

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 6827 of 2017

Ram Kishore Bhoi S/o Amarnath Bhoi, Aged About 48 Years Presently Attached At Kota As Suspended Patwari, Thana Kota, Tahsil And District Kota Bilaspur Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue And Disaster Management, Mahanadi Bhawan, New Raipur Thana Raipur (Chhattisgarh).
2. The Collector Raigarh, Collectorate Raigarh, Thana Raigarh, Tahsil And District Raigarh Chhattisgarh
3. The Sub- Divisional Officer, Sub- Division Raigarh, Thana Raigarh, Tahsil And District Raigarh Chhattisgarh

---- Respondents

Shri N.K.Malviya, counsel for the petitioner/s.
Shri Avinash Singh, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/12/2017

The petitioner has filed this petition seeking a direction to the respondents for revocation of suspension of the petitioner.

2. Learned counsel for the petitioner submits that the Deputy Collector, under instructions of the Collector, placed the petitioner under suspension vide order dated 09/10/13 on certain allegations of misconduct. It followed the charge sheet issued by the Collector which was assailed by the petitioner before this Court on the ground that the Collector being the Appellate Authority, in disciplinary matters could not have issued charge sheet. The said charge sheet remained stayed by this Court and now the said charge sheet has been quashed in WPS No.1703/2014.

Further submission is that in any case, petitioner's long suspension may not continue even after four years because the departmental enquiry could not be finalised

on account of interim order passed in the petition of the petitioner which has finally been allowed.

3. This petition has been heard analogously along with WPS No.1703/2014 in which charge sheet issued by the Collector has been quashed by this Court. That means, the charge sheet against the petitioner was not in accordance with law. The departmental enquiry could not continue because of the interim order passed by this Court.

4. These circumstances are required to be taken into consideration by the authority who passed the order of suspension, keeping in view the recent judicial pronouncement of the Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India though its Secretary and anr., (2015) 7 SCC 291 5** where long continuance of suspension on account of pendency of criminal case or departmental enquiry has been strongly deprecated by the Supreme Court. Their Lordships in the Supreme Court expressed their serious concern regarding long continuance of suspension, both on account of pendency of criminal case and departmental enquiry in following words -

“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 *Abdul Rehman Antulay V. R.S. Nayak*, 1992 (1) SCC 225, 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/Charge-sheet 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 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.”

5. Let appropriate orders be passed by the authority who issued the suspension order of the petitioner within a period of 30 days from the date of receipt of copy of this order.

6. The petition is accordingly finally disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge