

GAHC010167242024



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

Case No. : WP(C)/3295/2024

NABA JYOTI TAMULI
SON OF LATE ANANDARAM TAMULI

RESIDENT OF VILLAGE- GOHAIN GAON
WARD NO.- 5

PO- MORIGAON
DISTRICT- MORIGAON

ASSAM
PIN- 782105.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM

PUBLIC HEALTH ENGINEERING DEPARTMENT

DISPUR
GUWAHATI
DISTRICT- KAMRUP(M)

ASSAM
PIN- 781006.

2:THE SPECIAL CHIEF SECRETARY TO THE GOVERNMENT OF ASSAM
PUBLIC HEALTH ENGINEERING DEPARTMENT
DISPUR
GUWAHATI
DISTRICT- KAMRUP(M)

ASSAM
PIN- 781006.

3:THE SPECIAL SECRETARY TO THE GOVERNMENT OF ASSAM
PUBLIC HEALTH ENGINEERING DEPARTMENT
DISPUR
GUWAHATI
DISTRICT- KAMRUP(M)

ASSAM
PIN- 781006.

4:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
PUBLIC HEALTH ENGINEERING DEPARTMENT
DISPUR
GUWAHATI
DISTRICT- KAMRUP(M)

ASSAM
PIN- 781006.

5:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DEPARTMENT
MORIGAON
P.O. AND DISTRICT- MORIGAON

ASSAM
PIN- 782105.

Advocate for : MR. M DUTTA
Advocate for : SC
P H E appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

12.09.2024

Heard Mr. J. Patowary, learned counsel for the petitioner, who submits that by filing this writ petition the petitioner has challenged the notification dated 18.01.2024 (Annexure-3), by which the petitioner has been placed under

suspension w.e.f. 15.12.2023 until further orders. The learned counsel submits that although a show cause notice was issued to the petitioner on 22.02.2024 (Annexure-4), by which charge was framed and departmental proceedings was initiated, but the suspension of the petitioner has not been reviewed in terms of the law laid down by the Apex Court in ***Ajay Kumar Choudhary Vs. Union of India through its Secretary & Anr.***, reported in ***(2015) 7 SCC 291***. He therefore submits that the respondents may be directed to reinstate the petitioner.

2. Mr. D. Gogoi, learned Standing Counsel, PHE Department submits that although the suspension of the petitioner has not been reviewed within 3 months time in terms of the Apex Court Decision in ***Ajay Kumar Choudhary (supra)***, but departmental proceedings has been initiated against the petitioner within 3 months' time by issuing him show cause notice and the memorandum of charge on 22.02.2024. Therefore, the petitioner cannot be said to have any grievance.

3. I have heard the submissions made by the learned counsels for the rival parties.

4. The issue which requires consideration is as to whether drawing of departmental proceedings within the 3 months period of suspension would suffice to keep the delinquent officer under further suspension without a review of the suspension. In this regard, para 21 of ***Ajay Kumar Choudhary (supra)*** may be extracted:-

“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 concerned person 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that 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."

5. From the above abstract, it may be seen that the currency of a suspension order should not extend beyond 3 months and even if within this period memorandum of charge/charge is served, a reasoned order has to be passed for extension of the suspension which otherwise admittedly is not done in the present case.

6. At this stage, Mr. J. Patowary, learned counsel for the petitioner has also drawn the attention of this Court to the office memorandum dated 04.02.2020 issued by the Government of Assam in the Department of Personnel (B) under memo No. ABP.13/2018/Pt/35, wherein in line with the decision of the Apex Court in **Ajay Kumar Choudhary (supra)** as well as a direction of this Court dated 30.11.2017 passed in WP(C) 6465/2017 it has been provided that after the issuance of Memorandum of Charge/Charge-Sheet, the Senior Most Secretaries shall undertake a review within 6 months as regards the desirability

to further continue with the suspension order. Further, the Senior Most Secretaries will be held responsible if cases of suspension in their respective Departments are not dealt with and reviewed accordingly. The learned counsel submits that even on this count the suspension of the petitioner without review cannot be sustained and should be interfered with by this Court.

7. The petitioner as can be seen has been suspended since 15.12.2023 and in the absence of any review made by the competent authority in terms of the decision of the Apex Court as referred to hereinabove the same cannot continue in perpetuating. Accordingly, the respondents are directed to reinstate the petitioner back into service immediately. However, it is observed that since the departmental proceedings has been initiated against the petitioner the same should be brought to its logical conclusion as expeditiously as possible. It is needless to state herein that the notification dated 18.01.2024 suspending the petitioner is hereby set aside. It is however provided herein that the petitioner's entitlement is restricted to the amount of subsistence allowance drawn by him.

8. With the above directions and observations the writ petition stands disposed of.

JUDGE

Comparing Assistant