

HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 5847 of 2017

Hemshankar Deshlahra S/o Late Shri D. Deshlahra Aged About 54 Years R/o
Mig 2/ 229 A, Borsi Colony, Durg, District Durg, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Urban Administrative And Development, Mahanadi Bhawan, New Raipur, Police Station Rakhi, District Raipur, Chhattisgarh
2. Director, Department Of Urban Administrative And Development, Indravati Bhawan, New Raipur, Police Station Rakhi, District Raipur, Chhattisgarh

---- Respondents

Shri Anup Majumdar, counsel for the petitioner/s.
Shri Chandresh Shrivastava, Panel Lawyer for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/12/2017

The department enquiry records have been produced before this Court. Return has also been filed. It is stated that enquiry has been completed and report has been submitted.

2. The petitioner's grievance is with regard to long continuance of suspension. The petitioner was suspended on 28/09/2016. He submits that in view of the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India though its Secretary and anr., (2015) 7 SCC 291**, the suspension order of the petitioner is liable to be revoked. He would submit that the petitioner is not at all responsible for any delay in conclusion of departmental enquiry. It is also submitted that on 09/11/2016, charge sheet has been filed.

3. Learned counsel for the petitioner, relying upon the judgment of the Supreme Court in the case of Ajay Kumar Choudhary (supra), submits that the respondents were under a duty to review the suspension order as to whether it should be further continued. He would submit that looking to the allegations, there is no absolute justification for continuance of suspension for such a long period.

4. From the return of the respondents and report of the departmental enquiry produced before this Court, it is found that the petitioner has remained suspended since 28/09/2016 and charge sheet was issued to him on 09/11/2016. The order sheets do not show that the petitioner is guilty for delay in conclusion of departmental enquiry.

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 (supra)**. 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.”

6. In these circumstances, it has become necessary to immediately consider petitioner's case for revocation of suspension, more particularly when report has already been prepared and submitted and the petitioner is not responsible for delay in conclusion of departmental enquiry.

7. The State Government is directed to examine and consider for revocation of petitioner's suspension in accordance with the law laid down by the Supreme Court in the case of Ajay Kumar Choudhary (supra) 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