

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3128 of 2017

Amit Toppo S/o Shri Phildius Toppo, Aged About 35 Years R/o Village Indranagar, Fundurdihari, Police Station Gandhinagar, Tehsil Ambikapur, District Surguja Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)
2. Engineer In Chief, Public Works Department, Sirpur Bhawan, Raipur (Chhattisgarh)
3. Chief Engineer, Public Works Department, Sirpur Bhawan, Raipur (Chhattisgarh)

---- Respondents

Shri Yogendra Pandey, counsel for the petitioner/s.
Shri Manish Nigam, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

18/07/2017

The petitioner, while working as Sub-Engineer in Public Works Department was placed under suspension vide order dated 16.05.2016. The suspension was on account of arrest of the petitioner in connection with a criminal case. He was later on granted bail on 28.06.2016. Though, the petitioner did not assail validity of the order at its inception either by filing a petition before this Court or any departmental appeal, with the passage of time, the petitioner preferred a representation on 22.10.2016 (Annexure P/5) jointly with other employees who were placed under suspension submitting that in the changed circumstances, suspension may be revoked. As no orders have been passed, the petitioner has now approached this Court.

2. The petitioner is continuing under suspension ever since 16.05.2016 (14 months). He was later on granted bail also. Charge-sheet has also been filed in the

criminal case. Learned counsel for the petitioner also submits that till date even the charges in the criminal case have not been framed. Therefore, he has a case for consideration for revocation of suspension.

3. In the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and anr., (2015) 7 SCC 291**, the issue with regard to long continuance of suspension was considered by the Supreme Court wherein the practice of keeping an employee under suspension for long time was deprecated and following observations were made :-

“11. 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.

12. 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."

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"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.”

4. The State Government has also issued a circular dated 02.07.2012 which also requires consideration of cases for revocation of suspension where an employee has been placed under suspension on the ground of institution of criminal case and apprehension for more than 48 hours.

5. In view of the above, the petition, at this stage, is disposed off with a direction to the respondents to consider petitioner's case for revocation of suspension in the light of law laid down by Supreme Court and circular dated 02.07.2012. The decision in the matter shall be taken one way or the other by the Engineer-in-Chief within a period of 45 days from the date of receipt of representation. It is made clear that the

decision should be positively taken within 45 days and the matter shall not be kept unnecessarily pending for seeking guidance or guidelines from the Government.

**Sd/-
(Manindra Mohan Shrivastava)
Judge**

Deepti