

GAHC010286782023



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

Case No. : WP(C)/7530/2023

BINOD KUMAR PAYENG
SON OF LATE MAHESH PAYENG,
RESIDENT OF HOUSE NO. 17, KALYANI SAGAR PATH,
P.O.- KAHILIPARA, P.S.- DISPUR,
GUWAHATI, DISTRICT- KAMRUP(M),
PIN- 781019, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
ENVIRONMENT AND FORESTS DEPARTMENT,
DISPUR, GUWAHATI, DISTRICT- KAMRUP(M),
PIN- 781006, ASSAM.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
ARANYA BHAWAN
PANJABARI
GUWAHATI
DISTRICT- KAMRUP(M)
PIN- 781037
ASSAM.

3:DIRECTORATE OF VIGILANCE AND ANTI-CORRUPTION
ASSAM
REPRESENTED BY THE ADDITIONAL DIRECTOR GENERAL OF POLICE
SRIMANTAPUR
GUWAHATI
DISTRICT- KAMRUP(M)
PIN- 781032
ASSAM.

4:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF

ASSAM
FINANCE DEPARTMENT
DISPUR
GUWAHATI
DISTRICT- KAMRUP(M)
PIN- 781006
ASSAM.

5:THE PRINCIPAL ACCOUNTANT GENREAL (A AND E)
ASSAM
MAIDAMGAON
BELTOLA
GUWAHATI- 781029
DISTRICT- KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 01/02/2024

Heard Mr. S. Banik, learned counsel for the writ petitioner. Also heard Mr. I. Borthakur, learned Standing Counsel, Forest Department, Assam, Mr. P. Nayak, learned Standing Counsel, Finance Department, Assam, Ms. A. Talukdar, learned Government Advocate, Assam and Ms. J. Das, learned Standing Counsel, AG (A&E), Assam, appearing on behalf of the official respondents.

Assailing the order of suspension dated 29/09/2023, the petitioner has approached this Court by filing the instant writ petition, placing reliance on a decision of the Hon'ble Supreme Court rendered in the case of ***Ajay Kumar Choudhury Vs. Union of India through its Secretary and another*** reported in ***(2015) 7 SCC 291*** as well as the decision of the Division Bench of this Court rendered in the case of ***State of Assam and others Vs. Ajit Sonowal and 3 Ors [WA No. 114/2022]***, *inter alia*, contending that since the departmental authorities have failed to review the order of suspension within 90(ninety) days from the date of issuance of the same, the said order has lapsed due to efflux of time and therefore, is liable to be declared so by this Court.

The facts of the case, in a nutshell, are that the writ petitioner herein was serving as Deputy Conservator of Forest, under the Environment and Forest Department, Government of Assam. On

28/09/2023, he was arrested in connection with ACB PS case No. 72/2023 registered under section 120(B) of the Indian Penal Code (IPC) read with section 7(a) of the Prevention of Corruption (PC) Act, 1988 (as amended), on the ground that the petitioner had demanded bribe and accepted the same through a subordinate Forest official. On the very next day i.e. on 29/09/2023, the petitioner was placed under suspension with immediate effect as per Rule 6(2) of the Assam (Discipline and Appeal) Rules, 1964. On 31/10/2023, the petitioner was released on bail granted by the learned Special Judge, Assam, Guwahati, in connection with ACB PS case No. 72/2023. The petitioner had communicated to the departmental authorities on 02/11/2023 intimating about his release on bail. The petitioner had also preferred a statutory appeal under Rule 14 of the ***Assam Services (Discipline & Appeal) Rules, 1964*** (herein after referred to as ***the Rules of 1964***) against the order of suspension dated 29/09/2023. However, since no order was passed in the appeal preferred by the petitioner, he has been compelled to approach this Court by filing the instant writ petition.

By placing heavy reliance on the decision of this Court in the case of ***Ajit Sonowal (Supra)***, Mr. S. Banik, learned counsel for the petitioner has argued that since more than 90 (ninety) days has lapsed since the order of suspension was issued and considering the fact that the department has neither reviewed nor extended the order of suspension and no charge sheet has also been served upon the petitioner, the impugned order dated 29/09/2023 had automatically lapsed and, therefore, calls for a declaration to that effect from this Court.

Mr. I. Borthakur, learned Standing Counsel, Forest Department, Assam, on instruction obtained on the basis of the order dated 30/01/2024 passed by this Court, has appraised the Court that the department has neither initiated any departmental proceeding against the petitioner nor has the order of suspension been reviewed or extended even after the lapse of 90 days from the date of issuance of the same or since the release of the petitioner on bail.

Resisting the prayer made in the writ petition, Mr. P. Nayak, learned Standing Counsel, Finance Department, Assam, has argued that in view of clause 2.2.7 of the *Manual of Departmental Proceeding* framed under the Rules of 1964, the duty to inform the department about the release of an arrested employee is always upon the employee and failure to do so, would amount to suppression of material facts. Mr. Nayak has further argued that since the petitioner had intimated the department about his release only on 02/11/2023, the period of 90 days, for the purpose of this case would have to be counted with effect from 02/11/2023 and not from the date of issuance of the order of suspension. By referring to the decision in the case of ***Abdul Rahman Antulay Vs. R.S. Nayak*** reported in ***(1992) 1 SCC 225***, Mr. Nayak has further argued that in order to ascertain as to whether,

there has been undue delay on the part of the department in taking appropriate action in the matter, the Court must examine the attendant circumstances including the nature of offence etc. and a pedantic approach would not be called for in such a matter.

Deprecating protracted period of suspension, repeated renewal thereof and also emphasizing on the right of speedy trial, the Supreme Court has categorically laid down in the case of **Ajay Kumar Choudhury (Supra)** that an order of suspension should not extend beyond 3 (three) months, if within the said period, *memorandum of charges/charge sheet* is not served on the delinquent officer/employee. The observations made in para 21 in the aforesaid decision, are reproduced herein below for ready reference :-

“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/Chargesheet 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.”

In the present case, the suspension order has been issued to the petitioner due to his arrest in connection with ACB PS Case No. 72/2023 and, therefore, it is a case of deemed suspension coming within the purview of Rule 6(2) of Rules of 1964. The question as to whether the law laid down by the Supreme Court in the case of **Ajay Kumar Choudhury (Supra)** would be applicable even in the case of deemed suspension under Rule 6(2) of the Rules of 1964, came up for consideration before

the Division Bench of this Court in the case of ***Rekib Uddin Ahmed Vs. State of Assam and others [WP(C) No. 3218/2019]***. After examining the issue, the Division Bench had categorically held that the ratio laid down in ***Ajay Kumar Choudhury (Supra)*** will be attracted even in cases of deemed suspension under Rule 6(2) of the Rules of 1964, meaning thereby, that the requirement to review the order of suspension of a person arrested and detained in police custody would also call for review within 3 (three) months and the same should not be extended beyond 3(three) months without a proper review of the order of suspension by the departmental authorities.

Following the decision of the Supreme Court in the case of ***Ajay Kumar Choudhury (Supra)*** and this Court in ***Rekib Uddin Ahmed(Supra)***, another Division Bench of this Court had held in the case of ***Ajit Sonowal (Supra)*** that an order of deemed suspension under Rule 6(2) of the Rules of 1964 would automatically lapse after expiry of 90 days from the date of the order of suspension, if not reviewed within 90 days from the date of issuance of the order. The observations made in para 13 in the case of ***Ajit Sonowal (Supra)*** is reproduced herein below for ready reference :-

“13. From careful analysis of the above decisions of the Supreme Court what follows is that unless review is held within 90 days, an order of suspension including one issued due to the detention of an employee in custody for 48 hours, would not survive nor can such an order be granted fresh lease of life by carrying out a review after expiry of the period of 90 days. In view of the law laid down in the case of Dipak Mali (supra) and Ajay Kumar Choudhary (Supra) it is axiomatic that the order of suspension dated 07/12/2019 had lapsed after the expiry of 90 days due to want of review of the same by the Disciplinary Authority. We, therefore, find ourselves in agreement with the findings recorded by the learned Single Judge in the impugned Judgment and order dated 22/04/2021.”

The decision rendered in the case of ***Ajit Sonowal (Supra)*** lays down a binding precedent for this Court to follow.

As noted above, Mr. Nayak has argued that since the petitioner has intimated the department about his release on bail only on 02/11/2023, hence, the period of 90 days in this case ought to be computed with effect from the said date, bearing in mind, the mandate of paragraph 2.2.7 of the Rules of 1964. It would be relevant to note herein that in the case of ***Ajit Sonowal (Supra)***, the Division Bench has categorically held that the period of 90 days is to be counted with effect from the date of the order of suspension. However, even if the argument of Mr. Nayak is accepted, even then, the period of 90 days with effect from the date of information furnished to the department i.e.

02/11/2023, as on this date, has also lapsed. Therefore, viewed from any angle, this is a clear case where the order of suspension not having been reviewed by the departmental authorities within the period of 3 months (90 days) nor extended beyond 90 days, has spent its force.

Although Mr. Nayak has placed heavy reliance on the decision of **Abdul Rahman Antulay (Supra)** to contend that a pedantic approach in such matters should be avoided, but what is to be noted herein is that the observations made in the case **Abdul Rahman Antulay (Supra)** appears to have been made in the context of right to speedy trial under Article 21 of the Constitution of India and not in matters of review of orders of suspension. Moreover, it has also been clarified that the guidelines laid down in the said decision are not exhaustive.

The learned departmental counsel have not cited any reason for not reviewing the order of suspension dated 29/09/2023. Therefore, the question of adopting a different approach, on the facts and circumstances of the case, also does not arise in the present case. Moreover, since the law regarding requirement of review of order of suspension within 90 days or three months has been firmly laid down by the decisions of the Supreme Court as well as the Division Bench of this Court, as referred to above, the same will have strict application in all cases coming within the purview of those decisions. The present case, in the opinion of this Court, is squarely covered under the decisions rendered in the case of **Ajay Kumar Choudhury (Supra)** and **Ajit Sonowal (Supra)**.

For the reasons stated herein above, the impugned order dated 29/09/2023 is hereby set aside. Consequently, the petitioner is directed to be forthwith reinstated in service.

It is, however, made clear that notwithstanding this order passed in favour of the petitioner, it would be open for the departmental authorities to take appropriate action against the petitioner, as may be permissible under the law, subject to his reinstatement.

With the above observations, the writ petition stands disposed of.

There shall be no order as to costs.

JUDGE

sukhamay

Comparing Assistant