'Rules 1956'. As such, there is no denying that the powers under Section 25 of Maharashtra Police Act are also exercised,

which provides of punitive powers and suspension is also the punishment as per Section 25(1)(b) of Maharashtra Police Act. Whereas, as per Section 25(2)(a), the Director General, Inspector General including Additional Director General, Special Inspector General, Commissioner including Joint Commissioner, Additional Commissioner and Deputy Inspector General shall have the authority to punish the Inspectors or any member of this subordinate rank under Sub-section 1 or (1-a) of Section 25 of Maharashtra Police Act. As such, there is no denying that Section 25(1) as well as Section 25(2)(a) provides for the punitive powers of the respective authorities and Commissioner is one of them who is empowered to impose the punishment. Whereas, Section 26 of Maharashtra Police Act provides that except in cases referred to in 2nd proviso of Clause 2 of Article 311 of Constitution of India, no order of punishment under Sub-section 1 of Section 25 shall be passed unless the prescribed procedure is followed. This being the position, suffice to say, in law where the suspension is imposed by way of punishment, then there has to be compliance of the prescribed procedure of enquiry and opportunity of hearing to the delinquent.

13. However, in the present case, admittedly, neither any such opportunity of hearing was given to the Applicant nor any enquiry was conducted before imposing suspension by way of punishment.

14. Though the learned P.O. made feeble attempt to cover-up the situation stating that the suspension is by way of interim measure in contemplation of D.E. However, the specific stand taken by the Respondent in Affidavit in this behalf, is contrary to the oral submission of learned P.O. and the contention raised in the Affidavit reaffirmed that the suspension was imposed by way of punishment.

15. Here, material to note that when the point of jurisdiction was raised by the learned Advocate for the Applicant at the very initial stage, the Tribunal by

See back.

order dated 03.10.2018 took a cognizance and direction was issued to Commissioner of Police that he may take corrective steps, if so advised. Pertinently, the Respondent in pursuance of order dated 03.10.2018 filed Affidavit (Page 31 of P.B.) which is sworn by Tanaji Patil, A.C.P, Thane City. Para No.4 of the Affidavit is material, which is as follows :

"4. As per Section 25 of the Maharashtra Police Act (supra), the Respondent is well within his legal rights to pass the order of petitioner's suspension in the present matter. I say and submit that Section 25 of the Maharashtra Police Act empowers the Respondent to impose punishment of suspension upon Inspector or any Member of the Subordinate rank."

Suffice to say, the Respondent asserts powers under Section 25 of Maharashtra Police Act by filing Affidavit.

16. Matter does not rest here and same position is reiterated and reaffirmed in Affidavit-in-reply, which is at Page Nos.38 to 53 of P.B. Para No.2 (ii) and Para No.14, which are as follows :

"2(ii) Section 25(2)(A) of the Maharashtra Police Act empowers the Respondent to impose punishment of suspension upon Inspector or any member of the subordinate rank."

14. With reference to contents of paragraph No.6.7, I say that the Applicant is himself tagging order passed by Respondent as interim measure, this Respondent had exercised its power as per sec 25(2)(a) which is within frame of law. I crave leave to refer to and rely upon the reply filed by the Respondent to para 6.5 of O.A."

17. Thus, repeatedly, the Respondent asserts that it exercise powers under Section 25 and 25(2)(a) while suspending the Applicant where under suspension is punishment, which cannot be done without following due process of law.

18. In fact, the Respondent had an opportunity to salvage the damage by withdrawing assertion made in Affidavit-in-reply and ought to have clarified on

Affidavit that the suspension order is not punishment but it is only interim measure in contemplation of D.E. However, no such step is taken. This being the position, the Tribunal is left with no option but to examine the legality of suspension order on the basis of specific averment made in this behalf in Affidavit where repeatedly there is assertion of invoking the powers under Section 25(1) and 25(2)(a) of Maharashtra Police Act.

19. In this behalf, the learned Advocate for the Applicant referred the Judgment of this Tribunal in ***O.A.No.42/2010 decided by Hon'ble Chairman on 27.04.2010 (Shrinivas Dosari Vs. Additional Superintendent of Police)***. In that case, there was suspension of Police Official by way of punishment was in question and admittedly, it was without issuance of Show Cause Notice or opportunity of hearing alike the present case. The suspension order held ex-facie unsustainable and accordingly quashed.

20. In view of above, there is no escape from the conclusion that the impugned suspension order being passed under Section 25 and 25(2)(a) of Maharashtra Police Act admittedly without following due process of law or enquiry or opportunity of hearing, is not sustainable in law.

21. **As to Point No.(iii) :-**

The learned Advocate for the Applicant vehemently urged that the suspension order is passed by virtue of empowerment by Notification dated 12.01.2011, but there is no compliance of proviso to Rule 3(1-a)(i) of 'Rules 1956'. In this behalf, he has pointed out that in Notification itself, a specific proviso is added which mandates that where the suspension order is passed by the authority subordinate to the appointing authority, then such subordinate authority is required to report the appointing authority the circumstances in

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which the order of suspension was made forthwith. On this line of submission, he placed reliance on the Judgment passed by this Tribunal, Bench at Nagpur in O.A.No.650/2016 (Ramesh K. Ratnaparkhi Vs. State of Maharashtra) decided on 20th December, 2016 and Judgment passed by this Tribunal in O.A.No.300/2014 (Sunil S. Jain Vs. The Commissioner, Food & Drugs Admn.) decided on 26th November, 2014 wherein, non-compliance of proviso to Rule 4(i)(a) of M.C.S. (Discipline and Appeal) Rules, 1979 was one of the ground to set aside the suspension order. It is material to note that Proviso to Rule 4(1)(a) of 'Rules of 1979' and proviso to Rule 3(1-A)(i) of 'Rules 1956 are analogous.

22. Admittedly, the appointing Authority of the Applicant is Director General of Police. Whereas, the learned P.O. tried to contend that the copy of suspension order was forwarded to D.I.G, and therefore, it can be construed as compliance of the proviso. According to her, there is endorsement on suspension order dated 01.02.2018 itself about the forwarding of copy of suspension order for information to D.G, Mumbai.

23. It would be appropriate to reproduce Section 3(1-A)(i) with proviso thereunder, which is as follows :

“(1-A) (i) The appointing authority or any authority to which it is subordinate or any other authority empowered by the State Government in this behalf may place, a Police Officer under suspension where—

(a) an inquiry into his conduct is contemplated or is pending,

or

(b) a complaint against him of any criminal offence is under investigation or trial:

Provided that where the order of suspension is made by an authority lower in rank than the appointing authority, such authority shall forthwith report to the appointing authority the circumstances in which the order of suspension was made.”

24. The perusal of the aforesaid provision makes it quite clear that where suspension order is passed by any other authority empowered by State Government (other than appointing authority) then in that event, it is mandatory on the part of such authority to forward the report forthwith to the appointing authority the circumstances in which the order of suspension was made. It is mandatory requirement and not mere formality. That is why, it also find place in Notification dated 20.01.2011. Needless to mention, when law requires to do a particular thing in particular manner only then such requirement has to be followed in that manner, if the provision is mandatory. In the present case, the word is used "shall" and not "may". As such, it is mandatory and not directory. Therefore, the compliance of proviso is *sine-qua-non* for sustainability of the suspension order in the eye of law. In the present case, it being not done so, there is no escape from the conclusion that the suspension order on this count i.e. for non-compliance of proviso to Rule 3(1-A)(i) of 'Rules 1956' is not sustainable in law. In O.A.No.650/2018 referred to above also one of the ground for quashing the suspension order was non-compliance of the proviso to Rule 3(1-A)(i) of 'Rules 1956'.

25. Suffice to say, mere forwarding of copy of suspension order to D.G. for information can hardly be said compliance of proviso. The Respondent was required to explain or report to the appointment authority the circumstances in which the order of suspension was made. In other words, he was required to explain as to why suspension was urgently necessitated in the light of attending circumstances in the given case. Therefore, mere forwarding the copy of suspension order to D.G. cannot be termed compliance of proviso in the eye of law. I, therefore, find merit in the submission advanced by the learned Advocate for the Applicant in this behalf.

One order

26. As such, even assuming for a moment that the suspension order is not by way of punishment, but it is interim measure in contemplation of D.E. restricted to Rule 3(1-a)(i) of 'Rules 1956', even in that event also, there being no compliance of the mandatory provision, such order is unsustainable in law.

27. As to Point No.(iv) :-

The learned Advocate for the Applicant further urged that the Applicant has been kept under suspension for more than 15 months till date without taking any positive steps for completion of D.E. or Criminal Trial, and therefore, the continued suspension in view of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra) is unsustainable and cannot be continued further. He further urged that, though thrice review was purportedly taken as contemplated under G.R. dated 14.10.2011, it is mere formality and no objective decision has been taken.

28. Per contra, the learned P.O. sought to contend that, in view of serious nature of allegation made by the complainant, the reviewing authority thought it appropriate not to revoke the suspension.

29. Admittedly, charge-sheet in D.E. was issued on 26.03.2018. The charge-sheet in Criminal Case has also been filed on 07.06.2018 vide Criminal Case No.1226 of 2018. Neither Criminal Case is progressing nor D.E. is taken to its logical conclusion. True, the Applicant has challenged the initiation of D.E. by filing O.A.No.764/2018 and the same is subjudice. He seems to have challenged the initiation of D.E. on the ground that the procedure adopted is not in consonance with the provisions of 'Sexual Harassment of Women at Working Place (Prevention, Prohibition and Redressal) Act, 2013' (hereinafter referred to as "Act 2013"). The learned Advocate for the Applicant had submitted that, in

view of certain legal infirmities in initiation of D.E, it was stayed by the Department and proceedings were continued before Internal Complaint Committee envisaged under the provisions of 'Act 2013'. However, fact remains that no positive steps are taken to complete the proceedings of Internal Committee and matter is simply dragged on, though the period of 15 months till date is over from the date of suspension order. Having regard to the allegation as perceived to be serious by the Respondents, it ought to have expedited the enquiry, so as to take it to the logical conclusion. However, no such seriousness in completing enquiry is seen in the matter and the Applicant is continued in prolong suspension, which has been frown upon by the Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case. The Hon'ble Apex Court in Judgment held that the currency of suspension order should not extend beyond three months and where extension is warranted, it should be with reasoned order. It would be apposite to reproduce Para Nos.11, 12 and 21, which are as follows :

"11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12. Protracted period of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take on inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that – "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the

See para 11

Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

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 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."

30. The Judgment in **Ajay Kumar Choudhary's** case was also followed by Hon'ble Supreme Court in **State of Tamil Nadu Vs. Pramod Kumar and another (Civil Appeal No.2427-2428 of 2018) dated 21st August, 2018** wherein it has been held that, suspension must be necessarily for a short duration and if no useful purpose could be served by continuing the employee for a longer period and reinstatement could not be threat for fair trial or departmental enquiry, the suspension should not continue further.

31. In so far as the decision of Review Committee is concerned, it seems that the review was firstly taken on 17.04.2018 and the column of remark, all that stated "suspension to be continued". No reasons are mentioned. Secondly, again, the review was taken in June, 2018 and suspension was continued on the ground that the "D.E. is under progress". This is the only reasoning. Thirdly, again, the review was taken in September, 2018 and it was continued on the

ground that the "proceeding before Internal Complaint Committee is pending". It is thus obvious that the suspension was continued only on the ground of pendency of enquiry and no other reasons are forthcoming. In such situation, the Respondent was obliged to expedite the proceeding before Internal Complaint Committee without keeping the Applicant in animated suspension indefinitely, which is inconsistent with the Judgment of Hon'ble Apex Court in **Ajay Kumar Choudhary's** case.

32. Needless to mention that the suspension should be for a limited duration and where concerned authority is not vigilant to complete the enquiry within reasonable time, such employee who is under prolong suspension can be reinstated with safeguard to post him at some other place, so that he should not be threat for trial or departmental enquiry.

33. The necessary corollary of aforesaid discussion leads me to sum-up that for the aforesaid reasons, the suspension order suffers from material illegality and is not sustainable in law. The O.A, therefore, deserves to be allowed. Hence, the following order.

ORDER

- (A) The Original Application is allowed.
- (B) The impugned suspension order dated 01.02.2018 is quashed and set aside.
- (C) The Respondent is directed to reinstate the Applicant in service on any suitable post, as he deems fit, having regard to the fair trial of the enquiry as well as Criminal Proceedings within two weeks from today.

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(D) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 17.05.2019

Dictation taken by :

S.K. Wamanse.

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