

GAHC010045992023



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

**Case No. : WP(C)/1240/2023**

ASHIRBAD HAZARIKA  
S/O- DR. INDRA KUMAR HAZARIKA,  
R/O- SANTIDAN PATH,  
RUPALIM NAGAR, LANKESWAR,  
P.O.- GAUHATI UNIVERSITY,  
P.S.- JALUKBARI, DIST.- KAMRUP(M),  
ASSAM, PIN- 781014.

VERSUS

THE STATE OF ASSAM AND 2 ORS.  
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,  
DISPUR, GUWAHATI- 6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM  
REVENUE AND DISASTER MANAGEMENT (LR) DEPTT.  
DISPUR  
GUWAHATI-6.

3:THE JOINT SECRETARY TO THE GOVT. OF ASSAM  
REVENUE AND DISASTER MANAGEMENT(LR) DEPTT.  
DISPUR  
GUWAHATI-6

**Advocate for the Petitioner : MR. K N CHOUDHURY**

**Advocate for the Respondent : GA, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 11-06-2024**

Heard Mr. J. Patowary, learned counsel for the petitioner as well as Ms. A. Bhattacharjee, learned Addl. Senior Govt. Advocate appearing for the respondent no.1 and Mr. S. Dutta, learned standing counsel for the Revenue Department representing all the respondent nos. 2 and 3.

2. The case of the petitioner is that while serving as Circle Officer (Attached), Dalgaon in the district of Darrang the petitioner was arrested on 10.11.2022 in connection with Dhula P.S. case no.114/2022. As he was detained in custody for a period of exceeding 48 hours and he was suspended vide notification dated 12.11.2022. The learned counsel for the petitioner has submitted that by an order dated 14.11.2022 passed by this Court in BA 3045/2022, the petitioner was granted bail. Upon release, the grant of bail was intimated to the Commissioner and Secretary to the Govt. of Assam, Revenue and Disaster Management Department vide letter dated 12.12.2022 and was sent by registered post with A/D with copies thereof to two other authorities mentioned therein. The said intimation is stated to be served on the addressee on 17.12.2022. Memorandum of charges dated 17.03.2023 was issued to the petitioner, which was posted on 28.03.2023 and purportedly received by the petitioner on 06.04.2023. Accordingly, it is submitted that the service of the memorandum of charges against the petitioner was beyond the period of 90 days which has been laid down by the Supreme Court of India in the case of *Ajay Kumar Choudhury v. Union of India and another, (2015) 7 SCC 291*. Accordingly, the petitioner had filed this writ petition under Article 226 of the Constitution of India for setting aside the notification dated 12.11.2022 by which

he was placed under suspension and for setting aside notification dated 18.02.2023, thereby extending the period of suspension of the petitioner for a further period of 3(three) months w.e.f. 10.02.2023 and for a direction upon the respondent authorities to reinstate the petitioner as well as to release his subsistence allowance.

3. The learned counsel for the petitioner has submitted that the order of suspension is required to be served as per the provision of clause 2.1.8 of the Manual of Departmental Proceedings which is being brought into force vide OM no.ABP.284/79/1 dated 05.09.1979.

4. Accordingly, it is submitted that pursuant to the decision of the Supreme Court of India in the case of *Ajay Kr. Choudhury (supra)*, the Govt. of Assam has also issued another office memorandum no. ABP.13/2018/Pt/35 dated 04.02.2020 by which, amongst others direction has been issued that if the Memorandum of Charges/ Charge sheet be served on the delinquent officer before the expiry of three months period from the date of issuance of Order of suspension.

5. In support of the submissions, the learned counsel for the petitioner has relied on the following cases: (1) *Ajay Kr. Choudhury v. Union of India, (supra)* ; (2) *Bachhittar Singh v. State of Punjab, AIR 1963 SC 395*; (3) *Union of India v. Dipak Mali, (2010) 2 SCC 222*; (4) *State of Nagaland v. C. Imchein, 2019 (5) GLT 444*; (5) *The King Emperor v. K. Nazir Ahmed, AIR 1936 PC 253 (2) and (6) Rafed Ali v. State of Assam, 2023 (3) GLT 718*.

6. Per contra, the learned Govt. Advocate has submitted that the petitioner has negligently made a false inquest report in connection with inquest over a dead body conducted on 11.06.2022 in connection with Dhula P.S. U/D

case no.10/2022 whereby the case of sexual assault on a minor coupled with a homicidal hanging sought to be converted to a case of suicidal death and the report was allegedly prepared without examining the dead body and the signature of the witnesses were taken on a wrong premises by misleading them on a false statement for which the witnesses were not aware that their signatures were taken in the inquest report and accordingly, the petitioner had violated the code of conduct as provided under Rule 3(1)(ii) of the Assam Civil Services (Conduct) Rules, 1964. It is submitted that the periodical review of the order of suspension has been made from time to time. It is also submitted that as the intimation of the enlargement of the petitioner was received on 17.12.2022, as the charge sheet was issued on 17.03.2023, there is sufficient compliance of the requirement on which charge sheet within 90 days is provided as per the case of *Ajay Kumar Choudhury (supra)*.

7. In support of his submissions, the learned standing counsel for the Revenue Department has placed reliance on the following cases: (1) *Prasanta Dutta v. State of Assam and ors., 2023 (4) GLT 113*, (2) *Ranjit Gogoi v. State of Assam and ors., 2021 (5) GLT 461*, (3) *The State of Assam and another v. Ajit Sonowal and 3 ors., WA 114/2022 decided on 02.03.2023*.

8. It is submitted that in the case of *Prasanta Dutta (supra)* the Coordinate Bench of this Court had directed the disciplinary authority to take a decision on the continued suspension of the petitioner by passing a reasoned order.

9. In reference to the case of *Ajit Sonowal (supra)* was relied upon for the purpose of bringing on the point that the Court had issued a direction that notwithstanding that a disciplinary proceeding was initiated against the respondents therein by serving charges upon him and this Court had clarified

that the order dated 02.03.2023 passed by this Court shall not come in the way of the disciplinary authority from exercising its jurisdiction under Rule 6(1) of the Assam Services (Disciplinary and Appeal) Rules, 1964 and to pass a fresh order of suspension, if so advised. Accordingly, it is submitted that the government would have the power and authority to keep the petitioner under suspension.

10. In the case of *Ranjit Gogoi (supra)*, this Court had directed that while taking into account the seriousness of charges, the petitioner name may be posted to any non-sensitive post to be decided by the authorities.

11. At the outset the relevant paragraphs 20, 21 and 22 of the case of *Ajay Kumar Choudhury (supra)* are quoted below:

*“20. It will be useful to recall that prior to 1973 an accused could be detained for continuous and consecutive periods of 15 days, albeit, after judicial scrutiny and supervision. The Cr.P.C. of 1973 contains a new proviso which has the effect of circumscribing the power of the Magistrate to authorise detention of an accused person beyond period of 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than 10 years, and beyond a period of 60 days where the investigation relates to any other offence. Drawing support from the observations contained of the Division Bench in Raghbir Singh v. State of Bihar, (1986) 4 SCC 481, and more so of the Constitution Bench in Antulay, we are spurred to extrapolate the quintessence of the proviso of Section 167(2) of the Cr.P.C. 1973 to moderate Suspension Orders in cases of departmental/disciplinary inquiries also. It seems to us that if Parliament considered it necessary that a person be released from incarceration after the expiry of 90 days even though accused of commission of the most heinous crimes, a fortiori suspension should not be continued after the expiry of the similar period especially when a Memorandum of Charges/Charge-sheet has not been served on the suspended person. It is true that the proviso to Section 167(2) Cr.P.C. postulates personal freedom, but respect and preservation of human dignity as well as the right to a speedy trial should also be placed on the same pedestal.*

*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.*

*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."*

12. The relevant paragraph 2 and 3 of the office memorandum dated 04.02.2020 is also quoted below:

*"It is therefore directed that all the Senior Most Secretaries of all the Departments shall ensure that the Memorandum of Charges/Charge Sheet is served on the delinquent officer/employee before the expiration of three months of period from the date of issuance of Order of suspension. They shall also ensure that the currency of the 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 within 3 (three) months of suspension, a reasoned Order must be passed for the extension of the suspension, wherever necessary.*

*The officer proposing for suspension shall also ensure that the charges are framed and submitted to the Disciplinary Authority within two weeks from the date of passing order of suspension."*

13. From the decision rendered in the case of *Ajay Kumar Choudhury (supra)*, it was directed that the currency of the suspension order should not be exceeded beyond three months if within this period the memorandum of charges or charge sheet is not served on the delinquent officer.

14. The office memorandum dated 04.02.2020 issued by the Chief Secretary, Govt. of Assam has also laid down that the senior most Secretaries of all the departments be required to ensure that the memorandum of charges/ charge sheet was served on the delinquent officer before expiry of three months from the date of issuance of order of suspension.

15. From the materials available on record, it is seen from the reply affidavit filed by the petitioner, the copy of the postal envelope has been annexed which discloses that the said postal article was posted on 23.03.2023 and as per the postal track report, the postal article was sent for service on 06.04.2023. Therefore, the memorandum of charges/ charge sheet against the petitioner cannot be said to have been served on the petitioner within 17.03.2023 which is the 90<sup>th</sup> day from the receipt of intimation dated 12.12.2022 to which the petitioner has been released on bail.

16. As per the hereinbefore referred 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 obligation to the delinquent officer 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 principles and procedure with regard to suspension need strict compliance- (i) suspension should be resorted 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 the Government Servant concerned should be reinstated; and (iii) In cases where 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 Personnel 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 Personnel Department could advise whether any further extension of the period of suspension should be permitted or not.”*

17. The submission of the learned standing counsel for the Revenue Department that the memorandum of charges were issued to the petitioner on 17.03.2023 is not and cannot be said to be a new compliance of clause 2.1.8 of the Manual of Departmental Proceedings read with the office memorandum dated 04.02.2020.

18. The cases cited by the learned departmental counsel has taken a new contrary to the case laid down by the Supreme Court of India in the case of *Ajay Kumar Choudhury (supra)*. Therefore, the Court is of the considered opinion that the continued suspension of the petitioner is not sustainable. The memo of charges have not been served within a period of 90 days from the date of receipt of intimation of the petitioner being released on bail and order for reinstatement of the petitioner in service. Accordingly, the respondent authorities are directed to reinstate the petitioner within a period of 2(two) weeks from the date of certified copy of this order.

19. Considering the nature of charges which are framed against the petitioner in the departmental proceedings it would be open to the respondent authorities to post the petitioner in any non-sensitive post or usually other place

of posting so as to prevent the petitioner from impressing any witness.

20. As the Court has held the petitioner to be entitled to be reinstated, there is no requirement for setting aside and quashing of the order of suspension dated 12.11.2022 and the notification dated 18.02.2023. Prospectively, the said two notifications dated 12.11.2022 and 18.02.2023 or any other subsequent notification of extension of the period of suspension of the petitioner shall not have force or effect from the date of this order.

21. It is also submitted that under the facts on which the petitioner was suspended, instead of interfering with the order of suspension it would be appropriate if this Court issues a direction upon the respondent authorities to conclude the departmental proceedings in a time bound manner on the next date of proceeding which is fixed on 27.06.2024.

**JUDGE**

**Comparing Assistant**