

\$~33

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

Judgment Dated: 26th July, 2016

+ W.P.(C) 6456/2016
GOVT OF NCT OF DELHI AND ANR Petitioners
Through : Mr. Sanjay Dewan, Advocate.

versus

VIJAY KUMAR JHA Respondent
Through : Nemo.

CORAM:

**HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE I.S.MEHTA**

G.S.SISTANI, J (ORAL)

CM No. 26454/2016 (Exemption)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

W.P.(C) 6456/2016 & CM No. 26453/2016 (Stay)

1. Challenge in this writ petition is to the order dated 25th May, 2016 passed by the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal' in short) by which an OA filed by the respondent herein stands allowed and the order of suspension from the date of his arrest i.e. 20th September, 2013 has been quashed. The Tribunal has also directed that the applicant/respondent herein shall be posted to a place where he cannot influence or tamper with the evidence against him in the criminal case. The Tribunal has also directed that in the event, a charge sheet is filed against the applicant/respondent herein, during this period a reasoned order must be passed if the suspension is to be further extended.

2. Some necessary facts, which are required to be noticed are that the

respondent herein is a Medical Officer belonging to Delhi Health Services Cadre and was posted at Babu Jagjivan Ram Memorial Hospital, Jahangirpuri, Delhi, when, he was arrested on 20th September, 2013 on the basis of an FIR No. 16/2013 registered against him at the Police Station Anti Corruption Branch for the offence punishable under Sections 8, 12 & 13 of the Prevention of Corruption Act read with Sections 417 & 418 read with Section 120 B of the Indian Penal Code (for short 'IPC') on the allegations of giving bribe to a person, who had made some complaint against him. The respondent was released on bail by the order of the Special Judge dated 1st November, 2013. He reported for duty on 4th November, 2013, but he was not permitted to join. By an order dated 20th November, 2013, he was placed under deemed suspension from the date of his arrest i.e. 20th September, 2013 and the period of suspension of the respondent has been extended from time to time as required under Rule 10 (6) of the CCS (CCA) Rules 1965. The subsistence allowance has been enhanced to 75% of his deemed salary.

3. Learned counsel for the petitioner submits that the Tribunal has exceeded its jurisdiction and failed to take into consideration that an FIR filed by the Anti Corruption Branch is pending against him and upon his arrest, an order of deemed suspension was passed against him. Learned counsel further submits that the Tribunal has failed to take note of the decision rendered by the Supreme Court of India in the case of *Union of India v. Rajiv Kumar* reported in (2003) 6 SCC 516, wherein it has been held that if the authorities feel that the suspension needs to be continued and merely because it is for a long period, that would not invalidate the suspension. Counsel further submits that the respondent herein was involved in offence of corruption punishable under Sections 8, 12 & 13 of the Prevention of Corruption Act read with Sections 417 & 418 read with

Section 120-B of IPC, on the basis of which, an FIR was registered against him and the matter is still under investigation and it is for this reason, he was not allowed to resume his duties.

4. Learned counsel for the petitioner also relied upon a decision rendered by the Supreme Court in ***Allahabad Bank and another v. Deepak Kumar Bhola*** reported in (1997) 4 SCC 1, wherein, the order of the Allahabad High Court quashing the order of suspension of the respondent was set aside.

5. We have heard the learned counsel for the petitioner. We have posted two basic questions to learned counsel for the petitioner, the first one being, as to whether any departmental inquiry has been initiated against the respondent and the second one being as to whether, any charge sheet has been filed in the criminal court from the date of registration of the FIR against the respondent, to which the learned counsel for the petitioner answered in the negative.

6. While, there can be no quarrel to the proposition that merely because a period of suspension is long, that by itself cannot be a ground to withdraw the order of suspension. We are of the view that the decisions of the Supreme Court in ***Allahabad Bank (supra)*** and in ***Rajiv Kumar (supra)*** sought to be relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case.

7. In our view, the Tribunal has correctly relied on a decision of the Supreme Court in ***Civil Appeal No. 1912/2015 (arising out of SLP (C) No. 31761/2013 in Ajay Kumar Choudhary v. Union of India Through its Secretary & Anr.***, wherein, it has been held as under:

“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.”

8. The present case can be decided on the touchstone of the law laid down by the Apex Court in the case of **Ajay Kumar Choudhary** (supra). In this case the respondent was arrested on 20.09.2013 based on an FIR No.16/2013. He was thereafter placed under deemed suspension. The respondent was released on bail on 01.11.2013. Till date neither any departmental proceedings have been initiated against him by the petitioners nor a charge-sheet has been filed in the criminal court.

8. We do not find any infirmity in the order passed by the Tribunal which would require us to interfere in the proceedings under Article 226 of the Constitution of India. No ground is made out to entertain this petition. The writ petition and the application are dismissed accordingly.

G.S.SISTANI
(JUDGE)

I.S. MEHTA
(JUDGE)

JULY 26, 2016
j