

GAHC010112082024



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

Case No. : I.A.(Civil)/1692/2024

GANESH BARMAN
S/O LT. KESHAB CHANDRA BARMAN R/O VILL. CHAMATA P.S. BELCHAR
P.O. PASCHIM CHAMATA DIST. NALBARI ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP BY THE COMMISSIONER AND SECRETARY HOME AFFAIRS DISPUR
GUWAHATI 6

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ASSAM POLICE HEAD QUARTERS ULUBARI GUWAHATI 7 ASSAM

3:THE INSPECTOR GENERAL OF POLICE (ADMINISTRATION)
ASSAM POLICE HEAD QUARTERS ULUBARI GUWAHATI 7 ASSA

Advocate for the Petitioner : MR. S K GOSWAMI

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/7453/2023

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S/O LT. KESHAB CHANDRA BARMAN R/O VILL. CHAMATA P.S. BELCHAR
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ASSAM POLICE HEAD QUARTERS ULUBARI GUWAHATI 7 ASSAM

Advocate for : MR. S K GOSWAMI

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 24.07.2024

Heard Mr. S.K. Goswami, learned counsel for the applicant and Ms. M. Bhattacharjee, learned Addl. Senior Govt. Advocate, representing all the respondents.

2) The applicant is the writ petitioner in the connected writ petition. The case of the petitioner is that while working as Inspector of Police, he was entrusted with the investigation of Gobardhana P.S. Case No. 83/2023 under sections 120B/380/411/417/420 IPC read with section 7 of the Essential Commodities Act, 1955 read with section 19(c)(ii) of the Fertilizer Control Order, 1985. In course of events related to the said investigation, which need not be narrated herein, the applicant was implicated in a trap case which was registered as ACB Case No. 40/2023. On the allegation that a sum of Rs.40,000/- was accepted by him as a bribe, the applicant was arrested on 29.05.2023 at about 04:45 p.m.

3) By an order dated 30.05.2023, issued by the Inspector General of Police (Admn.), the applicant was placed under suspension with immediate effect. This was followed by issuance of a show-cause notice to the applicant, against which the applicant has submitted his show-cause reply dated 04.09.2023.

4) By an order dated 11.09.2023, the Inspector General of Police (Admn.) (respondent no.3) had constituted a Departmental Review Committee to review the suspension of the applicant and to submit a report. Later on, by order under Memo no. Proc. Cell/XXVII/26/2023/44 dated 22.09.2023, issued by the respondent no.3, the suspension order dated 30.05.2023 of the applicant was extended for a further period of 90 days w.e.f. 30.08.2023 or until further order whichever is earlier. By another order under Memo no. Proc. Cell/XXVII/26/2023/94 dated 27.12.2023, the respondent no.3 had extended the suspension order dated 30.05.2023 of the applicant for a further period of 90 days w.e.f. 29.11.2023 or until further order whichever is earlier. Accordingly, by filing this interlocutory application filed on 03.06.2024, the applicant has assailed his continued suspension on the ground that the orders issued for reviewing and/or extending his suspension were passed beyond the period of 90 (ninety) days.

5) By referring to the statements made in I.A.(C) 1877/2024, the learned counsel for the applicant has submitted that the Enquiry Officer had submitted his finding and report dated 28.02.2024, which was not accepted by the Disciplinary Authority (respondent no.2) by order under Memo no. Proc. Cell/XXVII/26/2023/180 dated 30.03.2024.

6) It has been submitted that notwithstanding that the finding and the report of the Enquiry Officer has not been found acceptable, yet the

applicant is still under continued suspension, and it is prayed that the suspension of the applicant be interfered with.

7) In support of his submissions, the learned counsel for the applicant has relied on the following cases, viz., (i) *A.K. Adhyapok (Dr.) v. State of Assam & Ors.*, 2019 (1) GLT 804; (ii) *GO-2148X, Sri Vinay Kumar Singh v. The Union of India & Ors.*, (2023) 0 Supreme(Gau) 1223; (iii) *Capt. M. Paul Anthony v. Bharat Gold Mines Ltd. & Anr.*, 1999 (3) Suprme 376; (iv) *State Bank of India & Ors. v. Neelam Nag & Anr.*, (2016) 9 SCC 491; (v) *Sudipto Sarkar v. Union of India & Ors.*, 2019 (2) GLT 127; and (vi) *Indian Institute of Technology v. Aloke Kumar Ghosal*, (2017) 6 GauLJ 297.

8) The learned Addl. Senior Govt. Advocate has placed reliance on the affidavit-in-opposition filed by the respondent no.2 and it was submitted that the applicant was suspended after his arrest on 29.05.2023 and recovery of bribe amount of Rs.40,000/- (Rupees Forty thousand only), in connection with ACB PS Case No.40/2023 under section 7(a) of the Prevention of Corruption Act, 1988 and before expiry of 90 (ninety) days, a departmental proceeding was initiated against the applicant by issuance of show-cause notice dated 21.08.2023. The Disciplinary Authority, i.e. the Director General of Police, Assam (respondent no.2), by order dated 20.10.2023, appointed the Enquiry Officer and Presenting Officer so as to conduct the departmental proceeding against the applicant.

9) Thereafter, by order dated 11.09.2023, a Departmental Review Committee was constituted and asked to submit their recommendation and accordingly, the said committee had given their recommendation dated 15.09.2023, to continue the suspension of the applicant, pending departmental enquiry. Accordingly, by order dated 22.09.2023, the respondent no.3, the

applicant's suspension was extended for a further period of 90 days w.e.f. 30.08.2023.

10) Thereafter, by order dated 07.12.2023, a Departmental Review Committee was constituted to give their recommendation. Accordingly, the said committee had given their recommendation dated 15.12.2023, to continue the suspension of the applicant till disposal of his departmental proceeding. Accordingly, by order dated 27.12.2023, the applicant's suspension was reviewed and extended for a further period of 90 days w.e.f. 29.11.2023.

11) Considered the submissions of both sides and perused the materials available on the record.

12) As regards extension of the period of suspension, it is seen as follows:-

- a. The applicant has been suspended by order dated 30.05.2023.
- b. The period of suspension of the petitioner for a further period of 90 days was by order dated 22.09.2023, issued by the respondent no.3.
- c. The effect of the said order was from an anterior date of 30.08.2023.
- d. Therefore, the review order dated 22.09.2023 was passed beyond the period of 90 days.
- e. Calculated from 30.08.2023, the 90 days period would be over on 28.11.2023.
- f. However, the next order to review the period of suspension was issued by the respondent no.3 on 27.12.2023, thereby extending the suspension of the applicant for a further period of 90 days with effect from an anterior date of 29.11.2023.

g. Therefore, the review order dated 27.12.2023 was passed beyond the period of 90 days.

13) The Court is unable to accept the submissions made by the learned Addl. Senior Govt. Advocate that exercise for review was initiated before the expiry of 90 days and on receipt of recommendation from the Departmental Review Committee, the suspension review order were passed on 22.09.2023 and 27.12.2023 respectively.

14) Moreover, it is also noted that the Enquiry Report of the Enquiry Officer has not been accepted by the Disciplinary Authority vide order dated 30.03.2024.

15) It would be appropriate to quote herein below the observations made by this Court in para-20 of the case of *GO-2148X, Sri Vinay Kumar Singh v. The Union of India & Ors., (2023) 0 Supreme(Gau) 1223*, which is as follows:-

“20. It is the admitted position in the instant case that the review of the order of suspension was done only on 03.02.2023. It is clear that the said review was not done within the mandatory period of 90 days as required under the law. The Hon’ble Supreme Court in the case of Dipak Mali (supra) has clearly laid down that review done beyond a period of 90 days would not serve the purpose of law and would have no consequence. In the instant case, it is also admitted that no disciplinary proceeding has been initiated by issuance of any show cause notice prior to the expiry of the said period of 90 days.”

16) Hence, the Court is of the considered opinion that the (i) order under memo no. Proc. Cell/XXVII/26/2023/44 dated 22.09.2023, issued by the respondent no.3; and (ii) the order under Memo no. Proc. Cell/XXVII/26/2023/94 dated 27.12.2023, were both issued by the respondent no.3 beyond the period of 90 days, which is contrary to the law laid down by the Supreme Court of India in the case of *Ajay Kumar Choudhary v. Union of India & Ors., (2015) 7 SCC 291*. Hence, the continued suspension of the

petitioner, namely, Ganesh Barman is not sustainable.

17) Accordingly, the respondents, more specifically the Inspector General of Police (Admn.) (respondent no.3) is directed to revoke the suspension of the petitioner and reinstate him within 10 (ten) days from the date of service of the certified copy of this order upon respondent no.3. In doing so, the respondent authorities would be free to transfer him to any office or post to ensure that he is not in a position to influence the departmental proceeding against him and to prohibit him from handling records and documents and/or to meet the witnesses in the departmental proceeding without permission from the respondent no.3.

18) This interlocutory application stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant