
(2015) 05 MAN CK 0018

In the Manipur High Court

Case No : Writ Petition (C) Nos. 171 and 258 of 2015

Chingangbam Premjit Singh

APPELLANT

Vs

The State of Manipur and Others

RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Arms Act, 1959 — Section 25(1-C)
General Clauses Act, 1897 — Section 16
Unlawful Activities (Prevention) Act, 1967 — Section 20

Citation : (2015) 2 GLT 867

Hon'ble Judges : Kh. Nobin Singh, J

Bench : Single Bench

Advocate : H.S. Paonam, Senior Advocate, for the Appellant; Sundari, Govt. Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Kh. Nobin Singh, J.—Heard Shri H.S. Paonam, learned Sr. Advocate appearing for the petitioner and Smt. Ch. Sundari, learned Govt. Advocate appearing for the respondents.

2. Both the writ petitions arise out of the same set of facts and therefore, the same are being disposed of by this common judgment and order.

W.P. (C) No. 171 of 2010:

3. The present writ petition has been filed by the petitioner praying for quashing and setting aside the suspension order dated 12-11-2009 issued by the Superintendent, CID (Crime Branch) and also for returning the FIR to FR as no incriminating documents are found against him and consequently, allowing him to complete the basic training. So far as the second and third part of the prayers are concerned, the Senior counsel appearing for the petitioner has given up them during the course of hearing and accordingly, no argument was advanced in respect thereof.

3.1 According to the petitioner, after having participated in the D.P.C. held for appointment to the post of A.S.I., the petitioner being successful was included in the list of successful candidates. The Notification declaring the result provides that the appointment order would be issued after completion of the police verification and after being satisfied with the police verification, the petitioner was appointed as A.S.I. in CID (CB) vide order dated 13-01-2009 issued by the Superintendent of Police/CID(CB). By submitting his joining report the same day in the office of the S.P., CID (CB), the petitioner assumed the office on joining the duty as A.S.I. By order dated 27-01-2009 issued by the Superintendent of Police, CID (CB), the petitioner was released for undergoing training and was directed for reporting to the Director, North-Eastern Police Academy (NEPA), Umsaw, Meghalaya and accordingly, the petitioner reported on 01-02-2009 and started his basic training.

3.2 While the petitioner was in the midst of training at NEFA, the Director, NEFA vide its order dated 28-10-2009 directed the petitioner to proceed to Manipur along with deputed officers of Manipur Police and to report to the Senior Superintendent of Police on the ground that the petitioner was suspected to be involved in a case under F.I.R. No. 146(10)09 u/s. 20 UA (P)A. Act of Lamphel Police. On arrival at Imphal, the petitioner was produced before the Duty Magistrate on 29-10-2009 who remanded the petitioner to police custody till 04-11-2009. After the said F.I.R. was transferred to Heingang P.S., a new F.I.R. being No. 120(10)09 HNG P.S. u/s. 20 UA(P)A. Act, 2004 and 25(1-C) A. Act, 1959 was registered naming the petitioner as one of the accused and accordingly, the petitioner was produced before the Duty Magistrate.

3.3 On 04-11-2009 when the petitioner was produced before the Learned Judicial Magistrate 1st Class, Imphal East who was pleased to release the petitioner on bail. Thereafter the petitioner submitted an application dated 07-11-2009 to the Superintendent of Police, CID, Manipur requesting him to allow the petitioner to report back to NEPA. Since no positive response being received by him, the petitioner preferred a writ petition being W.P. (C) No. 698 of 2009 which was withdrawn, with liberty to file a fresh petition, in view of the subsequent event of the petitioner being placed under suspension by an order dated 12-11-2009 issued by the Superintendent of Police, CID for the reason that the petitioner was in police custody exceeding 48 hours.

3.4 The petitioner submitted a representation dated 20-11-2009 to the Director General of Police, Manipur for allowing him to report back at NEFA, Meghalaya and since no positive response having been received by him, the petitioner submitted another representation dated 03-12-2009 to the Superintendent of Police, CID (CB) for revocation of his suspension order. Being aggrieved with the inaction on the part of the respondents, the present writ petition has been filed by the petitioner.

W.P. (C) No. 258 of 2015:

4.1 The present writ petition has been filed by the petitioner praying inter-alia that the respondents and the Superintendent of Police, CID(CB) in particular, be directed to issue necessary order for allowing the petitioner to proceed and report to NEPA, Meghalaya for further training.

4.2 According to the petitioner, the FIR registered against him appears to be on the basis of a statement given by one Shri Sagolsem Okendra and apart from that, there is no incriminating articles or documents being seized from his possession. Having no prima facie evidence being found against him, the petitioner was released on bail.

4.3 On 08-09-2010 the Director General of Police, Manipur issued an order directing the Superintendent of Police, CID (CB) to issue an appropriate order for extension of probation period so as to enable the petitioner to clear back paper and the Superintendent of Police, CID(CB) on the same day, directed the petitioner and another person to submit their explanation for unauthorised absence from the examinations held from 17th to 24th February, 2010. Immediately on receipt of the said letter, the petitioner submitted his explanation highlighting the circumstances leading to his absence and requested for permission to proceed and report to the Director, NEPA for re-appearing the examination.

4.4 When no positive response was received, the petitioner filed a writ petition being W.P. (C) No. 582 of 2010 praying for allowing him to proceed and report to the Director, NEPA for enabling him to successfully complete the basic course. On 29-09-2010 when the matter was listed for consideration, the then learned Advocate General, Manipur placed a letter dated 27-09-2010, addressed to the Commissioner (Home) by the DGP, Manipur, on record which stated that the Government had proposed to send the petitioner to complete the basic training course and in view thereof, the Hon'ble High Court disposed of the said writ petition after recording the stand of the State Government as apprised and submitted by the learned Advocate General. Since no positive response was received, the petitioner filed a contempt petition being CC No. 17 of 2011 which was disposed of with the direction that the order be complied with by the parties concerned in the light of that assurance.

4.5 Instead of complying the court's order, a writ appeal being W.A. No. 3 of 2015 was preferred by the State Government questioning the order dated 29-09-2010 of the learned Single Judge which was dismissed by this Court on 14-01-2015. Having no alternative remedy to compel the respondents to allow him to complete the basic training course, the petitioner has filed the present petition.

5. It is submitted by Shri H.S. Paonam, the Senior counsel appearing for the petitioner that the suspension of the petitioner from service in a purported exercise of power conferred by Rule 66 of the Assam Police Manual Part - III without complying with the principles of rule of law and pre-conditioned

requirement, i.e. safeguards provided by the rule itself as is given at Rule 66 Part - II, is highly arbitrary, bias and not sustainable in the eye of law. It is further submitted that imposing a penalty in exercise of power under Rule 66 of the Assam Police Manual on the basis of an FIR, in respect of which there is no incriminating documents being seized from the petitioner so as to connect the petitioner with the alleged offence, is extremely unreasonable and moreover, it is not certain as to how many years the petitioner will have to wait for the completion of investigation and conclusion of trial. On the other hand, the learned Government Advocate has submitted that the petitioner was arrested as he was found to be involved in an unlawful activities, the investigation of which is going on; that the petitioner was not suspended by way of imposition of a penalty but because of the fact that he was in custody for more than 24 hours and that necessary actions would be taken only after the completion of the investigation.

6. In many cases the Hon"ble Supreme Court has dealt with at length as regards the meaning, nature, object, purpose etc. of "suspension" and it is apt for this court to refer to some of the decisions throwing light on the various aspects of the term "suspension" which are illustrative and not exhaustive.

Meaning of suspension:

7. According to Oxford Dictionary, the word "suspension" means action of debarring or state of being debarred, especially for some time, from a function or privilege; temporary deprivation of one's office or position; the state of temporary kept from doing or deprived of something. The dictionary meaning of the word "suspend" is to debar usually for time from the exercise of a function or enjoyment of a privilege, specially to deprive temporary of one's office.

The word "suspension" refers to state of position, when any employee is temporarily debarred by his employer, for the time being, from performing any of his official functions or enjoying certain privileges. In the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416 : (1999) 2 CTC 579 : (1999) 82 FLR 627 : (1999) 2 JT 456 : (1999) 1 LLJ 1094 : (1999) 2 SCALE 363 : (1999) 3 SCC 679 : (1999) SCC(L&S) 810 : (1999) 2 SCR 257 : (1999) AIRSCW 1098 : (1999) 3 Supreme 376 , the Hon"ble Supreme Court held:

"26. To place an employee under suspension is an unqualified right of the employer. This right is conceded to the employer in service jurisprudence everywhere. It has even received statutory recognition under service rules framed by various authorities, including the Govt. of India and the State Government. [See: for example, Rule 10 of the Central Civil Service (Classification, Control and Appeal) Rules]. Even under the General Clauses Act, 1897, this right conceded to the employer by Section 16 which, inter-alia, provides that power to appoint includes power to suspend or dismiss.

27. The order of suspension does not put an end to an employee's service and

he continues to be a member of the service though he is not permitted to work and is paid only subsistence allowance which is less than salary."

Kinds of suspension:

In the case of V.P. Gidroniya Vs. The State of Madhya Pradesh and Another, AIR 1970 SC 1494 : (1971) 21 FLR 251 : (1970) LabIC 1332 : (1970) 2 LLJ 143 : (1970) 1 SCC 362 : (1970) 3 SCR 448 , the Hon"ble Supreme Court held:

"Three kinds of suspension are known to law. A public servant may be suspended as a mode of punishment or he may be suspended during the pendency of an enquiry against him if the order appointing him or statutory provisions governing his service provide for such suspensions. Lastly, he may merely be forbidden from discharging his duties during the pendency of an enquiry against him which act is called suspension."

Similarly, in the case of L.K. Verma Vs. H.M.T. Ltd. and Another, AIR 2006 SC 975 : (2006) 108 FLR 1101 : (2006) 2 JT 99 : (2006) 1 LLJ 1074 : (2006) 142 PLR 838 : (2006) 2 SCALE 90 : (2006) 2 SCC 269 : (2006) SCC(L&S) 278 : (2006) 1 SCR 959 : (2006) 2 SLJ 350 : (2006) AIRSCW 460 : (2006) 1 Supreme 575 , the Hon"ble Supreme Court held:

"17. Suspension is of three kinds. An order of suspension may be passed by way of punishment in terms of the conduct rules. An order of suspension can also be passed by employer in exercise of its inherent power in the sense that it may not take any work from the delinquent officer but in that event, the entire salary is required to be paid. An order of suspension can also be passed, if such a provision exists in the rule laying down that in place of full salary, the delinquent officer shall be paid only the subsistence allowance specified therein."

Difference between suspension by way of punishment and suspension on administrative grounds:

There is difference between suspension by way of punishment and suspension on administrative grounds:

1. During the pendency of departmental enquiry;
2. During pendency of criminal investigation.

In the case of R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 , the Hon"ble Supreme Court has referred to the above two kinds of suspension on administrative grounds. In one of the decisions rendered by the Patna High Court, it has been observed that the suspension pending criminal proceedings is technically called interim suspension.

When the suspension is ordered on administrative ground, there is no element of punishment involved in it. It is something transitional or temporary. It is only a temporary deprivation of civil servant of his functions. Suspension in such cases is not a quasi-judicial or judicial act. It is purely administrative and a person who

is suspended remains a government servant.

Object and purpose of Suspension:

As regards this aspect, the observations made by the Hon'ble Supreme Court in the case of P.R. Nayak Vs. Union of India (UOI), AIR 1972 SC 554 : (1972) LabIC 313 : (1972) 1 LLJ 535 : (1972) 1 SCC 332 : (1972) 2 SCR 695 may be relevant, some of which are given as under:

"a) That is why suspension is an interim measure in aid of disciplinary proceedings and is in itself a disciplinary matter so that the officer concerned does not gain custody or control of papers or take any advantage of position or power in service;

b) The order of suspension in the context of preliminary investigation and a prima facie case against the Government servant is appropriately an initiation of disciplinary proceedings and is a step in aid of formal enquiry which will be held for imposition of penalty;

c) This suspension is not a punishment but a disciplinary matter in aid of disciplinary proceedings. Suspension is ordered to facilitate free investigation and collection of evidence.

In the case of R.P. Kapur Vs. Union of India (UOI) and Another, AIR 1964 SC 787 : (1966) 2 LLJ 164 : (1964) 5 SCR 431 , the Hon'ble Supreme Court considered the suspension of a Government Servant on the ground that a criminal case was pending against him. It was contended in that case that suspension pending a criminal proceeding could not be said to be a disciplinary matter. That was argument was not accepted. It was said that suspension is of two kinds. It is either a punishment or an interim measure pending a departmental enquiry or pending a criminal proceeding. Suspension as a punishment is a disciplinary matter. Suspension pending a departmental enquiry or pending a criminal proceeding was also held to be comprised within the words "disciplinary matters" within the meaning of Article 314. It was then said "Take the case of suspension pending a departmental enquiry. The purpose of such suspension is generally to facilitate a departmental enquiry and to ensure that while such enquiry is going on it may relate to serious lapses on the part of a public servant, he is not in a position to misuse his authority in the same way in which he might have been charged to have done so in the enquiry. In such a case suspension pending a departmental enquiry can not be but a matter intimately related to disciplinary matter."

Period of suspension:

In the case of O.P. Gupta Vs. Union of India (UOI) and Others, AIR 1987 SC 2257 : (1987) 3 JT 532 : (1988) 1 LLJ 453 : (1987) 2 SCALE 457 : (1987) 4 SCC 328 : (1988) 1 SCR 27 : (1988) 1 SLJ 121 wherein the appellant who was an Assistant Engineer in the CPWD was placed under suspension pending a departmental enquiry on 03-09-1959 and he remained on suspension till

25-05-1970, the Hon"ble Supreme Court made the following observations with regard to subsistence allowance:

"15. We have set out the facts in sufficient detail to show that there is no presumption that the government always acts in a manner which is just and fair. There was no occasion whatever to protract the departmental enquiry for a period of 20 years and keeping the appellant under suspension for a period of nearly 11 years unless it was actuated with the malafide intention of subjecting him to harassment. The charge framed against the appellant was serious enough to merit his dismissal from service. Apparently, the departmental authorities were not in a position to substantiate the charge, But there was no reason for keeping the departmental proceedings alive for a period of 20 years and not to have revoked the order of suspension for over 11 years. An order of suspension of a government servant does not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of the suspension as explained by this court in *Khem Chand Vs. Union of India* is that he continues to be member of government service but is not permitted to work and further during the period of suspension he is paid only some allowance-generally called subsistence allowance which is normally less than the salary in stead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression "subsistence allowance" has an undeniable penal significance. The dictionary meaning of the word "subsist" as given in *Shorter Oxford" English Dictionary*, Vol. II at p. 2171 is" to remain alive as on food; to continue to exist". Subsistence means-means of supporting life, especially a minimum of livelihood."

After referring to a large of number of earlier decisions, the Hon"ble Supreme Court has, in the case of *Union of India (UOI) and Another Vs. Ashok Kumar Aggarwal*, (2014) 140 FLR 737 : (2013) 15 JT 200 : (2013) 14 SCALE 323 : (2014) 1 SCJ 115 : (2014) 2 SCT 70 : (2014) 1 SLJ 408 , examined as to what is suspension; as to what is the power of suspension; as to how power of suspension can be exercised and as to what is the scope of interference by the court and has held:

"19. During suspension, the relationship of master and servant continues between the employer and the employee. However, the employee is forbidden to perform his official duties. Thus, a suspension order does not put an end to the service. Suspension means the action of debarring for the time being from a function or privilege or temporary deprivation of working in the office. In certain cases, suspension may cause stigma even after exoneration in the departmental proceedings or acquittal by the criminal court, but it cannot be treated as a punishment even by any stretch of imagination in the strict legal sense. (*Vide O.P. Gupta v. Union of India and Capt. M. Paul Anthony v. Bharat Gold Mines Ltd.*

20. *State of Orissa v. Bimal Kumar Mohanty* this Court observed as under: (SCC

p. 133, para 13)

"13. ...the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated and the nature of the evidence placed before the appointing authority and on application of the mind by the disciplinary authority. Appointing authority or disciplinary authority should consider ... and decide whether it is expedient to keep an employee under suspension pending aforesaid action. It would not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The court or the Tribunal must consider each case on its own facts and no general law could be laid down in that behalf.... In other words it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending inquiry without any impediment or to provide an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witnesses or the delinquent having had an opportunity in office to impede the progress of the investigation or inquiry, etc.... It would be another thing if the action is actuated by mala fides, arbitrarily or for ulterior purpose. The suspension must be a step in aid to the ultimate result of the investigation or inquiry. The authority also should keep in mind public interest of the impact of the delinquent's continuance in office while facing departmental inquiry or trial of a criminal charge."

21. The power of suspension should not be exercised in an arbitrary manner and without any reasonable ground or as vindictive misuse of power. Suspension should be made only in a case where there is a strong prima facie case against the delinquent employee and the allegations involving moral turpitude, grave misconduct or indiscipline or refusal to carry out the orders of superior authority are there, or there is a strong prima facie case against him, if proved, would ordinarily result in reduction in rank, removal or dismissal from service. The authority should also take into account all the available material as to whether in a given case, it is advisable to allow the delinquent to continue to perform his duties in the office or his retention in office is likely to hamper or frustrate the inquiry.

22. In view of the above, the law on the issue can be summarised to the effect that suspension order can be passed by the competent authority considering the gravity of the alleged misconduct i.e. serious act of omission or commission and the nature of evidence available. It cannot be actuated by mala fide, arbitrariness, or for ulterior purpose. Effect on public interest due to the employee's continuation in office is also a relevant and determining factor. The facts of each case have to be taken into consideration as no formula of universal application can be laid down in this regard. However, suspension order should be passed only where there is a strong prima facie case against the delinquent, and

if the charges stand proved, would ordinarily warrant imposition of major punishment i.e. removal or dismissal from service, or reduction in rank, etc.

23. In *Jayrajbhai Jayantibhai Patel v. Anilbhai Nathubhai Patel* this Court explained: (SCC p. 209, para 18)

"18. Having regard to it all, it is manifest that the power of judicial review may not be exercised unless the administrative decision is illogical or suffers from procedural impropriety or it shocks the conscience of the court in the sense that it is in defiance of logic or moral standards but no standardised formula, universally applicable to all cases, can be evolved. Each case has to be considered on its own facts, depending upon the authority that exercises the power, the source, the nature or scope of power and the indelible effects it generates in the operation of law or affects the individual or society. Though judicial restraint, albeit self-recognised, is the order of the day, yet an administrative decision or action which is based on wholly irrelevant considerations or material; or excludes from consideration the relevant material; or it is so absurd that no reasonable person could have arrived at it on the given material, may be struck down. In other words, when a court is satisfied that there is an abuse or misuse of power, and its jurisdiction is invoked, it is incumbent on the court to intervene. It is nevertheless, trite that the scope of judicial review is limited to the deficiency in the decision-making process and not the decision."

24. Long period of suspension does not make the order of suspension invalid. However, in *STATE OF H.P. v. B.C. THAKUR*, this Court held that where for any reason it is not possible to proceed with the domestic enquiry the delinquent may not be kept under suspension.

26. The scope of interference by the Court with the order of suspension has been examined by the Court in a large number of cases, particularly in *STATE OF M.P. v. Shardul Singh*, *P.V. Srinivasa Sastry v. Comptroller and Auditor General*, *ESI v. T. Abdul Razak*, *Kusheshwar Dubey v. Bharat Coking Coal Ltd.*, *Delhi Cloth and General Mills Ltd. v. Kushal Bhan*, *U.P. Rajya Krishi Utpadan Mandi Parishad v. Sanjiv Rajan*, *State of Rajasthan v. B.K. Meena*, *Prohibition and Excise Deptt. v. L. Srinivasan* and *Allahabad Bank v. Deepak Kumar Bhola*, wherein it has been observed that even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, if satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. Where the charges are baseless, mala fide or vindictive and are framed only to keep the delinquent employee out of job, a case for judicial review is made out. But in a case where no conclusion can be arrived at without examining the entire record in question

and in order that the disciplinary proceedings may continue unhindered the court may not interfere. In case the court comes to the conclusion that the authority is not proceeding expeditiously as it ought to have been and it results in prolongation of sufferings for the delinquent employee, the court may issue directions. The court may, in case the authority fails to furnish proper explanation for delay in conclusion of the enquiry, direct to complete the enquiry within a stipulated period. However, mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature. But, whether the employee should or should not continue in his office during the period of enquiry is a matter to be assessed by the disciplinary authority concerned and ordinarily the court should not interfere with the orders of suspension unless they are passed in mala fide and without there being even a prima facie evidence on record connecting the employee with the misconduct in question.

27. Suspension is a device to keep the delinquent out of the mischief range. The purpose is to complete the proceedings unhindered. Suspension is an interim measure in the aid of disciplinary proceedings so that the delinquent may not gain custody or control of papers or take any advantage of his position. Moreso, at this stage, it is not desirable that the court may find out as to which version is true when there are claims and counterclaims on factual issues. The court cannot act as if it is an appellate forum de hors the powers of judicial review.

29. The Vigilance Manual issued by CVC on 12-01-2005 specifically deals with suspension of a public servant. Clause 5.13 thereof provides that the Commission can lay down the guidelines for suspension of a government servant. However, if CBI has recommended suspension of a public servant and the competent authority does not propose to accept the said recommendation, the matter may be referred to CVC for its advice. CBI may be consulted if the administrative authority proposes to revoke the suspension order. Clause 6.1 read with Clause 6.3.2 thereof provide that suspension is an executive order only to prevent the delinquent employee to perform his duties during the period of suspension. However, as the suspension order constitutes a great hardship to the person concerned as it leads to reduction in emoluments, adversely affects his prospects of promotion and also carried a stigma, an order of suspension should not be made in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account."

8. Admittedly the service condition of ASI is governed by the Assam Police Manual and the petitioner is deemed to have been suspended with effect from 28-10-2009 in terms of Rule 66 of Assam Police Manual part - III which is reproduced herein below:

"66. Proceedings to be drawn up in cases of major punishment - (As corrected vide Government approval No. HPL 131/57/p/34 dated 16-11-67 on the correction slip No. 150 date 1-6-38 and C.S. No. 57 dated 11-7-35)

(I) The appointment of the police officers mentioned in column I of the schedule shall be made by the authorities mentioned in column 2.

(II) The following penalties may, for good and sufficient reason be imposed upon members of the service namely:

3. Suspension.

4. Major penalties:- (a) Dismissal from service which shall ordinarily be a disqualification for future employment; (b) Removal from service which shall not be disqualification for future employment; (c) Compulsory retirement;

(d) Reduction to a lower service, grade or post or to a lower time scale or to a lower stage in a time scale; (e) Recovery from pay of the whole or part of any pecuniary loss caused by negligence or breach of orders to the Government of Assam or the Central Government or any other State Government or any other State Government, or any local or other authority to whom services of Government servant had been lent; (f) Black mark; (g) Withholding of increments or promotion; (h) Censure.

5. Minor Penalties:- (a) Government to the Guard Room for a period not exceeding 28 days; (b) Confinement to quarters or barracks for a period not exceeding 15 days; (c) Punishment drill; (d) Extra guard, fatigue of other duty;

(e) Reprimand.

(III) No order of major punishment shall be passed on a member of the service (other than an order based on facts which have led to this conviction in a criminal court) unless he has been informed in writing of the grounds on which it is proposed to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs an oral inquiry shall be held.

At that inquiry oral evidence shall be heard as to such of the allegations are not admitted, and the person charged shall be entitled to cross examine the witnesses, to give evidence in person and to have such witness called, as he may which, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded or where it is for other reasons impracticable to communicate with him. All or any of the

provisions of the rule may, in exceptional cases for special and sufficient reasons to be recorded in writing, be waived where there is a difficulty in observing exactly the requirement of the rule and those requirements can be waived without injustice to the person charged."

In the said rule 66 "suspension" is prescribed as one of the penalties that can be awarded against an employee and therefore, an order of suspension may be passed by way of punishment in terms of the said conduct rules but as to how and under what circumstances, the penalty of suspension can be awarded is not indicated therein. The State Government may proceed to hold a departmental enquiry against a government servant and only after his being found guilty, it may order suspension as a punishment. The learned senior counsel appearing for the petitioner has submitted that the penalty of suspension has been awarded to the petitioner without following the principles of natural justice leave alone the disciplinary enquiry being conducted and that the suspension order dated 12-11-2009 is liable to be quashed on this ground itself. But in view of the stand taken by the respondents in their affidavit-in-opposition that the petitioner was not suspended by way of punishment but because of the fact that he was in custody for more than 48 hours, there is no need of this court going into that controversy and suffice it to say that the authority is competent to issue suspension order on administrative grounds which is something transitional or temporary.

9. As has been stated in the preceding para, there is no procedure prescribed in Rule 66 of the Assam Police Manual to be followed by the concerned authority before or after the suspension order is issued. In so far as the major penalty is concerned, para-III of Rule - 66 provides the manner in which the enquiry is to be held before the penalty is awarded. Such provision is not there at all in respect of penalty of suspension. It is submitted by the learned Senior counsel appearing for the petitioner that while issuing the suspension order, the Superintendent of Police, CID (CB) had applied the spirit of sub-rule 2 of rule 10 of the Central Civil Services (CCA) Rules and therefore, it ought to apply the spirit of other provisions of rule 10 and in particular sub-rule (6) and (7) by which the suspension order is required to be reviewed before the expiry of 90 days and the suspension order shall not be valid after the period of 90 days unless extended after a review for a further period of 90 days and in any case, it can not be extended beyond 180 days at a time. On perusal of the suspension order dated 12-11-2009, it is evident that the suspension order was issued in terms of rule 66 of the Assam Police Manual on the ground that the petitioner was detained in custody for a period exceeding forty-eight hours. It is no doubt true that the Superintendent of Police, CID (CB) is competent to issue suspension order but there is no provision in rule 66 of the Assam Police Manual that an employee can be suspended provided he has been detained for more than forty-eight hours. It appears that there is some force in the submission of the learned Senior Counsel appearing for the petitioner and it appears to be true to some extent that since the Superintendent of Police, CID (CB) has applied the

spirit of a part of the provisions of rule 10 of the Central Civil Services (CCA) rule, there is no reason why it ought not to apply the other provisions thereof. But in the absence of materials that the suspension has really been issued under the provisions of sub-rule 2 of Rule 10 of Central Civil Services (CCA) Rules, this court can not come to the conclusion that merely because the provisions of sub-rule 6 and 7 of Rule 10 have not been followed, the suspension order became illegal and liable to be quashed.

10. An alternate submission is made by the learned Senior counsel appearing for the petitioner that even assuming for the sake argument that the provisions of Rule 10 of the Central Civil Services (CCA) Rules are not required to be followed by the Superintendent of Police, CID (CB) while issuing the suspension order, even then the suspension order is not sustainable and is liable to be quashed in terms of the judgment and order dated 16-02-2015 passed by the Hon''ble Supreme Court in Civil Appeal No. 1912 of 2015 (Arising out of SLP (C) No. 31761 of 2013), Ajay Kumar Choudhary Vs. Union of India wherein the appellant was placed under suspension on 30-9-2011 which had been extended forth times. The Central Administrative Tribunal vide its order dated 22-05-2013 opining that no employee can be indefinitely suspended and the disciplinary proceedings be concluded within a reasonable time, directed that if no charge memo was issued to the appellant before the expiry on 21-06-2013, the appellant would be reinstated in service and if it was decided to conduct inquiry, it had to be concluded in a time bound manner. The Hon''ble High Court, on a writ petition being filed by the Union of India, allowed the same with the opinion that the Tribunal's view was nothing but a substitution of a judicial determination to that of the authority possessing the power, i.e., Executive Government as to the justification or rationale to continue with the suspension and directed the Central Government to pass appropriate orders as to whether it wishes to continue with the suspension or not having regard to the relevant factors and that the exercise be completed as early as possible. The Hon''ble Supreme Court, while laying down the guidelines in respect of right to speedy trial, directed that the currency of a suspension order should not extend beyond three months if within this period the memo of charges/chargesheet is not served on the delinquent officer/employee and if the memo of charges/chargesheet is served, a reasoned order must be passed for the extension of the suspension. This court is unable to accept this submission made by the learned senior counsel for the petitioner. The facts of that case are different from that of the present case and the law laid down by the Hon''ble Supreme Court therein will not apply to the facts of the present case and moreover, before deciding the issue involved therein, it appears that the decision of the Hon''ble Supreme Court rendered in Union of India Vs. Ashok Kumar Aggarwal (supra) was not brought to the notice of the Hon''ble Court wherein the Hon''ble Supreme Court inter-alia has held that long period of suspension does not make the order of suspension invalid and even if a criminal trial or enquiry takes a long time, it is ordinarily not open to the court to interfere in case of suspension as it is in the exclusive domain of the

competent authority who can always review its order of suspension being an inherent power conferred upon them by the provisions of Article 21 of the General Clauses Act, 1897 and while exercising such a power, the authority can consider the case of an employee for revoking the suspension order, satisfied that the criminal case pending would be concluded after an unusual delay for no fault of the employee concerned. It has also been held that mere delay in conclusion of enquiry or trial cannot be a ground for quashing the suspension order, if the charges are grave in nature. In the present case, the stand of the State Government is that since the investigation is pending, the suspension order cannot be revoked for the time being. Considering the facts of the present case and the law laid down by the Hon'ble Supreme Court in the case of Union of India Vs. Ashok Kumar Aggarwal (supra), this court is of the view that the end of justice will be made by disposing of the present writ petition with the direction that the State respondents shall review the suspension order and issue an appropriate order thereof.

11. In writ petition being W.P. (C) No. 258 of 2015, the subject matter in issue relates to the question of allowing the petitioner to proceed and report to the Manipur Police Training College, Pangei/Director, NEPA, Meghalaya for enabling him to complete the basic training course. It may not be much in dispute that normally when a person is selected for appointment as police personnel, he is required to undergo training and likewise in the present case also, after the petitioner having been selected, he was sent to NEPA for undergoing basic training. It so happened that during the midst of training, the petitioner was suspected to be involved in a case under FIR No. 146(10)09 Lamphel PS u/s. 20 UA(P)A Act 2004, on transfer of which a new FIR No. 120(10)09 HNG PS u/s. 20 of UA(P)A Act, 2004 and 25(1-C) Arms Act, 1959 was registered naming the petitioner as one of the accused. The petitioner was placed under suspension on the ground that the petitioner had remained in custody for more than 48 hours. The investigation in respect of the above case is not yet completed and is still pending whereas the disciplinary proceedings initiated against him has been stayed vide order dated 10-06-2010 passed by this court in M.C. (W.P.(C)) No. 118 of 2010.

12. The question that arises for consideration is as to whether in the present facts and circumstances of the case, the petitioner is entitled to relief prayed for in the writ petition. The learned senior counsel appearing for the petitioner has submitted that there is no probability of the petitioner being involved in the case and that the petitioner appears to be suspected to have been involved in the case on the basis of a statement given by the accused in the original FIR and there is no incriminating documents/evidence being found against him in the course of investigation. It has been further submitted that the petitioner, though under suspension, is being allowed to attend the office of the Superintendent of Police, CID(CB) and that there will be no harm in sending the petitioner for completing the basic training. On the other hand, the learned Government Advocate, relying upon the progress report submitted by the Officer-in-charge of

the concerned Police Station, has submitted that during investigation, some documents have been seized from the accused persons which are yet to be sent for expert opinion and it is a fit case for charge sheet. It is further submitted that the offence for which investigation is conducted, is not an ordinary criminal offence to be tried under the provisions of Indian Penal Code and that in case the petitioner, after having undergone the basic training, is found to be guilty after trial of the offence concerning the maintenance of public order and the security of the country, it will set a dangerous precedent and will give rise to a security risk later on. To substantiate her contention, the learned Government Advocate has relied upon the decision rendered by the Hon"ble Supreme Court in the case of Commissioner of Police, New Delhi and Another Vs. Mehar Singh, (2013) 7 AD 352 : AIR 2013 SC 2861 : (2013) 9 JT 470 : (2013) LabIC 3207 : (2013) 4 LLN 461 : (2013) 9 SCALE 444 : (2013) 7 SCC 685 : (2013) 2 SCC(L&S) 910 : (2013) 4 SCT 311 . After having heard the learned counsels appearing for the parties, this court is of the view that it cannot be held that in the facts and circumstances, the petitioner is entitled to complete the basic training course and it is for the State Government to take a decision keeping in mind the various factors including the proposal which had been taken by the State Government at one time as referred to in the order dated 29-9-2010 passed by this court in W.P. (C) No. 582 of 2010.

13. In view of the above observations, both the writ petitions being W.P. (C) No. 171 of 2010 and W.P. (C) No. 258 of 2015 are disposed with the following directions:

(a) The respondents shall review the suspension order dated 12-11-2009 within a period of a month from the date of receipt of a copy of this order taking all factors into account and keeping strictly in mind the principles laid down by the Hon"ble Supreme Court in the case of Union of India Vs. Ashok Kumar Aggarwal (supra);

(b) issue an appropriate order, thereafter, with cogent reasons in case the suspension order is required to be extended for further period;

(c) The respondents shall also consider as to whether the petitioner can be sent, during the pendency of investigation, to the Manipur Police Training College, Pangei/Director, NEPA, Meghalaya for enabling him to complete the basic training course keeping in mind all factors including the time already taken in the investigation and the earlier proposal mentioned above and this exercise shall be done within a month from the date of receipt of a copy of this order; and

(d) Issue an appropriate order, thereafter, assigning reasons thereof.