

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI  
ORIGINAL APPLICATION NO.269 OF 2018**

**DISTRICT : THANE**

Shri Hiralal Rama Jadhav, )  
Age 54 years, occ. Service as Superintendent of Prison,) )  
Thane Central Jail (presently under suspension), ) )  
Residing at B-1, 303, Ganga Orchard Society, ) )  
Pinglewasti, Mundhwa Road, Pune-36 ) )..Applicant

Versus

State of Maharashtra, ) )  
Home Department (Prison), Main Building, 2<sup>nd</sup> Floor, ) )  
Madame Cama Road, Hutatma Rajguru Chowk, ) )  
Mantralaya, Mumbai 400032 ) )  
Through Principal Secretary (Prison) ) )..Respondent

Shri H.R. Jadhav – Applicant in person

Miss Savita Suryawanshi – Presenting Officer for the Respondent

CORAM : Shri Justice A.H. Joshi, Chairman  
RESERVED ON : 26<sup>th</sup> September, 2018  
PRONOUNCED ON : 16<sup>th</sup> October, 2018

**J U D G M E N T**

1. Heard Shri H.R. Jadhav, Applicant in person and Miss Savita Suryawanshi, learned Presenting Officer for the Respondent.

2. By this OA, the Applicant has prayed for quashing of suspension order dated 2.9.2016 along with various other reliefs, copy whereof is at Exhibit H page 45-46 of OA. However, the prayer for quashing the suspension is pressed and therefore other prayers are not examined.

3. Admitted facts are as follows:

- (a) 27.8.2016:- *The Applicant was engaged in sending, receiving, replying again and sending messages from his mobile handset with number 9503259077 to the complainant Smt. Praja Choudhary a newly recruited Lady Police Constable on her mobile phone between 10.35 p.m. on 27.8.2016 till 1.32 a.m. on 28.8.2016.*
- (b) 29.8.2016:- *On 29.8.2016 Smt. Praja Choudhary complained to higher authorities and tendered a print out of chatting and transcript of audio calling etc., and demanded action.*
- (c) 30.8.2016:- *The matter was processed at the level of office of Additional Director General of Police and Inspector General of Prisons.*
- (d) 1.9.2016:- *Inspector General of Prisons wrote letter dated 1.9.2016 to the Government and proposed disciplinary action for major penalty under Rule 8 of the MCS (Discipline & Appeal) Rules, 1979 (Exhibit G page 43).*
- (e) 2.9.2016:- *By order dated 2.9.2016 the Applicant is put under suspension.*
- (f) 15.11.2016:- *By memorandum dated 15.11.2016, charge sheet for disciplinary action towards misconduct relating to Applicant's conduct with Lady Police Constable Smt. Praja Choudhary is issued and has been served on Applicant in due course.*
- (g) 14.9.2016:- *Applicant filed OA No.919 of 2016 and prayed for quashing the suspension order dated 2.9.2016*

- (h) 7.2.2017:- Applicant has filed OA No.115 of 2017 in this Tribunal and prayed for quashing of memorandum dated 15.11.2016 and suspension order dated 2.9.2016.
- (i) 10.7.2017:- By judgment dated 10.7.2017 this Tribunal found that the enquiry through the complaint committee at the level of Head of Department/Government level is permissible and dismissed the OA No.115 of 2017 (Exhibit L page 102-116).
- (j) 12.9.2017:- By judgment and order dated 12.9.2017 this Tribunal allowed OA No.919 of 2016 (Exhibit M page 117-134).
- (k) Applicant carried the challenge against the judgment delivered by this Tribunal in OA No.919 of 2016. The writ petition was registered as Writ Petition No.11384 of 2018. The said writ petition has been allowed and judgment and order of this Tribunal is set aside (Exhibit O page 163-192).
- (l) The Applicant carried the grievance against the judgment dated 10.7.2017 of this Tribunal rendered in OA No.115 of 2017 before Hon'ble Bombay High Court by way of Writ Petition No.8080 of 2017. The departmental proceedings of enquiry were stayed during pendency of writ petition.
- (m) 22.1.2018:- The Applicant has carried the matter of competence of DE and challenged the order passed in Writ Petition No.8080 of 2017 by way of SLP No.92 of 2018 before the Hon'ble Supreme Court in which direction is given on 22.1.2018 that final order in the disciplinary proceedings should not be passed without express leave of the Hon'ble Supreme Court (Exhibit P page 193-194).
- (n) Applicant requested to the Government for review of suspension and its revocation on the ground that the departmental enquiry was not completed.
- (o) 7.2.2018:- The department had moved a proposal for review of Applicant's suspension. A note to that effect was initiated on 7.2.2018.
- (p) The matter of review of Applicant's suspension was considered by the review committee twice and revocation of suspension with recommendation to post the Applicant on any non executive post.
- (q) The matter of decision on the proposal for review of suspension has remained awaiting decision, initially on account of certain queries and in recent past awaiting spare time of Hon'ble Chief Minister to read file and take decision.

4. The Applicant has placed reliance on following judgments to urge that suspension be revoked at once:

- (a) *State of Maharashtra & Anr. Vs. Manoj Prabhakar Lohar, 2011(2) ALL MR 309.*
- (b) *Madanlal Sharma Vs. State of Maharashtra & Ors., 2004(1) Mh.L.J. 581.*
- (c) *State of Maharashtra Vs. Shivram Sambhajirao Sadawarte, 2001(3) Mh.L.J. 249.*
- (d) *Ambarish Rangshahi Patnigere & Ors. Vs. State of Maharashtra & Ors., 2012(1) Mh.L.J. 900.*
- (e) *Minaxi Zaverbhai Jethva Vs. State, High Court of Gujarat at Ahmedabad, Special Civil Application Appeal No.3708 of 1998 decided on 15.12.1999.*
- (f) *A.C. Barot Vs. District Superintendent of Police, Panchmahals & Ors. 1990(1) G.L.H. 545, Special Civil Application No.1930 of 1989 decided on 19.8.1989.*
- (g) *State of Orissa Vs. Bimal Kumar Mohanty, Supreme Court of India decided on 21.2.1994, 1994 AIR 2296 : 1994 SCC (4) 126 : (1994) 2 SCR 51.*
- (h) *Nanasaheb Namdeo Nirmal Vs. The State of Maharashtra & Anr. 2002(2) ALL MR 876.*
- (i) *Harbanslal Sahnia & Anr. Vs. Indian Oil Corpn. Ltd. & Ors. AIR 2003 SC 2120.*
- (j) *Sandeep Inderchand Gandhi & Ors. Vs. State of Maharashtra & Ors. 2015(3) Mh.L.J. 925.*
- (k) *Deorao Vithoba Kale Vs. Divisional Joint Registrar Cooperative Societies, Nagpur & Ors. 1982 Mh.L.J. 543.*
- (l) *Kumbhargaoon Vividh Karyekari Sahakari Seva Society Ltd. Vs. The Assistant Registrar, Cooperative Societies, Patan & Ors. 1993(1) Bom.C.R. 586.*

5. The Ld. Presenting Officer has argued and stressed on the points namely:-

- (a) *The collective reading of all the reasons in Ajay Kumar Choudhary (supra) which is followed in subsequent judgment of Hon'ble Supreme Court in State of Tamil Nadu Vs. Promod Kumar IPS & Anr. Civil Appeal No.8427-8428 of 2018 decided on 21.8.2018, is that the power of Government to take review, which power pre-supposes an action either to revoke or to continue, is not held ultra vires rather it is saved.*
- (b) *In Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr. (2015) 7 SCC 291 the Hon'ble Supreme Court had made strongest observation and has employed eloquent words to discourage continuation of suspension beyond 90 (ninety) days. It may be arguable that as an ordinary rule, however, the competent authority is not rendered devoid of power to continue the suspension beyond 90 days, being guided by facts of each case, gravity of misconduct and need of continuation of suspension.*

6. According to Ld. PO, the review committee has already recommended revocation of suspension and the Government is in the process of taking decision. The Hon'ble Chief Minister may agree or take a different view as to the recommendation of the review committee. Therefore occasion or event has not matured for issue of writ of certiorari or a writ of mandamus for direction to revoke the suspension and for issue of an order of reinstatement against the Government.

7. Continuation of suspension beyond 90 days is abhorred in two recent judgments of Hon'ble Supreme Court, which this Tribunal had followed in Shri Dilip Jagannath Ambilwade Vs. The State of Maharashtra & Anr. OA No.35 of 2018 decided on 11.9.2018, however, a rider as referred to in clause (e) and (f) of foregoing paras may have to be read as an inbuilt proviso thereby qualifying the power to continue the suspension. This power has to be construed as an enabling provision. It follows that power to continue suspension does not mean unbridled power, but power invocable when warranted and impelled due to facts based on objective data and based on duly recorded reasons.

8. Ld. Presenting Officer's submissions recorded in foregoing paragraphs in answer to Applicant's plea contains articulation, however, not with an indelible rider. An indelible rider as this Tribunal finds, is that while the power to take review may not be said to have been superseded or nullified due to Ajay Kumar Choudhary's case, yet said power is now to be read through the expression proclaimed through Ajay Kumar Choudhary's case supra, as a guide within which power of review and continuation of suspension has to be carved out as an exception than as an absolute power.

9. Once it is held that outer limit of continuation of suspension would be 90 days yet power of review is saved which would mean as a necessary corollary that the reviewing authority ought to take the decision and in the event suspension is required to be continued, extenuating circumstances which justify suspension for any duration beyond 90 days must speak for themselves without external aid and by necessary corollary it ought to be a reasoned decision/reasoned order ought to afford a full view window to take a judicial review.

10. Thus, judgment of Hon'ble Supreme Court in Ajay Kumar Choudhary (supra) is to be read as an embargo on continuation of suspension than a precedent laying down an exception, thereby reiterating an unconditional and categorical saving of absolute power to continue the suspension.

11. The totality of ratio of judgments relied upon by the Applicant can be summarized in nutshell as follows:

- (a) *The suspension may be ordered if the act or omission for which a Government servant is charge or is being sheeted may prima facie and in ordinary course attract major penalty, in the event the misconduct is proved in the disciplinary proceedings.*

- (b) *In case, the nature of misconduct warrants that it is necessary to keep the Government servant away from place of work, for conserving and preserving the evidence and avoiding tampering, or on facts his isolation is considered imperative the very act of suspension and its continuation even beyond 90 days may be justified.*
- (c) *The review of suspension shall have to be done furtherance to policy laid down by the Government which prescribes various eventualities.*
- (d) *The power to continue the suspension beyond 90 days available with the Government is to be exercised judiciously (though not judicially), based on facts of the case for objectively justifying continuation of suspension.*
- (e) *The suspension causes immense hurt, legal injury and factually the humiliation, and a conscious decision to continue the suspension must be taken which would be open for judicial scrutiny and judicial review.*
- (f) *Power to continue suspension exists however it ought not to be totally open ended. Failure of competent authority to objectively decide must attract reinstatement as a deeming fiction in terms of law as is laid down in Ajay Kumar Choudhary (supra).*

12. In the background of the fact and law this Tribunal has taken note of facts that:-

- (a) *In the present case applicant's suspension is by this date, continued for two years and one month.*
- (b) *The Government has duty to act punctually.*
- (c) *The review committee has (at least twice) recommended revocation of suspension.*
- (d) *Now the ball has rolled up to the table of Hon'ble Chief Minister and is waiting in limbo to find its turn to have the application of mind of the head of the Government.*
- (e) *As in the present case justifiably high speed worth appreciation and applause was shown by Jail Department as well by Hon'ble Chief Minister at the time of processing Applicant's suspension.*
- (f) *The Lady Police Constable submitted complaint on 29.8.2016. Her statement was recorded on 30.8.2016. The proposal for suspension*

*was sent on 1.9.2016 and suspension is ordered and delivered on 2.9.2016.*

- (g) A speed at least of some notable velocity and simile ought to have been shown while taking decision to review the suspension.*
- (h) The same executive namely Jail Authority or the Secretary to Home Department who gave an impetus to the file at the time of taking decision to suspension shows at least better degree of eagerness though not of the same speed as earlier (at the time of suspension) for decision on review.*

13. In view of the foregoing conclusions and discussion on facts this Tribunal reaches a considered view that when in facts of present case it is shown that:-

- (a) The Government is in the process of taking decision on the proposal for review, justice would require that on facts of present case, this Tribunal should hold hands and permit the executive to take decision.*
- (b) However, taking excessive time and delaying the decision is not the prerogative of the executive, nor that the exercise of judicial powers be made contingent upon sweet choice and will of the executive.*

14. “Justice delayed is justice denied” applies to executive with equal rigors, whenever it comes to doing justice by affirmative action by executive is concerned.

15. In the background of foregoing factual narration given in foregoing para no.12, this Tribunal considers it necessary to give at least two weeks time from the date of this order for the executive for taking the decision on review of Applicant’s suspension.

16. Needless to observe by reiteration that the conscious decision would essentially be based on the reasons which would be eloquently emerging than to be reached out.

17. In the event decision is not taken within two weeks from the date of this order, it shall be deemed that the suspension stands revoked and Applicant shall be deemed to have been reinstated, pending enquiry. In this eventuality Applicant shall report in the office of Inspector General of Prisons for detailed order of posting to any post, as may be chosen by the Government, which be given within ten days from date of deemed reinstatement. If posting is not given, Applicant shall continue to be posted in the office of Director General of Police and Inspector General of Prisons and shall be paid his salary and allowances from said establishment.

18. This order of deemed reinstatement shall be self operative unless stayed by the higher forum.

19. All other prayers are not adjudicated as not pressed and are kept open.

20. Ld. PO is directed to communicate this order to all concerned.

21. OA is disposed off with the above directions. Parties are directed to bear own costs.

**Sd/-**  
**(A.H. Joshi, J.)**  
**Chairman**  
**16.10.2018**

Dictation taken by: S.G. Jawalkar.