

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

LIBRARY

No. O.A. 350/01323/2015

Date of order: 11.9.2015

Present : Hon'ble Mr. Justice G. Rajasuria, Judicial Member  
Hon'ble Ms. Jaya Das Gupta, Administrative Member

Shri Biswajit Chatterjee,  
Son of Late D.L. Chatterjee,  
Aged about 55 years,  
Working as LAB/NHT. N. 784 ER-  
Carriage & Wagon Department Naihati,  
Eastern Railway - since being under suspension,  
Residing at 58, Radha Ballav Road,  
Post Office - Naihati, P.S. Naihati,  
Dist. - 24 Parganas (N),  
Presently at 3 No. Krishnapur,  
P.O. - Rabindranagar, P.S. Chinsurah,  
Dist. - Hooghly, Pin - 712101, WB.

.. Applicant


- V E R S U S -

1. Union of India,  
Service through the General Manager,  
Eastern Railway,  
Fairlie Place,  
Kolkata - 700 001.
2. The General Manager,  
Eastern Railway, Fairlie Place,  
Kolkata - 700 001.
3. The Sr. Divisional Personnel Officer,  
Eastern Railway, Sealdah Division,  
Sealdah,  
Kolkata - 700 014.
4. The Superintendent,  
Carriage & Wagon Department,  
Eastern Railway, Naihati Sealdah Division,  
Naihati, 24 Parganas (N),  
Pin - 743 165.

.. Respondents

For the Applicant : Mr. J.R. Das, Counsel

For the Respondents : Mr. A.K. Banerjee, Counsel



O R D E R (Oral)

Per Mr. G. Rajasuria, Judicial Member:

Heard Ld. Counsel for both sides.

2. This O.A. has been filed seeking the following reliefs:-

“(i) An order do issue directing the respondent authorities to immediately cancel/rescind, withdraw or set aside the order of suspension dated 31.7.1996 as also the Major Penalty charge sheet dated 17.12.1996 being Annexure A-2 and A-4 to the instant application and the applicant be allowed to rejoin his duties and status since the said suspension order has never been reviewed, hence liable to be set aside forthwith.

(ii) A direction do issue directing the respondent authorities to immediately release/make payment of all arrear amounts of subsistence allowance 50% upto 180 days and 75% after 180 days to the applicant till date with statutory interests thereon and to direct the respondent authorities to make payment of the subsistence allowance month by month thereafter.

(iii) An order do issue directing the respondent authorities to certify and produce the records of this case so that conscionable justice may be done to the applicant by the making payment of arrear salary as also the due substance allowance to the applicant with statutory interest thereon.

(iv) Costs and incidence.

(v) Any other order or further order/orders and/or direction/directions as to this Hon'ble Tribunal seem fit and proper.”

3. The Ld. Counsel for the applicant would air the grievance of his client to the effect that his client was put under suspension as a sequel to his detention in judicial custody relating to a case booked as against him at the instance of his wife, so as to say, there were some matrimonial dispute between the husband and the wife. This happened in the year 1996; till now the applicant is under suspension. No doubt major penalty charge-sheet was issued with regard to the subject matter of the criminal case so as to proceed departmentally as against the applicant.

4. In view of the pendency of the criminal case the departmental

proceeding is also pending, and there is no finality achieved in any of the proceedings.

5. The Ld. Counsel for the applicant would also argue that as per the recent decision of the Hon'ble Apex Court the applicant cannot be kept under suspension ad infinitum. Accordingly, he would pray for a positive direction for revocation of suspension.

6. Ld. Counsel for the respondents would vehemently oppose the aforesaid argument by contending that the applicant has been kept under suspension because the criminal case as also the departmental proceeding is pending against the applicant and in that case revocation of suspension is not automatic.

7. The point for consideration is as to whether the respondents can continue to keep the applicant under suspension?

8. The Hon'ble Supreme Court in the **Ajay Kumar Choudhary v. Union of India & anr.** reported in (2015) 7 SCC 291 has 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 **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 case 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 charge/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

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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/chargesheet is not served on the delinquent officer/employee; if the memorandum of charge /chargesheet 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 record 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 ground 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."

9. A mere going through the decision would exemplify and demonstrate that a Government servant cannot be kept under suspension for a long time and, accordingly, the Hon'ble Apex Court enjoins the authority concerned to consider the matter and revoke the suspension in appropriate cases. Here ex-facie and prima facie it is made clear before us that almost for near about two decades the applicant has been kept under suspension. There is no reasoned speaking order also passed in this connection by the authority concerned. As such, we would like to direct the respondents / appropriate disciplinary authority to consider the matter emergently in the wake of the mandate as contained in the Hon'ble Apex Court's judgment cited supra and take a decision in the matter within 15 days from the date of receipt of a copy of this order and communicate the same to the applicant

*[Handwritten signature]*

immediately thereafter.

9. Ordered accordingly.

<sup>2</sup>  
(Jaya Das Gupta)  
MEMBER(A)

(G. Rajasuria)  
MEMBER(J)

SP