



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : WP(C)/291/2023

Snehangshu Roy
S/o Lt. S.B. Roy
Permanent Resident of 192/29 M.S Mukherjee Road, PO B.D Sopan, Khardah,
Kolkata, District 24 Parganah North, West Bengal, Presently residing at Bordumsa,
Changlang District, Arunachal Pradesh.
Phone No. 8118947766

VERSUS

THE STATE OF AP and 4 Ors.
Represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar. 2:the
Chief Secretary
Age: 0
Occupation :

3:the Secretary (Personnel)
Age: 0
Occupation :

4:the Under Secretary (Personnel)
Age: 0
Occupation :

5:the Suspension Review Committee
Age: 0
Occupation

Advocate for the Petitioner : Dicky Panging

Advocate for the Respondent : GA (AP)

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. D. Panging, Adv
For the Respondent : Mr. Y. Riram,
Govt. Adv. Arunachal Pradesh
Date of hearing : 14.11.2023
Date of judgment : 14.11.2023

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Panging, learned counsel for the petitioner. Also heard Mr. Y. Riram learned Govt. Advocate for the State of Arunachal Pradesh representing all the respondents.

2. The brief case of the petitioner is that while the petitioner was posted as In-Charge Extra-Assistant Commissioner at Diyun Circle under Bordumsa Sub-Division in the Changlang District of the State of Arunachal Pradesh, the petitioner was placed on suspension in exercise of power conferred by sub-rule (1) of Rule 10 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, (in short CCS (CCA) Rules, 1965) vide Memorandum dated 22.11.2022 on the ground that the disciplinary proceedings is being contemplated against the petitioner. Thereafter a Memorandum of Charge dated 13.01.2023 was served upon the petitioner with the imputation of charge that while the petitioner was functioning as i/c Extra Assistant Commissioner, Diyun, Channaland District had engaged one Shri Robin Chakma as MTS in the office of the EAC, Diyun since June, 2021 without any authority and permission from the

government. Consequent to the issuance of Memorandum dated 13.01.2023, the petitioner submitted his written statement of defence on 30.01.2023 and the petitioner was expecting that the departmental proceeding initiated against the petitioner in terms of the memorandum dated 13.01.2023 would be held, however, no departmental proceedings has been held till and instead the respondent No. 2 issued order dated 16.02.2023 and 21.05.2023 in exercise of powers conferred by Rule 10(6) of the CCS (CCA) Rules, 1965 by which the suspension period of the petitioner was mechanically extended for a further period of 90 days each without assigning any reasons as to why the suspension period of the petitioner was required to be extended. Being aggrieved, this writ petition is filed before this Court.

3. The basic ground of such challenge is that though memorandum of charge has been framed against the petitioner however, no departmental proceeding has been initiated till date by appointing any Enquiry Officer, neither the employer has proceeded after filing of reply by the petitioner to the charge-sheet and the petitioner is put under prolonged suspension which is not sustainable under law as declared by the Hon'ble Apex Court in the case of ***Ajay Kr Choudhary Vs. Union of India and another*** reported in **(2015) 7 SCC 291**.

4. It is the further contention of the petitioner that though the period of suspension has been extended after purported review, however, such review is not supported by any reason and the affidavit filed by the respondent authorities also do not disclose any reason for reviewing the order of suspension and extending the same and therefore, such exercise is in derogation of law laid down by the Hon'ble Apex Court in ***Ajay Kr Choudhary*** (supra).

5. The respondent State though has filed an affidavit, however, except stating that the extension of suspension of the petitioner has been done under the purview of CCS (CCA) Rules, 1965, considering the exigencies.

6. This Court has given anxious consideration to the arguments advanced by the learned counsel for the parties. Also perused the materials available on record.

7. The Hon'ble Apex Court in the case of **Ajay Kr Choudhary** (supra) observed that protracted periods of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. On the basis of such consideration, the Hon'ble Apex Court mandated the maximum period of three months for continuation of suspension, if memo of charge is not filed within the period of 90 days and also mandated that for recording of reasons for extension of suspension. While mandating the aforesaid, the Hon'ble Apex Court concluded that such mandate shall adequately safeguard the universally recognized principle of human dignity.

8. Coming to the case in hand, the impugned order dated 22.11.2022 reflects that the suspension order was issued in contemplation of disciplinary proceeding and the charge memo was also filed within 90 days from the date of suspension. The fact also remains that the petitioner had also filed written statement within the stipulated period of time as given in the charge memo. However, admittedly, nothing has been proceeded further and the period of suspension has been extended by the order dated 16.02.2023 for another three months. Subsequently by another dated 21.05.2023, the suspension was further extended till 18.08.2023.

9. Though affidavit is filed by the State respondent on 24.08.2023, however, it is silent whether the order of suspension was extended beyond 18.08.2023. Even from 18.08.2023, already almost three months have completed. In the affidavit-in-opposition, the respondent has not offered any comment regarding statements made in paragraphs 1 to 12. So for relating to the paragraph 13, it is the stand of the respondent that the petitioner has himself admitted that the

allegation is correct. A perusal of the paragraph-7, wherein, paragraph 13 of the writ petition is replied touches the merit of the allegation made in the charge memo. It is also a stand at paragraph-7 in the affidavit **"the further proceeding against the petitioner is under submission to the disciplinary authority. The extension of the suspension has been done under the purview of CCS (CCA) Rules, 1965, considering exigency"**.

10. From the above, it is clear that except stating that extension has been done under the purview of CCS (CCA) Rules, 1965, considering the exigency, no specific reason for the requirement of continuation of suspension is discernible from the affidavit. The order of extensions, even do not disclose such reason of exigency. It is true that in a given case, a continuation of suspension may be necessary and such extension is also permissible, however, the mandate of the Hon'ble Apex Court in **Ajay Kumar Choudhury** (supra) is loud and clear that reason is required to be recorded for extension of such suspension, which in turn shall adequately safeguard the universally recognized principle of human dignity. However, in the case in hand, not only the order of extension lacks reason but also the affidavit filed by the respondent fails to disclose any reason on the basis of which, the orders of extension of suspension were issued.

11. This Court cannot also be unmindful of the fact that the petitioner is in the verge of retirement and is going to retire on 31.03.2024 and even after filing of his reply dated 30.01.2023 to the memorandum of charges, admittedly, nothing has proceeded.

12. This Court is also of the view that not only a departmental enquiry should be completed within a reasonable time but also such completion is in the interest of the respondent employer inasmuch as when an employee is put under suspension for a prolonged period, the same will be a loss to the State exchequer without having service of the employee.

13. Therefore, in the considered opinion of this Court, the action of the authority in keeping the petitioner under suspension, in the given facts of the present case is not sustainable more particularly for the reason that not only the respondents have not recorded any reason in the order of extension of suspension but also failed to bring any material in the present proceeding of existence of any recorded reason or deliberation made before reviewing the suspension order and extending the same. Accordingly, the suspension order dated 22.11.2022 and the subsequent review order dated 16.02.2023 and 21.05.2023 are interfered with and it is directed that the respondent shall reinstate the petitioner in service.

14. It is needless to say that the respondent shall be at liberty to proceed with the departmental proceeding and also shall be at liberty to transfer and post the petitioner to any department and in any office. It is also made clear that this order should not be treated as a comment either on the merit of the charge or on the reply made thereof by the petitioner.

JUDGE

Comparing Assistant