

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/615 OF 2017
Cuttack, this the 29th day of November, 2017

CORAM
HON'BLE MR. S. K. PATTNAIK, MEMBER(J)
HON'BLE DR. M. SARANGI, MEMBER (A)

.....
Sri Partha Sarathi Mishra, IAS,
aged about 54 years,
S/o Late Naba Kumar Mishra,
resident of Malisahi, Bajra Kabati Road,
Cuttack-753001, Ex Managing Director of
Odisha Small Scale Industries Corporation(OSIC)
(under suspension), Madhupatna Industrial Estate,
Cuttack, Odisha.

...Applicant

(By the Advocate-Mr. K. C. Kanungo)

-VERSUS-

Union of India Represented through

1. Secretary to Govt. of India, Ministry of Personnel, Public Grievance and Pension, Dept. of Personnel & Training, North Block, New Delhi-110001.
2. State of Orissa represented through Chief Secretary to Govt. of Odisha, Odisha Secretariat, Bhubaneswar-751001, Dist- Khurda, Odisha.
3. Special Secretary to Govt. of Odisha, General Administration Department, Odisha Secretariat, Bhubaneswar-1, Dist- Khurda, Odisha.

...Respondents

(By the Advocate- M/s. S.B. Mohanty, J.Pal)

.....

ORDER

S.K.PATTNAIK, MEMBER (JUDL.):

(a) The applicant, an IAS Officer of Orissa Cadre, has challenged continuance of his suspension even after expiry of three months in view of pronouncement of the Hon'ble Apex Court in the case of *Ajay Kumar*

Choudhury Vs. Union of India reported in (2015) 2 SCC (L&S) 455 read with Circular of the DoP&T dated 23.08.2016 (Annexure-A/9). (b) The applicant also seeks quashing of the suspension order dated 20.02.2017 (Annexure-A/1) by which he was placed under deemed suspension w.e.f. 16.02.2017 (AN) in terms of Sub Rule 8(a) of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969 in view of his detention in jail custody w.e.f. 16.02.2017 in connection with a vigilance case under investigation. (c) Applicant also challenges the order dated 17.04.2017 (Annexure-A/4) by which the suspension was extended for a further period of 60 days w.e.f. 18.04.2017. (d) Applicant also challenges the order dated 09.06.2017 (Annexure-A/7) by which his suspension has been further extended for a period of 180 days w.e.f. 17.06.2017.

2. The case of the parties as revealed from the pleading of the applicant so also objection filed on behalf of Respondent Nos. 2 and 3 may be summarized as follows:

(a) The applicant, Shri Partha Sarathi Mishra, IAS, Ex MD, OSIC, Cuttack, was placed under suspension vide order dated 20.02.2017 in view of investigation relating to criminal case pending against him, which is still continuing.

(b) His suspension was first reviewed vide order dated 10.04.2017 and the Review Committee basing upon the status report of the G.A. (Vigilance) Department dated 07.04.2017 recommended for continuance of suspension. Accordingly, State Government extended applicant's suspension for a period of 60 days w.e.f. 18.04.2017.

(c) His suspension was again reviewed on 05.06.2017 and on the recommendation of the Review Committee, the State Government further extended suspension of the applicant for a period of 180 days w.e.f. 17.06.2017.

(d) Respondents have submitted that the applicant was suspended vide order dated 20.02.2017 in accordance with Rule 3 (2) of the AIS (D&A) Rules, 1969. Further case of the Respondents is that charge sheet along with evidence and statement of imputation, from the department has been served on the applicant vide memorandum dated 20.05.2017.

3. The whole gamut of submission of the Ld. Counsel for the applicant is that the applicant was placed under deemed suspension in view of his detention in judicial custody on 16.02.2017 in terms of Sub Rule 8(a) of Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969. But, since till date no charge sheet has yet been filed by the Vigilance Department, in view of the latest pronouncement by the Hon'ble Apex Court in the case of *Ajay Kumar Choudhury Vs. Union of India reported in (2015) 2 SCC (L&S) 455* further continuance of the currency of suspension order should not extend beyond three months if within this period charge sheet is not served on the delinquent officer/employee. The observation of Their Lordships in the aforesaid case at paragraph 20 and 21 are extracted below for ready reference:

“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 authorize 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 and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso to Section 167(2) Cr.PC 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 provision to Section 167(2) Cr.PC 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 defense. 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 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.

4. Only legal obstacle for continuance of suspension, when admittedly no charge sheet filed within 3 months from the date of arrest, in view of the latest circular of DoP&T communicated vide letter dated 23.08.2016 passed in response to the aforesaid judgment of the Hon'ble Supreme Court. The relevant portion of the Office Memorandum at paragraph 2 and 3 are produced below:

“In compliance of the above judgment, it has been decided that where a Government servant is placed under suspension, the order of suspension should not extend beyond three months, if within this period the charge-sheet is not served to the charged officer. As such, it should be ensured that the charge sheet is issued before expiry of 90 days from the date of suspension. As the suspension will lapse in case this time line is not adhered to, a close watch needs to be kept at all levels to ensure that charge sheets are issued in time.

It should also be ensured that disciplinary proceedings are initiated as far as practicable in cases where an investigating agency is seized of the matter of criminal proceedings have been launched. Clarifications in this regard have already been issued vide O.M. No. 11012/6/2007-Estt.A-III dated 21.07.2016.”

5. On going through the above circular, it is absolutely clear that when a Government servant is placed under suspension on the basis of a criminal case, it should be ensured that charge sheet is served before expiry of 90 days from the date of suspension as further continuance becomes illegal in view of the pronouncement of the Hon'ble Supreme Court. The only option left to the Department to get rid of such casualties when the vigilance department is not furnishing any charge sheet and continuing with the investigation is to initiate a departmental proceeding within said 90 days and for that a fresh order has to be passed that in view of not furnishing the charge sheet in the Criminal Court within 90 days his suspension is revoked but as such difficulty has been rectified by departmental charge memo within the time frame the person has to continue with the suspension.

6. In the instant case, admittedly, the applicant was kept in judicial custody on 16.02.2017 and till date no charge sheet has been filed and the departmental charge memorandum was issued on 20.05.2017, which was received by the applicant on 25.05.2017. Since suspension was made under Rule 3(8)(a) of the AIS (D&A) Rules, 1969 for having been kept under judicial custody, which is bound to be revoked due to non-furnishing of charge sheet in the Criminal Court within 90 days. After service of departmental charge memo, a fresh cause of action arises and for that a fresh suspension order has to be passed. But the earlier suspension order dated 20.02.2017 cannot have an effective application when within 16.05.2017 no charge sheet was filed.

7. Considering the pros and cons of the entire material on record, we have no hesitation in coming to the conclusion that the continuance of the suspension order dated 09.06.2017 (Annexure-A/7) in connection with the vigilance case is not legally tenable due to non-filing of charge sheet within 90 days of arrest. Though the initial suspension order was legal but continuance of suspension order after 90 days became illegal due to non-filing of the charge sheet. Hence ordered.

8. O.A. is allowed. Continuance of the suspension order dated 09.06.2017 (Annexure-A/7) being illegal is hereby quashed. No costs.

(M. SARANGI)
Member (Admn.)

(S.K.PATTNAIK)
Member (Judl.)

RK