

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2560 of 2014**

K.R.Jangde S/o. Shri Heera Singh Jangde Age about 56 years, R/o. Laxmi Nagar, Mowa (Chhattisgarh Vidhansabha), PS : Mowa, Dist.: Raipur (CG)

---- **Petitioner****Versus**

1. State of Chhattisgarh Through The Secretary, Department of Panchayat and Rural Development, Mantralaya, Mahanadi Bhawan, Raipur (CG)
2. The Joint Secretary, Department of Panchayat and Rural Development, Mantralaya, Mahanadi Bhawan, Raipur (CG)
2. Superintendent Engineer, Rural Engineering Service, Department of Panchayat and Rural Development, Raipur Division, Raipur (CG)

---- **Respondents**

For Petitioner	:	Mr.N.Naha Roy, Advocate
For Res. No.1 to 4	:	Y.S. Thakur, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****14/12/2015**

1. Learned counsel for the petitioner would submit that the petitioner has been suspended by order dated 4.2.2014 from the post of Incharge Executive Engineer and his suspension is still continuing. He was not served with the charge-sheet within a period of 90 days from the date of order of suspension and as such, the order of suspension is bad in law in view of the decision rendered by the Supreme Court in the matter of **Ajay Kumar Choudhary v. Union of India through its Secretary and Another**¹. Learned counsel

¹ (2015) 7 SCC 291

invited attention of this Court of paragraph 21 of the aforesaid judgment, in which the Hon'ble Supreme Court has held that currency of the suspension should not extend particularly the period of time and 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) 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) of 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 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 contract that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contracting 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.”

2. Be that as it may, the petitioner is allowed to make a

representation before the appointing authority/disciplinary authority with regard to revocation of his suspension along with copy of the judgment passed by the Supreme Court in the matter of **Ajay Kumar Choudhary (supra)** within a period of 15 days from today and the competent authority would take a decision on such a representation within further 45 days in the light of the decision rendered by the Supreme Court.

3. With the aforesaid observation, the writ petition finally stands disposed of. No order as to cost(s).

**Sd/-
(Sanjay K. Agrawal)
JUDGE**

B/-