

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6502 of 2017

- Santosh Kumr Burman S/o Harinath Burman, Aged About 41 Years R/o Govt. Qtr. In The Premises Of Old District Hospital Janjgir District Janjgir Champa Chhattisgarh, Permanent R/o Village & Post Chisda, Police Station Hasaud District Janjgir Champa Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Health And Family Welfare Department, Mantralaya, Mahanadi Bhawan, Naya Raipur, Revenue And Civil District Raipur Chhattisgarh
2. Director, Health Services, Indrawati Bhawan, new Raipur, District Raipur Chhattisgarh
3. Chief Medical And Health Officer, Janjgir District Janjgir Champa Chhattisgarh
4. The Civil Surgeon-Cum - Cheif Hospital Superintendent, Janjgir, District Janjgir Champa Chhattisgarh

---- Respondents

For petitioner : Mr. Dharmesh Shrivastava, Advocate.

For State : Mr. Satish Gupta, Government Advocate.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board

14/12/2017

Heard.

1. The petitioner's grievance is arising on account of long continuance of suspension on the allegations of commission of offences vide order dated 03-08-2015. Though, criminal case is pending against the petitioner, departmental enquiry has also been initiated vide charge sheet dated 07-09-2015, neither departmental enquiry has come to an end nor criminal case has been decided.

2. The petitioner has continued under suspension for a long time. Long continuance of suspension has been deprecated by the Supreme Court in the case of **Ajay Choudhary v. Union of India through its Secretary and another, (2015) 7 SCC 291**, the Supreme Court had an occasion to examine the propriety of keeping an employee under suspension for a long period. Their Lordships in the Supreme Court expressed their concern as below :

“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 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 to [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.

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 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 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.”

3. The petitioner's case is also required to be examined and decided in the light of the principles laid down by the Supreme Court in the case of *Ajay Kumar Choudhary (supra)*, referred to here and above. Let the Chief Medical and Health Officer, Janjgir-Champa consider the petitioner's case and take appropriate decision within a period of 30 days from the date of receipt of copy of this order.

4. The petition is accordingly disposed off.

Sd/-

(Manindra Mohan Shrivastava)

Judge