

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5762 of 2017

Sayyed Gaffar Ali S/o Late Mohd. Ali, Aged About 50 Years Assistant Grade -03, Tahsil Office Dhamdha, District Durg Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary Revenue And Apda Prabandhak, Department, Mahanadi Bhawan, Naya Raipur Raipur Chhattisgarh
2. The Commissioner, Durg Division, Durg 491001, Tahsil And District Durg Chhattisgarh
3. Sub Divisional Officer (Revenue), District Durg Chhattisgarh
4. The Tahsildar, Dhamdha / Patan Durg 491001 Tahsil And District Durg Chhattisgarh

---- Respondents

Shri V.G.Tamaskar, counsel for the petitioner/s.
Shri Shashank Thakur, G.A. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

23/11/2017

Petitioner's grievance is that the petitioner has been continued under suspension ever since 06/09/2016 even though, till date, there is no material progress in the criminal case.

2. On the last date of hearing, this Court required the authorities to inform the Court as to whether charges have been framed in the criminal case or not.
3. Learned counsel for the petitioner placed on record order sheets of the criminal case upto 13/11/2017 which shows that till date, charges have not been framed against the petitioner.
4. It appears that on account of petitioner's arrest and detention for more than 48 hrs., the petitioner was kept under suspension though charge sheet was filed in

the Court, charges have not been framed.

5. Long continuance of suspension on account of pendency of criminal case or departmental enquiry has been strongly deprecated by the Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary and anr., (2015) 7 SCC 291**. It has been held 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 *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.”

6. The State had earlier issued a circular on 02/07/2012 (Annexure P/9) which also indicates that long continuance of suspension is not envisaged. The circular indicate that even in a case, charges have been framed, if the trial is not concluded, employee is liable to be considered for revocation of suspension. Present is a case where charges have not been framed.

7. In view of above consideration, keeping in view the mandate of the Supreme Court in the case of **Ajay Kumar Choudhary (supra)**, this Court found that the respondents are required to take appropriate decision in the matter of revocation. It would not out of place to mention that various communications placed on record show that opinion has been sought from various authorities by the Collector but it appears that the matter has not been brought to its logical conclusion. The mandate of the Supreme Court requires revocation of suspension as the petitioner is under suspension for more than one year. Let the authorities pass appropriate order regarding revocation of suspension of the petitioner within

30 days from the date of receipt of copy of this order.

8. With the aforesaid observations, this petition is finally disposed off.

Sd/-
(Manindra Mohan Shrivastava)
Judge