

**Central Administrative Tribunal
Principal Bench**

OA No.1785/2017

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

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

Dr. Rishi Anand, Group 'A',
Under suspension since 12.7.2016,
Aged about 43 years,
S/o Shri M.M. Gupta,
R/o 280-281, 3rd Floor,
Pocket-IV, Sector-25,
Rohini,
Delhi-85.

...Applicant

(By Advocate : Shri Anil Singal)

Versus

1. Lt. Governor of Delhi
Raj Bhawan,
Delhi.
2. Govt. NCT of Delhi,
Through its Chief Secretary,
Delhi Secretariat,
I.P. Estate,
New Delhi.
3. Secretary,
Health & Family Welfare Department,
Govt. NCT of Delhi,
Delhi Secretariat,
I.P. Estate,
New Delhi.

...Respondents

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

ORDER (ORAL)**Mr. Justice Permod Kohli, Chairman :-**

The only issue involved in the present OA is whether the suspension of the applicant beyond 90 days is legal and valid without issuing the charge sheet within the period of 90 days. Under these circumstances, Shri N.K. Singh, learned proxy counsel for respondents was asked to seek instructions and inform the Court as to when the charge sheet was issued. He has placed on record, copy of charge sheet which indicates that it was issued on 01.03.2017 and seems to have been served thereafter.

2. Heard the learned counsel for the parties without insisting for reply.

3. The applicant is aggrieved of his continued suspension beyond 90 days. While working as Specialist ENT & M.O.I/C, Satyawadi Raja Harish Chander Hospital, GNCTD, the applicant was placed under suspension vide order dated 12.07.2016 in contemplation of the disciplinary proceedings under Rule 10(1) of the Central Civil Services(CCA) Rules, 1965. No period of suspension was prescribed in that Order. The suspension of the applicant thereafter was extended by 180 days vide order dated 27.09.2016 w.e.f. 10.10.2016 to 07.04.2017 pursuant to the recommendations of the Review Committee. Vide subsequent order dated 07.04.2017, the

suspension of the applicant has further been extended on the recommendations of the Review Committee for a period of 180 days w.e.f. 08.04.2017. The charge sheet was issued on 01.03.2017, copy whereof has been placed on record. It is now settled law that the suspension beyond 90 days without serving the charge sheet is illegal and invalid. Hon'ble Supreme Court in ***Ajay Kumar Choudhary Vs. Union of India through its Secretary and Another*** (2015) 7 SCC 291, has made the following observations :-

“13. 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 Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond 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 Raghubir Singh vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries 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/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.

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."

4. In view of the law laid down by the Hon'ble Apex Court, the suspension of the applicant beyond 90 days is impermissible in law and the same is liable to be quashed. The initial suspension of 90 days was completed on 9th Oct, 2016.

5. In view of the above, this OA is allowed. Suspension of the applicant beyond 90 days from the date of initial suspension vide

order dated 12.07.2016, i.e. after 09.10.2016, vide order dated 27.09.2016 and 07.04.2017 are hereby quashed. As a consequence of quashment of the suspension of the applicant, respondents are directed to reinstate the applicant within a period of one week from the date of receipt of a certified copy of this order. Needless to say that the applicant shall be entitled to full salary i.e. the differential amount between the subsistence allowance, if any, paid and the admissible salary payable to him for the period w.e.f. 10.10.2016. Insofar as his period of suspension for initial 90 days is concerned, on termination of departmental proceedings, respondents will take decision in terms of FR 54-B, depending upon the outcome of the departmental proceedings.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

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