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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24, September, 2018
Pronounced on: 31, October, 2018

+ W.P.(C) 6859/2018

KULAMANI BISWAL Petitioner

Through: Mr. Krishnan Venugopal, Sr. Adv.
with Mr. Anish Gupta and Mr. Gaurav
Wadhwa, Advs.

versus

UNION OF INDIA AND ANR. Respondent

Through: Mr. Arun Bhardwaj, Adv. for R-1
Mr. Puneet Taneja, Adv. and
Mr. Rajesh Mahendra, Adv. for R-2

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T

1. This writ petition, filed by Kulamani Biswal, seeks quashing of three orders, viz. (i) order dated 14th December, 2017, whereby the petitioner was placed under suspension, by invoking Rule 20(1)(c) of the NTPC (Conduct, Discipline and Appeal) Rules, 1977 (hereinafter referred to as the “CDA Rules”), (ii) order dated 18th May, 2018, communicating the decision of the competent authority in the Ministry of Power (Respondent No.1), rejecting the representations, dated 8th March, 2018, 28th March, 2018 and 17th April, 2018, submitted by the petitioner, seeking revocation of the order suspending him from

service and (iii) order dated 15th June, 2018, communicating the decision of the competent authority in the Ministry of Power, to reject the representation, dated 28th May, 2018, of the petitioner, requesting for revocation of his suspension.

2. A brief recapitulation of the facts would be apposite at the outset.

3. On 5th December, 2013, the petitioner was appointed as Director (Finance) in the National Thermal Power Corporation (NTPC), which has been impleaded as Respondent No.2 in these proceedings.

4. On 7th December, 2017, a First Information Report (FIR) was filed, against the petitioner, by the Central Bureau of Investigation (CBI) under Sections 11 and 12 of the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC Act”), read with Section 120-B of the Indian Penal Code, 1860 (“the IPC”). The complaint alleged, receipt by the petitioner, of illegal gratification of ₹ 5 lakhs from Mr. Rohit Reddy Bathina, financing a foreign trip of the petitioner. Mr. Bathina was one of the directors in M/s BGR Mining and Infra Pvt. Limited, and the FIR also alleged that the petitioner had attempted to procure items of value from the said company, without any consideration.

5. Pursuant to, and provoked by the above investigations, Respondent No.1 suspended the petitioner from service *vide* order dated 14th December, 2017, which read thus :

“

CONFIDENTIAL

NO- 13011/106/2017- V&S

Government of India

Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi the, 14th December 2017

ORDER

Whereas a FIR has been registered by CBI vide No- RC AC-1 2017 A0007 dated 07.12.2017 against Shri Kulamani Biswal Director (Finance) NTPC Limited regarding illegal gratification and a case against him in respect of criminal offence is under Investigation by CBI.

Now, therefore, the undersigned, in exercise of the powers conferred by Sub-Rule (1) (c) of Rule 20 NTPC (Conduct, Discipline and Appeal) Rule, 1977 hereby places the said Shri Kulamani Biswal, Director (Finance) NTPC Limited under suspension with immediate effect.

It is further ordered that during the period that this order shall remain in force, the headquarters of Shri Kulamani Biswal should be New Delhi and the said Shri Kulamani Biswal shall not leave the headquarters without obtaining the previous permission of the competent authority.

(By order and in the name of the President)

(Dilip Kumar)
Under Secretary to the Government of India”

6. Rule 20(1) of the CDA Rules is reproduced as under :

“Rule 20 Suspension

(1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the management by general or special order may place an employee under suspension:

(a) Where a disciplinary proceeding against him is contemplated or is pending; or

(b) Where, in the opinion of the Authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the state; or

(c) Where a case against him in respect of any criminal offence is under investigation or trial.”

7. The petitioner continues to remain under suspension, consequent to the issuance of the aforementioned order dated 14th December, 2017, till date. The writ petition expresses a grievance that, despite the lapse of six months from the date of suspension, neither has any departmental inquiry been initiated against the petitioner, nor has any charge-sheet been filed, against him, in the criminal court, by the CBI.

8. In these circumstances, the petitioner represented, to the Secretary, Ministry of Power, on 8th March, 2018, 28th March, 2018 and 17th April, 2018, for revocation of his suspension order. In these representations, the petitioner contended, *inter alia*, that (i) during the course of investigation by the CBI, search was conducted at his house, and his mobile phone was also seized, and the seizure reports dated 7th and 8th December, 2017, prepared by the CBI, clearly indicated that nothing incriminating was found, during search of the residence of the petitioner, (ii) neither had any charge-sheet been filed against him in the criminal court, by the CBI, nor had any warrants of arrest been issued against him by the said court, and (iii) no disciplinary inquiry or proceedings had been initiated against him. The petitioner also sought to draw sustenance from Rule 10(6) and (7) of the Central

Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter referred to as the “CCS (CCA) Rules”), which read thus :

“(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension, before expiry of ninety days from the effective date of suspension, on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.

(7) An order of suspension made or deemed to have been made under sub-rules (1) or (2) of this rule shall not be valid after a period of ninety days unless it is extended after review, for a further period before the expiry of ninety days :

Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under suspension at the time of completion of ninety days of suspension and the ninety days period in such case will count from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later.”

The CCS (CCA) Rules, it was submitted, were applicable *mutatis mutandis* to the NTPC, as the CDA Rules had expressly been framed on the basis of the extant government guidelines. The petitioner also relied on the judgment of the Supreme Court in **Ajay Kumar Choudhary v. UOI, (2015) 7 SCC 291**, which held that suspension could not continue for a period of more than three months, if, within that period, no charge-sheet was served on the officer or employee concerned. It was also pointed out that, on the basis of the judgment

of the Supreme Court in *Ajay Kumar Choudhary (supra)*, Office Memorandum (OM) dated 23rd August, 2016 had been issued by the Department of Personnel and Training (hereinafter referred to as the “DOPT”), which, too ordained that expiry of the period of time stipulated in *Ajay Kumar Choudhary (supra)*, without issuance of a charge-sheet to the employee concerned, would result in the suspension of the employee automatically coming to an end.

9. On his above representations eliciting no response from the respondents, the petitioner moved this Court by way of W.P (C) 4707/2018, which was disposed of, by this Court, *vide* order dated 4th May, 2018, directing the Ministry of Power to pass a speaking order on the petitioner’s representations within two weeks, and reserving liberty, to the petitioner, to seek his remedies thereagainst, in the event of the decision being adverse to his interests.

10. Purportedly in compliance with the above directions issued by this Court, order dated 18th May, 2018 (which constitutes one of the orders impugned in these proceedings) was passed by the Ministry of Power, conveying the decision of the competent authority to reject the petitioner’s representations dated 8th March, 2018, 28th March, 2018 and 17th April, 2018 (*supra*). The said order noted the fact that the petitioner’s suspension was effected under Rule 20(1)(c) of the CDA Rules of the NTPC, which provided that an employee could be placed under suspension where a case against him, in respect of any criminal offence, was under investigation or trial. The reliance, by the petitioner, on the judgment of the Supreme Court in *Ajay Kumar*

Choudhary (supra) was sought to be rebutted on the ground that the said case dealt with the CCS (CCA) Rules, whereas para 1.15.1 of the terms and conditions of appointment of the petitioner, as issued by the Ministry of Power on 31st October, 2016, clearly stated that the petitioner would be governed by the CDA Rules of the NTPC, in respect of non-workmen category of staff, *mutatis mutandis*. As such, the order sought to opine that the CCS (CCA) Rules were not applicable to the petitioner. The order also noted the fact that the post of Director (Finance) in the NTPC, which was held by the petitioner, was a responsible and sensitive post, and could not be manned by a person whose integrity was doubtful. Neither, it was noted in the order, was it possible to transfer the petitioner, as he had been appointed as Director (Finance) on tenure basis. The order further noted that sub-rules (3) and (6) of the CDA Rules, read in conjunction, empowered the competent authority to review suspension of employees every six months, as per extant guidelines of the Government and also ordained that the reasons for revoking or continuing with the suspension were required to be recorded in writing. The said period of six months, it was noted, had yet to elapse. For these reasons, as already noted hereinabove, the representations of the petitioner were rejected.

11. The petitioner addressed another representation, to the Secretary, Ministry of Power, on 28th May, 2018, again seeking revocation of the order suspending him from service. The said representation highlighted the fact that nothing incriminating had been found, against the petitioner, by the CBI. It was pointed out that the

CDA Rules of the NTPC, themselves provided that the suspension of an employee of the NTPC would be reviewed by the competent authority, “as per the extant government guidelines” and that reasons for revoking or continuing with suspension would be recorded in writing. The petitioner also expressed his discomfiture at the fact that though, following on the judgment of the Supreme Court in *Ajay Kumar Choudhary (supra)*, the DOPT had issued fresh guidelines, reducing the maximum period of suspension, in the absence of any charge-sheet, from six months to three months, corresponding amendments had not been effected by the NTPC in its CDA Rules. Even applying the six months’ criterion, it was pointed out, the order suspending the petitioner from service was due for review on 14th June, 2018.

12. This subsequent representation, dated 28th May, 2018, of the petitioner, evoked a fresh order, dated 15th June, 2018, from the competent authority in the Ministry of Power which, needless to say, is also impugned in the present proceedings. The representation of the petitioner was, once again, rejected by the said order, para 3 whereof reads thus:

“3. Shri Biswal has been placed under suspension w.e.f. 14.12.2017, subsequent to registering of a case of illegal gratification and criminal offences against him by CBI, as per CDA Rule 20 (1) (C) of the NTPC. The said Rule provides that, an employee can be placed under suspension where a case against him in respect of any criminal offence is under investigation or trial. Since, Shri Biswal was placed under suspension for the reasons that a case against him in respect of criminal offence was under investigation by the CBI. The status of the case was ascertained from CBI. CBI has intimated on 05.06.18 that the case is still under investigation.

As such there is no change in the circumstances under which Shri Biswal was placed under suspension. Further, the petitioner was occupying a post of Director (Finance), which carries high responsibilities and crucial decisions are required to be taken on a day to day basis by the person occupying this post. If the petitioner is reinstated he will be in a position to influence witnesses or tamper with the evidence.”

13. It is in these circumstances, that the petitioner has moved this Court by means of the present writ petition.

14. Be it noted, here, that though the petitioner had, in his representations, also sought to contest the allegations, against him, on merits, Mr. Krishnan Venugopal, learned Senior Counsel appearing for the petitioner, expressly submitted, at the very outset, that he would not be addressing the merits of the allegations against the petitioner. As such, this judgment, too does not make any allusion to, or record any observation with respect to, the merits of the said allegations.

15. The contentions of Mr. Venugopal, learned Senior Counsel appearing for the petitioner, are the following :

(i) Para 6 of the order dated 18th May, 2018 (*supra*), passed by Respondent No.1, read thus :

“6. As per NTPC CDA Rules 20(6) "An order of suspension made or deemed to have been made under this Rule, may at any time be revoked by the authority, which made or is deemed to have made the order or by any authority to which that authority is subordinate. As per NTPC CDA Rules 20(3) "The suspension of

employees placed under suspension in terms of sub-Rule 1 & 2 shall be reviewed by the Competent Authority every six months as per the extant Govt. guidelines and the reasons for revoking or continuing with the suspensions shall be recorded in writing. In the instant case six months time has not yet been completed from the date when the petitioner has been placed under suspension. Further, CBI has also informed that the case is under investigation.”

(ii) A reading of this para makes it apparent that Respondent No.1 was not treating the said order, dated 18th May, 2018 as a review of the order of suspension of the petitioner, within the meaning of Rule 20(3) and 20(6) of the CDA Rules.

(iii) Similarly, the order dated 15th June, 2018 (*supra*) too, was merely by way of a dismissal of the representation of the petitioner, and not by way of a review of the order dated 14th December, 2017, suspending the petitioner from service.

(iv) The resultant position was that, despite the expiry of much more than six months since the date of his being suspended from service, there has been no review, as contemplated by the CDA Rules, of the said order of suspension.

(v) Clause 1.15.1 of the terms and conditions of appointment of the petitioner, as set out in his appointment order dated 31st October, 2016, read thus :

“1.15.1 The conduct, Discipline and Appeal Rules framed by NTPC in respect of their non-workmen category of staff would also mutatis mutandis apply to him with the modification that the Disciplinary

Authority, in his case, would be the President of India.”

As such, the authority competent to place the petitioner under suspension would be the Hon’ble President of India. In view thereof, Rule 20(1) of the CDA Rules, which empowered the appointing authority, any authority to which it was subordinate, the disciplinary authority, or any authority empowered in that behalf by the management of general or special order, to place an employee under suspension, necessarily implied that the order of suspension, of the petitioner, could not have been issued by an authority lower than the Hon’ble President of India.

(vi) Even if the order dated 15th June, 2018, were to be regarded as an order of review of the petitioner’s suspension, it would still be barred by time, as six months, from the date of issuance of the suspension order of the petitioner, expired on 13th June, 2018.

(vii) In this context, Mr. Venugopal has relied on the judgment of the Supreme Court in *Union of India v. Dipak Mali, (2010) 2 SCC 222* to support his submission that, on 13th June, 2018, the order of suspension of his client automatically ceased to exist. He submits that, though Rule 20(6) of the CDA Rules does not, in terms, state that, on the expiry of six months from the issuance of an order of suspension, the order would become invalid in the absence of any review thereof, the provisions of sub-rules (1) and (3) of Rule 20 of the CDA Rules being

mandatory, non-review, of the order of suspension, would necessarily result, on the expiry of six months from the passing of the said order, in extinguishing of the said order in its entirety.

(viii) Mr. Venugopal next relied on the judgment of the Supreme Court in *Ajay Kumar Choudhary (supra)*, specifically drawing attention to para 11 thereof. Drawing sustenance therefrom, Mr. Venugopal submits, that by now, nine months have elapsed since the issuance of the order of suspension of the petitioner on 14th December, 2017, without any charge-sheet being issued to him departmentally and without any charge-sheet being filed by the CBI in the criminal court. Applying *Ajay Kumar Choudhary (supra)*, Mr. Venugopal would submit that the suspension order of the petitioner, consequently, deserved to be brought to an end. He points out the irony of the situation in which his client is placed, by submitting that, had criminal investigations been ongoing, his client would have got bail in 90 days as no charge-sheet had been filed therein. On the other hand, with nothing having been found against his client, he submits that his client is required to continue to languish under suspension. Mr. Venugopal submits that his client is willing to give an undertaking that if he is found tampering with the evidence, he would be liable to be suspended yet again.

(ix) Mr. Venugopal also draws my attention to the fact that, in a recent decision of the Supreme Court, delivered on 21st

August, 2018 in *State of Tamil Nadu v. Pramod Kumar, C.A. 8427-8428/2018, Ajay Kumar Choudhary (supra)* has been relied upon and reiterated. Reliance is also placed, in this context, by Mr. Venugopal, on a judgment of the High Court of Calcutta in *Sandipta Gangopadhyay v. Allahabad Bank, (2015) SCC Online Cal 3894*.

(x) Mr. Venugopal has also referred to the judgment of a Division Bench of this Court in *GNCTD v. Dr. Rishi Anand, 2017 SCC Online Del 10506*, which considered the judgment of the Supreme Court in *Ajay Kumar Choudhary (supra)* and rejected the submission of the officer, in the said case, founded on the said judgment, that non-issuance of the charge-sheet, within 90 days, resulted in automatic lapsing of his suspension. Mr. Venugopal would seek to draw attention to several observations, of the Division Bench of this Court in the said judgment, which would underscore the fact that this Court had not departed from *Ajay Kumar Choudhary (supra)*—which, needless to say, was not a course of action which was open to it, in law but held that, in view of the peculiar circumstances obtaining, which were different from those obtaining in *Ajay Kumar Choudhary (supra)*, the law in *Ajay Kumar Choudhary (supra)* would not apply. My attention has been invited, in this context, to the fact that this Court, in para 14 of its judgment, opined that the reason, for the Supreme Court setting aside the suspension of *Ajay Kumar Choudhary (supra)*, was that he had, in fact, been served with the charge-sheet albeit nearly three years after his suspension. Mr. Venugopal would submit

that his client has not been served with any charge-sheet till date. Mr. Venugopal further relied on para 16 of the judgment which, in his submission, highlights the requirement of six monthly review of every order of suspension, and reads thus :

“16. In *Kartar Singh v. State of Punjab* [(1994) 3 SCC 569 : 1994 SCC (Cri) 899] the Constitution Bench of this Court unequivocally construed the right of speedy trial as a fundamental right, and we can do no better than extract these paragraphs from that celebrated decision: (SCC pp. 638-39, paras 86-87)

“86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

87. This Court in *Hussainara Khatoon (I) v. State of Bihar* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] while dealing with Article 21 of the Constitution of India has observed thus: (SCC p. 89, para 5)

‘5. ... No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral

and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge levelled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21.”

Immediately following thereupon, Mr. Venugopal would point out, para 17 of the judgment records that this Court opined that the judgment in *Ajay Kumar Choudhary (supra)* could not be treated as denuding the government of its power to review an order of suspension at six monthly intervals. It held that “the power of the competent authority to pass orders under Rule 10(6) of the CCS (CCA) Rules extending to suspension has not been extinguished by the Supreme Court”. Mr. Venugopal would submit that this singular fact made all the difference between the case of Dr. Rishi Anand and the case of the present petitioner, inasmuch as, in the case of the former, the power to extend suspension beyond the period of six months had been exercised under Rule 10(6) of the CCS (CCA) Rules, whereas no such power has been exercised, in the case of his client. Mr. Venugopal further highlights that, far from being against his client, the judgment of this Court in *Ajay Kumar Choudhary (supra)* specifically highlights, in paras 22 and 23, the necessity

of reviewing every order of suspension within the period of 90 days.

(xi) Mr. Venugopal also relies on a judgment of a Division Bench of this Court in ***GNCTD v. Vijay Kumar Jha, 2016 SCC Online Del 4167*** and of the High Court of Kerala in ***K. Padmakumar v. State of Kerala, 2017 SCC Online Ker 39978***.

16. Rebutting the above submissions of Mr. Venugopal, Mr. Arun Bhardwaj, learned Standing Counsel appearing on behalf of the respondent, predictably relies on para 17 of the judgment of this Court in ***Dr. Rishi Anand (supra)***, to which more detailed allusion would be made hereinafter. He further submits that, under the CDA Rules of the NTPC, the period of suspension prescribed was not three months, but six months. He seeks to distinguish the judgment of the Supreme Court in ***Ajay Kumar Choudhary (supra)***, by pointing out that the said decision was rendered in the context of the CCS (CCA) Rules, whereunder the initial maximum permissible period of suspension was stipulated as three months, followed by periodical six monthly reviews. As against this, he would point out that the initial non-reviewable period of suspension, under the CDA Rules of the NTPC was six months, followed by periodical six monthly reviews. This distinction between the initial non-reviewable suspension period, as prescribed under the CCS (CCA) Rules, *vis-a-vis* the CDA Rules of the NTPC, in the submission of Mr. Bhardwaj, makes all the difference. Mr. Bhardwaj submits that the suspension of the petitioner was, in fact, extended *vide* noting dated 7th June, 2018.

17. Mr. Bhardwaj places reliance on Rule 20(3) of the CDA Rules of the NTPC. He reiterates the observations and reasoning contained in para 6 of the impugned order dated 18th May, 2018, which already stands reproduced hereinabove. Reverting again to the judgment in ***Dr. Rishi Anand (supra)*** Mr. Bhardwaj places reliance on the following observations, with which para 20 of the judgment commences :

“20. It may not always be possible for the government to serve the charge sheet on the officer concerned within a period of 90 days, or even the extended period, for myriad justifiable reasons. At the same time, there may be cases where the conduct of the government servant may be such, that it may be undesirable to recall the suspension and put him in position once again, even after sanitising the environment so that he may not interfere in the proposed inquiry.”

18. The submission of Mr. Bhardwaj is, therefore, that, no case for setting aside, or even discontinuing, the suspension of the petitioner, was made out, on the submissions advanced by Mr. Venugopal.

19. Mr. Venugopal reiterates, in rejoinder, the legal position that the appointing authority, as well as the Disciplinary Authority, of his client, was the Hon’ble President of India. He points out that the order of suspension, dated 18th May, 2018, was issued by the Hon’ble President of India, and the fact that the Hon’ble President of India was the Disciplinary Authority of the petitioner also stands recognised and acknowledged, by Respondent No. 1 itself, in para 4 of the impugned order dated 18th May, 2018. The file noting, relied upon by Mr. Bhardwaj, as extending the petitioner’s suspension beyond the period of six months, was, on the other hand, not issued by the Hon’ble

President of India and could not therefore, in Mr. Venugopal's submission, be treated as a valid order of extension of his client's suspension. He draws attention to Rule 20(3) of the CDA Rules of the NTPC, which reads as under :

“ The suspension of employees placed under suspension in terms of sub-Rule 1 & 2 shall be reviewed by the Competent Authority every six months as per the extant Govt. guidelines and the reasons for revoking or continuing with the suspension shall be recorded in writing. However, issuance of separate orders will not be necessary after such reviews if the Competent Authority decides to continue further with the suspension. The Competent Authority shall be the authority which placed the employee under suspension/under deemed suspension or any other higher authority.”

20. Mr. Venugopal would, therefore, submit that the “competent authority”, to decide on whether to review the suspension of the petitioner, or not, was only Hon'ble President of India and no one else.

21. Mr. Venugopal, therefore reiterates his submission that there has, in fact, been no renewal of the suspension of his client, till date, and that, therefore, there could be no question of continuing the said suspension any further.

22. Without prejudice to the above, Mr. Venugopal draws my attention to the well known decision of the Constitution Bench of the Supreme Court in ***Bachhittar Singh v. State of Punjab***, AIR 1963 SC 395, which clearly held that an order which is not communicated to the person concerned, cannot be treated as valid or enforceable in law.

Paras 9 and 10 of the said decision are pressed into service by Mr. Venugopal, in this regard.

23. Insofar as the judgment in *Dr. Rishi Anand (supra)* is concerned, Mr. Venugopal would reiterate that the said judgment would need to be read in juxtaposition with, and in terms of, para 22 of the decision in *Ajay Kumar Choudhary (supra)*. Inasmuch as detailed reference to these decisions would be made hereinafter, the said paragraphs are not being reproduced at this stage.

24. Infine, Mr. Venugopal would reiterate his reliance on *Pramod Kumar (supra)* and submit that, as *Ajay Kumar Choudhary (supra)* stands reiterated in *Pramod Kumar (supra)*, the judgment of the Division Bench of this Court, in *Dr. Rishi Anand (supra)*, would have to cede place.

25. Analysis

25.1 The appointment order, dated 31st October, 2016, issued by Respondent No.1, clearly stated, in para 1.15.1, that the CDA Rules of the NTPC, in respect of non-workmen category of staff, would apply, *mutatis mutandis*, to the petitioner, with the modification that his Disciplinary Authority would be the Hon'ble President of India.

25.2 Rule 20 of the CDA Rules of the NTPC reads thus:

- (1) The appointing authority or any authority to which it is subordinate or the disciplinary authority or any authority

empowered in that behalf by the management by general or special order may place an employee under suspension:

- (a) Where a disciplinary proceeding against him is contemplated or is pending; or
 - (b) Where, in the opinion of the Authority aforesaid, he has engaged himself in activities prejudicial to the interest of the security of the state; or
 - (c) Where a case against him in respect of any criminal offence is under investigation or trial.
- (2) (a) An employee who is detained in custody, whether on criminal charge or otherwise, for a period exceeding 48 hours shall be deemed to have been suspended with effect from the date of detention by an order of the appointing authority or by the authority to whom the powers are delegated and shall remain under suspension until further orders.
- (b) An employee shall also be deemed to have been placed under suspension from the date of his conviction if in the event of a conviction for an offence; he is sentenced to a term of imprisonment exceeding 48 hrs. and is not forthwith dismissed or removed or compulsorily retired consequent to such conviction.

Note : The period of 48 hours referred to in Clause 2(b) of this sub-rule shall be computed from the commencement of the imprisonment after the conviction and for this purpose, intermittent period of imprisonment, if any, shall be taken into account.

- (c) Where an Employee is suspended or is deemed to have been suspended (whether in connection with any disciplinary proceeding or otherwise) and any other disciplinary proceeding is commenced against him during the continuance of that suspension, the Authority competent to place him under suspension may, for reasons to be recorded by it in writing, direct that the Employees shall continue to be under

suspension until the termination of all or any of such proceedings.

(d) Headquarter of the suspended employee shall be the station of posting immediately before the order of suspension if issued.

(e) The Competent Authority may change the headquarters of any employee during suspension, if it is in public/administrative interest.

(f) When an employee under suspension requests for a change of headquarters, the Competent Authority may consider the request and upon being satisfied that such a course will not put the Company to any extra expenditure like grant of travelling allowances etc. or other complications like creating difficulty in investigation or departmental proceedings etc. may take appropriate decision.

(g) Leave shall not be granted to any employee under suspension.

(h) If an employee is arrested by the police on a criminal charge and bail is not granted, no subsistence allowance is payable. On grant of bail if the Competent Authority decides to continue the suspension, the employee shall be entitled to subsistence allowance from the date he is granted bail.

(3) The suspension of employees placed under suspension in terms of sub-Rule 1 & 2 shall be reviewed by the Competent Authority every six months as per the extant Govt. guidelines and the reasons for revoking or continuing with the suspension shall be recorded in writing. However, issuance of separate orders will not be necessary after such reviews if the Competent Authority decides to continue further with the suspension. The Competent Authority shall be the authority which placed the employee under suspension/under deemed suspension or any higher authority.

(4) Where a penalty of dismissal or removal from service imposed upon an employee under suspension is set aside on an appeal or on a review under these rules and the case is

remitted for further enquiry or action or with any other directions, the order of his suspension shall be deemed to have continued in force on and from the date of the original order of dismissal or removal and shall remain in force until further orders.

(5) Where a penalty or dismissal or removal from service imposed upon an employee is set aside or declared or rendered void in consequence of or by a decision of a court of law and the disciplinary authority, on consideration of the circumstances of the case, decides to hold a further inquiry against him on the allegations on which the penalty of dismissal or removal was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal or removal and shall continue to remain under suspension until further orders.

(6) An order of suspension made or deemed to have been made under this Rule may at any time be revoked by the authority which made or is deemed to have made the order or by any authority to which that authority is subordinate. ”

25.3 In the context of the present controversy, it is relevant to note that Rule 20 of the CDA Rules postulates that placing, of an employee, under suspension, may be effected either by the “appointing authority”, or any authority to which it is subordinate, or the Disciplinary Authority, or an authority empowered in that behalf by the management by general or special power.

25.4 In the present case, the above extracted Clause 1.15.1 of the terms and conditions of appointment of the petitioner makes it clear that the appointing authority of the petitioner would be the Hon’ble President of India.

25.5 Mr. Venugopal correctly points out that the impugned order, dated 18th May, 2018, also acknowledges, in para 4 thereof (which has already been reproduced hereinabove) that the Disciplinary Authority of the petitioner was the Hon'ble President of India.

25.6 Needless to say, there is no authority to whom the Hon'ble President of India is subordinate.

25.7 The inevitable sequitur of this factual position, read in conjunction with Rule 20(1) of the CDA Rules of the NTPC, is, therefore, that the only authority, competent to place the petitioner under suspension would be the Hon'ble President of India. In other words, the "competent authority", for the purposes of Rule 20 of the CDA Rules of the NTPC would necessarily be the Hon'ble President of India and none other. Sub-rule (3) of Rule 20 makes this expressly clear by stating, specifically, that "the Competent Authority would be the authority which places the employee under suspension/under deemed suspension or any other higher authority".

25.8 This is also reflected from the fact that the order dated 14th December, 2017, placing the petitioner under suspension, has also been issued "by order and in the name of" the Hon'ble President of India.

25.9 Sub-rule (3) of Rule 20 of the CDA Rules of the NTPC expressly stipulates that review, of the order of suspension, of employees of the NTPC, suspended under sub-rule (1) or (2) has to be effected by the competent authority every six months as per the extant

government guidelines. The words in which sub-rule (3) of Rule 20 of the CDA Rules of the NTPC are couched, are, in this regard interesting and significant. The said sub-rule ordains that:

- (i) the suspension, of employees suspended under sub-rules (1) or (2) of Rule 20 would be reviewed by the competent authority every six months,
- (ii) such review would be “as per the extant Govt. guidelines”,
- (iii) the “reasons for revoking or continuing with the suspension shall be recorded in writing”, and
- (iv) “however, issuance of separate orders would not be necessary after such reviews if the competent authority decides to continue further with the suspension”.

25.10 As thus couched, Rule 20(3) (*supra*) of the CDA Rules of NTPC clearly requires any order, reviewing suspension of an officer, who has been placed under suspension under sub-rule (1) or sub-rule (2) of Rule 20, to be by the competent authority who was competent to place the officer under suspension, i.e. in the case of the petitioner, the Hon’ble President of India, and no authority subordinate to him.

25.11 There is no order, forthcoming, by the Hon’ble President of India, or even by order and under the name of the Hon’ble President of India, reviewing the suspension of the petitioner, till date.

25.12 Mr. Bhardwaj has placed considerable reliance on a noting, dated 7th June, 2018, by Aniruddha Kumar, Joint Secretary (TH) and CVO. This noting, as filed by Mr. Bhardwaj with his written

submissions, has been endorsed by the Secretary, (P) MOS, PNNRE (IC).

25.13 Mr. Venugopal has also sought to contend that such a noting was woefully insufficient to constitute a legitimate basis for extending the suspension of the petitioner. He has placed reliance on the following passages, from the judgment of the Constitution Bench of the Supreme Court in *Bachhittar Singh (supra)*:

“9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could well score out his remarks or minutes on the file and write fresh ones.

10. The business of State is a complicated one and has necessarily to be conducted through the agency of a large number of officials and authorities. The Constitution, therefore, requires and so did the Rules of Business framed by the Rajpramukh of PEPSU provide, that the action must be taken by the authority concerned in the name of the Rajpramukh. It is not till this formality is observed that the action can be regarded as that of the State or here, by the Rajpramukh. We may further observe that, constitutionally speaking, the Minister is no more than an adviser and that the head of the State, the Governor or Rajpramukh [Till the abolition of that office by the Amendment of the Constitution in 1956.] , is to act with the aid and advice of his Council of Ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the action of the State until the advice of the Council of Ministers

is accepted or deemed to be accepted by the Head of the State. Indeed, it is possible that after expressing one opinion about a particular matter at a particular stage a Minister or the Council of Ministers may express quite a different opinion, one which may be completely opposed to the earlier opinion. Which of them can be regarded as the “order” of the State Government? Therefore, to make the opinion amount to a decision of the Government it must be communicated to the person concerned. In this connection we may quote the following from the judgment of this Court in the *State of Punjab v. Sodhi Sukhdev Singh* [AIR (1961) SC 493, 512]:

“Mr. Gopal Singh attempted to argue that before the final order was passed the Council of Ministers had decided to accept the respondent's representation and to reinstate him, and that, according to him, the respondent seeks to prove by calling the two original orders. We are unable to understand this argument. Even if the Council of Ministers had provisionally decided to reinstate the respondent that would not prevent the Council from reconsidering the matter and coming to a contrary conclusion later on, until a final decision is reached by them and is communicated to the Rajpramukh in the form of advice and acted upon by him by issuing an order in that behalf to the respondent.”

Thus it is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character.”

25.14 The response of Mr. Bhardwaj, to this submission, is that Rule 20(3) of the CDA Rules of the NTPC expressly states that, if the competent authority decided to continue further with the suspension, separate orders were not required to be issued. That, however, appears, to me, to be a somewhat inaccurate reading of Rule 20(3). What the said sub-rule says, in my view, is that, “if, after reviewing

the suspension of the concerned employee, the competent authority decided to continue further with the suspension, separate orders were not required to be issued". The sub-rule clearly states that separate orders would not be required to be issued "after such reviews". To me, it appears that this stipulation exempts the competent authority from issuing a separate order continuing the suspension, once the decision to continue the suspension is taken. That, in my opinion, cannot imply that the employee concerned would be kept in the dark as to the decision of the concerned authority. Such an interpretation would also lead to manifestly absurd results, as, if it were to be accepted, an employee would remain continuously unaware of the decision of the reviewing authority, on whether his suspension should be continued or not, and remain, as it were in a state of animated suspension. Such an unreasonable construction, in my view, could not be placed on Rule 20(3) (*supra*). The only reasonable manner in which the said sub-rule can be construed, if it were to harmonise with the law laid down by the Constitution Bench in ***Bachhittar Singh*** (*supra*), would be that, while the employee would necessarily have to be informed of the decision of the competent authority, a separate formal order, continuing the suspension, may not be required to be issued. It cannot be said that the employee can be kept totally uninformed of the outcome of the review and that it is only when the employee petitions a court, against continuation of his suspension, that the respondent would be gracious enough to reveal, to the employee, the decision to continue with his suspension; that too by a file noting. I am unable to countenance an argument that the entire exercise of

review of suspension of the employee can take place on the file, keeping the employee completely unconscious and unaware thereof.

25.15 For all these reasons, I do not subscribe to the submission, of Mr. Bhardwaj, that the file noting, dated 7th June, 2018, was sufficient compliance with the mandate of sub-rule (3) of Rule 20 of the CDA Rules of the NTPC.

25.16 Though the continued suspension of the petitioner is liable to be set aside even for the above reason, I deem it appropriate to address, on merits, the main submission advanced, before me, by learned counsel, which was regarding the applicability, or otherwise, of the judgment of the Supreme Court in *Ajay Kumar Choudhary (supra)*. For this, a brief study of the decisions in *Ajay Kumar Choudhary (supra)*, *Dr. Rishi Anand (supra)*, *Vijay Kumar Jha (supra)* and *Pramod Kumar (supra)* would be necessary.

25.17 I am not referring to the decisions of the High Court of Kerala and Calcutta, on which reliance was placed, as, in my view, it is not necessary to refer to the said decisions, to decide the controversy in issue.

26. *Ajay Kumar Choudhary v. Union of India*

26.1 The appellant Ajay Kumar Choudhary (hereinafter referred to as “Choudhary”) was suspended on 30th September, 2011. The suspension continued, thereafter, till the Supreme Court intervened. The suspension, it may be noted, was extended, for the first time, on

28th December, 2011, for a period of 180 days, which prompted Choudhary to approach the Central Administrative Tribunal (hereinafter referred to as “the Tribunal”). During pendency of the proceedings before the Tribunal, the suspension of Choudhary was extended a second, a third and a fourth time, on each occasion for 180 days, with effect from 26th June, 2012, 2nd December, 2012 and 22nd March, 2013.

26.2 By its judgment dated 22nd May, 2013, the Tribunal opined that no employee could be indefinitely suspended, and therefore, directed, that, if no charge memo was issued to Choudhary on or before 21st June, 2013, he would be entitled to reinstatement in service.

26.3 The Union of India assailed the said judgment, of the Tribunal, before this Court, contending that the Tribunal had no power to direct that the suspension of Choudhary would not be extended if no charge memo was served to him on the expiry of 90 days from 19th March, 2013 (when the then extant suspension order expired). This Court formulated the question arising before it, for its consideration, in the following terms : “Whether the impugned directions circumscribing the government’s power to continue the suspension and also to issue a chargesheet within a time bound manner can be sustained?”

26.4 Opining that the view expressed by the Tribunal amounted to “a substitution of a judicial determination to that of the authority possessing the power, i.e. the executive government, as to the decision was rational to continue with the suspension”, this Court, *vide* its judgment dated 4th September, 2013, allowed the writ petition of the

Union of India and directed the Central Government to pass appropriate orders as to whether it wished to continue, or not, with the suspension of Choudhary, having regard to all relevant factors, within a period of two weeks.

26.5 Choudhary petitioned the Supreme Court thereagainst.

26.6 The Supreme Court noted that, *vide* letter dated 13th June, 2014, the suspension of Choudhary had been continued for 90 days with effect from 15th June, 2014, and that this constituted the fourth extension of Choudhary's suspension. Arguments in the appeal before the Supreme Court were heard on 9th September, 2014, by which date neither a charge-sheet nor a memorandum of charges had been served on Choudhary.

26.7 The Supreme Court, even while noting that each extension of suspension was supported by elaborate reasons, proceeded to hold, nevertheless thus :

“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.”

26.8 This Court likened continuation of suspension with continuation of incarceration and held that, just as it was not permissible to indefinitely incarcerate a person in custody, it was, equally, not permissible to indefinitely continue an officer under suspension. Paras 20 and 21 of the judgment, which may be said to contend its *raison d’etre*, or its *ratio decidendi*, may be reproduced, to advantage, thus :

“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 a 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 v. State of*

Bihar [(1986) 4 SCC 481 : 1986 SCC (Cri) 511] and more so of the Constitution Bench in Antulay [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , we are spurred to extrapolate the quintessence of the proviso to Section 167(2) CrPC, 1973 to moderate suspension orders in cases of departmental/disciplinary enquiries 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) CrPC 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 person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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.”

26.9 To my estimation, the law laid down in para 21 of *Ajay Kumar Choudhary (supra)* cannot be said to be limited by the CCS (CCA) Rules, or the fact that the controversy, in that case, arose within the ambit of the said Rules. While it is true that the ratio of a judgment has to be appreciated in the context of the facts obtaining before the court, and the controversy that arose before it for determination, it is equally true that this Court cannot read down an omnibus enunciation of the law by the Supreme Court, or limit such an enunciation as being applicable only to the facts which obtained before the Supreme Court. It is one thing to say that a judgment of the Supreme Court has to be understood in the context of the facts before it; it is quite another to say that a judgment of the Supreme Court can be limited, by a court of inferior jurisdiction, to the facts obtaining in the said judgment. Any such attempt, by this Court, or, for that matter, by any judicial authority hierarchically inferior to the Supreme Court, would in my view, amount to clear-cut judicial indiscipline.

26.10 Para 20 of the judgment in *Ajay Kumar Choudhary (supra)* has enunciated a clear proposition of law, to the effect that no suspension order could extend beyond three months, if within the said period, no memorandum of charges or charge-sheet is served on the delinquent officer/employee.

26.11 In fact, a bare glance at para 20 of the judgment in *Ajay Kumar Choudhary (supra)* would make it clear that the period of three months, prescribed in para 21 of the judgment, has been borrowed

from Section 167(2) of the Code of Criminal Procedure, 1973. If that be so, it cannot apply, any differently to an employee of the NTPC, than to any Central Government employee.

27. Government of NCT of Delhi v. Dr. Rishi Anand

27.1 The petitioner Rishi Anand was placed under suspension *vide* order dated 12th July, 2016, under Rule 10(1) of the CCS (CCA) Rules, in contemplation of disciplinary proceedings. His suspension was extended by 180 days, *vide* order dated 27th September, 2016, for the period 10th October, 2016 to 7th April, 2017. Departmental proceedings were initiated, against him, by issuance of a charge-sheet dated 1st March, 2017. During the currency thereof, his suspension was further extended, *vide* order dated 7th March, 2017, for a further period of 180 days, with effect from 8th April, 2017.

27.2 At this stage, Rishi Anand approached the Tribunal, contending that, on the basis of *Ajay Kumar Choudhary*, as no charge-sheet had been issued to him within 90 days of his original suspension, his continued suspension had been rendered illegal. Reliance was placed, by him on the OM dated 23rd August, 2016, issued by the DOPT as a sequel to the judgment in *Ajay Kumar Choudhary (supra)*.

27.3 The Tribunal allowed the OA of Rishi Anand, *vide* its judgment dated 29th May, 2017, relying, for the purpose, on the judgment in *Ajay Kumar Choudhary (supra)*. Aggrieved thereby, the Government of NCT of Delhi petitioned this Court.

27.4 The reasoning of this Court, as contained in its judgment, requires to be carefully understood. In para 14 of the judgment, this Court noted that, despite the fact that Choudhary had remained under suspension from 30th September, 2011, the Supreme Court did not set it aside *as, in the meantime, he had been served with a charge sheet sometime after 9th September, 2014*. The sequitur to this observation, could possibly be that, *had no such charge-sheet been served on Choudhary, the Supreme Court may have set aside his suspension*. Interestingly, in the present case, no charge-sheet, till date, has been served on the petitioner. Paras 14 to 23 of ***Rishi Anand (supra)*** are reproduced thus :

“14. In the said case, the tribunal had directed that if no charge memo was issued to the appellant Ajay Kumar Choudhary before the expiry of 21.06.2013, then he would be reinstated in service. The said order was assailed by the Union of India before the High Court. The High Court disposed of the petition by issuing a direction to the Central Government to pass appropriate orders “as to whether it wishes to continue with the suspension or not having regard to all the relevant factors, including the report of CBI, if any, it might have received by now. This exercise should be completed as early as possible and within two weeks from today”.

15. The appellant then approached the Supreme Court to assail the said direction of the High Court. The Supreme Court observed in its decision that till arguments were heard on 09.09.2014, neither the charge sheet, nor the memorandum of charge had been served on the appellant. It was represented before the Supreme Court that the charge sheet was expected to be served on the appellant before 12.09.2014. The Supreme Court considered several decisions and, eventually, concluded in para 21 as follows:

“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 person concerned 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 recognised principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognise that the 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”.

16. It appears that before the Supreme Court rendered its decision on 16.02.2016, the charge sheet had been served on the appellant - though from a reading of the decision it is not clear as to on what date the same was so served. This development was taken note of by the Supreme Court in its decision. In para 22 of the decision, the Supreme Court observed:

*“22. So far as the facts of the present case are concerned, **the appellant has now been served with a charge-sheet, and, therefore, these directions may not be relevant to him any longer.** However, if the appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the respondents will be subject to judicial review”.*

(emphasis supplied)

17. Thus, even though the charge sheet had not been served on the appellant Ajay Kumar Choudhary when he initially assailed his suspension, or even till the hearing of the appeal

took place before the Supreme Court on 09.09.2014 (it was only between 09.09.2014 and the date of decision on 16.02.2015 that the charge sheet appears to have been served), the Supreme Court held that since the charge sheet had been served on the appellant, therefore, the directions issued by it would not be relevant to his case. Despite the fact that the appellant Ajay Kumar Choudhary had remained under suspension right from 30.09.2011, the Supreme Court did not set aside the order of suspension since, in the meantime, Ajay Kumar Choudhary had been served with a charge sheet sometime after 09.09.2014, i.e. nearly three years after his suspension.

18. The O.M. dated 23.08.2016 and even the earlier O.M. dated 03.07.2015 issued by the DoPT (a copy whereof has been tendered in court by counsel for the respondent) evidently have misconstrued the said decision of the Supreme Court, since the facts of the said case and the eventual directions issued in para 22 of the said decision, appear to have escaped attention.

19. There can be no quarrel with the proposition that a government servant who is suspended in contemplation of a disciplinary proceedings or criminal proceedings under Rule 10 of the CCS (CCA) Rules, should not be kept under suspension indefinitely or unnecessarily. It is for this reason that a review of the on-going suspension is required to be undertaken by the government at regular intervals under Rule 10(6) of the CCS (CCA) Rules, which reads as under:

“10(6) An order of suspension made or deemed to have been made under this rule shall be reviewed by the authority competent to modify or revoke the suspension [before expiry of ninety days from the effective date of suspension] on the recommendation of the Review Committee constituted for the purpose and pass orders either extending or revoking the suspension. Subsequent reviews shall be made before expiry of the extended period of suspension. Extension of suspension shall not be for a period exceeding one hundred and eighty days at a time.”

(emphasis supplied)

20. It may not always be possible for the government to serve the charge sheet on the officer concerned within a period of 90 days, or even the extended period, for myriad justifiable reasons. At the same time, there may be cases where the conduct of the government servant may be such, that it may be undesirable to recall the suspension and put him in position once again, even after sanitising the environment so that he may not interfere in the proposed inquiry. On a reading of **Ajay Kumar Choudhary (supra)**, we are of the view that the Supreme Court has not denuded the Government of its authority to continue/extend the suspension of the government servant - before, or after the service of the charge sheet - if there is sufficient justification for it. The Supreme Court has, while observing that the suspension should not be extended beyond three months - if within this period the memorandum of charges/charge-sheet is not served on the delinquent officer, has stopped short of observing that if the charge memo/charge-sheet is not issued within three months of suspension, the suspension of the government servant shall automatically lapse, without any further order being passed by the Government. No such consequence - of the automatic lapsing of suspension at the expiry of three months if the charge memo/charge-sheet is not issued during that period, has been prescribed. In **Kailash v. Nanhku, (2005) 4 SCC 480 : AIR 2005 SC 2441**, while examining the issue: whether the obligation cast on the defendant to file the written statement to the plaint under Rule (1) of Order 8 CPC within the specified time was directory or mandatory i.e. whether the Court could extend the time for filing of the written statement beyond the period specified in Rule 1 of Order 8, the Supreme Court held that the Court had the power to extend the time for filing of the written statement, since there was no consequence prescribed flowing from non-extension of time. In para 29 of this decision, the Supreme Court observed as follows:

“29. It is also to be noted that though the power of the court under the proviso appended to Rule 1 Order 8 is circumscribed by the words “shall not be later than ninety days” but the consequences flowing from non-extension of time are not specifically provided for though they may be read in by necessary implication. Merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions. The courts,

when called upon to interpret the nature of the provision, may, keeping in view the entire context in which the provision came to be enacted, hold the same to be directory though worded in the negative form.”

(emphasis supplied)

21. The direction issued by the Supreme Court is that the currency of the suspension should not be extended beyond three months, if the charge memorandum/charge-sheet is not issued within the period of 3 months of suspension. But it does not say that if, as a matter of fact, it is so extended it would be null and void and of no effect. The power of the competent authority to pass orders under Rule 10(6) of the CCS (CCA) Rules extending the suspension has not been extinguished by the Supreme Court. The said power can be exercised if good reasons therefor are forthcoming.

22. The decision of the Supreme Court in **Ajay Kumar Choudhary (supra)** itself shows that there cannot be a hard and fast rule in this regard. If that were so, the Supreme Court would have quashed the suspension of Ajay Kumar Choudhary. However, in view of the fact that the charge memo had been issued to Ajay Kumar Choudhary - though after nearly three years of his initial suspension, the Supreme Court held that the directions issued by it would not be relevant to his case.

23. From a reading of the decision in **Ajay Kumar Choudhary (supra)** and Rule 10 of the CCS (CCA) Rules, it emerges that the government is obliged to record its reasons for extension of the suspension which, if assailed, would be open to judicial scrutiny - not as in an appeal, but on grounds available in law for judicial review of administrative action.”

27.5 In para 16 of its judgment, this Court clearly endorsed the fundamental principle that a government servant, who was suspended in contemplation of disciplinary proceedings, or criminal proceedings, could not be kept under suspension indefinitely or unnecessarily. It was for this reason, it was noted, *“that review of the ongoing suspension is required to be undertaken by the government at regular*

intervals under Rule 10(6) of the CCS (CCA) Rules.....”. Clearly, therefore, this Court has recognised, even in ***Dr. Rishi Anand (supra)***, the necessity of timely review of the suspension of the government servant concerned, as ordained by Rule 10(6) of the CCS (CCA) Rules. Thereafter, in para 20 of its judgment – on which Mr. Bhardwaj seeks to capitalise – this Court, while recognising the possibility of cases where the conduct of the government servant would be such as rendered it undesirable to recall the suspension and put him in position once again, “even after sanitising the environment”, so that he may not interfere in the proposed inquiry, only recognised the preservation, even by ***Ajay Kumar Choudhary (supra)***, of the right of the Government to continue/extend the suspension of the government servant concerned, before or after service of the charge-sheet, provided sufficient justification extended for such suspension. The Supreme Court, thereafter, holds that the judgment in ***Ajay Kumar Choudhary (supra)*** could not be read as an authority for the proposition that non-issuance of charge memo/charge-sheet, within three months of suspension, would result in automatic lapsing of the suspension order. Thereafter, in para 18, this Court again observes that “the power of the competent authority to pass orders under Rule 10(6) of the CCS (CCA) Rules, continuing or extending the suspension has not been extinguished by the Supreme Court.” This observation, too, cannot come to the aid of the respondent, inasmuch as, while, in ***Dr. Rishi Anand (supra)***, *appropriate orders extending the suspension had been passed within the stipulated period of six months, no such orders have been passed in the present case*, as already noted hereinabove. This fact, stands

expressly underscored and categorised as “pertinent” by this Court itself, in para 23 of its judgment, which notes that “*pertinently, the respondent’s suspension was reviewed and extended by the government within the initial period of 90 days on 27.09.2016*”. Nothing of the sort has happened, however, in the present case.

28. Though, therefore, sitting singly, it is not open to me to question the correctness of the judgment of the Division Bench in ***Dr. Rishi Anand (supra)***, I am of the view that the said decision cannot come to any substantial aid of the respondent.

29. **Government of NCT of Delhi v. Vijay Kumar Jha**

29.1 As against ***Dr. Rishi Anand (supra)***, Mr. Venugopal has drawn my attention to the fact that ***Ajay Kumar Choudhary (supra)*** has expressly been followed, by another Division Bench of this Court in ***Vijay Kumar Jha (supra)***. In that case, the respondent Vijay Kumar Jha (hereinafter referred to as “Jha”) was arrested on 20th September, 2013 and was, *vide* order dated 20th November, 2013, placed under deemed suspension with effect from the date of the said arrest. His suspension was extended, from time to time, in accordance with Rule 10(6) of the CCS (CCA) Rules. Jha approached the Tribunal, which, *vide* its judgment dated 25th May, 2016, allowed the Original Application (OA) filed by Jha and quashed the order suspending him from service. Aggrieved thereby, the GNCTD approached this Court.

29.2 The judgment of this Court records at the very outset, that two basic questions were posed, to the counsel appearing for the GNCTD, the first being as to whether any departmental inquiry had been initiated against Jha, and the second as to whether any charge-sheet had been filed against Jha in the criminal court, both of which were answered in the negative. Significantly, both these questions, in the present case, too, are liable to be answered in the negative.

29.3 Thereafter, the Division Bench of this Court extracted the paragraphs, from *Ajay Kumar Choudhary (supra)* which already stand extracted hereinabove, and observed, in the concluding two paragraphs of its judgment thus :

“8. While, there can be no quarrel to the proposition that merely because a period of suspension is long, that by itself cannot be a ground to withdraw the order of suspension. We are of the view that the decisions of the Supreme Court in *Allahabad Bank (supra)* and in *Rajiv Kumar (supra)* sought to be relied upon by the learned counsel for the petitioner are not applicable to the facts of the present case.

9. In our view, the Tribunal has correctly relied on a decision of the Supreme Court in Civil Appeal No. 1912/2015 (arising out of SLP (C) No. 31761/2013 in *Ajay Kumar Choudhary v. Union of India* Through its Secretary, wherein, it has been held as under:

13. 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 Cr.P.C. of 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 v. State of Bihar*, (1986) 4 SCC 481, and more so of the Constitution Bench in *Antulay*, 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.

4. 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.”

29.4 There can be no gainsaying the fact that, this Court, in *Vijay Kumar Jha* completely relied on *Ajay Kumar Choudhary (supra)*.

30. State of Tamil Nadu v. Pramod Kumar

30.1 The necessity of negotiating *Dr. Rishi Anand (supra)* and *Vijay Kumar Jha (supra)* would, fortunately, stand obviated by this decision, rendered on 21st August, 2018, which followed the law laid down in *Ajay Kumar Choudhary (supra)*.

30.2 The respondent Pramod Kumar, in this case, was placed under suspension and issued a charge memo, both of which he impugned before the Tribunal. The Tribunal quashed the order suspending Pramod Kumar from service, but refused to interfere with the charge memo issued to him. Pramod Kumar, thereupon, moved the High Court of Madras, challenging the decision of the Tribunal, to the extent it refused to interfere with the charge memo issued to him. *Per contra*, the State of Tamil Nadu petitioned the High Court challenging the judgment of the Tribunal to the extent it quashed the suspension of Pramod Kumar.

30.3 *Vide* its judgment dated 12th January, 2017, the High Court upheld the judgment of the Tribunal, quashing the suspension Pramod Kumar and went a step further, by quashing the disciplinary proceedings initiated against him *vide* a charge memo dated 29th October, 2013, thereby allowing the writ petition of Pramod Kumar and dismissing the writ petition of the State of Tamil Nadu.

30.4 Aggrieved thereby, the State of Tamil Nadu approached the Supreme Court.

30.5 Before the Supreme Court, it was contended, on behalf of the State of Tamil Nadu, that the suspension of Pramod Kumar was periodically reviewed and orders were passed, pursuant thereto, extending his suspension. Given the seriousness of the charges against him, the State of Tamil Nadu argued that reinstatement of Pramod Kumar would be contrary to public interest. The Supreme Court delineated the two issues, arising before it for consideration, as relating to the validity of the charged memo, and to the continuance of Pramod Kumar under suspension, respectively. It was also noted that these two issues were distinct and not connected with each other.

30.6 This judgment is not required to be burdened with any detailed allusion with the decision of the Supreme Court, insofar as it related to the validity of the charge memo issued to Pramod Kumar, as no such controversy arises in the present case.

30.7 On the issue of legality of continuation of the suspension of Pramod Kumar, however, in paras 20 to 23 of the judgment of the Supreme Court ruled thus :

“20. The first Respondent was placed under deemed suspension under Rule 3(2) of the All India Services Rules for being in custody for a period of more than 48 hours. Periodic reviews were conducted for his continuance under suspension. The recommendations of the Review Committees did not favour his reinstatement due to which he is still under suspension. Mr. P. Chidambaram, learned Senior Counsel appearing for the first Respondent fairly submitted that we

can proceed on the basis that the criminal trial is pending. There cannot be any dispute regarding the power or jurisdiction of the State Government for continuing the first Respondent under suspension pending criminal trial. There is no doubt that the allegations made against the first Respondent are serious in nature. However, the point is whether the continued suspension of the first Respondent for a prolonged period is justified.

21. The first Respondent has been under suspension for more than six years. While releasing the first Respondent on bail, liberty was given to the investigating agency to approach the Court in case he indulged in tampering with the evidence. Admittedly, no complaint is made by the CBI in that regard. Even now the Appellant has no case that there is any specific instance of any attempt by the first Respondent to tamper with evidence.

22. In the minutes of the Review Committee meeting held on 27.06.2016, it was mentioned that the first Respondent is capable of exerting pressure and influencing witnesses and there is every likelihood of the first Respondent misusing office if he is reinstated as Inspector General of Police. Only on the basis of the minutes of the Review Committee meeting, the Principal Secretary, Home (SC) Department ordered extension of the period of suspension for a further period of 180 days beyond 09.07.2016 vide order dated 06.07.2016.

23. This Court in *Ajay Kumar Choudhary v. Union of India, (2015) 7 SCC 291* has frowned upon the practice of protracted suspension and held that suspension must necessarily be for a short duration. On the basis of the material on record, we are convinced that no useful purpose would be served by continuing the first Respondent under suspension any longer and that his reinstatement would not be a threat to a fair trial. We reiterate the observation of the High Court that the Appellant State has the liberty to appoint the first Respondent in a non sensitive post.”

30.8 The law laid down in the above extracted paragraphs from the judgment of the Supreme Court is seminal and significant. It is noted, by the Supreme Court, that periodic reviews for continuing the

suspension of Pramod Kumar, had been conducted, and the suspension continued as a consequence thereof. It was also noted that the recommendations, for his reinstatement, did not find favour with the review committees. The Supreme Court also noted the seriousness of the charges against Pramod Kumar, but held that the point arising before it, was “whether the continued suspension of the first respondent for a prolonged period is justified”.

30.9 The Supreme Court chose, without entering into the controversy in any further detail, to follow its earlier decision in *Ajay Kumar Choudhary (supra)* in para 23 of its judgment which already stands reproduced hereinabove.

31. A conjoint reading of the authorities examined hereinabove i.e. the judgments of the Supreme Court in *Ajay Kumar Choudhary (supra)* and *Pramod Kumar (supra)* and the judgments of this Court in *Dr. Rishi Anand (supra)* and *Vijay Kumar Jha (supra)*, make it clear, in any event, that suspension cannot continue indefinitely and that periodical review of the order of suspension is essential. Continuous suspension, in the absence of such review, is antithetical both to the mandate of the statute as well as to the general principles relating to suspension themselves.

32. Thus viewed, I am of the opinion that the suspension of the petitioner Kulamani Biswal cannot be allowed to continue any further. It is a matter of record that, till date, no charge-sheet has been filed, against the petitioner in the criminal court, and no disciplinary

proceedings have been initiated, against him, either. As already observed by me in detail hereinabove, no review of the suspension of the petitioner, has taken place, on six monthly basis, as mandated by Rule 20(3) of the CDA Rules of the NTPC. No order, communicating the decision of any such review, passed by Hon'ble President of India or by order and in the name of the Hon'ble President of India, stands communicated to the petitioner till date.

33. The file noting, dated 7th June, 2018, on which the case propounded by Mr. Bhardwaj rests, is in my view, too weak to function as a crutch, using which the case of the respondent could stand upright.

34. Resultantly, I am of the view that the suspension of the petitioner from service, as effected by the order dated 14th December, 2017 (*supra*), cannot be allowed to continue any further.

35. The impugned orders dated 14th December, 2017, 18th May, 2018 and 15th June, 2018 are, accordingly quashed and set aside. The petitioner is entitled to be reinstated in service.

36. The respondent is directed to take a decision on how to treat the period of suspension of the petitioner and communicate the decision, to him, within a period of six months.

37. The writ petition stands allowed in the aforementioned terms, with no orders as to costs.

C. HARI SHANKAR, J

OCTOBER 31, 2018/kr

