

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.463 OF 2019

DISTRICT : SATARA

Shri Nanasaheb D. Hole.)
Police Naik (under suspension),)
R/o. Maloji Nagar, Koloki Phalton,)
District : Satara - 415 523.)...**Applicant**

Versus

1. The State of Maharashtra.)
Through Addl. Chief Secretary,)
Home Department, Mantralaya,)
Mumbai - 400 032.)
2. The Superintendent of Police.)
Malhar Peth, District : Satara.)...**Respondents**

Mr. R.M. Kolge, Advocate for Applicant.

Mr. A.J. Chougule, Presenting Officer for Respondents.

CORAM : A.P. KURHEKAR, MEMBER-J

DATE : 05.08.2019

JUDGMENT

1. Heard Shri R.M. Kolge, learned Advocate for Applicant and Shri A.J. Chougule, learned Presenting Officer for Respondents.
2. In the present O.A, the challenge is to the suspension order dated 23.03.2019 whereby the Applicant is kept under suspension exercising powers under Rule 3(1)(1-A) (I)(a) of Bombay police

(Punishment & Appeal) Rules, 1956 (hereinafter referred to as 'Rules 1956' for brevity) in contemplation of departmental enquiry (D.E.).

3. The Applicant is serving as Police Naik and at the time of suspension, he was attached to Phaltan Rural Police Station, Phaltan, District : Satara. By order dated 23.03.2019, he is kept under suspension exercising Rule 3(1)(1-A)(i)(a) 'Rules 1956' having found that in preliminary enquiry, the Applicant found demanded bribe from Sagar Jadhav during conversation on mobile. The Superintendent of Police, Satara, therefore, proposed D.E. against the Applicant and suspended the Applicant by order dated 23.03.2019. The Applicant claims to be innocent and approached this Tribunal to set aside the suspension order.

4. Shri R.M. Kolge, learned Advocate for the Applicant submits that the Applicant is victimized by placing him under suspension without any evidence, and therefore, the suspension is unsustainable in law. He further pointed out that though the period of more than 90 days is over, no steps are taken to review the suspension, and therefore, in view of decision of Hon'ble Supreme Court in **(2015) 7 SCC 291 (Ajay Kumar Choudhary Vs. Union of India & Anr.)**, the prolong suspension is illegal.

5. Whereas, Shri A.J. Chougule, learned Presenting Officer submitted that the sufficiency of material at the time of suspension cannot be looked into by this Tribunal and has pointed out that the charge-sheet is served on the Applicant on 08.04.10`9 and the D.E. is in process.

6. Normally, the adequacy of material before the Disciplinary Authority for suspension of Government servant cannot be looked into by the Tribunal, it being within the province of Disciplinary Authority. However, the Government servant cannot be subjected to prolong

suspension without taking review for the continuity or for revocation of suspension by the Competent Authority.

7. In so far as the continuity to suspension period is concerned, it is no more *res-integra* in view of Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case (cited supra). In Para Nos.11 and 21 of the Judgment, the Hon'ble Supreme Court held 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 an 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 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

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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."

8. 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.

9. As such, though the period of 90 days are over, no steps are taken to review the suspension. Indeed, as per the Judgment of Hon'ble Supreme Court in **Ajay Kumar Choudhary's** case, the suspension for more than 90 days is unsustainable in law. In so far as the facts of present case are concerned, in D.E. the charge-sheet is already issued on 08.04.2019 i.e. before expiry of period of 90 days from the date of suspension. This being the position, the Disciplinary Authority needs to consider as to whether after filing of charge-sheet in D.E, the continuation of suspension is warranted. However, no such decision is taken by the Disciplinary Authority. Needless to mention that the Applicant cannot be subjected to prolong suspension without taking review of suspension to determine as to whether the continuation of suspension is justified.

10. In this view of the matter, the O.A. can be disposed of with suitable direction. As the D.E. is already initiated, it needs to be completed within stipulated period. Accordingly, the O.A. deserves to be allowed partly. Hence, the following order.

ORDER

- (A) The Original Application is allowed partly.
- (B) The Respondent No.2 is directed to take review of the suspension in view of service of charge-sheet upon the Applicant and shall pass appropriate order within four weeks from today.
- (C) The Respondent No.2 is further directed to ensure completion of D.E. by passing final order therein within two months from today.
- (D) The Applicant is directed to cooperate for expeditious completion of D.E. within stipulated time as directed above.
- (E) If the Applicant felt aggrieved by the decision of Respondent No.2, he may avail further remedy in accordance to law.
- (F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
Member-J

Mumbai

Date : 05.08.2019

Dictation taken by :

S.K. Wamanse.

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