

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.3984 OF 2013

New Delhi, this the 12th day of January, 2016

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND**

HON'BLE SHRI K.N.SHRIVASTAVA, ADMINISTRATIVE MEMBER

í í .

Dr.Bela Shah,

D/o Dr.S.M.Shah,

Aged 59 years,

R/o C-4/186, Sector 36, Noida 201303, U.P. í .. Applicant

(By Advocate: Shri S.D.Singh)

Vs.

1. Indian Council of Medical Research,
Through its Authorized Signatory
V.Ramalingaswamy Bhawan,
Ansari Nagar,
Post Box 4911,
New Delhi 110029

2. Dr.V.M.Katoch,
Director General,
Indian Council of Medical Research,
V.Ramalingaswamy Bhawan,
Ansari Nagar,
Post Box 4911
New Delhi 110029

í í í . Respondents

(By Advocate: Shri R.N.Singh)

í í í

ORDER

RAJ VIR SHARMA, MEMBER(J):

The applicant has filed the present O.A. seeking the following reliefs:

õ(a) quash and set aside the suspension orders dated 19.2.2013, 25.6.2013 and 30.8/5.9.2013 passed by the

Respondents against the Applicant and Applicant has been kept under suspension;

- (b) any other or further order(s) as this Honøble Tribunal may deem fit and proper in the interest of justice;ö

2. Brief facts: While the applicant was working as Scientist -Gø & Head of NCD Division, Indian Council of Medical Research (ICMR), a charge-sheet, dated 31.10.2012, was filed by the Central Bureau of Investigation, New Delhi, in Criminal Case No. RC 0622010E0010/CBI/EOU-IV/New Delhi (corresponding to Special Case No.18 of 2012) initiated against the applicant and others, before the Special Judge, Anti Corruption (CBI), Ghaziabad (hereinafter referred to as -Special Judgeø), alleging commission of offences punishable under Section 120B of the Indian Penal Code (hereinafter referred to as -I.P.C.ø) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as -P.C.Act, 1988ø), and under Section 13(2) of the P.C.Act, 1988. The said charge sheet was accompanied by the order issued by the competent authority of ICMR under Section 19 of the P.C.Act, 1988, granting sanction for prosecution of the applicant and another. On receipt of intimation from the CBI, New Delhi, that the applicant was detained in judicial custody with effect from 14.2.2013, ICMR issued order, dated 19.2.2013, under Rule 10(2) of the Central Civil Services (CCA) Rules, 1965 (hereinafter referred to as -CCS (CCA) Rules, 1965ø), whereby the applicant was deemed to have been placed under suspension with effect from 14.2.2013 until further orders. The Honøble Allahabad High Court, vide order dated 9.5.2013 passed in Criminal Misc. Bail Application No.5928 of 2013, granted bail to

her, and, accordingly, she was released from judicial custody on 16.5.2013. On the basis of the recommendation of the Suspension Review Committee, the competent authority of ICMR decided to extend the period of suspension of the applicant, and, accordingly, order dated 25.6.2013 was issued by ICMR extending her suspension period. Being aggrieved thereby, the applicant made a representation dated 3.7.2013 requesting respondent no.2 to revoke her suspension, and to reinstate her in service. When the said representation dated 3.7.2013 was pending, the order dated 30.8.2013/5.9.2013 was issued extending her suspension period, on the basis of the recommendation of the Suspension Review Committee. As already noted, the applicant has impugned the said orders dated 19.2.2013, 25.6.2013 and 5.9.2013, in the present O.A. It is mainly contended by the applicant that when she was released on bail on 16.5.2013, the respondents, instead of issuing orders extending her suspension period in a mechanical manner and without applying their mind to the facts and circumstances of the case, ought to have revoked the order of suspension issued under Rule 10(2) of the CCS (CCA) Rules, 1965, and reinstated her in service.

3. In their counter reply, the respondents have stated, *inter alia*, that after taking into account the gravity of the offences alleged to have been committed by the applicant and other officers of ICMR, the sanction accorded by the Governing Body of ICMR for their prosecution, and also the contemplated departmental action against the applicant, the Suspension Review Committee recommended extension of the period of suspension of

the applicant until further orders, and accordingly, orders were issued extending the suspension period of the applicant. Therefore, according to the respondents, there is no infirmity in the orders impugned in the present O.A.

4. In her rejoinder reply, the applicant has reiterated more or less the same averments and contentions as in her O.A.

5. The respondents have also filed an affidavit along with some extracts from the Vigilance Manual containing the guidelines relating to initiation of departmental enquiry against an officer of the rank of the applicant, and copies of some correspondences between ICMR and the Central Vigilance Commission regarding issuance of charge sheet in the departmental proceeding initiated against the applicant and Shri A.K.Shrivastava, Executive Engineer, ICMR.

6. We have carefully perused the records, and have heard Shri S.D.Singh, the learned counsel appearing for the applicant, and Shri R.N.Singh, the learned counsel appearing for the respondents.

7. During the course of hearing, Shri S.D.Singh, the learned counsel appearing for the applicant, invited our attention to the judgment dated 19.11.2015 passed by the Honøble Supreme Court in Criminal Appeal Nos.798, 799, 800, 801, 930 and 1537 of 2015 (**Prof. N.K.Ganguly, etc. vs. CBI, New Delhi**) and submitted that the criminal case initiated by the CBI, New Delhi, which gave rise to Special Case No.18 of 2012 on the file of the Special Judge, against the applicant and others, has already been quashed by the Honøble Supreme Court, and, thus, the applicant and others have been

acquitted in the said criminal case. Therefore, there is no justification for continuing the suspension of the applicant. It was also submitted by Shri S.D.Singh that in spite of the said judgment of the Honøble Supreme Court, the suspension of the applicant was reviewed by the Suspension Review Committee on 9.12.2015, and the period of her suspension was extended up to 11.1.2016, and that is how, the applicant is still continuing under suspension. Relying on the judgment dated 16.2.2015 passed by the Honøble Supreme Court in **Ajay Kumar Choudhary v. Union of India through its Secretary & another**, Civil Appeal No.1912 of 2015, Shri S.D.Singh also submitted that as no charge sheet has yet been served on the applicant in the departmental proceeding contemplated against her, the suspension of the applicant is liable to be revoked, and the applicant is entitled to be reinstated in service.

8. *Per contra*, Shri R.N.Singh, the learned counsel appearing for the respondents, submitted that as the applicant was involved in the criminal case initiated by the CBI, and the disciplinary proceeding against her was contemplated by the respondents, the applicant was placed under suspension, and the period of her suspension was extended from time to time on the basis of the recommendations of the Suspension Review Committee. Referring to the judgment in **Prof. N.K.Ganguly's case** (supra), Shri R.N.Singh submitted that the Honøble Supreme Court only quashed the proceedings taking cognizance and issuing summons to the applicant and others in Special Case No.18 of 2012 by the Special Judge in absence of

previous sanction obtained from the Central Government to prosecute them as required under Section 197 of the Code of Criminal Procedure. It was, thus, contended by Shri R.N.Singh that on the basis of the said judgment, the applicant cannot claim revocation of her suspension and reinstatement in service. It was also submitted by Shri R.N.Singh that the criminal proceedings initiated against the applicant and/or the charge sheet filed by the CBI against the applicant and others in the criminal case, for alleged commission of offences punishable under Section 120B IPC read with Section 13(1)(d) of the P.C.Act, 1988, and under Section 13(2) of the P.C.Act, 1988, cannot be said to have been completely wiped out, and that the prosecuting agency, i.e., CBI is free to obtain the necessary sanction from the Central Government, or other competent authority, as the case may be, under Section 197 of the Code of Criminal Procedure, and to approach the Special Judge to consider the matter and take cognizance of offence punishable under Section 120B of the I.P.C. read with Section 13(1)(d) of the P.C.Act, 1988. It was also submitted by Shri R.N.Singh that so far as offence punishable under Section 13(2) of P.C.Act, 1988, is concerned, the sanction under Section 19 of the P.C.Act, 1988, had already been obtained and placed before the learned Special Judge while taking cognizance of the said offence. It was further submitted by Shri R.N.Singh that besides the criminal case, the disciplinary proceedings against the applicant have already been contemplated, and the charge sheet in the disciplinary proceedings is to be issued soon. It was, thus, submitted by Shri R.N.Singh

that there is no infirmity in the orders impugned in the O.A. and the applicant is not entitled to be reinstated in service.

8.1 During the course of hearing, Shri R.N.Singh filed a copy of the letter, dated 9.12.2015, addressed to him by Shri T.S.Jawahar, Senior Deputy Director General (Administration) & CVO, ICMR, New Delhi, which reads thus:

INDIAN COUNCIL OF MEDICAL RESEARCH
ANSARI NAGAR, NEW DELHI
Position Note on the status of suspension of DR. BELA SHAH,
SCIENTIST-G AND SHRI A.K.SRIVASTAVA, EXECUTIVE
ENGINEER, ICMR.

The Suspension Review Committee for considering the above case met today under the chairmanship of Secretary, DHR and DG, ICMR.

In view of the fact that the Honøble Supreme Court of India vide Cr.Appeal No.798 of 2015 in Prof. N.K.Ganguly Vs. CBI, New Delhi has quashed the proceedings taking cognizance and issuing summons to the appellants in the court of the Special Judge, Anti Corruption (CBI), Ghaziabad, in absence of previous sanction obtained from the Central Government to prosecute the appellants as required under Section 197 of CrPC, opinion of Additional Solicitor General was sought in this case and it is expected shortly.

Pending receipt of such opinion of ASG, the Suspension Review Committee decided to extend the suspension up to 11.01.2016.ö

9. Before proceeding to consider the rival contentions of the parties, it would be apposite to briefly state the following relevant facts giving rise to the present O.A.:

9.1 ICMR, a registered society under the Societies Registration Act, 1860, is a premier research institute dealing with the formulation, coordination, and promotion of bio-medical research. Its functional object is

to initiate, aid, develop, and coordinate medical and scientific research in India, and to promote and assist institutions for the study of diseases, their prevention, causation, and remedy. It is fully funded by the Government of India, through Department of Health Research, Ministry of Health and Family Welfare. The Institute of Cytology & Preventive Oncology (hereinafter referred to as ðICPOö) is one of the institutes of ICMR, the main aim of which is to promote research in the field of cancer.

9.2 On 30.11.2010, a criminal case was registered under Section 120-B I.P.C., read with Section 13(1)(d) P.C.Act, and under Section 13(2) of the P.C.Act on the basis of a written complaint filed by Shri M.R. Atrey, Sub-Inspector of Police, CBI, EOU, VII, New Delhi, against Shri N.K. Ganguly, the then Director General; Shri Mohinder Singh, the then Sr.Dy. Director General-Admin; Shri P.D. Seth, the then Financial Advisor; Shri A.K. Srivastava, Executive Engineer, all from ICMR, New Delhi; and Shri B.C. Das, the then Director, ICPO, and other unknown persons, in the matter relating to the alleged unauthorized and illegal transfer of plot no.119, Sector 35, NOIDA, measuring 9712.62 sq.meters from ICPO, NOIDA to ICPO-ICMR Cooperative Group Housing Society Ltd., NOIDA (hereinafter referred to as the ðICPO-ICMR Housing Societyö).

9.3 In the preliminary inquiry into the matter, it was found that the aforesaid officials and other unknown persons had entered into a criminal conspiracy by abusing their official position as public servants and had unauthorisedly and illegally transferred the aforesaid plot from ICPO to

ICPO-ICMR Housing Society at a consideration of Rs.4,33,90,337/- which was much lower than the then prevailing sector rate of Rs.18,000/- per sq.mtrs. of NOIDA, thereby, giving themselves and other members of the ICPO-ICMR Housing Society an undue pecuniary advantage. It was also revealed in the enquiry that the membership of the ICPO-ICMR Housing Society was granted to such persons who were otherwise not eligible for getting membership as per the bye-laws of the society, and the terms and conditions stipulated and approved by ICMR for membership in the said society. It was further revealed that the officers of NOIDA allowed the transfer of the said plot unauthorisedly and illegally from ICPO to ICPO-ICMR Housing Society, despite the fact that they were not competent to pass such order of transfer.

9.4 During the course of investigation by CBI, apart from the aforesaid named accused persons in the FIR, the fact of involvement of other officials, namely, Shri L.D. Pushp, the then Administrative Officer, ICPO; Shri Jatinder Singh, the then Senior Accounts Officer, ICMR; Dr. S.K. Bhattacharya, the then Additional Director General, ICMR; Dr. Bela Shah, Head of NCD Division, ICMR (the applicant in the present case); Smt. Bhawani Thiagarajan, the then Joint Secretary, Ministry of Health and Family Welfare, Government of India; Shri S.C. Pabreja, the then Manager (Residential Plots), NOIDA; and Shri R.S. Yadav, OSD (Residential Plots), NOIDA, was revealed.

9.5 After completion of investigation, the C.B.I. moved ICMR to grant sanction for prosecution of the applicant and Shri A.K.Shrivastava, Executive Engineer, ICMR. After the sanction was accorded by the competent authority of ICMR under Section 19 of the P.C.Act, 1988, for prosecution of the applicant and the said Shri A.K.Shrivastava, a charge-sheet was filed against the applicant and others, before the learned Special Judge, under Section 173(2) of CrPC for the offences punishable under Section 120-B of IPC read with Section 13(1)(d), and under Section 13(2) of the P.C. Act, 1988. The requisite sanction for prosecution against Shri R.S. Yadav was declined by the competent authority. After considering the charge-sheet and other materials available on record, the learned Special Judge came to the conclusion that a *prima facie* case appeared to have been made out by the CBI against the applicant and others. Accordingly, the learned Special Judge, vide his order dated 08.11.2012, took cognizance and issued summons against the applicant and others to face the trial for the said offences.

9.6 Aggrieved by the order of taking cognizance and issuance of summons, the applicant and others filed applications before the Honøble High Court of Allahabad under Section 482 of CrPC, urging various grounds, and prayed that the entire proceedings on the file of the learned Special Judge in Special Case No. 18 of 2012 be quashed. Finding no merit in the applications filed by the applicant and others, the Honøble High Court,

vide its judgment dated 27.05.2013, refused to interfere with the order of the learned Special Judge dated 08.11.2012 and dismissed the same.

9.7 By way of special leave, the applicant in the present case filed Criminal Appeal No.800 of 2015, and others filed Criminal Appeal Nos. 798, 799, 801,930 and 1537 of 2015 before the Honøble Supreme Court, challenging the judgment dated 27.5.2013 passed by the Honøble Allahabad High Court.

9.8 The Honøble Supreme Court, by a common judgment dated 19.11.2015, allowed the aforesaid Criminal Appeals (**Prof. N.K.Ganguly, etc. v. CBI New Delhi**).

9.9 On the factual matrix, and in the light of the rival contentions urged by the learned counsel for the parties, the Honøble Supreme Court, in paragraph 11 of the judgment, framed the following issues for consideration:

- ö1) Whether an offence under Section 120B IPC is made out against the appellants, and if so, whether previous sanction of the Central Government is required to prosecute them for the same?
- 2) Whether the order dated 08.11.2012 passed by the learned Special Judge taking cognizance of the offence against the appellants is legal and valid?
- 3) What order?ö

9.10 On issue nos. 1 & 2, the Honøble Supreme Court, in paragraph 25 of the judgment, returned the following findings:

öFrom a perusal of the case law referred to supra, it becomes clear that for the purpose of obtaining previous sanction from the appropriate government under Section 197 of CrPC, it is imperative that the alleged offence is committed in discharge of official duty by the accused. It is also important for the Court to examine the allegations contained in the final report against the Appellants, to decide whether previous

sanction is required to be obtained by the respondent from the appropriate government before taking cognizance of the alleged offence by the learned Special Judge against the accused. In the instant case, since the allegations made against the Appellants in the final report filed by the respondent that the alleged offences were committed by them in discharge of their official duty, therefore, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 of CrPC was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the appellants for their presence.ö

9.11 Accordingly, the Honøble Supreme Court concluded and ordered as follows:

öFor the aforesaid reasons, we set aside the impugned judgment and order of the High Court dated 27.05.2013 passed in Application Nos. 480 of 2013, 41206, 40718, 41006 and 41187 of 2012 and order dated 7.10.2014 passed in Application No. 277KH of 2014 in Special Case No. 18 of 2012 and quash the proceedings taking cognizance and issuing summons to the appellants in Special Case No. 18 of 2012 by the Special Judge, Anti Corruption (CBI), Ghaziabad, U.P. in absence of previous sanction obtained from the Central Government to prosecute the appellants as required under Section 197 of CrPC. The appeals are allowed. All the applications are disposed of.ö

(Emphasis laid)

10. A plain reading of the judgment in **Prof. N.K.Ganguly's case** (supra) makes it clear that the Honøble Supreme Court only considered the issue as to whether an offence under Section 120B of the I.P.C. was made out against the applicant and others, and if so, whether previous sanction of the Central Government under Section 197 Cr.P.C. was required to prosecute them for the same. After considering the materials available on record, and the rival contentions of the parties, it was observed by the Honøble Supreme Court that since the allegations made against the applicant

and others in the final report filed by the C.B.I. were that the offences were committed by them in discharge of their official duty, it was essential for the learned Special Judge to correctly decide as to whether the previous sanction from the Central Government under Section 197 of Cr.P.C was required to be taken by the respondent, before taking cognizance and passing an order issuing summons to the applicant and others for their presence in respect of the offence punishable under Section 120B of the I.P.C.. It is also clear that the charge sheet filed by the CBI against the applicant and others, and the entire criminal case were not quashed by the Honøble Supreme Court. The Honøble Supreme Court only quashed the proceedings taking cognizance and issuing summons to the appellants in Special Case No.18 of 2012 by the Special Judge, Anti Corruption (CBI), Ghaziabad, U.P. in absence of previous sanction obtained from the Central Government to prosecute the appellants as required under Section 197 of CrPCø

11. It has not been disputed before us that the learned Special Judge took cognizance of offences punishable under Section 120B IPC, read with Section 13(1) (d) of P.C.Act, 1988, and under Section 13(2) of P.C.Act, 1988, and that sanction for prosecution of the applicant and Shri A.K.Srivastava, Executive Engineer, ICMR, issued under Section 19 of the P.C.Act, 1988, was already available on record, and that sanction under Section 19 of the P.C.Act, 1988, was not required for prosecution of others who had already retired from service. Therefore, we find no substance in the contention of Shri S.D.Singh, learned counsel appearing for the applicant

that the entire criminal case initiated by the CBI, New Delhi, which gave rise to Special Case No.18 of 2012 on the file of the Special Judge against the applicant and others has been quashed and the applicant and others have been acquitted of the charges levelled against them, and, thus, there is no justification for continuing the suspension of the applicant.

12. The next contention of Shri S.D.Singh, the learned counsel appearing for the applicant, is that as no charge sheet has yet been served on the applicant in the departmental proceeding contemplated against her, the suspension of the applicant is liable to be revoked and the applicant is entitled to be reinstated in service.

12.1 For appreciating the above contention of Shri S.D.Singh, it would be apposite to refer to Rule 10 of the CCS (CCA) Rules, 1965, which reads thus:

õ10. 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 ó

- (a) where a disciplinary proceeding against him is contemplated or is pending; or
- (b) where, in the opinion of the authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the State; or
- (c) where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that, except in case of an order of suspension made by the Comptroller and Auditor-General in regard to a member of the Indian Audit and Accounts Service and in regard to an Assistant Accountant-General or equivalent (other than a

regular member of the Indian Audit and Accounts Service), where the order of suspension is made by an authority lower than the Appointing Authority, such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2) A Government servant shall be deemed to have been placed under suspension by an order of Appointing Authority if

- (a) with effect from the date of his detention, if he is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours;
- (b) with effect from the date of his conviction, if, in the event of a conviction for an offence, he is sentenced to a term of imprisonment exceeding forty-eight hours and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

EXPLANATION - The period of forty-eight hours referred to in clause (b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent periods of imprisonment, if any, shall be taken into account.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rules and the case is remitted for further inquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal, removal or compulsory retirement and shall remain in force until further orders.

(4) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant is set aside or declared or rendered void in consequence of or by a decision of a Court of Law and the disciplinary authority, on a consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed, the Government servant shall be

deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders :

Provided that no such further inquiry shall be ordered unless it is intended to meet a situation where the Court has passed an order purely on technical grounds without going into the merits of the case.

(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 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-rules (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 detention 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.ö

(Emphasis laid)

12.2 A conspectus of the above provisions indicates that under Rule 10(1), *ibid*, the competent authority may place a Government servant under suspension, where a disciplinary proceeding against him is contemplated or is pending; or where a case against him in respect of any criminal offence is under investigation, inquiry or trial. By an order issued by the appointing authority under Rule 10(2), *ibid*, a Government servant shall be deemed to have been placed under suspension with effect from the date of his detention, if he is detained in custody on a criminal charge for a period exceeding forty-eight years. Under Rule 10(5)(b), *ibid*, the competent authority may direct that the Government servant shall continue to be under suspension until the termination of all or any of such proceedings, 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. Under Rule 10(6), *ibid*, an order of suspension made or deemed to have been made under Rule 10, *ibid*, shall be reviewed by the authority 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 and pass orders either extending or revoking the suspension. Under Rule 10(7), *ibid*, an order of suspension made or deemed to have been made under sub-rule (1) or sub-rule (2) 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.

12.3 From the extract of the decision of the 85th GB meeting of ICMR held on 10.10.2012 (copy of which has been filed by the applicant as Annexure A/6 to the O.A.), and the letters dated 18.11.2013, 2.1.2014, 5.2.2014, 13/19.2.2014, 10.3.2014, 20/21.3.2014, 21.4.2014, 30.4.2014 and 12.8.2014 addressed by the Sr.D.D.G.(Admn.) and Chief Vigilance Officer, ICMR, to the Director, Central Vigilance Commission, and the letter dated 5.5.2014 addressed by the Director, Central Vigilance Commission, to the C.V.O., ICMR (copies of which have been filed by the respondents), it transpires that the Disciplinary Authority has decided to initiate departmental proceedings against the applicant and Shri A.K.Srivastava, Executive Engineer, ICMR and to serve on them charge sheets under Rule 14 of the CCS (CCA) Rules, 1965, and that the draft charge sheets along with the requisite documents have already been sent to the Central Vigilance Commission for vetting and advice. It also transpires from the aforesaid letters that the Central Vigilance Commission is yet to render the necessary advice in the matter and to send back the duly vetted charge sheets to the ICMR for proceeding in the departmental enquiry after serving the charge sheets on the applicant and Shri A.K.Srivastava. Thus, it is clear that the

disciplinary proceeding against the applicant has been contemplated, and the disciplinary authority has submitted the draft charge sheets to the Central Vigilance Commission for vetting and advice.

12.4. It has been found by us that prior to the detention of the applicant in the judicial custody with effect from 14.2.2013 on the orders passed by the learned Special Judge in the criminal case, the competent authority of ICMR had granted sanction for prosecution of the applicant and also ordered initiation of the departmental proceedings against her and others, the charge sheet had been filed by the CBI, and the learned Special Judge had taken cognizance of offences punishable under Section 120B IPC read with Section 13(1)(d) of the P.C.Act,1988 and under Section 13(2) of the P.C.Act,1988, and that the order dated 19.2.2013,*ibid*, was issued by ICMR under Rule 10(2) of the CCS (CCA)Rules, 1965, whereby the applicant was deemed to have been placed under suspension. The order of suspension dated 19.2.2013, *ibid*, was reviewed, and the period of suspension of the applicant was extended on the recommendation of the Suspension Review Committee under sub-rule (5)(b) and sub-rule (6) of Rule 10 of the CCS (CCA)Rules, 1965, vide orders dated 25.6.2013 and 5.9.2013, *ibid*. It is also the admitted position between the parties that the suspension of the applicant was last reviewed on 9.12.2015, and the period of suspension of the applicant has been extended up to 11.1.2016.

12.5 Even if it is assumed that at present no criminal case is pending against the applicant, the order of suspension and the subsequent

orders issued in accordance with sub-rule (5)(b) and sub-rule (6) of Rule 10 of the CCS (CCA) Rules, 1965, extending the period of suspension of the applicant until the termination of the disciplinary proceedings contemplated against her, cannot be said to have been fraught with any illegality.

12.6 Proviso to Sub-rule (7) of Rule 10 of the CCS (CCA) Rules, 1965, stipulates that no review of suspension shall be necessary in the case of deemed suspension under Sub-rule (2), if the Government servant continues to be under detention at the time of completion of ninety days of suspension and in such case the period of ninety days 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. In the instant case, the applicant was released from detention on 16.5.2013, and her suspension was reviewed by the Suspension Review Committee, and, on the basis of the recommendation of the said Committee, the order extending her suspension period was issued on 25.6.2013, i.e., within ninety days from the date of her release from detention. Thereafter, her suspension was reviewed by the Suspension Review Committee, and, on the basis of the recommendation of the said Committee, her suspension period was extended, vide order dated 5.9.2013, i.e., within ninety days before the extended period of suspension. Therefore, the orders dated 19.2.2013, 25.6.2013 and 5.9.2013, which are impugned in the present O.A., do not suffer from any illegality.

12.7 As already noted, it has not been disputed before us that all subsequent orders extending the period of suspension of the applicant have been issued by the ICMR on the basis of the recommendations of the Suspension Review Committee.

12.8 After having given our anxious consideration to the facts and circumstances of the case, and the rival contentions of the parties, in the light of the provisions of Rule 10 of the CCS (CCA) Rules, 1965, we are not inclined to accept the contention of Shri S.D.Singh, the learned counsel appearing for the applicant, that the suspension of the applicant is liable to be revoked and the applicant is entitled to be reinstated in service on the ground of non-service of charge-sheet in the disciplinary proceedings contemplated/initiated against her.

13. In **Ajay Kumar Choudhary's case** (supra), the appellant's suspension with effect from 30.9.2011 was in contemplation of a departmental enquiry on the allegation that while working as Defence Estate Officer, Kashmir Circle, during 2008-2009, a large portion of the land owned by the Union of India and held by the Director General of Defence Estates had not been mutated/noted in the revenue records as Defence land. He had issued NOCs in respect of approximately four acres of the said Defence land, stating that the same was not Defence land, but was private land. On 28.12.2011 his suspension was extended for the first time for a period of 180 days. He filed an O.A. before Chandigarh Bench of the Tribunal. During the pendency of the proceedings before the Tribunal, his

suspension was extended for the second time for 180 days. Thereafter, his suspension was extended for the third time for 90 days, which came to be followed by the fourth extension for yet another period of 90 days w.e.f. 22.3.2013. The Tribunal, disposing of the O.A., vide its order dated 22.5.2013, directed that if no charge memo was issued to the appellant before the expiry of the fourth extended period of suspension, i.e., on 21.6.2013, the appellant would be reinstated in service. The Union of India filed writ petition, challenging the Tribunal's order dated 22.5.2013. The Hon'ble High Court of Punjab & Haryana, vide its judgment dated 4.9.2013, allowed the said writ petition, and directed the Union of India to pass appropriate orders as to whether it wished to continue with the suspension or not having regard to all the relevant factors, including the report of the CBI, if any, it might have received by then. The said judgment of the Hon'ble High Court of Punjab & Haryana High Court was challenged by the appellant before the Hon'ble Supreme Court. The learned Additional Solicitor General submitted that the original suspension was in contemplation of a departmental inquiry which could not be commenced because of a directive of the Central Vigilance Commission prohibiting its commencement if the matter was under investigation of the CBI. It was also submitted that the sanction for prosecution was granted on 1.8.2014, and that the charge sheet was expected to be served on the appellant before 12.9.2014, i.e., before the expiry of the fourth extension of the period of suspension of the appellant. Referring to the proviso to Section 167(2) of

Cr.P.C. 1973, their Lordships observed that a fortiori suspension should not be continued after the expiry of the similar period when a Memorandum of Charges/Chargesheet is not served on the suspended person, and directed 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/Charge-sheet is served a reasoned order must be passed for the extension of the suspension. It was also observed by the Hon'ble Supreme Court in paragraph 14 of the judgment that 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. Nevertheless, while disposing of the appeal, the Hon'ble Supreme Court concluded as follows:

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.

13.1 In the instant case, as already noted, prior to the detention of the applicant in the judicial custody with effect from 14.2.2013 on the orders passed by the learned Special Judge in the criminal case, the competent authority of ICMR had granted sanction for prosecution of the applicant and also ordered initiation of the departmental proceedings against her and others, the charge sheet had been filed by the CBI, and the learned Special

Judge had taken cognizance of offences punishable under Section 120B IPC read with Section 13(1)(d) of the P.C.Act and under Section 13(2) of the P.C.Act, 1988, and that the order dated 19.2.2013 was issued by ICMR under Rule 10(2) of the CCS (CCA)Rules, 1965, whereby the applicant was deemed to have been placed under suspension. The order of suspension dated 19.2.2013, *ibid*, was reviewed, and the period of suspension of the applicant was extended on the recommendation of the Suspension Review Committee under sub-rule (5)(b) and sub-rule (6) of Rule 10 of the CCS (CCA)Rules, 1965, vide orders dated 25.6.2013 and 5.9.2013, *ibid*. The suspension of the applicant was last reviewed on 9.12.2015, and the period of suspension of the applicant has been extended up to 11.1.2016.

13.2 Thus, it is found that the factual matrix obtaining in **Ajay Kumar Chaudhary's case** (supra) is different from that of the present case. Therefore, the reliance placed by Shri S.D.Singh, the learned counsel appearing for the applicant, on **Ajay Kumar Chaudhary's case** (supra), in support of the claim of the applicant for revocation of suspension and reinstatement in service due to non-service of charge-sheet in the disciplinary proceedings contemplated against her, is of no avail.

13.3 However, as the directive issued by the Central Vigilance Commission that pending a criminal investigation the departmental proceedings are to be held in abeyance stood superseded by the decision of the Honøble Supreme Court in **Ajay Kumar Chaudhary's case** (supra), we direct the respondents to bring this order to the notice of the Central

Vigilance Commission and take appropriate decision in the case of the applicant at the earliest opportunity.

14. With the above observations and direction, the O.A. is dismissed as being devoid of merit. Consequently, MA No.1586/15 filed by the applicant for interim relief is dismissed. No costs.

(K.N.SHRIVASTAVA)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

AN