

**Central Administrative Tribunal
Principal Bench**

OA No.1741/2016

New Delhi, this the 31st day of May, 2016

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

Ashish Mohan S/o Umakant Bhardwaj,
DANICS Group 'A',
R/o Flat No.306, Block No.2,
DDA HIG Govt. Flats,
Motia Khan, Delhi-110055.

... Applicant

(By Advocate : Shri Anil Singal)

Versus

1. Union of India through Secretary,
MHA, North Block, New Delhi.
2. Government of NCT of Delhi through
Chief Secretary, Delhi Secretariat,
I.P.Estates, New Delhi.
3. Delhi Subordinate Services Selection Board
through its Chairman,
FC-18, Institutional Area,
Karkardooma, Delhi-110092. ... Respondents

(By Advocate : Shri Hanu Bhaskar for Respondent No.1; Shri K. M. Singh for Respondents 2 & 3)

O R D E R

Justice Permod Kohli, Chairman :

This OA has been filed by the applicant challenging the validity of the order dated 13.06.2014 placing him under suspension in

contemplation of disciplinary proceedings; and orders dated 29.08.2014, 04.06.2015 and 04.12.2015 whereby the suspension of the applicant has been continued from time to time.

2. Brief facts leading to filing of the present OA are that the applicant, a DANICS officer, was placed under suspension vide the first impugned order dated 13.06.2014 on the ground of contemplated disciplinary proceedings against him, in exercise of powers under sub-rule (1) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, by the Government of NCT of Delhi. His suspension has been continued vide subsequent impugned orders referred to hereinabove.

3. The grievance of the applicant is that continued suspension under rule 10 of the CCS (CCA) Rules, 1965 beyond 90 days without serving charge-sheet for disciplinary proceedings, is bad in law and is liable to be quashed. The applicant also made a representation dated 02.03.2015 seeking revocation of his suspension. The applicant also relies upon a judgment of the Hon'ble Supreme Court reported as (2015) 7 SCC 291 - *Ajay Kumar Choudhary v Union of India and another*, and office memorandum dated 03.07.2015 issued by the DOP&T pursuant to the

observations/directions of the Hon'ble Supreme Court in its judgment in *Ajay Kumar Choudhary* (supra).

4. Since the issue is only legal and the only fact required to be ascertained from the respondents was whether any disciplinary proceedings were initiated against the applicant within a period of 90 days, this Tribunal while issuing notice passed following order on 17.05.2016:

“The short question involved in the present OA is whether the suspension of the applicant vide order dated 13.06.2014 and continuance thereof from time to time, without initiating any disciplinary proceedings is valid in law. According to the averments made in the Application, the applicant was placed under suspension vide the impugned order pending disciplinary proceedings. His suspension has been continued without initiating any disciplinary proceedings. It is stated that no charge sheet has been served upon the applicant till date.

Heard.

Issue notice.

Shri Hanu Bhaskar, learned standing counsel appears and accepts notice on behalf of respondent No.1 and Shri K. M. Singh, learned counsel accepts notice on behalf of respondents No.2 & 3. They will seek instructions and report to the Tribunal as to whether any disciplinary proceedings have been initiated against the applicant till date.

List on 27.05.2016. Order ‘Dasti’.”

5. Shri Hanu Bhaskar, learned counsel appearing for the respondent No.1 has today reported that till date no charge-sheet has

been issued and thus no disciplinary proceedings could be initiated against the applicant. His contention is that the applicant being posted with the Government of NCT of Delhi, the charge-sheet was required to be issued by the Government of NCT of Delhi, and not by the Central Government, and thus the Central Government had no option but to extend the suspension of the applicant from time to time.

6. We have heard the learned counsel for parties.

7. Rule 10 of the CCS (CCA) Rules, 1965 deals with suspension of Government servants. Relevant extract of rule 10 is reproduced hereunder:

“10. Suspension

(1) The appointing authority or any authority to which it is subordinate or the Disciplinary Authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension-

(a) where a disciplinary proceeding against him is contemplated or is pending; or

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(5)(a) Subject to the provisions contained in sub-rule (7), an order of suspension made or deemed to have been made under this rule shall continue to remain in force until it is modified or revoked by the authority competent to do so.

(b) Where a Government servant is suspended or is deemed to have been suspended (whether in

connection with any disciplinary proceeding or otherwise), and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the authority competent to place him under suspension may, for reasons to be recorded by him in writing, direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings.

(c) An order of suspension made or deemed to have been made under this rule may at any time be modified or revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate.

(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority which is competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rule (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days:

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later."

8. One of the grounds for placing a Government servant under suspension is contemplated or pending disciplinary proceedings against him. Vide order dated 13.06.2014, the applicant was placed under suspension on account of contemplated disciplinary proceedings. A conjoint reading of sub-rules (5), (6) and (7) would make it clear that – (i) an order of suspension shall remain in force until it is modified or revoked by the authority competent to do so; (ii) if during the currency of suspension, any other disciplinary proceeding is commenced against the Government servant under suspension, the authority competent to place him under suspension may, for reasons to be recorded in writing, continue suspension of the Government servant until termination of all or any of such proceedings; (iii) the order of suspension made, at any time, may be modified or revoked by the authority; (iv) the authority competent to modify or revoke the suspension shall review the suspension before expiry of 90 days from the effective date of suspension on the recommendation of the review committee constituted for the purpose and pass order either extending or revoking the suspension, and subsequent review shall be made before expiry of the extended period of suspension; (v) the extension of suspension shall not be for a period exceeding 180 days at a time; (vi) an order of suspension shall not be valid after a period of 90 days unless it is extended after

review for a further period before expiry of 90 days. Such review is, however, not necessary in a case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of 90 days of suspension, and the 90 days period in such a case will count from the date the Government servant detained in custody is released from the detention, or the date on which the fact of his release from detention is intimated to the appointing authority, whichever be later.

9. From the perusal of the orders dated 29.08.2014, 04.06.2015 and 04.12.2015, it appears that the suspension of the applicant has been continued on the recommendation of the review committee before whom his case was placed from time to time. It is noticed that the first review was conducted within 90 days from the date of initial suspension. However, the second and third extensions, though made on the basis of recommendations of the review committee, were made beyond 90 days of the expiry of the earlier extensions. The significant issue is that all extensions were made without even serving charge-sheet upon the applicant, much less holding an inquiry against him. It is on this ground that the applicant has sought quashment of the continued extension vide the impugned orders.

10. The question of continued extension of suspension of Government servants came up for consideration before the Hon'ble Supreme Court in *Ajay Kumar Choudhary* (supra). The Hon'ble Supreme Court examined various dimensions of the issue and applying the analogy and principle enshrined under Section 167(2) CrPC, which entitles an accused to be released if the charge-sheet is not presented within the prescribed period, and after examination, made the following observations/directions:

“20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, *albeit*, after judicial scrutiny and supervision. The Code of Criminal Procedure, 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond a period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in *Raghbir Singh vs. State of Bihar* [1986 (4) SCC 481] and more so of the Constitution Bench in *Antulay* [*Abdul Rehman Antulay v R. S. Nayak* (1992) 1 SCC 225], we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries also. 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/charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) CrPC 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.

21. We, therefore, direct that the currency of a suspension order should not extend beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer/employee; if the memorandum of charges/charge-sheet 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."

Office memorandum dated 03.07.2015 (Annexure A-3) has been issued by the DOP&T pursuant to the observations/directions contained in the aforesaid judgment.

11. In view of the law laid down by the Hon'ble Supreme Court in *Ajay Kumar Choudhary* (supra), continued suspension of

the applicant is absolutely unjustified and illegal for non-commencement of disciplinary proceedings within a period of 90 days from the date of effective suspension of the applicant.

12. This OA is accordingly allowed. The respondents are directed to revoke the suspension of the applicant forthwith and reinstate him. The respondents shall also decide about the period of suspension in accordance with rules within a period of two months. The respondents are, however, at liberty to initiate the disciplinary proceedings in accordance with law.

(K. N. Shrivastava)
Member (A)

(Permod Kohli)
Chairman

/as/