CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00857/2019

DATED THIS THE 13TH DAY OF NOVEBER 2019

HON'BLE DR. K.B. SURESH, MEMBER (J)

HON'BLE SHRI CV. SANKAR, MEMBER (A)

Suresh, S.S.,
S/o Siddappa Shetty,
Aged about 32 years,
GDS BPM/MD/MC (Under POD),
Venkatipete BO Account with
Bikkodu SO,
R/a Chokanahalli Village,
Bikkodu Post-573 215,
Hassan District. ...Applicant

(By Advocate Shri BS.Venkatesh Kumar)

vs.

1.Union of India represented by
Secretary to Government.
Department of Posts.
Ministry of Communications
& Information Technology,
Dak Bhavan, Parliament Street.
New Delhi-110 001.

2.The Chief Postmaster General.
Karnataka Circle, Palace Road.
Bangalore-560 001.

3.The Supdt. of Post Offices,
Hassan Division, Hassan-573 201.

4.The Inspector of Posts,
Sakleshpur Sub-Division.
Sakleshpura-573 134.
Hassan District.

(By Shri N.Amaresh, Sr. Panel Counsel)

O R D E R (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER(J)

1. Heard. The matter seems to be covered by the order of Hon'ble Apex Court produced as Annexure A-5 which we quote:-

" REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 1912 OF 2015

(Arising out of SLP © No. 31761 of 2013

AJAY KUMAR CHOUDHARY ..... APPELLANT

Vs.

UNION OF INDIA THROUGH ITS SECRETARY & ANR.. .....RESPONDENTS

J U D G M E N T

VIKRAMAJIT SEN,J.

1. Leave granted.

2. The Appellant assails his suspension which was effected on 30.9.2011 and has been extended and continued ever since. In November, 2006, he was posted as the Defence Estate Officer (DEO) Kashmir Circle, Jammu & Kashmir. During this tenure it was discovered that a large portion of the land owned by the Union of India and held by the Director General Defence Estates had not been mutated/noted in the Revenue records as Defence Lands. The Appellant alleges that between 2008 and 2009, Office-notes were prepared by his staff, namely, Shri Vijay Kumar, SDO-II, Smt. Amarjit Kaur, SDO-III, Shri Abdul Sayoom Technical Assistant, and Shri Noor Mohd., LDC, that approximately four acres of land were not Defence Lands, but were private lands in respect of which NOCs could be issued. These NOCs were accordingly issued by the

Appellant. Thereafter, on 3.4.2010, the Appellant was transferred to Ambala Cantt. However, vide letter dated 25.1.2011 the Appellant was asked to give his explanation for issuing the factually incorrect NOCs. In his reply the Appellant admitted his mistake, denied any mala fides in issuing the NOCs, and attributed the issuance of the NOCs to the notes prepared by the subordinate staff of SDOs/Technical Officer. It was in this background that he received the Suspension Order dated 30.9.2011. Various litigation was fruitlessly initiated by the Appellant in the Central Administrative Tribunal, Chandigarh Bench, as well as in the Punjab & Haryana High Court, with which we are not concerned. The Appellant asserts that since the subject land was within the parameter wall of the Air Force Station, no physical transfer thereof has occurred. On 28.12.2011 the Appellant's suspension was extended for the first time for a further period of 180 days. This prompted the Appellant to approach the Central Administrative Tribunal, Chandigarh Bench (CAT), and during the pendency of the proceedings the second extension was ordered with effect from 26.6.2012 for another period of 180 days. The challenge to these extensions did not meet with success before the CAT. Thereafter, the third extension of the Appellant's suspension was ordered on 21.12.2012, but for a period of 90 days. It came to be followed by the fourth suspension for yet another period of 90 days with effect from 22.3.2013.

3. It appears that the Tribunal gave partial relief to the Appellant in terms of its Order dated 22.5.2013 opining that no employee can be indefinitely suspended; that disciplinary proceedings have to be concluded within a reasonable period. The CAT directed that if no charge memo was issued to the Appellant before the expiry on 21.6.2013 of the then prevailing period the Appellant would be reinstated in service. The CAT further ordered that if it was decided to conduct an Inquiry it had to be concluded "in a time bound manner". The Appellant alleges that the suspension was not extended beyond 19.6.2013 but this is not correct. The Respondent, Union of India filed a Writ Petition before the Delhi High Court contending that the Tribunal had exercised power not possessed by it inasmuch as it directed that the suspension would not be extended if the charge memo was served on the Appellant after the expiry of 90

days from 19.3.2013 (i.e. the currency of the then extant Suspension Order). This challenge has found favour with the Court in terms of the impugned Judgment dated September 04, 2013. The Writ Court formulated the question before it to be "whether the impugned directions circumscribing the Government's power to continue the suspension and also to issue a chargesheet within a time bound manner can be sustained". It opined that the Tribunal's view was "nothing but a substitution of a judicial determination to that of the authority possessing the power, i.e., the Executive Government as to the justification or rationale to continue with the suspension". The Writ Petition was allowed and the Central Government was directed to pass appropriate orders "as to whether it wishes to continue with the suspension or not having regard to all the relevant factors, including the report of the CBI, if any, it might have received by now. This exercise should be completed as early as possible and within two weeks from today."

4. This has led to the filing of the Appeal before this Court. In the hearing held on 11.07.14, it was noted that by letter dated 13.6.2014 the suspension of the Appellant had been continued for a period of 90 days with effect from 1.6.2014 (i.e. the fourth extension), and that investigation having been completed, sanction for prosecution was to be granted within a period of two weeks. When the arguments were heard in great detail on 9th September, 2014 by which date neither a Chargesheet nor a Memorandum of Charges had been served on the Appellant. It had been contended by learned counsel for the Appellant that this letter, as well as the preceding one dated 8.10.2013, had been back-dated. We had called for the original records and on perusal this contention was found by us to be without substance.

5 The learned Additional Solicitor General has submitted that the original suspension was in contemplation of a departmental inquiry which could not be commenced because of a directive of the Central Vigilance Commission prohibiting its commencement if the matter was under the investigation of the CBI. The sanction for prosecution was granted on 1.8.2014. It was also

submitted that the Chargesheet was expected to be served on the Appellant before 12.9.2014, (viz., before the expiry of the fourth extension). However, we need to underscore that the Appellant has been continuously on suspension from 30.9.2011.

6. It is necessary to record that all the relevant files were shown to us, on the perusal of which it was evident that reasons were elaborately recorded for the each extension of suspension and within the currency of the then prevailing period. Therefore, the reliance of learned Senior Counsel for the Appellant on Ravi Yashwant Bhoir v. District Collector, Raigad 2012 (4) SCC 407, is of no avail since the salutary requirement of natural justice, that is of spelling out the reasons for the passing of an order, has been complied with.

7. Learned Senior Counsel for the Appellant, however, has rightly relied on a series of Judgments of this Court, including O.P. Gupta v. Union of India 1987 (4) SCC 328, where this Court has enunciated that the suspension of an employee is injurious to his interests and must not be continued for an unreasonably long period; that, therefore, an order of suspension should not be lightly passed. Our attention has also been drawn to K. Sukhendar Reddy v. State of A.P. 1999 (6) SCC 257, which is topical in that it castigates selective suspension perpetuated indefinitely in circumstances where other involved persons had not been subjected to any scrutiny. Reliance on this decision is in the backdrop of the admitted facts that all the persons who have been privy to the making of the Office-notes have not been proceeded against departmentally. So far as the question of prejudicial treatment accorded to an employee is concerned, this Court in State of A.P. v. N. Radhakishan 1998 (4) SCC 154, has observed that it would be fair to make this assumption of prejudice if there is an unexplained delay in the conclusion of proceedings. However, the decision of this Court in Union of India v. Dipak Mali 2010 (2) SCC 222 does not come to the succour of the Appellant since our inspection of the records produced in original have established that firstly, the decision to continue the suspension was carried out within the then prevailing period and

secondly, that it was duly supported by elaborate reasoning.

8 . Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the Memorandum of Charges, and eventually culminate after even longer delay.

9. Protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision of his Department, has to endure this excruciation even before he is formally charged with some misdemeanour, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably the sophist will nimbly counter that our Constitution does not explicitly guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of common law jurisprudence, antedating even the Magna Carta of 1215, which assures that – "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial. Article 12 of the Universal Declaration of Human Rights, 1948 assures that – "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such

interference or attacks". More recently, the European Convention on Human Rights in Article 6(1) promises that "in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time…." and in its second sub article that "everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law".

10. The Supreme Court of the United States struck down the use of nolle persequi, an indefinite but ominous and omnipresent postponement of civil or criminal prosecution in Klapfer vs. State of North Carolina 386 U.S. 213 (1967). In Kartar Singh vs. State of Punjab (1994) 3 SCC 569 the Constitution Bench of this Court unequivocally construed the right of speedy trial as a fundamental right, and we can do no better the extract these paragraphs from that celebrated decision –

" 86 The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

87.This Court in Hussainara Khatoon (I) v. Home Secretary, State of Bihar while dealing with Article 21 of the Constitution of India has observed thus:

"No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article

21. There can, therefore, be no doubt that speedy trial, and by speedy trial we

mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21."

11. The legal expectation of expedition and diligence being present at every stage of a criminal trial and a fortiori in departmental inquiries has been emphasised by this Court on numerous occasions. The Constitution Bench in Abdul Rehman Antulay vs. R.S. Nayak, 1992 (1) SCC 225, underscored that this right to speedy trial is implicit in Article 21 of the Constitution and is also reflected in Section 309 of the Cr.P.C., 1973; that it encompasses all stages, viz., investigation, inquiry, trial, appeal, revision and re-trial; that the burden lies on the prosecution to justify and explain the delay; that the Court must engage in a balancing test to determine whether this right had been denied in the particular case before it. Keeping these factors in mind the CAT had in the case in hand directed that the Appellant's suspension would not be extended beyond 90 days from 19.3.2013. The High Court had set aside this direction, viewing it as a substitution of a judicial determination to the authority possessing that power, i.e., the Government. This conclusion of the High Court cannot be sustained in view of the following pronouncement of the Constitution Bench in Antulay:

86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are: (1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused

to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:
(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and
(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.
(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their

rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation. (5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barke 33 L Ed 2d 101 "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell 15 L Ed 2d 627 in the following words:

'… the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.' However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the

prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker 33 L Ed 2d 101and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors — 'balancing test' or 'balancing process' — and determine in each case whether the right to speedy trial has been denied in a given case. (9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any timelimit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a

case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

12. State of Punjab v. Chaman Lal Goyal (1995) 2 SCC 570 deserves mention, inter alia, because action was initiated on 25.3.1992 and a Memorandum of Charges was issued on 9.7.1992 in relation to an incident which had occurred on 1.1.1987. In the factual matrix obtaining in that case, this Court reserved and set aside the High Court decision to quash the Inquiry because of delay, but directed that the concerned officer should be immediately considered for promotion without taking the pendency of the Inquiry into perspective.

13. 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 Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond 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 vs. State of Bihar, 1986 (4) SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries 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/Chargesheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. 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.

14. 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 Charges/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 concerned person 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 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 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.

15. So far as the facts of the present case are concerned, the Appellant has now been served with a Chargesheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review.

16 The Appeal is disposed of in the above terms and we desist from imposing costs.

…….J[VIKRAMAJIT SEN] …….J [C. NAGAPPAN] New Delhi;
February 16, 2015. “

2. Therefore, since the applicant had been put off duty without charge sheet and we had found that on examination of the charge sheet that even though it is dated as 22.7.2019 it had been issued only on 6.9.2019 as made clear from the rejoinder filed by the applicant. Therefore, there will be a direction to the respondents to either take him back in service forthwith with full wages or pay him full wages but still keep him out side so that he can effectively participate in the inquiry against him. But then, without any doubt the department can pass any order in the disciplinary inquiry as they think fit under the law.

3. OA is disposed as above. No order as to costs.

(CV. SANKAR)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER (J)

bk.

Annexures referred to by the applicant in OA.No.857/2019

Annexure A-1 Copy of appointment order of the applicant dated 29.2.2018

AnnexureA-2 Copy of POD order dated 11.3.2019

AnnexureA-3 Copy of POT ratification order dated 20.3.2019

AnnexureA-4 Copy of Memo dated 4.6.2019 enhancing the POD allowance by 5%

AnnexureA-5 Copy of judgment dated 16.2.2015 passed by Hon'ble Supreme Court in Ajay Kumar Chowdhary v. UOI

AnnexureA-6 Copy of interim order dated 21.12.2018 in OA No.1888/2018 passed by this Hon'ble Tribunal

Annexures referred to by the respondents in the Reply Statement

Annexure R1: Copy of memorandum dt. 22.7.2019

Annexure R2: Copy of applicant's letter dt. 11.3.2019

Annexures referred in the Rejoinder

A-7 Copy of the envelope showing posting of Charge memorandum

A-8 Copy of registered post track report

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