

GAHC010107922022



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

Case No. : WP(C)/3730/2022

BARENYA RANJAN BORTHAKUR
S/O- SRI DILIP BORTHAKUR, R/O- HOUSE NO. 4, BYE LANE NO. 7, GANDHI
BASTI, NEAR KALI MANDIR, P.S. CHANDMARI, GUWAHATI-781003, DIST.
KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE AND D.M. DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
REVENUE AND D.M. DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
REVENUE AND D.M. DEPARTMENT
DISPUR
GUWAHATI-6

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : SC, REVENUE AND DISASTER MANAGEMENT DEPT

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 17.03.2023

Heard Mr. J. Patowary, the learned counsel appearing on behalf of the petitioner and Mr. S. Dutta, the learned counsel appearing on behalf of the respondent Nos. 1, 2 and 3.

2. The case of the petitioner herein is that the petitioner was arrested on the basis of an FIR filed by two persons namely Sri Nara Bahadur Karki and Sri Dhruba Barua before the Superintendent of Police, Vigilance and Anti-Corruption alleging that the petitioner and one Md. Gulzar Hussain, Laat Mondal of the Thelamara Revenue Circle have jointly prepared a list of Dalal and demanded Rs.8,00,000/- from them. The said case was registered being ACB P.S. Case No.09/2021 under Section 7(a) of the Prevention of Corruption Act, 1988.

3. Pursuant thereto on 02.10.2021, the petitioner was arrested and forwarded to the Court of the Chief Judicial Magistrate Kamrup(M) on 04.10.2021 with a prayer to add Section 13(2) of Prevention of Corruption Act, 1988. In view of the fact that the petitioner was arrested, the respondent No.3 issued a notification dated 11.10.2021 whereby in exercise of powers under Rule 6(2) of the Assam Service (Discipline and Appeal) Rules, 1964, the petitioner was placed under suspension with effect from the date of arrest i.e. 02.10.2021 until further orders.

4. It further reveals from the records that the petitioner have filed the Bail Application before this Court which was registered and numbered as B.A. No.2813/2021 and this Court vide an order dated 18.11.2021 granted bail to the

petitioner. Thereupon, the petitioner on 11.01.2022 informed the respondent No.3 that he has been already released on bail and requested that he may be reinstated to his service so that he can resume his duty. It is the case of the petitioner that till date, the respondent authorities have not initiated the Departmental Proceedings even though a period of almost 1½ years have expired. It is the case of the petitioner that the petitioner has also not yet been served the Memorandum of Charge/charge sheet and taking into account the judgment of the Supreme Court in the case of ***Ajay Kumar Choudhary Vs. Union of India and Another reported in (2015) 7 SCC 291***, the currency of the suspension period could not have gone beyond the period of 3 (three) months without serving the copy of the Memorandum of Charge/charge sheet upon the petitioner.

5. I have also perused the affidavit-in-opposition filed by the respondents as well as the affidavit-in-reply. Mr. S. Dutta, the learned counsel appearing on behalf of the respondents fairly submitted that as on date, the Memorandum of Charge/charge sheet have not been served upon the petitioner. Mr. J. Patowary, the learned counsel appearing on behalf of the petitioner has drawn the attention of this Court to paragraph No.21 of the judgment in the case of ***Ajay Kumar Choudhary (supra)*** which categorically mandates that the currency of a suspension order should not extend beyond 3 (three) months if within the said period the Memorandum of Charge/charge sheet has not been served on the delinquent officer/employee. The learned counsel for the petitioner also referred to the judgment of the Division Bench of this Court in the case of ***Rakibuddin Ahmed Vs. State of Assam and Others reported in 2020 2 GLR 621*** and submitted that the Division Bench of this Court had categorically held that law laid down in ***Ajay Kumar Choudhary (supra)*** duly applies also to deemed suspension so made

under Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964.

6. This Court taking into account the said submission and after hearing the learned counsels, finds it relevant to quote paragraph No.21 of the judgment in the case of **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.”

7. Admittedly, in the instant case as the Memorandum of Charge/charge sheet have not been served upon the petitioner and the period of 90 days have already expired from the date of intimation to the appointing authority which

was on 11.01.2022, this Court is of the opinion that the further continuation of the suspension of the petitioner would be in violation to the judgment of the Supreme Court in the case of ***Ajay Kumar Choudhary (supra)***. Accordingly, this Court therefore directs the respondent No.3 to forthwith reinstate the petitioner on the basis of a certified copy of the order being served upon him.

8. Before concluding, this Court further would like observe that the respondent authorities would be at liberty 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.

9. With the above, the instant petition stands disposed of.

JUDGE

Comparing Assistant