

GAHC010055852022



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

Case No. : WP(C)/2150/2022

HALADHAR HALOI
S/O- LATE DHARAM HALOI
R/O- VILLAGE PAIKAN BAN MAZA
P.S- MUKALMUA, P.O- BAN MAZA
DIST- NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
TO BE REPRESENTED BY THE COMMISSIONER TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, ASSAM,
GUWAHATI-37

2:THE CHIEF EXECUTIVE OFFICER
SONITPUR
ZILLA PARISHAD
DIST- SONITPUR

3:THE BLOCK DEVELOPMENT OFFICER
DHEKIAJULI
DIST- SONITPUR
PIN-78400

Advocate for the Petitioner : MR I RAFIQUE

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

22.02.2023

Heard Mr. I. Rafique, the learned counsel appearing on behalf of the petitioner. Mr. K. Konwar, learned Standing Counsel, P & RD Department representing the respondent Nos. 1,2 and 3.

2. The brief facts of the instant case is that the petitioner was placed under suspension vide a Memo No.CRPD/120/2021/13(A) dated 30/10/2021. It further appears that in pursuance to the suspension dated 30/10/2021, on 9/12/2021 a show cause notice was issued under Rule 9 of the Assam Services (Discipline and Appeal) Appeal Rules, 1964 read with Article 311 of the Constitution as to why penalties prescribed in Rule 7 of the 1964 Rules should not be inflicted upon the petitioner. The petitioner is aggrieved with the protracted suspension period and non compliance to the judgment of the Supreme Court in the case of Ajay Kumar Choudhury vs. Union of India reported in (2015) 17 SCC 291 wherein the Supreme Court had categorically mandated in paragraph No. 21 of the said judgment to the effect that the period of the suspension order shall not be more than 3 months if the memorandum of charge or charge sheet is not served upon the delinquent employee, and if the Memorandum of charge/charge sheet is served on the delinquent a reasoned order must be passed for extension of the suspension order. The learned counsel therefore submitted that in the instant case the petitioner was suspended on 31/10/2021. Thereupon there has been review on the suspension order but there is no extension of the suspension order after August 2022. This Court had issued notice on 29/4/2022. It further appears from the order dated 5/12/2022 that

this Court had specifically asked the learned Standing Counsel for the P & RD Department to obtain instructions as to whether the suspension order has been extended or not in the instant case. Similar orders were passed on 12/12/2022 as well as on 19/12/2022.

3. Today the learned Standing Counsel appearing for the P & RD Department upon instructions submits that after August 2022 there has been no extension of the suspension order.

4. In the backdrop of the above facts, let this Court therefore take into consideration the judgment of the Supreme Court in the case of Ajay Kr. Choudhury (supra) and more particularly paragraphs 20 and 21 of the said judgment which are reproduced below : -

“20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive period 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 Raghbir Singh v. State of Bihar and more so of the Constitution Bench in Antulay, 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 suspected 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 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 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 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."

5. From a perusal of the above quoted paragraphs of the said judgment, it appears that the Supreme Court taking into account the sufferings and the torment which a delinquent officer is put into on account of suspension, had applied the proviso to Section 167(2) of the Code of Criminal Procedure, 1973 to moderate suspension order in cases of departmental/disciplinary enquiries. In that perspective the Supreme Court observed at paragraph No. 21 that the currency of a suspension order should not extend beyond 3 months if within that period the memorandum of charges/the charge sheet is not served upon a delinquent officer/employee; if the memorandum of charges/charge sheet is served, a reasoned order must be passed for extension of the suspension. In the instant case as admittedly there has been no extension order of the suspension period after August 2022, the petitioner is therefore entitled to be reinstated to service. Accordingly, this Court therefore directs the respondents herein and more particularly the Commissioner, Panchayat and Rural Department Development to forthwith revoke the suspension order and reinstate the petitioner to service.

6. It is however made clear that the appointing authority is further given the liberty to transfer the petitioner to any of its offices within 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 appointing authority is further given the liberty to prohibit the petitioner from contacting any person or handling records and documents till the stage of the petitioner having to prepare his defence.

7. The Registry is directed to serve a copy of the instant order to Mr. K. Konwar, learned Standing Counsel for the P & RD Department for effective compliance.

With the above observations and directions, the petition stands disposed off.

JUDGE

Comparing Assistant