

GAHC040013482023



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

Case No. : WP(C)/477/2023

Shri Lotu Gadi
S/o Lt. Keglo Gadi, presently serving as Junior Engineer (Civil), Anini Division,
Department of Hydro Power Development, District Dibang Valley, Arunachal
Pradesh. Phone No 8415988456

VERSUS

The State of AP and 3 Others
represented through the Chief Secretary to the Govt. of Arunachal Pradesh, Civil
Secretariat, Itanagar.

2:The Commissioner, Department of Hydro Power Development, Govt. of Arunachal
Pradesh, Itanagar. Age: 0 Occupation :

3:The Chief Engineer, Western Zone, Department of Hydro Power Development,
Govt. of Arunachal Pradesh, Itanagar. Age: 0 Occupation :

4:The Superintending Engineer(Co-ord), Department of Hydro Power Development
Age: 0 Occupation :

5:Tatin Taki, Superintending Engineer, Lohit & Basin -cum-Inquiry Officer
Age: 0 Occupation

Advocate for the Petitioner : Labi Lombi
Nani Anju

Advocate for the Respondent : Riyum Basar, GA(AP)

**BEFORE
HONBLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 18.07.2024

Heard Ms. Labi Lombi, learned counsel for the petitioner. Also heard Ms. Riyum Basar, learned Government Advocate, appearing on behalf of all the respondents.

2. The petitioner, by way of instituting the present proceeding, has presented a challenge to an order, dated 09.01.2023, issued by the Superintending Engineer(Co-ord.), Department of Hydro-Power Development, Government of Arunachal Pradesh, Itanagar, placing the petitioner under deemed suspension with effect from the date of his detention i.e. 02.01.2023.

3. The petitioner, herein, being implicated in a criminal case, came to be placed under detention w.e.f. 02.01.2023. On receiving the said information; the departmental authorities vide order, dated 09.01.2023, proceeded to place the petitioner under suspension with effect from the date of his such detention. The petitioner was, thereafter, vide order, dated 17.04.2023, passed in BA No. 101/2023 by the learned Special Judge(PCA), Yupia, enlarged on bail. The petitioner vide his representation, dated 17.07.2023, informed the departmental authorities of his release on bail and also of the fact that no charge-sheet has been filed against him in the criminal case pending against him. The petitioner, accordingly, prayed that the order of suspension, dated 09.01.2023, as issued in his case, be revoked and he be reinstated in his service. The same not being considered, the petitioner has instituted the present proceeding.

4. It is an admitted position that the petitioner was placed under suspension in

connection with SIC(Vig.) PS Case No. 12/2022 under Sections 406/407/409/120(B) of the Indian Penal Code *read with* Section 7/8/13(2) of the Prevention of Corruption Act, 1988. The petitioner, was thereafter, enlarged on bail vide order, dated 17.04.2023, passed by the learned trial Court and the said fact was informed to the departmental authorities on 17.07.2023.

5. It is seen that the respondent authorities had carried-out a review with regard to the order of suspension as issued in respect of the petitioner, herein, on 02.01.2024, and on consideration, it was held that the same shall stand extended for a further period of 90 days. The said period of 90 days having expired, nothing has been brought on record to demonstrate as to whether any review of the suspension was carried out in respect of the petitioner, herein, on conclusion of the extension of the suspension period as per the decision of the review committee in its meeting held on 02.01.2024.

6. The Central Civil Services (Classification, Control and Appeal) Rules, 1965, were amended in the year 2022 and the proviso to sub-rule 7 of Rule 10, was substituted as follows:

"Provided that no such review of suspension shall be necessary in the case of deemed suspension under sub-rule (2), if the Government servant continues to be under detention and in such case the ninety days' period shall be computed from the date the Government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later:

Provided further that in a case where no charge sheet is issued under these rules, the total period under suspension or deemed suspension, as the case may be, including any extended period in terms of sub-rule (6) shall not exceed,-

(a) two hundred seventy days from the date of order of suspension, if the Government servant is placed under suspension in terms of clause (a) of sub-rule (1); or

(b) two years from the date of order of suspension, if the Government servant is placed under suspension in terms of clause (aa) or clause (b) of sub-rule (1) as the case may be; or

(c) two years from the date the Government servant detained in custody is released or the date on which the fact of his release from detention is intimated to his appointing authority, whichever is later, in the case of deemed suspension under sub-rule (2)."

7. On a consideration of the substituted provisions of sub-rule 7 of Rule 10 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, coming into force in terms of the amendment effected in the year 2022; it is seen that the review of suspension in respect of a government servant placed under detention shall not be mandated to be carried out till the date such government servant remains under detention and the period of 90 days as mandated for carrying out the review of the order of suspension in respect of such government servant, would be so computed from the date the government servant detained in custody is released from detention or the date on which the fact of his release from detention is intimated to his appointing authority, whichever, is later.

8. In the present case; it is seen that the petitioner had intimated his release from detention vide his representation, dated 17.07.2023 and accordingly, the period of 90 days would commence from the date of submission of the said representation i.e. 17.07.2023. The period of 90 days mandated for carrying out the review of the order of suspension of the petitioner, herein, would end on 16.10.2023.

9. It is seen that the order of suspension as passed in respect of the petitioner, herein, on 09.01.2023, was reviewed by the departmental authorities only on 02.01.2024 i.e. beyond the period of 90 days as mandated under the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

10. Accordingly, the order of suspension having lost its validity on completion of a period of 90 days from the date intimation was given by the petitioner of his

enlargement on bail by the Court of competent jurisdiction; the review as carried out in the matter on 02.01.2024, was rendered meaningless in-as-much the order of suspension has already lost its validity much before the said review was so carried out by the departmental authorities.

11. In view of the above position; the order of suspension, dated 09.01.2023, as issued in respect of the petitioner, herein, having lost its validity on the same not being reviewed in terms of provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, as well as in the light of the decision rendered by the Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhary v. Union of India through its Secretary & anr.*** reported in ***(2015) 7 SCC 291***; the said order of suspension, dated 09.01.2023, cannot be now permitted to be continued.

12. Accordingly, in view of the above position; the impugned order of suspension, dated 09.01.2023; is hereby set aside.

13. This Court having interfered with the order of suspension, dated 09.01.2023; the respondent authorities are hereby directed to reinstate the petitioner, herein, in his service as a Junior Engineer(Civil) in the Department of Hydropower Development, Government of Arunachal Pradesh.

14. However, liberty is granted to the respondent authorities to transfer the petitioner, herein, to any other place, other than the place wherein he was working at the time he was placed under detention and consequently, placed under suspension, as provided for in paragraph No. 21 of the decision of the Hon'ble Supreme Court in the case of ***Ajay Kumar Choudhary***(supra). For ready reference, the paragraph No.

21 of the judgment in the said case, is extracted hereinbelow:

“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.”

15. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant