

**Central Administrative Tribunal  
Principal Bench  
New Delhi**

**OA No.432/2018**

This the 29<sup>th</sup> day of May, 2018

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

B. B. Rajendra Prasad S/o B. Ramulu,  
R/o G-34, Central Govt. Officers' Quarters,  
Hyderabad Estate, L. D. Ruparel Marg,  
Napeansea Road, Bombay-400006  
[working as Commissioner of Income Tax  
(under suspension)].

... Applicant

( By Advocate : Mr. Surinder Kumar Gupta )

Versus

1. Union of India through  
Secretary, Department of Revenue,  
Ministry of Finance, North Block,  
New Delhi.
2. Chairman,  
Central Board of Direct Taxes,  
Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi.
3. Pr. Director General of Income Tax (Vig.),  
1<sup>st</sup> Floor, Dayal Singh Library,  
1, Deen Dayal Upadhyay Marg,  
New Delhi.

... Respondents

( By Advocate : Mr. Manjeet Singh Reen )

**O R D E R**

**Justice Dinesh Gupta, Chairman :**

The limited controversy involved in the present OA is as to whether the continuation of the suspension of the applicant beyond the initial 90 days would be in accordance with law in view of the fact

that neither a charge memorandum has been issued in the departmental proceedings, nor any charge-sheet has been filed in the criminal trial pending against him within this period.

2. The facts necessary for adjudication of the issue are that while posted as Commissioner of Income Tax (Appeal)-30, Mumbai, the applicant was placed under suspension vide order dated 17.05.2017 (Annexure A-1) under the provisions of rule 10(2)(a) and 10(1)(b) of the CCS (CCA) Rules, 1965, with effect from 02.05.2017, on account of his detention in custody on a criminal charge for a period exceeding 48 hours. Vide subsequent order dated 26.07.2017 (Annexure A-2) pursuant to recommendation of the suspension review committee, his suspension was continued for 180 days. His suspension was further extended for another 180 days vide order dated 17.01.2018 (Annexure A-3). In this OA the applicant has challenged these orders and has sought the following relief:

- “(i) quash and set aside the order of suspension dated 17.05.2017 (Annexure A-1), orders dated 26.07.2017 (Annexure A-2) and order dated 17.01.2018 (Annexure A-3);
- (ii) direct the respondents to reinstate the applicant forthwith with all consequential benefits.
- (iii) May also pass any further order(s), direction(s) as be deemed just and proper to meet the ends of justice.”

3. It is stated that while the applicant was posted as Commissioner of Income Tax (Appeals)-30, Mumbai, he was falsely

implicated in a criminal case. An FIR was lodged by the CBI on 01.05.2017, whereupon the applicant was arrested on 02.05.2017. He was granted bail vide order dated 08.06.2017 of the Spl. Judge, CBI, Visakhapatnam. The applicant was placed under suspension vide order dated 17.05.2017 w.e.f. 02.05.2017 in terms of rule 10 of the CCS (CCA) Rules, 1965. His suspension was continued for a period of 180 days on each occasion vide subsequent orders dated 26.07.2017 and 17.01.2018.

4. It is the case of the applicant that he was arrested on 02.05.2017 and remained in custody till 08.06.2017 when he was enlarged on bail, and since no charge memorandum was issued by the respondents in terms of the CCS (CCA) Rules, 1965 and no police report under Section 173 Cr.PC was filed in the criminal case, and he continued to remain under suspension, he submitted a representation dated 14.08.2017 (Annexure A-6) to the respondents seeking revocation of his suspension and reinstatement in service. In the aforesaid representation, the applicant relied upon the judgment of the Hon'ble Supreme Court in *Ajay Kumar Choudhary v Union of India* [(2015) 7 SCC 291], wherein the Apex Court has held that the currency of suspension order should not exceed beyond three months if within this period the memorandum of charges/charge-sheet is not served on the delinquent employee. He also submitted another representation dated 01.11.2017. However, his grievance has

not been redressed. The applicant has accordingly filed the present OA seeking the relief mentioned hereinabove.

5. Upon notice, the respondents have put in appearance and filed their counter reply contesting the cause of the applicant.

6. The respondents have raised a preliminary objection regarding maintainability of the OA before the Principal Bench of the Tribunal on the ground of territorial jurisdiction. It is stated that the applicant was posted as Commissioner of Income Tax at Mumbai and the impugned order dated 17.05.2017 was served upon the applicant in Mumbai, and, therefore, this Bench would have no jurisdiction to entertain the present OA. Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 prescribes the place of filing of applications. Sub-rule (1)(i) of this rule provides that an application shall ordinarily be filed by the applicant with the Registrar of the Bench within whose jurisdiction the cause of action, wholly or in part, has arisen. As can be seen from the impugned suspension order dated 17.05.2017 and the subsequent orders extending the suspension, they all have been issued by the Ministry of Finance, Department of Revenue, at New Delhi, and, therefore, the cause of action, at least, in part, can be said to have arisen within the territorial jurisdiction of the Principal Bench of the Tribunal at Delhi. This

objection raised on behalf of the respondents is not sustainable and thus rejected.

7. The respondents further submit that the allegations levelled against the applicant are of grave nature which may lead to imposition of major penalty on him, and keeping this in view his suspension has been continued vide order dated 17.01.2018. It is further submitted that the applicant has challenged the impugned orders without waiting for the decision of the disciplinary authority, and the OA is thus premature at this stage. The respondents have also relied upon a judgment of the Hon'ble Supreme Court in *Secretary, Ministry of Defence & others v Prabhash Chandra Mirdha* [(2012) 11 SCC 565]. It is also submitted that the applicant has not exhausted the departmental remedies available to him which would render the OA liable to be dismissed being barred by Section 20 of the Administrative Tribunals Act, 1985.

8. It is further submitted that the CBI, Visakhapatnam registered a case RC.8(A)/2017-CBI/VSP dated 01.05.2017 against the applicant, who was CIT (Appeal)-30, Mumbai at that time, and seven others. He was arrested on 02.05.2017 and produced before the court on 03.05.2017. The applicant was remanded to police custody for five days up to 08.05.2017. He was, therefore, placed under suspension vide order dated 17.05.2017 under the provisions of rule 10 of CCS (CCA) Rules, 1965 w.e.f. 02.05.2017 as he remained in police custody

for a period exceeding 48 hours. It is also stated that the suspension of the applicant was extended in subsequent reviews vide orders dated 26.07.2017 and 17.01.2018 after due application of mind with the approval of the disciplinary authority. As regards the representations dated 14.08.2017 and 01.11.2017 submitted by the applicant, it is stated that the representations of the applicant as also the attending facts and circumstances of the case were duly considered in their entirety by the suspension review committee in its meeting held on 04.01.2018. The committee also took note of the allegations against the applicant which were of having indulged in corruption. The committee further observed that the cases registered by the CBI are under investigation, and considering the serious nature of allegations of demand of bribe and recovery of huge cash, recommended continuation of suspension of the applicant, which was also approved by the disciplinary authority. The respondents have also attempted to distinguish the judgment of the Apex Court in *Ajay Kumar Choudhary* (supra) stating that the said judgment would not be applicable in the present case as the facts and circumstances therein were entirely different.

9. We have heard the learned counsel representing the parties and perused the pleadings available on record.

10. As noticed above, suspension of the applicant was ordered under sub-rules (2)(a) and (1)(b) of rule 10 of the CCS (CCA) Rules, 1965. Rule 10(2)(a) provides that a government servant shall be deemed to have been placed under suspension by an order of the appointing authority 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 48 hours. Sub-rule (1)(b) of the said rule permits the authority to place a government servant under suspension where a case against him in respect of any criminal offence is under investigation, inquiry or trial. Rule 10 of the aforesaid Rules came to be interpreted by the Apex Court in *Ajay Kumar Choudhary v Union of India & others* [(2015) 7 SCC 291]. Considering the analogy of Section 167 Cr.PC, the Hon'ble Supreme Court made following observations/directions:

“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."

This judgment of the Apex Court has been implemented by the Government of India and an office memorandum F.No.11012/04/2016-Estt.(A) dated 23.08.2016 has been issued by the DOP&T advising all Ministries/Departments/Offices to ensure that the dictum of the judgment is adhered to.

11. Para 21 of the judgment of the Apex Court contains a clear and unambiguous direction that the currency of the suspension order should not be extended beyond three months, if within this period the memorandum of charge/charge-sheet is not served on the delinquent official/employee. It further says if the memorandum of charge/charge-sheet is served, a reasoned order must be passed for extension of suspension. In absence of issuance of the charge memorandum/charge-sheet the extension of suspension is impermissible in law. It is also not the case of the respondent that the charge-sheet has been issued to the applicant within three months of the initial suspension

14. Reliance placed by the respondents on the judgment of the Apex Court in *Secretary, Ministry of Defence & others v Prabhash Chandra Mirdha* (supra) is entirely misplaced. In the said case the Hon'ble Supreme Court held that quashing of charge-sheet in a routine manner at the initial stage is not permissible under law, and in case the delinquent employee has any grievance in respect of

the charge-sheet he must raise the issue by filing representation and wait for the outcome thereof. Admittedly, in the present case no charge memorandum in the disciplinary proceedings has been issued so far, and, therefore, the question of quashing the charge memorandum in a routine manner at the initial stage does not arise. The applicant has approached the Tribunal on a different count, i.e., against his continued suspension without having been served the charge memorandum within the initial suspension period of 90 days. His case is entirely covered by the judgment of the Apex Court in *Ajay Kumar Chaudhary* (supra).

15. We are, therefore, of the considered opinion that the continued suspension of the applicant in the given circumstances is not sustainable in law. The OA is accordingly allowed with the following directions:

- (1) Continued suspension of the applicant beyond initial 90 days is hereby set aside and quashed.
- (2) As a consequence of quashment of the suspension, the applicant shall be reinstated within one month from the date of receipt of this order.
- (3) The applicant shall be entitled to salary minus the subsistence allowance already received by him for the *interregnum* period, i.e., from the date when his initial

suspension ended after 90 days and till the date he is reinstated in service.

- (4) Initial period of suspension up to 90 days shall be decided in accordance with Fundamental Rule 54-B.
- (5) This order will not, however, come in the way of the respondents in proceeding with the matter in accordance with law.

**( K. N. Shrivastava )**  
**Member (A)**

**( Justice Dinesh Gupta )**  
**Chairman**

/as/