

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 1023 OF 2017

DISTRICT : MUMBAI

Shri Ravindra Vitthal Bharti,)	
Government service as Chowkidar,)	
[Now under suspension],)	
Manora M.L A Hostel, Nariman Point,)	
Mumbai 400 032.)	
R/o: Room No. 244, Geeta Nagar,)	
Navy Nagar Road, Colaba,)	
Mumbai – 5.)	...Applicant

Versus

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|----|---|---|--|
| 1. | The Executive Engineer, |) | |
| | Presidency City, [Public Works] |) | |
| | Division, 2 nd floor, Bandhkam |) | |
| | Bhavan, 25, Marzban Road, Fort, |) | |
| | Mumbai – 1. |) | |
| | | | |
| 2. | The Superintendent, |) | |
| | M.L.A Hostel, Mumbai. |) | |
| | [Public Works] Sub Division, |) | |
| | 1 st floor, Bandhkam Bhavan, |) | |
| | 25, Marzban Road, Fort, |) | |
| | Mumbai – 1. |) | |

3. The State of Maharashtra,)
Through Principal Secretary,)
Public Works Department,)
Having office at Mantralaya,)
Mumbai 400 032.)...**Respondents**

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

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : Shri Justice A.H Joshi (Chairman)

DATE : 29.11.2017

ORDER

1. Heard Shri A.V Bandiwadekar, learned advocate for the Applicant and Ms Archana B.K, learned Presenting Officer for the Respondents
2. Case proceeds on following admitted facts:-
 - (a) Applicant herein was named as an accused in Crime No. 343/2016 for offences punishable under Sections 306, 304(B), 498 (A), 323, 504 and 34 of I.P.C.
 - (b) Applicant was arrested and was released on bail only after one month.
 - (c) By impugned order which is dated 20.2.2017, he has been kept under suspension from the date of his arrest.
 - (d) In the F.I.R it is alleged that applicant was one amongst the persons who had ill-treated his deceased daughter-in-law on account of dowry related demands.

3. Applicant's case was considered by Review Committee before filing of one Original Application and once again during pendency of this Original Application.

4. Learned Advocate for the applicant has placed reliance for relief sought in O.A on following judgments:-

- (i) Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr. (2015) 2 SCC (L & S) 445 : (2015) 7 SCC 291.
- (ii) Dr. Narendra Omprakash Bansal Vs. The State of Maharashtra & Ors. Writ Petition No. 11987 of 2015 decided on 11.3.2016 by the Hon'ble Bombay High Court.
- (iii) Judgment of this Tribunal dated 23.10.2017 in Shri Naresh A. Polani Vs. State of Maharashtra (O.A 611/2017).

5. This Tribunal was keen to consider as to whether Review Committee has applied its mind to the facts of the case. Initially, it surfaced that Review Committee has not even called for the case papers whatsoever. The file evidenced that the papers such as F.I.R, statement of witnesses, charge sheet etc were not called. Learned Presenting Officer states that whatever papers called were adequate.

6. In the aforesaid premises, the question as to whether the Committee has applied its mind does not remain to be a puzzle nor it is a mystery to be solved. The evidence as collected by the Police which may probably consist of the material which may be incriminating the applicant, could have been seen by the Committee.

7. To the shock and surprise of this Tribunal, the Review Committee which consists of Divisional Commissioner and two other Class-I officers did not find it necessary and worth, even to

call for and read the statement of crucial witnesses Smt Jaya D. Puri, Shri Amit D. Puri and Shri Shrihari S. Puri, which did not run more than three pages together.

8. Though it is not convincing, but one can understand that if one of the members of the Committee who is a Police Officer of the rank of S.D.P.O, who is by virtue of specialization on account of his occupational mastery has studied the papers very quickly and opined about the aspect of gravity of the case and other Committee Members could either cross check it or moderately depend on the opinion of the S.D.P.O.

9. However, when the papers are not called and not read, not only by each Member, but even by the officer of the rank of S.D.P.O, the very purpose of associating a Class-I rank Police Officer in the Committee is totally frustrated.

10. The Committee has in turn become a cause of perishing the very object of associating Police Officer in such Committee. The Government may have in its mind that Police Officers to be part of the Committee, so that expertise of reducing the case papers is readily available.

11. It is very sad to note that the Committee considered the case once before the applicant approached this Tribunal and second time during the pendency of this Original Application and the same result of deciding the case without reading the papers is rendered.

12. Ordering in such situation, the case could either be remanded to the Committee or be decided by this Tribunal. Considering the inordinate delay of suspension and considering

the fact that the applicant is retiring, the purpose of continuance of suspension gets actually defeated.

13. Moreover, sending the case to the Committee would amount to sending the litigant who is already hurt from pillar to post.

14. Being curious enough in order to see that a person who does not deserve any latitude should not be given, this Tribunal has read the statement of three witnesses which according to the learned P.O indicts the present applicant.

15. Learned Presenting Officer has called for bunches of papers forming part of charge sheet. Learned Presenting Officer has taken assistance of Police personnel for reading papers.

16. Statement of witnesses were shown to this Tribunal, in which according to the prosecution the indictment of the applicant is shown.

17. Since matter now is subjudice, it would not be appropriate to make any comment thereon. It shall suffice to observe that what appears prima facie that material adequately enough to continue the applicant's suspension does not exist.

18. The approach of the Committee is wholly deplorable inasmuch as they did not exert to read the statement of witnesses. This is more shocking particularly in the background that one Police Officer of the rank of S.D.P.O is the member of the Committee, who is supported to have expertise in surfing through charge sheet, however, though bulky it is.



19. This is not the first case coming before this Tribunal as a rare specie where the Review Committee has failed to consider the material on the basis of which the decision to continue the suspension is to be taken.

20. It is a matter of genuine application that while deciding to continue or to revoke the suspension, the record relating to criminal case is really not studied and the decision to continue the suspension is taken subjectively than objectively.

21. It is, therefore, considered necessary that this fact needs to be brought to the notice of the Chief Secretary for issue of directions to the Committee Members that whenever review of suspension is to be done in the background of a criminal case, the documents such as, stage of investigation, case diary, statement of witnesses and other evidence gathered by the Police be attended to and whenever it be a case other than suspension on account of a criminal case, all relevant papers must be examined and objective satisfaction must be recorded.

22. The Committee Members and the officer functioning as Secretary of the Committee should be cautioned that if such matters of deficient consideration comes before this Tribunal apart from personal liability towards costs of cases, serious view as regards failure to perform duty by the officers concerned could be taken by this Tribunal, apart from any liability towards disciplinary action.

23. Therefore, Chief Secretary is directed to issue proper and necessary guidelines within two months from the date of receipt of this order.

24. In the result, relying on the ratio as laid down in the case referred to by the learned advocate for the applicant, Original Application succeeds and the suspension order dated 20.2.2017 is quashed and set aside. Barring the actual days of arrest, the consequence of revocation of suspension order will follow.

Sd/-


(A.H JOSHI J.)
Chairman

Place : Mumbai

Date : 29.11.2017

Dictation taken by : A.K. Nair.

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