

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-3990/2016

New Delhi this the 29th day of March, 2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)
Hon'ble Mr. Raj Vir Sharma, Member (J)

Sh. Amit Kumar Pamasi, DANICS,
SDM/Model Town Group-B
S/o Sh. Kishan Lal,
Aged about 37 years,
DANICS,
R/o B-40, Shekhar Apartments,
Mayur Vihar Phase-I,
Delhi-110091.

.... Applicant

(through Sh. K.C. Agarwal, Advocate)

Versus

1. Union of India through
Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi.
2. The Lt. Governor Delhi,
Government of Delhi,
LG Secretariat, Raj Niwas Marg,
Civil Lines Delhi.
Through Secretary (Services),
7th Level, C-Wing, Delhi Secretariat,
I.P. Estate, New Delhi-110002.

.... Respondents

(through Sh. Vijay Pandita, Advocate)

ORDER (ORAL)

Mr. Shekhar Agarwal, Member (A)

The applicant is an officer of DANICS. He was placed under suspension vide order dated 23.08.2016 on the ground that

disciplinary proceedings were contemplated against him. Since then his suspension period has been extended from time to time. His grievance is that the respondents did not serve charge sheet on him within a period of 90 days counted from his date of suspension. Consequently, his suspension cannot be continued and deserves to be revoked. He has relied on the judgment of a Co-ordinate Bench of this Tribunal in **OA-4047/2016** dated 16.12.2016 in which after placing reliance on the judgment of the Apex Court in the case of **Ajay Kumar Choudhary Vs. UOI through its Secretary and Anr., (2015) 7 SCC 291** the suspension was quashed on the same ground. Learned counsel for the applicant submitted that the applicant of OA-4047/2016 was a co-delinquent in the case in which the applicant was suspended.

2. Both the Union of India as well as GNCTD have filed their reply. It has been stated that applicant was placed under suspension on 23.08.2016 for a period of 90 days. This period was to expire on 20.11.2016. A meeting of the Suspension Review Committee was held on 10.11.2016 wherein it was noted that the matter had already been preferred to CBI for investigation and the same was in progress. The Committee recommended continuation of applicant's suspension for a period of 180 days w.e.f. 21.11.2016. This recommendation was accepted by the Disciplinary Authority (DA)

and accordingly vide order dated 18.11.2016 the suspension period of the applicant was extended.

3. Arguing for GNCTD Sh. Vijay Pandita stated that the charge against the applicant was of a very serious nature. He is alleged to have misused his official position by carrying out mutation of government land without any lawful authority and jurisdiction with mala fide intention and ulterior motive to benefit a private person. His actions have adversely affected government interest in respect of a valuable piece of land, worth crores of rupees. He was, therefore, placed under suspension. Sh. Pandita further submitted that on 04.01.2017 charge sheet has also been served on the applicant. Sh. Pandita has relied on the judgment of this very Bench of the Tribunal in OA-4385/2015 dated 13.02.2017 in the case of **Hukam Chand Vs. GNCTD & Ors.**

4. We have considered the aforesaid submissions. It is not disputed that after applicant's suspension on 23.08.2016, the charge sheet could not be served on him within a period of 90 days. In the case of **Ajay Kumar Choudhary** (supra) the Apex Court has observed as follows:-

“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 *Raghubir 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."

Placing reliance on this judgment, a Co-ordinate Bench of the Tribunal in the case of a co-delinquent in this matter had quashed the continuation of suspension of the applicant beyond 90 days. This case is squarely covered by the aforesaid judgment.

4.1 We have perused the judgment in OA-4385/2015 relied upon by the respondents. In that case, we find that the charge sheet on the applicant therein had been issued on the same day on which he was suspended. The applicant had been seeking quashing of the suspension on the ground that enquiry proceedings had been stayed by the Tribunal in another case and were, therefore, likely to be inordinately delayed. Thus, the facts of this case were entirely different and distinguishable. This case has no application to the instant case.

5. In view of the above, we allow this O.A. to the extent that the suspension of the applicant beyond 90 days is quashed and set aside. The applicant shall be reinstated forthwith. Respondents shall separately pass orders regarding the period of suspension beyond 90 days within a period of two months. They shall, however, be at liberty to proceed with the enquiry in the charge sheet served on the

applicant. This order shall also not preclude them from suspending the applicant again, if so advised. No costs.

(Raj Vir Sharma)
Member (J)

(Shekhar Agarwal)
Member (A)

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