

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.4047/2016

New Delhi this the 16th day of December, 2016

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)**

Shri Navlendra Kumar Singh,
S/o Shri Maheshwar Siingh,
R/o 34-B, Pocket-B
Post ADM,
Mayur Vihar, Phase-II,
Delhi .

... Applicant

(By Advocate: Mr.Roopansh Purohit)

VERSUS

1. Union of India
Through its Secretary)
Ministry of Home Affairs,
North Delhi, New Delhi-110001

2. Govt. of National Capital Territory of Delhi
(Through its Chief Secretary)
Delhi Secretariat, Delhi.

3. Govt. of National Capital Territory of Delhi
(Through its Secretary (Vig.))
Directorate of Vigilance,
4th Level, C-Wing, Delhi Secretariat
I.P.Estate, New Delhi. ... Respondents

(By Advocate: Shri Hanu Bhaskar and Shri G.D.Chawla for
Ms.Harvinder Oberoi)

O R D E R (ORAL)

By Hon'ble Mr.Justice Permod Kohli, Chairman:

This OA has been filed by the applicant challenging continuation of his suspension beyond 90 days. Vide order dated 23.08.2016, the applicant was placed under suspension on

account of contemplated disciplinary proceedings (Annexure A-1). His suspension was however, ratified vide order dated 05.10.2016 (Annexure A-2) by the President in terms of sub rule (1) of Rule 10 of the CCS (CCA) Rules,1965. The suspension of the applicant has been continued vide order dated 18.11.2016 on the recommendation of the review committee for a period of 180 days w.e.f. 21.11.2016 (Annexure A-3). The applicant preferred representation/appeal against his suspension on 29.09.2016 and the same was rejected vide order dated 17.10.2016 (Annexure A-4).

2. The main contention of the applicant is that his continued suspension beyond 90 days without issuing charge sheet is impermissible in law, where the suspension is on account of contemplated disciplinary proceedings.

3. While issuing notice, respondents were directed to seek instructions whether any charge sheet was issued within the period of 90 days of the initial suspension. Today when the matter was taken up, Shri Hanu Bhaskar, learned counsel appearing for the respondents stated that no charge sheet has been served within the period of 90 days, rather till date no charge sheet has been issued to the applicant. Under these circumstances, continued suspension beyond 90 days is impermissible in law. The issue is no more *res integra* and has been settled by the Apex Court in the case of **Ajay Kumar**

Choudhary vs. Union of India through its Secretary and Another (2015) 7 SCC 291 wherein it is held as under:

“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.ö

Following the above dictum, a co-ordinate bench of this Tribunal in similar circumstances in OA No.1741/2016 in the case of **Ashish Mohan Vs. Union Of India & Ors.** decided on 31.05.2016 has quashed the suspension beyond 90 days

4. In view of settled position of law, the present OA is allowed. Continuation of suspension of the applicant beyond 90 days without issuing any charge sheet in the contemplated disciplinary proceedings is held to be illegal. Respondents are, therefore, directed to reinstate the applicant forthwith. Respondents shall also decide about the period of suspension in accordance with law within a period of two months. Respondents are, however, at liberty to initiate disciplinary proceedings in accordance with law.

(Shekhar Agarwal)
Member(A)

(Justice Permod Kohli)
Chairman

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