

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2534/2016

This the 6th day of September, 2016

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

Smt. Balesh Kumari Vijarun W/o Rajender Parsad,
R/o D-1/78, Janakpuri (1st Floor),
New Delhi-110058. ... Applicant

(By Advocate: Mr. Ajesh Luthra)

Versus

1. Government of NCT of Delhi through its
Chief Secretary,
5th Floor, Delhi Sachivalaya,
Govt. of NCT of Delhi.
2. Director, Directorate of Education,
Old Secretariat, Delhi,
Govt. of NCT of Delhi.
3. Special Director of Education (Vig.),
Directorate of Education,
Old Sectt., Delhi.
4. Lieutenant Governor of Delhi,
Raj Niwas, Rajpur Road,
Delhi. ... Respondents

(By Advocates: Mr. N. K. Singh for Mrs. Avnish Ahlawat)

O R D E R

Justice Permod Kohli, Chairman :

The applicant was promoted as Deputy Education Officer on 07.07.2014. While serving as Deputy Education Officer (Zone-18) she

was placed under suspension vide order dated 16.04.2016 on account of contemplated disciplinary proceedings, in exercise of powers under sub-rule (1) of rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Subsistence allowance in terms of FR 53 (1) (c) was also sanctioned vide the same order. The applicant represented against her suspension vide various representations collectively marked as Annexure A-3. Receiving no response, another representation dated 11.07.2016 was made seeking revocation of the suspension.

2. While the applicant was under suspension, an FIR No.419/2016 u/s 420/468/471 IPC was registered against her on 27.04.2016 at PS Uttam Nagar, Delhi. She was granted anticipatory bail by the Additional Sessions Judge-04 West, Tis Hazari, Delhi vide order dated 02.06.2016. Suspension of the applicant has been extended vide order dated 14.07.2016 on the recommendations of the review committee, which recommended her continued suspension in the meeting held on 08.07.2016. It is recorded in this extension order that the allegations against the applicant are of grave nature and it may not be administratively expedient to revoke her suspension. Her suspension has been extended for a further period of 90 days w.e.f. 15.07.2016 or till further orders, whichever is earlier, without change in subsistence allowance being paid to her. The order of suspension dated 16.04.2016 and the order dated 14.07.2016 whereby

the suspension of the applicant has been extended for a further period of 90 days or till further orders, are under challenge in the present OA.

3. When this OA was filed, it was noticed that the suspension beyond 90 days without filing charge-sheet is impermissible in view of the law settled by the Hon'ble Supreme Court in case of *Ajay Kumar Choudhary v Union of India & others* [(2015) 7 SCC 291]. Mr. N. K. Singh, who accepted notice for Mrs. Avnish Ahlawat, was granted three weeks' time to file reply. When the matter was taken up for hearing on 06.09.2016, Mr. N. K. Singh was asked to report whether any charge memo in the disciplinary proceedings has been issued to the applicant or charge-sheet in the criminal case has been filed. His emphatic reply was 'no'.

4. Admittedly, no charge memo in the disciplinary proceedings has been issued within 90 days from the date of suspension nor any charge-sheet has been filed in the criminal court in respect of the criminal proceedings registered against the applicant. The controversy is no more *res integra* having been settled by the Hon'ble Supreme Court in the case of *Ajay Kumar Choudhary* (supra), wherein the following observations have been made:

"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 v. State of Bihar* [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] and more so of the Constitution Bench in *Antulay* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93], we are spurred to extrapolate the quintessence of the proviso to Section 167(2) 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 person concerned 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 recognise that the 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."

5. In this view of the matter, continuation of suspension of the applicant beyond 90 days without a charge memo in the disciplinary proceedings having been issued or charge-sheet in the criminal court having been filed, is illegal and contrary to law. The order dated 14.07.2016 extending the suspension of the applicant for a further period of 90 days w.e.f. 15.07.2016 is, therefore, liable to be set aside. We order accordingly. The applicant shall be reinstated. However, the respondents are at liberty to decide the period of suspension in accordance with law.

6. The OA is allowed accordingly.

(V. N. Gaur)
Member (A)

(Justice Permod Kohli)
Chairman

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