

GAHC010062152023



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

Case No. : WP(C)/1676/2023

RANJIT GOSWAMI
S/O- LATE RAMA PRASANNA GOSWAMI, R/O- VILLAGE- SAWTALBASTI,
P.O. ERALIGOOL, DIST.- KARIMGANJ, ASSAM, PIN- 788723

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE AND
DISASTER MANAGEMENT DEPTT., ASSAM SECRETARIAT, DISPUR,
ASSAM-06

2:THE DIRECTOR OF LAND RECORDS AND SURVEYS
ASSAM
RUPNAGAR
GUWAHATI- 32

3:THE DEPUTY COMMISSIONER
KARIMGANJ
ASSAM
PIN- 788710

4:THE CIRCLE OFFICER
KARIMGANJ SADAR CIRCLE
KARIMGANJ
ASSAM
PIN- 78871

Advocate for the Petitioner : MR. S K TALUKDAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 03.05.2023

Heard Mr. S.K. Talukdar, the learned counsel appearing on behalf of the petitioner. Also heard Mr. H. Sarma, the learned counsel appearing on behalf of the respondent Nos. 3 & 4 and Mr. S. Dutta, the learned counsel appearing for the respondent Nos. 1 and 2.

2. The case of the petitioner herein is that the petitioner in pursuance to an FIR dated 26/8/2022 lodged before the Officer –In-Charge ACB Police Station-cum-Superintendent of Police, Vigilance and Anti Corruption, Guwahati, which was registered ACB Case No. 34/2022 under Section 7(A) of the Prevention of Corruption Act, 1988 was arrested on 26/8/2022. Subsequently vide order dated 28/9/2022 passed in Bail Application No.1654/2022, the Court of the Special Judge, Assam was pleased to enlarge the petitioner on bail. Upon release of the petitioner, the petitioner joined on 30/9/2022. Subsequent thereto, on 29/10/2022, the Deputy Commissioner in exercise of the powers under Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964 placed the petitioner under suspension w.e.f. 26/8/2022 pending drawal of the departmental proceedings against the petitioner.

3. The petitioner being aggrieved challenged the said suspension order in W/.P.(C) No. 8389/2022. This Court vide an order dated 2/1/2023 disposed off the said writ petition with a direction to the Deputy Commissioner, Karimganj to pass a reasoned order upon examination of the claim of the petitioner for vacating the suspension order as indicated therein, if so advised. It was further

observed by this Court that while passing the reasoned order, the Deputy Commissioner shall arrive at its own satisfaction that the detention of the petitioner was not made on account of any charge not connected with his position as a Government servant or continuance in office is not likely to embarrass the Government or the Government servant in discharge of his duties or the charge does not involve moral turpitude. It was also observed that if the order is in favour of the petitioner the suspension order may be vacated. However, if the order is against the petitioner, the petitioner be duly communicated with the said order.

4. It may be relevant herein to take note of that the said writ petition was filed challenging the order of suspension on the ground that the respondent authorities have not taken any action in terms with the proviso to Rule 6(2) of the Rules of 1964. Subsequent to the order dated 2/1/2023, the Deputy Commissioner, Karimganj passed an order thereby reflecting that the disciplinary authority deems it proper to continue the suspension period till the conclusion of the enquiry.

5. By way of the instant writ petition, the petitioner has challenged the order dated 1/2/2023 as well as also the original suspension order dated 29/10/2022 on the ground that the petitioner till date has not been served with the memorandum of charge/the chargesheet which is required in terms with the judgment of the Supreme Court in the case of **Ajay Kumar Choudhary vs Union of India** reported in (2015) 7 SCC 291. In other words, the case of the petitioner in the present writ petition is in respect to the violation of the rights under Article 21 of the Constitution.

6. It further appears that this Court upon filing of the instant writ petition issued notice on 24/3/2023 and directed the respondents authorities, more

particularly the respondent Nos. 3 and 4 to apprise this Court as to whether the memorandum of charge/the charge-sheet has been served upon the petitioner. The counsel appearing on behalf of the respondent Nos. 3 and 4 were also directed to produce the memorandum of charge/the charge-sheet, if any. It was also made clear in the said order that the respondent Nos. 3 and 4 were to apprise this Court as to whether there has been compliance to the judgment of the Supreme Court rendered in the case of Ajay Kumar Choudhary (supra) as well the Office Memorandum dated 4/2/2020 issued by the Personal Department of the Government of Assam.

7. It further appears on record that on 10/4/2023 when the matter was again listed before this Court, the learned counsel appearing on behalf of the respondent Nos. 3 and 4 submitted that the Memorandum of Charge was issued in the month of November, 2022 and the petitioner in pursuance to the said Memorandum of Charge had not submitted the reply and pursuant thereto in terms with Rule 9(4) and Rule 9(5) of the Rules of 1964, the Disciplinary Authority have also appointed the Enquiry Officer as well as the Presenting Officer. However, the learned counsel appearing on behalf of the petitioner vehemently objected that any Memorandum of Charge /the Chargesheet has been served upon the petitioner. Under such circumstances, vide the order dated 10/4/2013 this Court directed the respondent Nos. 3 and 4 to file an affidavit bringing on record the necessary documents as well as also indicating therein when the Memorandum of Charge was served upon the petitioner. It was categorically made clear that the said affidavit has to be filed by 19/4/2023 and the matter was directed to be put before this Court on 21/4/2023.

8. It further appears on record that no affidavit was filed in pursuance to the said order. However, when the matter was taken up on 21/4/2023, the learned

counsel appearing on behalf of the respondent Nos. 3 and 4 informed this Court that there were no materials available with the respondents that the Memorandum of Charge/the Chargesheet has been served upon the petitioner. Be that as it may, this Court enquired with the learned counsel appearing on behalf of the Respondent Nos. 3 and 4 as regards the Memorandum of Charge/the Chargesheet which was purportedly sent to the petitioner. The Memorandum of charge /the Chargesheet upon being produced, it revealed that the show cause notice which was issued was in respect to penalties under Section 7A of the Prevention of Corruption of Act, 1988. This Court being baffled and perplexed to see as to how the disciplinary authority could have exercised the power of a Criminal Court to inflict the punishment under Section 7A of the Prevention of Corruption Act, 1988, directed the Deputy Commissioner, Karimganj to file an affidavit explaining the manner in which the Departmental proceedings were proceeded with. Paragraph 6, 7 and 8 of the order dated 21/4/2023 are reproduced hereinunder :

“6. During the course of hearing, this Court has enquired as to what is the Show Cause Notice which has been issued. It shocks and surprises at the contents of the Show Cause notice inasmuch as the Deputy Commissioner, Karimganj who had issued Show Cause notice asked the petitioner to Show Cause as to why penalties prescribed in Section 7A of the Cause as to why penalties prescribed in Section 7A of the Prevention of Corruption Act, 1988 should not be inflicted upon the petitioner. This Court is surprised that when the Rules of 1964 mandates the manner in which the departmental enquiry is to be conducted and Rule 9(2) to Rule 9(10) is clear and unambiguous stipulating what is required to be done, it baffles this Court that a person in the high office of Deputy Commissioner, Karimganj is not aware of such requirement. This Court is further flabbergasted and perplexed to see the contents of the show cause notice inasmuch as the punishment which the disciplinary authority i.e. the Deputy Commissioner seeks to impose upon the petitioner is a punishment reserved for the Criminal Courts to impose and not by a disciplinary authority in exercise of the powers under Rules of 1964. 7. This Court further would like to take note of that the allegations so made against the petitioner as would appear from the First Information Report as well as the order dated 28.09.2022 in ACB P.S. Case No.34/2022 are serious. However the manner in which the disciplinary authority in the instant case have resorted to take action has the

potential of nullifying such resorted to take action has the potential of nullifying such departmental proceedings which would be contrary to good governance.

8. Taking note of the above, this Court therefore directs the Deputy Commissioner, Karimganj to file an affidavit to explain the above.”

9. Pursuant to the said order, it appears that the Deputy Commissioner i.e. one Shri Mridul Yadav had filed an affidavit. In the said affidavit, the Deputy Commissioner, Karimganj expressed his ignorance and improper understanding of law which is in force which led to the issuance of the show cause notice dated 30/11/2022 and further stated that in future before initiating any departmental enquiry or for any other legal action he would take proper legal advice. Paragraphs 4 and 5 of the said affidavit being pertinent to the issue are reproduced hereinbelow :-

“4. That your deponent humbly begs to state that it was an inadvertent mistake and due to improper understanding of the law which is in force, show cause notice dated 30.11.2022 was issued to the petitioner. In future your deponent shall take proper legal advice before initiating any Departmental Enquiry or for any other legal action that is to be taken. As prima facie the issuance of the said show cause notice dated 30.11.2022 is against the settled provision of law, as such, your deponent will withdraw the said show cause notice dated 30.11.2022 forthwith. Your deponent further humbly states that it was a bona fide mistake and henceforth your deponent will be cautious enough not to do such type of mistake in future.

5. That it is respectfully submitted that it is an inadvertent mistake and as such the said show cause notice dated 30.11.2022 will be withdrawn forthwith.”

10. From the perusal of the above paragraphs, it would also relevant to take note of that the show cause notice dated 30/11/2022 was withdrawn by the disciplinary authority and under such circumstances, as on date there is no Memorandum of Charge/ the Chargesheet for a period of more than 6 months from the date of the order of suspension dated 29/10/2022. At this stage, this Court finds it relevant to take note of paragraph No. 21 of the judgment of the Supreme Court in **Ajay Kumar Choudhary (supra)** which is reproduced hereinunder :

“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.”

11. The above quoted paragraph of the said judgment makes it clear that the currency of a suspension order should not be more than 3 months, if the memorandum of charge/chargesheet have not been served upon the delinquent employee. It is further made clear that if the memorandum of charge or chargesheet has in the meantime been served then there has to be a reasoned order for the purpose of continuation of the suspension. This Court further finds it relevant to take note of that the Division Bench of this Court in the case of **Rekibuddin Ahmed Vs. State of Assam and Ors.** reported in **2020 (2) GLR 621** had also opined that the principles laid down by the Supreme Court in the case of **Ajay Kumar Choudhary(supra)** would also apply to a case of deemed suspension, which is the present case. It is also relevant to take note of that in a very recent judgment by the Division Bench of this Court in the case of **State of Assam Vs. Ajit Sonowal and 3 Others** reported in **2023 SCC Online Gau 731**, the principles laid down by the Division Bench in the case of

Rekibuddin Ahmed (supra) were reiterated. Further the Division Bench while concluding in the case of **Ajit Kumar Sonowal(supra)** observed at paragraph 18 as under :

“18. 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.”

12. Taking into account the above and as on date there is no Memorandum of Charge/ the Chargesheet, the further continuation of the suspension order dated 29/10/2022 would be contrary to the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhary(supra)** and as such this Court directs the respondent authorities, more particularly, the respondent No. 3 to forthwith reinstate the petitioner upon a certified copy of the instant order being served upon the respondent No. 3.

13. This Court further taking into account the mandate of the law declared by the Supreme Court in **Ajay Kumar Choudhary(supra)** grants the liberty to the respondent No. 3/ Appointing Authority to transfer the petitioner to any of its offices within the State so as to sever any local or personal contact that the petitioner may have and which he may misuse for obstructing the investigation against him. The respondent authorities are 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.

14. This Court further taking note of the recent judgment of the Division Bench of this Court in the case of **Ajit Sonowal(supra)** observes that in the event the Memorandum of Charge is served upon the petitioner, this order would not come in the way of the Disciplinary Authority from exercising the jurisdiction under Rule 6 (1) of the Rules of 1964 and issue a fresh order of suspension, if so advised.

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

JUDGE

Comparing Assistant