

GAHC010269102023



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

Case No. : WP(C)/7015/2023

BOBBY KHAN SAIKIA
W/O- JITEN SAIKIA,
VILLAGE- PATIACHUBURI,
P.S- DEKARGAON,
DIST- SONITPUR, ASSAM, PIN-784501

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY, GENERAL
ADMINISTRATION DEPARTMENT, GOVT. OF ASSAM,
DISPUR, GUWAHATI-06, ASSAM

2:THE JOINT SECRETARY
TO GOVERNMENT OF ASSAM
REVENUE AND DM DEPARTMENT
DISPUR
GUWAHATI
ASSAM-06.

3:THE DEPUTY COMMISSIONER

SONITPUR
P.O.- TEZPUR
DIST. SONITPUR
ASSAM
PIN- 784001.

4:THE ADDL . DEPUTY COMMISSIONER
(ALL)
SONITPUR P.O.- TEZPUR
DIST. SONITPUR

ASSAM
PIN- 784001.

5:THE JOINT SECRETARY
TO THE GOVERNMENT OF ASSAM

GENERAL ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI
ASSAM-06

Advocate for the Petitioner : MR. A M AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 21-06-2024

Heard Mr. A. M Ahmed learned counsel for the petitioner and Mr. R. Dhar, learned Additional Senior Government Advocate appearing for the respondent Nos. 1,3,4 and 5 and Mr. J. Handique, learned Standing Counsel for the Revenue Department.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed his continued suspension vide order dated 20.05.2023 by relying on the principles laid down in the case of *Ajay Kumar Choudhury Vs Union of India and Anr.,(2015) 7 SCC 291*.

3. The learned Additional Senior Government Advocate by referring to the affidavit-in-opposition filed by respondent No. 3, has submitted that the petitioner was suspended by order dated 20.05.2023. However, departmental proceedings was initiated against the petitioner by issuance of show-cause notice dated 19.07.2023.

4. It is submitted that though order has been passed for extension of the suspension period from time to time, the order extending the suspension was not passed by any speaking order, which is required to be passed in terms of para-21 of the case of *Ajay Kumar Choudhury(supra)*.

5. From the materials available on record, it is seen that the petitioner, on receipt of the show-cause notice, has submitted his reply on 27.07.2023. Thus, departmental/ disciplinary proceeding has been initiated against the petitioner.

6. As per the clause 2.1.8 of the Manual of Departmental Proceedings, we find that there is requirement of service of the charges and the statement of allegations to the delinquent officer within 90 days from the date of suspension and as per the sub-clause 2 thereof, it is provided that the charges and the statement of allegations are not served within the period of three months from the date of suspension failing which the government servant should be reinstated. The relevant clause 2.1.8 of the Manual of Departmental Proceedings is quoted below.

Clause 2.1.8 of the manual of the departmental proceeding states as follows:-

“ 2.1.8. The following principals and procedure with regard to suspension need strict compliance-(i) suspension should be restored to only in cases where a major punishment is likely to be imposed if the charges are proved;(ii) charges and the statement of allegations should be served within three months from the date of suspension failing which it is not reasonably practicable to prepare the charges for service within three months from the date of suspension and the continued suspension of the Government servant is considered necessary in the public interest, the authority concerned should move the Personal Department through Administrative Department well before the expiry of the period of three months with a letter detailing the nature of the allegations and the reasons for which charges could not be prepared so that the Personal Department could

advice whether any further extension of the period of suspension should be permitted or not."

7. The submission of the learned standing counsel for the Revenue Department is that the memorandum of charges were issued to the petitioner on 19.07.2023, which cannot be said to be not in compliance of clause 2.1.8 of the Manual of Departmental Proceedings, read with the Office Memorandum dated 04.02.2020.

8. It would also be appropriate to quote paragraph 21 and 22 of the case of *Ajay Kumar Choudhury (supra)*:-

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 contracting any person, or having 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.

22. So far as the facts of the present case are concerned, the Appellant has now been served with a Charge-sheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review."

9. On a reading of the paragraph 22 of the case of *Ajay Kumar Choudhury (supra)*, it appears that as the show-cause notice has been issued to the petitioner, there is no requirement of passing of a reasoned order for his continued suspension and the extension of the order of suspension would suffice.

10. Be that as it may, the order in this writ petition shall not preclude the petitioner to assail the departmental proceeding in a manner which is permissible by law, if so advised.

11. With the above observations, this writ petition stands closed.

J U D G E

Comparing Assistant