

**Central Administrative Tribunal
Principal Bench**

OA No.330/2017

New Delhi, this the 29th day of March, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)**

Chetan Bhatia, Aged 44 years
S/o Sh. Jagdish Kumar
Working as Ad hoc Dhanics
GNCT of Delhi, New Delhi
R/o 2/4978, Shiv Nagar, Karol Bagh
New Delhi-5. ..Applicant

(By Advocate: Shri Yogesh Sharma)

Versus

1. Govt. of NCT of Delhi through
The Chief Secretary, Delhi Secretariat
I.P. Estate, New Delhi.
2. The Deputy Commissioner (South West)
Old Terminal Tax Building
Kapashera, New Delhi-37
3. The Secretary, Services-I Department
GNCT of Delhi, B-Wing, Delhi Secretariat
Delhi. ..Respondents

(By Advocate: Shri N.K. Singh for Ms. Avnish Ahlawat)

ORDER (ORAL)

Justice Permod Kohli, Chairman :-

The copy of the suspension order dated 03.08.2016 has been furnished by the respondents to the applicant. The same is also taken on record.

2. The applicant has challenged the continuous suspension beyond 90 days on the ground that no charge sheet has been issued upon him and, therefore, under the given circumstances, the order dated 30.10.2016 as also the further extension order dated 28.11.2017 are said to be illegal.

3. In view of the averments made in the OA, Shri N.K. Singh, counsel for the respondents, was asked to seek instructions and also to file reply within four weeks. Though reply has not been filed, however, on instructions from the respondents, he has informed the court that no charge sheet was issued during the period of 90 days from the date of suspension.

4. We have heard the learned counsel for the parties.

5. While working as SDM, Kapashera, South West, Revenue Department, the applicant was directed to join the office of Divisional Commissioner (HQ) vide order dated 27.06.2016. The applicant accordingly joined the office of Divisional Commissioner on 28.06.2016. On 18.07.2016, the applicant was again directed to join Service Department of Govt. of NCT of Delhi where he joined on 19.07.2016. It is stated that the applicant was waiting for his posting but on 30.10.2016 he received the order by which his suspension was

extended by 90 days. It is alleged that the suspension order dated 03.08.2016, referred to in the extension order, was never served upon the applicant. This Original Application has been filed challenging the suspension order dated 03.08.2016 as also the order dated 30.10.2016 whereby the extension was granted for suspension. Since the original suspension order was not placed on record a direction was issued to respondents to supply copy of the suspension order. Copy having been supplied, the same has been placed on record hereinabove.

6. We have heard the learned counsel for the parties at length. Vide suspension order dated 03.08.2016, the applicant was placed under suspension under sub rule (1) of Rule 10 of the CCS(CCA) Rules, 1965 with immediate effect. The suspension was on account of contemplated disciplinary proceedings. Vide subsequent order dated 31.10.2016, the suspension of the applicant was continued beyond original period of 90 days for another spell of 90 days w.e.f. 01.11.2016. The suspension of the applicant was further extended vide order dated 28.01.2017 by 180 days from 30.01.2017. The main contention of learned counsel for the applicant is that continuous suspension of the applicant without serving the charge sheet beyond 90 days, is

impermissible in law and is violative of the judgment of Apex Court in **Ajay Kumar Choudhary Vs. Union of India** in Civil Appeal No. 1912/2015 decided on 16.02.2015, as also the Office Memorandum dated 23.08.2016 issued by the M/o Personnel, Public Grievance and Pension, Department of Personnel and Training. This OM has been issued consequent upon the judgment of the Apex Court in the case of **Ajay Kumar Choudhary**(supra). The relevant extract of the OM is noted hereunder:-

"2. In compliance of the above judgment, it has been decided that where a Government servant is placed under suspension, the order of suspension should not extend beyond three months, if within this period the charge-sheet is not served to the charged officer. As such, it should be ensured that the charge sheet is issued before expiry of 90 days from the date of suspension. As the suspension will lapse in case this time line is not adhered to, a close watch needs to be kept at all levels to ensure that charge sheets are issued in time.

7. Hon'ble Supreme Court in **Ajay Kumar Choudhary**(supra) has held as under:-

"14. 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 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 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. In the present case, admittedly, the charge memo was issued to the applicant on 27.01.2017. A copy whereof has been placed on record during the course of hearing. The original suspension of the applicant was ordered on 03.08.2016. Thus, it is evident that the charge sheet was not issued upon the applicant within 90 days from the date of suspension. In view of the aforesaid DOP&T OM dated 23.08.2016 and the dictum of the judgment of the Hon'ble Apex Court, suspension of the applicant beyond initial 90 days is illegal and is liable to be quashed. This OA is accordingly

allowed. The suspension of the applicant beyond initial 90 days is hereby declared as illegal. Respondents are directed to reinstate the applicant by the next working day from the date of receipt of copy of this order. The respondents are further directed to decide the period of suspension in terms of FR 54-B within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(K.N. Shrivastava)
Member(A)

(Justice Permod Kohli)
Chairman

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