

GAHC010230282023



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

Case No. : WP(C)/6101/2023

TAPAN DAS
AGM, APDCL, CAR, SILCHAR ZONE,
SILCHAR-15 (OFFICE ADDRESS)
PERMANENT ADDRESS-
C/O- BINA DAS,
RAMDIA, GUWAHATI
DISTRICT- KAMRUP
PIN- 781102.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY PRINCIPAL SECRETARY,
POWER (ELECTRICITY DEPARTMENT),
GUWAHATI-6, ASSAM.

2:MANAGING DIRECTOR
ASSAM POWER DISTRIBUTION COMPANY LTD.
5TH FLOOR
BIJULEE BHAWAN

PALTAN BAZAR
GUWAHATI-1.

3:CHIEF GENERAL MANAGER (D/S)
APDCL
BIJULEE BHAWAN
PALTAN BAZAR

GUWAHATI-1.

4:GENERAL MANAGER

APDCL

CAR
SILCHAR ZONE
SILCHAR-15

Advocate for the Petitioner : MR MINTU SAIKIA

Advocate for the Respondent : SC, APDCL

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

16/11/2023

Heard Mr. M. Saikia, learned counsel for the petitioner. Also heard Mr. J. K. Goswami, learned Additional Senior Government Advocate and Mr. K. P. Pathak, learned standing counsel, APDCL.

2. This writ petition is directed against the order of suspension dated 27.07.2023, whereby the petitioner was placed under suspension pending drawl of departmental proceedings on account of his misbehavior with office staff, being under influence of alcohol in the office premise and conducting himself in a manner upcoming of his position as the Assistant General Manager. This order of suspension was issued by the Managing Director of the Respondent Company.

3. The grievance of the petitioner is that no disciplinary proceedings have been initiated and the suspension has also not been reviewed even though more than 3 (three) months have been passed, since the order of suspension was issued.

4. Learned counsel for the petitioner has relied upon the judgment of the

Apex Court rendered in *Ajay Kumar Choudhury Vs Union of India and Another* reported in (2015) 7 SCC 291. It is the submission of the learned counsel for the petitioner that under the Assam State Electricity Board (General Services) Regulations (for Officers), 1960, the charge-sheet is required to be issued by the Disciplinary authority pursuant to which the petitioner ought to have been entitled to file his response and thereafter the Department was required to take a decision whether to proceed for disciplinary action against the petitioner. However, since the date of his suspension, no such steps have been taken by the authorities concerned. He, therefore submits that the order of suspension having not been reviewed beyond 3 (three) months, in view of the ratio laid down by the Apex Court in *Ajay Kumar Choudhury (Supra)*, the suspension order ought to be interfered with and set aside.

5. Mr. K. P. Pathak, learned counsel for the respondents submits that there is an preliminary enquiry conducted into the allegations against the petitioner and in terms of the findings of the preliminary enquiry, the Department is contemplating to take necessary action against him as per provision of law, if required. However, he has fairly submitted that since the date of the order of placing the petitioner under suspension, the suspension order has not been reviewed by the competent authority till date.

6. Learned counsels for the parties have been heard. The pleadings on record have carefully been perused.

7. Clause 10 of the Assam State Electricity Board (General Service) Regulations, (for Officers), 1960 is being relied upon for the purposes of initiating disciplinary proceedings for imposition of punishments. Clause 10 refers to the disciplinary action and punishment to be imposed. The various actions or omissions, which will be treated as misconducts have also prescribed

in the said clause.

8. In *Ajay Kumar Choudhury (Supra)*, the Apex Court was examining the issue or protracted period of suspension and repeated renewals thereof. The Apex Court held that such elongated periods of suspension and renewals thereof have the effect of making the officer concerned suffer in more than one ways.

9. Referring to the principal of law prescribed under Section 167 (2) Cr.P.C, 1973 whereby a person is required to be released from incarceration after expiry of 90 (ninety) days even though he may be accused of committing the most heinous crimes, the Apex Court held that the said principal can be applied in cases of suspension. The Apex Court held that the currency of any suspension order should not extend beyond 3 (three) months and within this period, the memorandum of charges/charge-sheet is not served on the delinquent officer/employee and if a memorandum of charge/charge-sheet is served, a reasoned order must be passed for extension of the suspension. The relevant paragraphs are extracted below:-

“11. Suspension, specially preceding the formulation of charges, is essentially transitory or temporary in nature, and must perforce be of short duration. If it is for an indeterminate period or if its renewal is not based on sound reasoning contemporaneously available on the record, this would render it punitive in nature. Departmental/disciplinary proceedings invariably commence with delay, are plagued with procrastination prior and post the drawing up of the memorandum of charges, and eventually culminate after even longer delay.

12. Protracted period of suspension, repeated renewal thereof, have regrettably become the norm and not the exception that they ought to be. The suspended person suffering the ignominy of insinuations, the scorn of society and the derision

of his department, has to endure this excruciation even before he is formally charged with some misdemeanor, indiscretion or offence. His torment is his knowledge that if and when charged, it will inexorably take an inordinate time for the inquisition or inquiry to come to its culmination, that is, to determine his innocence or iniquity. Much too often this has now become an accompaniment to retirement. Indubitably, the sophist will nimbly counter that our Constitution does not explicitly 4 guarantee either the right to a speedy trial even to the incarcerated, or assume the presumption of innocence to the accused. But we must remember that both these factors are legal ground norms, are inextricable tenets of Common Law Jurisprudence, antedating even the Magna Carta of 1215, which assures that — "We will sell to no man, we will not deny or defer to any man either justice or right." In similar vein the Sixth Amendment to the Constitution of the United States of America guarantees that in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

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 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 suspended 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 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."

10. A perusal of the Regulations of 1960 reveals that there is no specific period for keeping an officer under suspension or any specific period under which the charge-sheet or the Memo of charges are required to be served or even for periodic review of the suspension of the officer concerned by the competent authority.

11. Under such circumstances, in the facts and circumstances of this case, the law laid down by the Apex Court in *Ajay Kumar Choudhury (Supra)* is squarely applicable to the APDCL also. The authorities are required to review the suspension periodically not later than a period of 3 (three) months from the date of issuance of the order. That having not been done, the order of suspension dated 27.07.2023 shall be deemed to have lost its force. The respondents are accordingly directed to reinstate the petitioner and release all his pay and service benefits.

12. This order shall not be construed to be a bar for proceeding against the petitioner under the provisions of the Assam State Electricity Board (General Service) Regulations, (for Officers), 1960 or any other provision adopted by the authorities to proceed against the petitioner as per provision of law, if permitted.

13. Writ petition accordingly stands allowed and disposed of in terms of the above.

JUDGE

Comparing Assistant