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**BEFORE THE CENTRAL ADMINISTRATIVE
TRIBUNAL
CALCUTTA BENCH
CIRCUIT BENCH AT PORT BLAIR**

O.A/AN/No.351/1352/2020

Shri. Navin Krishna

S/o Shri. Sheo Krishna, *aged about 48 years*

R/o Biggi Line,

Port Blair

Presently working as Junior Engineer[U/s],
Electricity department, Andaman & Nicobar
Administration, Port Blair. *744101*

----- Applicant

- - Versus - -

1. The Union of India
Service through the Secretary,
Ministry of Power,
New Delhi. *Pin - 110001*
2. The Andaman & Nicobar Administration
Through the Chief Secretary
Secretariat
Port Blair, *Pin - 744101*
3. The Secretary[Power]
Secretariat
Port Blair, *Pin - 744101*
4. The Superintending Engineer
Electricity Department
Andaman & Nicobar Administration
Port Blair, *Pin - 744101*
5. The Deputy Secretary[Power]
Andaman & Nicobar Administration
Port Blair, *Pin - 744101*

----- Respondents

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O.A.351/1352/2020

Date of order : 29.12.2020

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Mr. Tarun Shridhar, Administrative Member

NAVIN KRISHNA
VS.
UNION OF INDIA & OTHERS
[Electricity(A&N Administration)]



For the applicant : Mr. P.C. Das, counsel

For the respondents : Mr. K. Rao, counsel

ORDER

Bidisha Banerjee, Judicial Member

Heard Id. counsel for the parties.

2. The applicant who has served for nearly 27 years in Electrical Department as Junior Engineer has claimed that he has discharged his duties to the satisfaction of the superior authorities and that he has carried out all the transfer orders except the one bearing No.183 dated 06.02.2020 whereby he was transferred from NRSE Division, Port Blair to Katchal Sub-Division. He had preferred O.A.No.252/2020 against the said order when this Tribunal on 24.02.2020 issued an interim

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protection to the effect that the applicant may not be compelled to join the place of transfer till the next date . On 02.03.2020 the said interim order was extended till the next date which was 03.04.2020. Meanwhile due to the pandemic situation the matter could not be listed on 03.04.2020. However, by virtue of a larger bench order of Hon'ble High Court in W.P.No.5323[W] of 2020, issued on 24.03.2020 all interim orders passed by all courts and Tribunals were extended till 30.04.2020. Further, by orders dated 07.08.2020 and 25.11.2020 such interim orders were extended till 30.11.2020 and 28.02.2021 respectively. Vide order dated 11.02.2020 the competent authority placed the applicant under suspension fixing his headquarters at Katchal. No charge sheet was filed within first 90 days from the date of such suspension. The suspension was further extended for a period of 90 days vide order dated 08.05.2020 without justifying the reason for extension.

3. Ld. counsel for the applicant alleged that in terms of law propounded in **Ajay Kumar Choudhury vs. Union of India through its Secretary & Another** and the O.M. dated 3rd July, 2015 issued by DOPT the respondents could not have extended the said suspension without issuing a charge sheet. That, it was incumbent upon the respondents to issue a charge sheet within 90 days from the date of suspension. That, vide memo dated 12.10.2020 the applicant was served with the articles of charge on the ground that he had not reported to the place of posting when the applicant was under the aegis of interim order



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granted by this Tribunal, extended further by virtue of larger bench's decision of Hon'ble High Court at Calcutta in W.P.No.5323 of 2020. Further that, by an order dated 05.11.2020 the period of suspension was further extended without assigning any reason.

4. That, the applicant served a notice dated 14.09.2020 upon the respondents intimating the legal position in regard to the interim orders passed by this Tribunal and higher forum. He even represented on 21.09.2020 praying for revocation of his suspension and release of pay and allowance but the authorities in total violation of orders as aforesaid, extended his suspension vide order dated 05.11.2020 in a mechanical manner. Aggrieved, applicant has sought for the following reliefs:-

"(i) An order setting aside the order bearing No.1014 and dated 05.11.2020 whereby the period of suspension of the applicant was extended for a further period of 60 days;

(ii) An order directing the respondent authorities to permit the applicant to continue at his present place of posting by treating his headquarter at Port Blair i.e. the last place of posting;

(iii) An order directing the respondents to produce the entire records of the case before this Hon'ble Tribunal for adjudication of the points at issue and administering conscionable justice;

(iv) And to pass such further or other order(s) and/or directions(s) as to this Hon'ble Tribunal may deem fit and proper."

5. We heard Id. counsel for the parties and perused the records. The Hon'ble Apex Court in Civil Appeal No.1912 of 2015(Arising out of SLP@ No.31761 of 2013 (Ajay Kumar Choudhury vs. Union of India through its Secretary & Another) has decided as under:-

".....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."



The mandate of Hon'ble Apex Court makes it imperative for the respondents to issue a charge sheet within 90 days of suspension or else to revoke the suspension order which the respondents in the case at hand have deliberately violated. In terms of the decision, currency of the suspension order dated 11.02.2020 would be till 10.05.2020. It could not have been validly extended on 08.05.2020 for another 90 days.

6. DOPT O.M. dated 3rd July, 2015 is explicit that currency of suspension order should not extend beyond 3 months if within such period Memorandum of charges/chargesheet is not served on the delinquent officer. The said O.M. has been issued as it appears from

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the O.M. itself in terms of the decision of Hon'ble Supreme Court in **Ajay Kumar Choudhury**.

It is quite discernible and self evident that in the present case admittedly and irrefutably no charge sheet was issued within the first 90 days of his suspension. Violation of law propounded in **Ajay Kumar Choudhury** and the instructions of the DOPT in terms of the O.M. dated 03.07.2015 is palpable.

7. Further, we discern that the Article-II of the charge sheet deals with the applicant's transfer to Katchal sub-Division and his relieving order dated 06.02.2020, alleging his denial to obey the order of competent authority. While framing the charge the Disciplinary Authority has totally brushed aside and ignored the implication of the interim order granted by this Tribunal which stood extended in terms of the Hon'ble High Court's directions as referred to supra. The Article-II of the charge is not valid.

8. Ld. Government Pleader appearing for the respondent authorities at hearing would place a communication from the Assistant Director, Administration dated 29.12.2020 which is extracted hereunder for clarity:-



PB

अण्डमान तथा निकोबार प्रशासन
अधीक्षक अधिव्यता का कार्यालय
विद्युत विभाग
पोर्ट ब्लेयर - 744 101

MOST IMMEDIATE
Andaman & Nicobar Administration
Office of the Superintending Engineer
Electricity Department
Port Blair - 744 101

Website : <http://electricity.and.nic.in/> E-Mail : seed@and.nic.in seelectricity@yahoo.com

दूरभाष / Tel : 03192 - 232404, टेलीफैक्स / Telefax : 03192 - 233365

फा.स./F.No2497/EL/SE/Estt./2020 /4220 पोर्ट ब्लेयर : Port Blair, दिनांक / Date: 29/12/2020

✓ To.

The Govt. Pleader
High Court Complex,
Port Blair.

Sub: Clarification regarding issuance of Memorandum along with Article of Charges against Shri Navin Krishan, Junior Engineer -reg.

Sir,

I am directed to refer your letter No. KR/GP/2020/822 dated 29.12.2020 on the subject cited and to furnish hereunder the clarification sought for therein :

S. No.	Clarification sought for	Status/Reply
1	Once the charge sheet has been served upon the applicant, under what circumstances the suspension period of the applicant is extended?	Extension being made based on the recommendation of the Suspension Review Committee of A&N Administration.
2	There is an order of stay with regard to the order of transfer of the applicant, under which circumstances in the Article -II of the Charges has been leveled against him on the allegation that he has not reported the duty in his placed of transfer?	Charges has been framed before the order of stay and he has been placed on suspension based on these charges. However, charge sheet/memorandum has been issued to the charged officer later. Inquiry Officer will be informed the order of stay of the Hon'ble Court for consideration of the same during his enquiry of charges.

Yours faithfully,

[Signature]
29/12/2020

सहायक निदेशक(प्रशासन)/Assistant Director (Admn.)



The respondents, therefore, have expressed without any ambiguity that extension of suspension beyond 10 days and framing of Article-II was not proper.

9. In the aforesaid backdrop, we dispose of the O.A. with a direction upon the Disciplinary Authority to immediately revoke the suspension order from an appropriate date in accordance with the decision in Ajay Choudhury and take a decision whether to proceed with the charge sheet dated 12.10.2020 which includes the Article-II about his denial to obey the transfer order of the competent authority to transfer and of his relieving while the applicant was under aegis of interim orders, which we note with regret is a deliberate attempt on the part of the Disciplinary Authority to sit over the decision of this Tribunal, to scuttle the power of Judiciary.

10. Appropriate order be issued within a period of fortnight from the date of receipt of this order.



(Tarun Shridhar)

Administrative Member

sb



(Bidisha Banerjee)
Judicial Member