

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 3163 of 2017

Sudhir Kumar Shrivastava S/o Shri Siyaram Shrivastava Aged About 53 Years R/o OB 22 Near SR Club AB Type CSEB Colony Korba, EAST, Korba, Chhattisgarh.

---- Petitioner

Versus

1. Chairman Chhattisgarh Power Companies Dangniya District Raipur.
2. Managing Director, Chhattisgarh Power Generation Company Limited, Dangniya, Raipur.
3. Executive Director, Chhattisgarh Power Generation Company Limited, Marwa-Tendubhata, Janjgir-Champa, Chhattisgarh.
4. Chief Engineer (H. R.) C G P C L Raipur, Head Office Vidyut Seva Bhawan.

---- Respondents

Shri Mateen Siddiqui, counsel for the petitioner/s.
Shri Raja Sharma, counsel for the respondents.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

08/11/2017

By this petition under Article 226 of the Constitution of India, the petitioner assails correctness and validity of order dated 15/03/2016 by which, he has been placed under suspension.

2. Undisputed facts of the case are that on certain allegations of misconduct, the petitioner was placed under suspension on 15/07/2015. The background of the incident which led to disciplinary action was that, while the petitioner was posted in Thermal Power Project of the company at Marwa - Tendubhata, it was alleged that the petitioner failed to take proper steps despite disclosure of fire having broken out. Later on, a charge sheet was issued on 13/08/2015. The suspension order earlier

passed on 15/07/2015 in respect of the allegations of misconduct stated in the charge sheet dated 13/08/2015 was revoked vide order dated 02/12/2015.

While the matter stood thus, second charge sheet was issued on 29/02/2016. In this charge sheet, the allegations as contained in charge No.1 were that in the intervening night of 12/07/2015 and 13/07/2015 from 10 PM to 6 AM, the petitioner did not take necessary steps in the matter of giving information relating to disruption of electricity supply.

In charge no.2, the allegations were that in the intervening night of 13/07/2015 and 14/07/2015 from 10 PM to 6 AM, the petitioner failed to discharge his duties of inspection and communicate with his subordinates, due to which, electricity supply could not be restored and also that breaking of fire could not be traced. Thereafter, another order was issued on 15/03/2016, impugned in this petition by which, the petitioner has again been placed under suspension. It is this order which is under challenge in this petition.

3. Assailing the correctness and validity of the order of suspension, learned counsel for the petitioner would submit that the petitioner is being harassed. He would further submit that in respect of the same incident of fire breaking in the project, one after the other, charge sheets have been issued to the petitioner, though they relate to one and the same allegation and the petitioner is being repeatedly placed under suspension. It is submitted that the two charge sheets are one and the same and therefore, placing the petitioner under suspension again on the same charges in the garb of new charge sheet when earlier suspension was revoked, is arbitrary. The next submission of learned counsel for the petitioner is that the suspension order mentions Rule 9 (5) (b) of the Chhattisgarh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short 'the Rules of 1966') which could be pressed into service only in contingency when on account of non-issuance

of charge sheet within the stipulated period, suspension stood automatically revoked and it became necessary to issue fresh suspension order after issuance of charge sheet. He submits that the suspension order pertaining to allegations of charge sheet dated 13/08/2015 was revoked on 02/12/2015. It was subsequent issuance of charge sheet and not a case of automatic revocation of suspension on account of non-issuance of charge sheet within a stipulated period. Lastly, it is submitted that the petitioner has continued under suspension ever since 15/03/2016 and allegations are not so grave that he should continue under suspension for such a long time. Reliance has been placed upon decision of the Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and anr., (2015) 7 SCC 291**. It is submitted that such a long continuance of suspension is wholly unjustified and such practice has been strongly deprecated by the Supreme Court. There is no justification for long continuance of suspension. Therefore, on these grounds, prayer is made for setting aside the suspension order. According to learned counsel for the petitioner, the allegations against the petitioner are not made out because for maintenance, private company was responsible and not the petitioner.

4. On the other hand, learned counsel for the respondents would submit that the petitioner was posted as Assistant Engineer and in the intervening night of 12/07/2015 and 13/07/2015 and 13/07/2015 and 14/07/2015, the petitioner committed more than one irregularities. These irregularities related to not taking any action despite information of fire breaking and also not taking steps towards restoration of electricity supply. In respect of two allegations, two charge sheets were issued to the petitioner. First on 13/08/2015 and the other on 29/02/2016. He further submits that the first suspension order dated 15/07/2015 and its revocation related to the allegations contained in the first charge sheet dated 13/08/2015. Later on, when second charge sheet was issued on 13/08/2015, the competent

authority decided to place the petitioner again under suspension. Therefore, there is no illegality in the order. He further submits that because of the negligence of the petitioner, there was heavy fire breaking out and it has been alleged in the charge sheet dated 13/08/2015 that it has resulted in loss of crores of rupees and long time was taken to bring the plant back to its working condition. Therefore, for this reason, the petitioner was placed under suspension.

5. The suspension order of the petitioner passed on 15/03/2016 was subsequent to charge sheet dated 29/02/2016. Infact, earlier suspension order issued on 15/07/2015 was revoked on 02/12/2015. Therefore, it is clear that the first suspension and thereafter, revocation was in relation to the allegations contained in charge sheet dated 13/08/2015. According to the respondents, the second suspension order of the petitioner was necessitated in view of the fresh charge sheet issued to the petitioner on 29/02/2016. If that be so, it cannot be said to be a case of petitioner having again been placed under suspension on the ground that the earlier revocation was automatic because of non-issuance of charge sheet within the stipulated period. Therefore, the new suspension order in substance, is a suspension founded on the allegations of misconduct contained in the charge sheet dated 29/02/2016. True it is that the suspension order refers to Rule 9 (5) (b) of the Rules of 1966, however, the form of the order is not decisive. The fact that before issuance of suspension order dated 15/03/2016, a new charge sheet was issued to the petitioner on 29/02/2016 and the earlier suspension order was revoked after charge sheet dated 13/08/2015 itself clearly show that the new suspension order had nothing to do with the earlier charge sheet but it was in connection with misconduct alleged in the second charge sheet. Therefore, suspension order, at its inception, does not appear to be in relation to allegations contained in charge sheet dated 13/08/2015.

6. The allegations of financial loss were subject matter of first charge sheet

dated 13/08/2015. In that case, suspension order was revoked on 02/12/2015. Thereafter, a new charge sheet was issued on 29/02/2016. The petitioner was placed under suspension on 15/03/2016. But then, this Court finds that on the allegations that the petitioner failed to take steps to ensure restoration of electricity supply, such long continuance of suspension of the petitioner appears to be quite arbitrary. In the return, no justification has been provided as to why the continuance of suspension of the petitioner is necessary even after 1½ years. It is not a case where the petitioner is, if allowed to work, may adversely affect the departmental enquiry which is going on against him. There is nothing in the return which would demonstrate that the petitioner is in a position to interpolate any records of the office.

7. Continuance of long suspension has been strongly deprecated by the Supreme Court in the case of **Ajay Kumar Choudhary** (supra). Their Lordships in the Supreme Court expressed their 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.”

8. The aforesaid decision of the Supreme Court provides beacon light in the matters of suspension. Suspension requires periodical review and the employee cannot be continued under suspension for years together. Having revoked the suspension in relation to allegations contained in the charge sheet dated 13/08/2015, continuance of suspension on the strength of charges contained in charge sheet dated 29/02/2016, appears to be arbitrary. Applying the principles laid down by the Supreme Court in the case of **Ajay Kumar Choudhary** (supra), the only irresistible conclusion would be that the respondents should proceed to revoke suspension in the matter because even if it is accepted that the suspension order may be justified if it has been passed, its continuance for more than 1½ years is without any amount of justification. Though I am not inclined to set aside the order of suspension but a direction has to be given to the respondent authority to revoke suspension of the petitioner forthwith. Accordingly, this petition is allowed to the extent and in the manner indicated as above.

9. Before parting with the case, this Court would like to issue clarification that the observations which are made in this petition, are for the limited purpose of referring to the nature of allegations, without commenting upon the merits of the allegations of misconduct and the departmental enquiry officer shall decide the matter without being influenced by this order.

Sd/-
(Manindra Mohan Shrivastava)
Judge