

GAHC010061242022



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

Case No. : WA/114/2022

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, FINANCE DEPARTMENT, DISPUR GUWAHATI 06

2: THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
FINANCE (ESTABLISHMENT-B) DEPTT. DISPUR
GUWAHATI-

VERSUS

AJIT SONOWAL AND 3 ORS.
S/O LT. GAGAN SONOWAL, R/VILL. KADAM KACHARI, P.O. CHARAI
MORIA, P.S. BOGINADI, DIST. LAKHIMPUR, ASSAM, PIN-787032

2: THE ACCOUNTANT GENERAL
ASSAM
MAIDAMGAON
ASSAM
GUWAHATI-29
BELTOLA

3: THE EXECUTIVE ENGINEER
PHE DIVISION
JAPI SAJIA
NORTH LAKHIMPUR
ASSAM

4: THE DEPUTY COMMISSIONER
LAKHIMPUR
ASSA

For the Appellants : Mr. P. Nayak, Standing Counsel, Finance Department, Assam.

For the Respondents: Mr. S. Borthakur, Advocate, for Respondent no. 1.
Mr. L.N. Dihingia, Advocate, for Respondent no.1.
Mr. B. Das, Standing Counsel, PHE Department.
Ms. R.B. Bora, Government Advocate, Assam.
Ms. D. Deka, Standing Counsel, AG, Assam.

BEFORE

**HON'BLE THE CHIEF JUSTICE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 23/02/2023.

Date of judgement : 02/03/2023

JUDGEMENT AND ORDER (CAV)

1. This intra-court appeal, preferred by the State, arises out of the judgement and order dated 22/04/2021 passed by the learned Single Judge in WP(C) No. 2409/2020 whereby, a bunch of writ petitions were disposed of by interfering with the orders of suspension impugned in those proceedings primarily on the ground that the orders of suspension had not been reviewed within a period of 90 days. The operative part of the order dated 22/04/2021 is quoted herein below for ready reference :-

“21. In view of the aforesaid facts and circumstances, this Court has no other option but to follow the decision of the Division Bench in the case of Rekibuddin Ahmed (supra). Accordingly, the orders of suspension which are not reviewed within a period of 90 days and where the show cause notice has not been issued are set aside and quashed. This Court would also like to add the observation that no prejudice, whatsoever would be caused to the Department inasmuch as, no blanket order of revocation of suspension is passed and it is left with the Departments to make periodic review within a period of three months and to decide as to whether such suspension is required to be extended by assigning reasons. Further, in tune with the observations of the Division Bench, this Court is also hasten to add that the respective Departments would be at liberty to transfer the petitioners to any non-sensitive posts.”

2. The appellant's case, in a nut-shell, is that since the order placing the respondent No1 under suspension was issued under Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964,(for short "Rules of 1964") there was no requirement for the Disciplinary Authority to periodically review the order inasmuch as, the ratio laid down in the case of ***Ajay Kumar Choudhary Vs. Union of India through its Secretary and another*** reported in ***(2015) 7 SCC 291*** would not be applicable in the facts of this case.

3. It appears from the materials available on record that while working as an Accounts Officer in the office of the Executive Engineer, North Lakhimpur PHE Division, the writ petitioner/respondent was caught red-handed while accepting bribe. He was arrested in connection with ACB PS Case No. 15/2019 registered under Section 7(a) of the Prevention of Corruption Act, 1988 and subsequently released on bail. However, in view of section 6(2) of the Rules of 1964, the Disciplinary Authority had placed him under suspension by order dated 07/12/2019.

4. The respondent no. 1 as writ petitioner had challenged the order of suspension dated 07/12/2019 by filing WP(C) No. 2409/2020 contending that his prolonged suspension was illegal. During the pendency of the said writ petition, departmental proceeding was initiated against the respondent No 1 vide notification dated 10/08/2020 and a communication was also issued to him intimating that there was no decision to revoke the suspension order dated 07/12/2019. However, the order of suspension had not been reviewed by the Disciplinary Authority. Aggrieved thereby, the respondent No 1 had approached this court for the second time by filing WP(C) 5523/2020. Both these writ petitions, along with other connected matters, were disposed of by the learned Single Judge by the common judgement and order dated 22/04/2021 by placing reliance on the decision of the Division Bench rendered in the case of ***Rekibuddin Ahmed Vs. State of Assam and others [WP(C) 3218/2019]*** , holding that the ratio laid down in the case of ***Ajay Kumar Choudhary (Supra)*** would be applicable even in the cases of deemed suspension under Rule 6(2) of the Rules of 1964. As such, it was incumbent upon the Disciplinary Authority to review the order dated 07/12/2019 before the expiry of 90 days.

5. It is to be noted herein that the question as to whether the Disciplinary Authority would be entitled to place an employee under prolonged suspension without reviewing the

order of suspension came up for consideration before the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary (Supra)**. The observations made in paragraphs 20 and 21 of the said decision would be relevant in the facts of this case and are, therefore, reproduced herein below, for ready reference :-

“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 Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorize 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 [(1992) 1 SCC 225], we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.

21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Charge-sheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the

Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us."

6. According to Mr. P. Nayak, learned counsel for the appellant, the decision in the case of **Ajay Kumar Choudhary (Supra)** was rendered without considering the earlier decision of the Supreme Court rendered in the case of **Union of India Vs. Rajiv Kumar** reported in **(2003) 6 SCC 516**. It is also the submission of Mr. Nayak that the decision in the case of **Rekibuddin Ahmed (Supra)** does not lay down the correct law and hence, the same calls for reconsideration by a larger bench. By relying on the decision in the case of **Rajiv Kumar (Supra)**, Mr. Nayak has argued that in case of deemed suspension, there is no requirement for the authorities to review and / or revoke the order of suspension. The aforesaid submission of the appellant's counsel has, however, been strongly refuted by Mr. S. Borthakur, learned counsel for the respondent by contending that the issue is settled by the decision of the Division Bench in the case of **Rekibuddin Ahmed (Supra)** and, therefore, there is no scope for entertaining this writ appeal.

7. In order to appreciate the arguments advanced by the learned counsel appearing for both the sides, it would be necessary to refer to the provisions of Rule 6 of the Rules of 1964, which deals with suspension. Rule 6 is quoted herein below for ready reference :-

“6. Suspension – (1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the Governor in that behalf may place a Government servant under suspension-

(a) Whether 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, inquiry or trial:

Provided that where the order of suspension is made by an authority lower than the Appointing authority such authority shall forthwith report to the Appointing Authority the circumstances in which the order was made.

(2) A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing Authority and shall remain under suspension until further orders :

Provided that where the detention is made on account of any charge not connected with this position as a Government servant or continuance in office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is released on bail or is not otherwise in custody or imprisonment.

(3) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant under suspension is set aside in appeal or on review under these rule and the case is remitted for further inquiry 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, removal or compulsory retirement and shall remain in force until further orders.

(4) Where penalty of dismissal, removal or compulsory retirement from service imposed upon a Government servant 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 a further inquiry against him on the allegations on which the penalty of dismissal, removal or compulsory retirement was originally imposed. The Government shall be deemed to have been placed under suspension by the Appointing Authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders.

(5) 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."

8. There is no dispute in this case that the order dated 07/12/2019 placing the writ petitioner/respondent No1 under suspension was issued under Rule 6(2) of the Rules of 1964. However, the order was neither reviewed nor revoked by the Disciplinary Authority within 90 days although no memorandum of charge was served upon the respondent No 1/ writ petitioner within that period. As a matter of fact, no proper reason was also furnished to the respondent No 1 for extending the period of suspension after the disciplinary proceeding was initiated against him.

9. Rule 6(2) provides that an order of deemed suspension of an employee due to detention in custody exceeding a period of 48 hours would remain in force until further orders. What is to be noted herein is that the proviso to Sub-Rule 2 of Rule 6 lays down that after the employee is released on bail or is not otherwise in custody or imprisonment, the authority may vacate the order of deemed suspension if the circumstances so justify. However, as noted above, no such exercise appears to have been undertaken in this case.

10. By interpreting the provisions of Rule 6(2), divergent views had been expressed by the learned Single Judges of this Court. In view of the above, the question as to whether, in a case covered by Rule 6(2) of the Rules of 1964, the decision of the Supreme Court in the case of **Ajay Kumar Choudhary (Supra)** would have automatic application or not came up

for consideration before the learned Single Judge. Accordingly, the question was referred to a larger bench. The reference was answered by the Division Bench by the judgement and order dated 04/10/2019 passed in **WP(C) 3218/2019 , Rekibuddin Ahmed (Supra)** by holding that the ratio in the case of **Ajay Kumar Choudhary (Supra)** would be applicable in case of deemed suspension under Rule 6(2) of the Rules of 1964. Therefore, we find force in the submission of Mr. Borthakur that the issue raised in this writ appeal is settled by the decision of the Division Bench rendered in the case of **Rekibuddin Ahmed (Supra)**.

11. In his attempt to convince this Court that the decision in the case of **Rekibuddin Ahmed (Supra)** requires reconsideration by a larger bench, Mr. Nayak has placed heavy reliance on the decision of the Supreme Court in the case of **Rajiv Kumar (Supra)**. It would be pertinent to note herein that the decision in the case of **Rajiv Kumar (Supra)** was rendered in the context of Rule 10 (2) read with *Rule 10 (5) (a) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965*. Rule 10(2) contains a deeming provision which create a legal fiction that any employee who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding 48 hours, shall be deemed to have been placed under suspension by an order of the Appointing Authority.

12. In the case of **Union of India and others Vs. Dipak Mali** reported in **(2010) 2 SCC 222**, the Apex Court had interpreted Sub-Rule 6 of Rule 10 of the Rules of 1965 and held that an order of suspension would not survive after the period of 90 days unless it was extended after review. In that case, it was observed that since no review was held within a period of 90 days nor was there any order of extension of the suspension issued within the said period, subsequent review and extension of the order of suspension would not sustain the order which had already become invalid after expiry of 90 days from the date of suspension.

13. From careful analysis of the above decisions of the Supreme Court what follows is that unless review is held within 90 days, an order of suspension including one issued due to the detention of an employee in custody for 48 hours, would not survive nor can such an order be granted fresh lease of life by carrying out a review after expiry of the period of 90 days. In view of the law laid down in the case of **Dipak Mali (supra)** and **Ajay Kumar Choudhary (Supra)** it is axiomatic that the order of suspension dated 07/12/2019 had lapsed after the expiry of 90 days due to want of review of the same by the Disciplinary

Authority. We, therefore, find ourselves in agreement with the findings recorded by the learned Single Judge in the impugned Judgment and order dated 22/04/2021.

14. In the case of ***Rajiv Kumar (Supra)***, relied upon by the writ appellant, the High Court of Judicature at Delhi had quashed the order of suspension by holding that after the release of the petitioner on bail, an order of suspension could have been passed only under Rule 10(1) and not under Rule 10(2) of the Central Civil Services (Classification, Control and Appeals) Rules 1965. Rule 10(1) of the Rules of 1965 provides that the Appointing Authority or any other authority to which it is subordinate or the disciplinary authority or any other authority empowered in that behalf by the President, by general or special order, may place a Government servant under suspension :-

- (a) Where a disciplinary proceeding against him is contemplated or is pending; or
- (aa) Where, in the opinion of the authority aforesaid, he has engaged himself prejudicial to the interest of the security of the State; or
- (b) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Answering the question raised by the appellant, the Supreme Court had made the following observations :-

“26. The inevitable conclusion therefore is that the order in terms of Rule 10(2) is not restricted in its point of duration or efficacy to the period of actual detention only. It continues to be operative unless modified or revoked under Sub-Rule 5(c), as provided under Sub-rule 5(a).

27. Rule 10(5)(b) deals with a situation where a government servant is suspended or is deemed to have suspended and any other disciplinary proceeding is commenced against him during continuance of that suspension irrespective of the fact whether the earlier suspension was in connection with any disciplinary proceeding or otherwise. Rule 10(5)(b) can be pressed into service only when any other disciplinary proceeding is also commenced than the one for and during which suspension or deemed suspension was already in force, to meet the situation until the termination of all such proceedings. In contradiction, Rule 10(5)(a) has application in relation to an order of suspension

already made or deemed to have been made. Rule 10(5)(b) has no application to the facts of the present case and no inspiration or support could be drawn for the stand taken for the respondents or the decision arrived at by the High Court. It is Rule 10(5)(a) alone which has application and the deemed suspension would continue to be in force till anything has been done under Rule 10(5)(c). Similarly, Rules 10(3) and 10(4) operate in different fields and merely because a specific provision is made for its continuance, until further orders in them itself due to certain further developments taking place and interposition of orders made by Court or appellate and reviewing authority to meet and get over such specific eventualities, in given circumstances and that does not in any way affect the order of suspension deemed to have been made under Rule 10(2)."

15. In that case also the respondent Rajiv Kumar was arrested on 26/03/1998 for accepting bribe and was released on bail on 02/04/1998. The order issued under Rule 10(2) of the Rules of 1965 to formally place him under suspension was passed on 15/05/1998, which order was assailed before the Central Administrative Tribunal (for short "CAT") at the Delhi Bench on the ground that that there was no reason for his continued suspension. On 09/11/2000, an order was passed by the authorities continuing his suspension. The CAT directed the authorities to dispose of the matter by a reasoned order. The application for review of the said order was also rejected. In terms of the CAT's direction, an order was passed on 21/05/2001 which was the subject matter of challenge in writ petition filed before the Delhi High Court.

16. The decision in the case of **Rajiv Kumar (Supra)**, does not lay down the proposition in law that an order of suspension would not call for periodic review. Therefore, the decision in **Rajiv Kumar (Supra)**, in our opinion, must be understood to have been rendered in the facts and circumstances of that case. On the other hand, the decision in the case of **Ajay Kumar Choudhary (Supra)** is of wider import and hence, would have applicability on every order of suspension. Moreover, in view of the categorical findings recorded by a co-ordinate bench in the case of **Rekibuddin Ahmed (Supra)**, holding that the ratio of **Ajay Kumar Choudhary (Supra)** would be applicable to an order of suspension issued under Rule 6(2), it would not be permissible for this Court to take a different view in

the matter. The appellant's counsel has also failed to persuade us to take a view that the decision in the case of ***Rekibuddin Ahmed (Supra)*** calls for reconsideration by a larger Bench.

17. For the reasons stated herein above, we hold that there is no merit in this appeal. However, since Rule 6(1)(a) of the Rules of 1964 permits the authorities to place an employee under suspension when a disciplinary proceeding against him is contemplated or is pending and considering the fact that disciplinary proceeding has, in the meantime, been initiated against respondent No 1 by serving a memorandum of charges upon him, we make it clear that this order would not come in the way of the Disciplinary Authority from exercising jurisdiction under Rule 6(1) of the Rules of 1964 and issue a fresh order of suspension, if so advised.

18. With the above observations, this writ appeal stands disposed of.

There shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Sukhamay

Comparing Assistant