

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, AT KOLKATA

O. A. No/350/ 826 of 2020

Shri Avijit Ghosh son of ^{Late}~~Shri~~
Basudeb Ghosh aged about 48
years, GDSBPM, Bikihakola B.O. in
a/c with Panchla S.O. under Howrah
Division, District Howrah, presently
under put off duty, residing at Vill.
& P. O. Bikihakola via- Panchla,
Dist. Howrah, Pin - 711322

... Applicant

-Versus-

1. Union of India, service through the
Secretary, Ministry of Communication
& Information Technology, New New
Delhi - 110001.

2. The Chief Post Master General, West
Bengal Circle, Yogayog Bhavan,
Chittaranjan Avenue, Kolkata -
700012.

3. The Post Master General, South
Bengal Region, Yogayog Bhavan,
Chittaranjan Avenue, Kolkata -
700012.

4. The Director of Postal Services,
South Bengal Region, Yogayog
Bhavan, Chittaranjan Avenue, Kolkata
- 700012.

5. The Sr. Superintendent of Post
Offices, Howrah Division, Howrah -
711101.

6. Inspector of Posts, Howrah 2nd Sub
Division, Fortgloster, Howrah -

711310

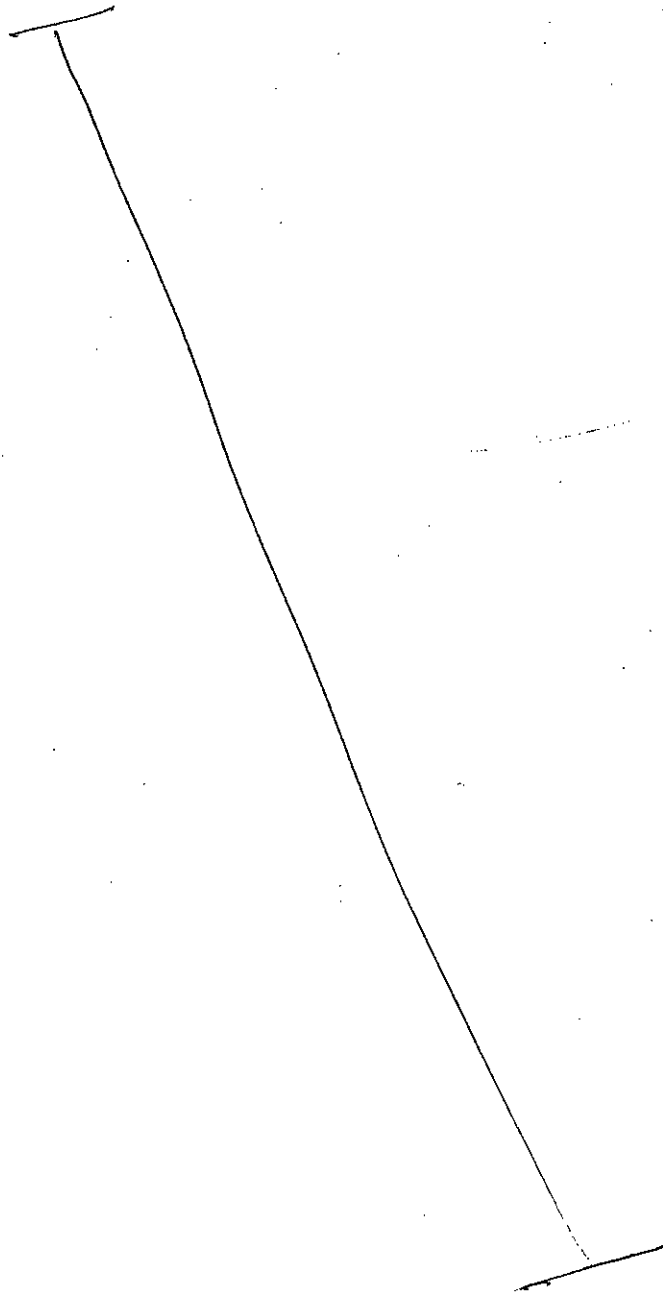
7. The Sr. Post Master, Howrah Head Post Office, Howrah - 711101.
8. Sri Sudip Sau son of not known, working as PA, Santragachi Post Office, Howrah, Pin - 711104.
9. Sri S. K. Mahiuddin son of not known working as Sub Post Master, Munshirhat Sub Post Office, Dist. Howrah, Pin - 711410.
10. Sri Rabindranath Ghosh son of not known, working as PA, Shibpurbazar Post Office,, Dist. Howrah, Pin 711101.
11. Sri Swadesh Kumar Bera son of not known, O.S. Howrah 2nd Sub Division, Fort Gloster Post Office, Dist. Howrah, Pin - 711310.

12. Sri Tapas Roy son of not known
Inspector of Posts, Howrah 22/3/86

Division, Fort Gloster Post Office,

Dist. Howrah, Pin - 711310.

... Respondents



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

OA/350/826/2020
M.A. No. 38/2021

Date of Order: 29.01.2021



Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Avijit Ghosh.....Applicant

Vrs.

Union of India & Ors.Respondents

For the Applicant(s) : Mr.P.C.Das, Mr.S.K.Datta, Mr.A.Chakraborty & Ms.T.Maity, Counsel

For the Respondent(s): Ms. P.Goswami, Counsel

ORDER (ORAL)

Bidisha Banerjee, Member (J):

This application has been preferred by the applicant to seek the following reliefs:

"8. i) An order directing the respondents to cancel, rescind, withdraw or set aside the purported speaking order being dated 25.02.2020, issued without due application of mind and also being in contradiction to Hon'ble Apex Court guidelines;

ii) An order directing the respondents to cancel, rescind, withdraw or set aside the purported order/letter dated 21.07.2020 by the SSPOs, Howrah Division and review the put off duty allowance due to the applicant @ 25% for first 90 days since 19.09.2019 and thereafter @ 5% till the revocation of said undue suspension as per rules of law;

iii) An order directing the respondents to cancel, rescind, withdraw or set aside the purported speaking order of suspension being dated 19.09.2019 and 25.09.2019 since been imposed without due application of mind and continuing against due process of law vis-a-vis Hon'ble Apex Court guidelines either;

iv) *An order directing the respondents to cancel, rescind, withdraw or set aside the purported charge Memorandum dated 20.07.2020 having cause of action since 27.10.1992 being absolutely bad in law as also shown serious suppression of facts without any whisper of submission of huge amounts by the applicant as high as Rs. 1, 20, 44000/- since not been refunded till date;*

v) *An order directing the respondents to cancel the undue process of inquiry without revealing the appointment of IO & PO but calling the applicant on telephone to attend the process of inquiry without issuance of call letters and without providing of relied upon documents against procedures of law;*

vi) *An order directing the respondents to produce entire records of the case with copy to the Ld. Advocate appearing for the applicant for conscionable justice.*

vii) *Any other order or orders further order/orders as to this Hon'ble Tribunal may seem fit and proper."*

2. At the outset, Ld. Counsel for the applicant would invite our attention to an order dated 02.12.2020 when this Tribunal had directed the respondents to supply the RUDs to the applicant, if not already supplied. Ld. Counsel would allege that the RUDs that have been supplied to the applicant are not legible; therefore, the applicant be permitted to take inspection of the original documents.

3. Ld. Counsel for the respondents while seriously opposing the contention of the applicant would draw our attention to an order dated 09.09.2020 passed in O.A. 414/2020, a previous O.A., preferred by the applicant before this Tribunal. In the said O.A., this Tribunal directed as under:

"7. In view of fact that the applicant is still on put off duty and it is imperative for the department to finalise the matter as expeditiously as possible without keeping the disciplinary proceedings beyond 45 days, we direct the authorities to conclude the proceedings as early as possible adhering to the time limit scrupulously or setting it extended legally, and in accordance with law, but not beyond 6 months under any circumstances."

Ld. Counsel would vociferously oppose the prayer for inspection of RUDs on the ground that this Tribunal had directed the authorities to conclude the proceedings within six months.



4. Ld. Counsels were heard and the records were perused.

5. It transpires, at hearing, that the RUDs have been supplied to the applicant only in November, 2020 and, therefore, the authorities cannot be expected to conclude their proceedings within six months from the date of the order in the earlier round, i.e. September, 2020.

6. Ld. Counsel for the applicant would also urge for inspection of original documents since RUDs supplied to the applicant are not legible.

7. In our considered opinion, nothing should stand on the way of granting the applicant an opportunity to take inspection of original documents to be able to defend his case effectively during the enquiry. Therefore, to put a *quietus* to the pending dispute, we direct the authorities to do the following:

To fix a date for inspection of original documents with due notice to the applicant and allow him inspection of the original documents and after such inspection of documents to make an honest endeavour to conclude the proceedings within a period of six months.

8. At hearing, Ld. Counsel for the applicant alleged that the respondents have chargesheeted the applicant for an alleged amount of Rs. 16 lakhs whereas the applicant has been asked to credit a sum of Rs. 1 crore, 10 lakhs, 44 thousand and odds, in government account. Therefore, the applicant should get back the balance amount after retaining the amount for which he is chargesheeted, or the amount should be fixed with the bank authorities in an FD account.

Ld. Counsel for the respondents would counter stating that the amount of Rs. 1 crore, 10 lakhs and odds have been voluntarily credited by the applicant as defalcation has been detected to the tune of Rs. 94 lakhs and 57 thousands although the chargesheeted amount is way less than the detected defalcation amount.



In view of the discrepancy of the figures about the detection of original defalcation amount and the allegation raised vide the chagesheet, we direct the authorities to pay back to the applicant any amount in excess of the chargesheeted amount in whatever manner it is permissible in accordance with law, ^{else} or fix the amount in an FD with the bank.

9. Ld. Counsel for the applicant would further allege that the authorities have kept the applicant on suspension since 2019 whereas in terms of the decision in **Civil Appeal No.1912 of 2015(Arising out of SLP (C) No.31761 of 2013 (Ajay Kumar Choudhury vs. Union of India through its Secretary & Another)**, the suspension period cannot exist beyond three months within which a charge sheet has to be issued and, that despite issuing a chargesheet, applicant is being continued on suspension with only 25% of TRCA.

Ld. Counsel for the respondents would vehemently oppose stating that the alleged misconduct being grave in nature, the applicant is being continued on suspension/put off duty and that the same is being reviewed from time to time in accordance with law. Therefore, the continued suspension/put off duty is justified. Further that, the put off duty allowance is being paid @ 50% of TRCA.

In our considered opinion, suspension/put off duty beyond 3 months is not

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permissible as Ajay Kumar Choudhury (supra) mandates, the extract being the following:

".....It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet 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 concerned person 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 to prepare his defence. We think this will adequately safeguard the universally recognised 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 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."

Accordingly, we direct the authorities to revoke suspension order after expiry of three months of original put off duty and to pay the balance amount of payable TRCA deducting the subsistence allowance/put off duty allowance already paid to the applicant. Appropriate order to that effect be issued by four weeks.



10. With the aforesaid directions, the O.A. stands disposed of with the consent of the parties. MA 38/2021 is also disposed of. No order as to costs.



(Dr. Nandita Chatterjee)
Member (A)

(Bidisha Banerjee)
Member(J)

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