

**Central Administrative Tribunal  
Principal Bench**

OA No. 2075/2015

Order reserved on: 13.05.2016

Order pronounced on: 25.05.2016

***Hon'ble Mr. Justice M.S.Sullar, Member (J)***

***Hon'ble Mr. V. N. Gaur, Member (A)***

Dr. Vijay Kumar Jha,  
S/o Sh. Sunder ShyamJha,  
R/o F-25, Flat No.51,  
Sector-3, Rohini,  
Delhi-110085  
(aged about 46 years)

- Applicant

(By Advocate: Sh. Ajesh Luthra)

Versus

1. The Lieutenant Governor,  
GNCT of Delhi,  
Rajpur Road,  
Raj Niwas Marg,  
Delhi-110054.
2. GNCT of Delhi  
Through its Chief Secretary,  
5<sup>th</sup> floor,  
Delhi Secretariat,  
IP Estate,  
New Delhi-110002.
3. The Principal Secretary,  
Health and Family Welfare Department,  
GNCT of Delhi  
9<sup>th</sup>Level, 'A' Wing,  
Delhi Secretariat,  
IP Estate,  
New Delhi-110002.
4. The Medical Superintendent,  
BabuJagjeevan Ram Memorial Hospital,  
Jahangirpuri, Delhi.

- Respondents

(By Advocate: Ms. Sangita Rai with Sh. Pradeep Tomar)

**ORDER****Hon'ble Mr. V.N.Gaur, Member (A)**

The applicant is a Medical Officer belonging to Delhi Health Service Cadre and was posted at Babu Jagjeevan Ram Memorial Hospital, Jahangirpuri, Delhi when he was arrested on 20.09.2013 on the basis of the FIR no.16/13 PS Anti Corruption Branch under Sections 8, 12 & 13 Prevention of Corruption Act read with Sections 417, 418 read with Section 120 B IPC on allegations of giving bribe to a person who had made some complaint against the applicant. The applicant was released on bail by the order of learned Special Judge dated 01.11.2013. The applicant reported for duty on 04.11.2013 but respondent - hospital did not allow him to join. By order dated 20.11.2013 the respondent no.3 placed the applicant under deemed suspension with effect from the date of rest, i.e., 20.09.2013. It is undisputed that the suspension period of the applicant has been extended by the respondents from time to time as required under Rule 10 (6) of CCS (CCA) Rules, 1965. The subsistence allowance has also been enhanced first to 60% and thereafter to 75% of the deemed salary. The present OA has been filed by the applicant with a prayer to quash the deemed suspension order dated 20.11.2013 and subsequent orders of extension of suspension.

2. Learned counsel for the applicant argued that in the very first instance the suspension of the applicant was not necessary

as he was cooperating at each and every stage of investigation and if the investigating agency has failed to file charge sheet even till today it only shows that there was no concrete evidence against the applicant. The Government instructions regarding suspension also envisage that suspension should be resorted to only if the continuation of the Government servant in office will prejudice the investigation, trial or any inquiry or it will seriously subvert discipline in the office or where the proceedings are likely to end in his conviction and/or dismissal, removal or compulsory retirement from service. In the present case none of these conditions is fulfilled. The suspension of the applicant has been continued since 2013 without any valid reason and thereby causing undue hardship to the applicant besides social stigma and mental trauma. Referring to the law laid down by Hon'ble Supreme Court in **Ajay Kumar Choudhary vs. Union of India through its Secretary & anr.**, CA No.1912/2015 dated 16.02.2015 the learned counsel submitted that the Hon'ble Supreme Court has laid down the limit of 90 days within which if the charge sheet is not filed, the suspension of a Government servant cannot be extended further. The respondents have not paid any heed to the repeated representations of the applicant bringing to their notice the Government of India instructions contained in OM No.11012/4/2003-Estt.(A) dated 07.01.2004 which provide that "if within one year charge sheet had not been

filed in the court of law or no charge memo was issued in a departmental enquiry, an officer under suspension shall ordinarily be reinstated in service without prejudice to the case against him". The aforesaid ruling of the Hon'ble Supreme Court was also brought to their notice. However, the respondents had refused to obey the law as laid down by the Hon'ble Supreme Court.

3. Learned counsel for the respondents submitted that the respondents have not violated any law or rule in suspending the applicant and extending it from time to time. She referred to the law as laid down by Hon'ble Supreme Court in **Union of India vs. Rajiv Kumar Bani Singh** and **Allahabad Bank & Anr. Vs. Deepak Kumar Bhola**. In these judgments the Hon'ble Supreme Court took a view that if authority felt that suspension needed to be continued, merely because it is for a long period, that would not invalidate the suspension. According to learned counsel the applicant was involved in an offence of moral turpitude which is still under investigation by Anti Corruption Branch, Govt. of NCT of Delhi. It is for this reason that he was not allowed to resume duty after release on bail in November 2013. As required under the rules, the respondents have not only reviewed the suspension as and when due, but also enhanced the subsistence allowance of the applicant at 75% of the salary. The OA, therefore, deserves to be dismissed.

4. We have considered the submissions made by the learned counsel of both the sides and perused the record. The main plank of the argument of the counsel for applicant is the law as laid down by the Hon'ble Supreme Court in *Ajay Kumar Choudhary* (supra). The relevant portion of that order reads as follows:

“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.

15 So far as the facts of the present case are concerned, the Appellant has now been served with a Chargesheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review.”

5. In somewhat similar circumstances Hon'ble Madras High Court in **S.Ravi Kumar vs. Commissioner of Commerical Taxes**, WP No.7033/2016 took the following view in its order dated 25.02.2016:

“7. In this regard, it is relevant to extract below paragraph Nos.13 and 14 of the above referred judgement of the Hon'ble Supreme Court in the case of **AJAY KUMAR CHOUDHARY VS. UNION OF INDIA**.

"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 in 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/Charge sheet 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/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".

8. In the present case, it is an admitted fact that till date, the memorandum of charges has not been served on the petitioner. Therefore, the case of the petitioner squarely falls within the above dictum as stated supra. Besides that, it is pertinent to note that the State Government have also issued a circular vide letter No.13519/N/2015-1 dated 23.7.2015 requesting the Departments of Secretariat and Heads of Department to follow the directions issued by the Hon`ble Supreme Court of India on the limitations in the period of suspension.

9. Therefore, this Court directs the respondents to reconsider the case of the petitioner for revocation and pass orders on merits and in the light of the Government letter No.13519/N/2015-1 dated 23.7.2015, within a period of four weeks from the date of receipt of a copy of this order."

6. A Coordinate Bench of this Tribunal dealt with a similar matter in OA No.1395/2013 by order dated 12.08.2015 in **B.B.Somayajulu vs. Govt. of NCT of Delhi**. After noting para 14 and 15 of Ajay Kumar Choudhary (supra), the Bench observed as follows:

"4. In the wake of the aforementioned judgment, the Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training) issued OM dated 03.07.2015. In the said OM, drawing attention to the OM No.35014/1/81-Estt.A dated 9.11.1982, Government of India provided that every efforts should be made to finalize the charge against the Government servant within three months of the date of suspension so that he get aware of the reasons of his suspension without much loss of time and may be in a position to effectively exercise his right to appeal available under Rule 23(i) of CCS (CCA) Rules, 1965 if so desires and the time limit of 45 days for submission of appeal should be counted from the date on which the reasons for suspension are communicated. The OM read thus:-

"Sub: Central Civil Services (Classification, Control and Appeal) Rules, 1965- instructions regarding timely issue of Charge-sheet-regarding.

The undersigned is directed to refer to DoP&T O.M. of even no. dated 2nd January, 2014 regarding consolidated instructions on suspension and to say that in a recent case, Ajay Kumar Choudhary vs. Union of India Civil Appeal No. 1912 of 2015 dated 16/02/2015 the Apex Court has directed as follows:

We, therefore, direct that the currency of 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.

2. It is noted that in many cases charge sheet are not issued despite clear prima facie evidence of misconduct on the ground that the matter is under investigation by an investigation agency like Central Bureau of Investigation etc. In the aforesaid judgment the Hon'ble Supreme Court has superseded the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance.

3. In this connection, attention is invited to this Department O.M. No.35014/1/81-Estt.A dated 9.11.1982 which contained the guidelines for timely issue of charge sheet to Charged Officer and to say that these instructions lay down, inter-alia, that where a Government servant is placed under suspension on the ground of 'Contemplated' disciplinary proceedings, the existing instructions provide that every effort would be made to finalise the charges, against the government servant within three months of the date of suspension. If these instructions are strictly adhered to, a Government servant who is placed under suspension on the ground of contemplated disciplinary proceedings will become aware of the reasons for his suspension without much loss of time. The reasons for suspension should be communicated to the Government servant concerned at the earliest, so that he may be in a position to effectively exercise the right of appeal available to him under Rule 23 (i) of the CCS (CCA) Rules, 1965, if he so desires. The time-limit of forty five days for submission of appeal should be counted from the date on which the reasons for suspension are communicated.

4. All Ministries/Departments are requested to bring the above guidelines to the notice of all concerned officials for compliance."

The law declared by Hon'ble Supreme Court in *Ajay Kumar Choudhary Vs. Union of India* through its Secretary & Anr. (ibid) is not that the absence of charge sheet should be a ground to quash such order of suspension, which are more than three years old. The law declared is that in the absence of issuance of charge sheet in three months, the order of suspension should not be extended beyond such period and the Government should exercise option to transfer the concerned person to any department in any offices or outside the State or to prohibit him from contacting any person or handling records and documents till he prepare his defence. In any case, having due regard to the aforementioned judgment of Hon'ble Supreme Court, the Government of India has already issued Office Memo dated 3.07.2015. We find that the applicant had made representations dated 24.12.2014 and 02.03.2015 to respondents requesting for revoking the order of his suspension. In the wake of the said OM, as well as having due regard to the provisions of Section 20 of Administrative Tribunals Act, 1985, we dispose of the OA with direction to respondents to decide the said representations of the applicant with due regard to the OM dated 03.07.2015 and the judgment of Hon'ble Supreme Court in the case of



A.K.Choudhary Vs. Union of India through its Secretary and Ors within eight weeks from the date of receipt of a copy of this order. No costs.”

7. Learned counsel for respondents has cited an order of a Coordinate Bench in OA No.3984/2013 dated 12.01.2016 wherein a similar request for quashing a suspension order continuing for a long time was rejected. We find that the facts of that case are quite different as prior to the detention of the applicant in that case in the judicial custody w.e.f. 14.02.2013 on the orders passed by learned Special Judge in the criminal case the competent authority had granted sanction for prosecution of the applicant and also ordered initiation of departmental proceeding. The charge sheet had been filed by the CBI and the learned Special Judge had taken cognizance of the same also. Therefore no parallel can be drawn with the present case.

8. The admitted position in this case is that the applicant was placed on deemed suspension with effect from his date of arrest, i.e., 20.09.2013 which has been continued since then in accordance with the rules. The investigation is still going on by Anti Corruption Branch and no charge sheet has been filed in a court of law. There is no departmental proceeding pending against the applicant either. In such a situation being guided by the law as laid down in Ajay Kumar Choudhary (supra), we direct that if a charge sheet is not filed against the applicant during the

currency of the present suspension period, the same shall terminate once the period is over. The applicant shall be posted to a place and post where he cannot influence or tamper with the evidence against him in the criminal case. In the event the charge sheet has been filed against the applicant during this period, a reasoned order must be passed if the suspension is to be further extended. OA is disposed of with these directions.

***(V.N. Gaur)***  
***Member (A)***

***(Justice M.S.Sullar)***  
***Member (J)***

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