

(2024) 07 GAU CK 1520
In the Gauhati High Court
Case No : WP(C) Of 447 Of 2024

Nepal Chandra Mandal

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 24-07-2024

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Civil Services (Conduct) Rules, 1964 — Rule 6(2)

Citation : (2024) 07 GAU CK 1520

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : J.I. Barbhuiya, I. Borthakur

Final Decision : Allowed

Judgement

Sanjay Kumar Medhi, J

1. An order of suspension dated 13.07.2023 of the petitioner from service is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India. Amongst the grounds taken, the lack of periodic review within the stipulated period of 90 days is one of the prominent grounds.

2. The facts projected in the petition is that while the petitioner was serving as Assistant Conservator of Forest under the Nagaon Forest Division, he was arrested on 12.07.2023 in connection with ACB P.S. Case No. 51/2023. An order of suspension dated 13.07.2023 was accordingly issued. It is the case of the petitioner that more than 90 days had elapsed and no action was taken for his reinstatement and accordingly, the petitioner had filed representation. Since no action was taken for reinstatement of the petitioner, the present writ petition has been filed.

3. I have heard Shri J.I. Barbhuiya, learned counsel for the petitioner. I have also heard Shri I. Borthakur, learned counsel for the Forest Department, who submits that affidavit-in-opposition has also been filed on 09.04.2024.

4. Shri Barbhuiya, the learned counsel for the petitioner has submitted that it is on the ground of the arrest of the petitioner that he was placed under suspension by invoking the provisions of Rule 6 (2) of the aforesaid Rules of 1964. By relying upon the case of the Hon'ble Supreme Court of Ajay Kumar Choudhury vs. Union of India through its Secretary and another reported in (2015) 7 SCC 291 along with the decision of a Division Bench of this Court in the case of Rekib Uddin Ahmed vs. State of Assam and Ors. [WP(C) No. 3218/2019] the learned counsel has submitted that the Division Bench has clarified that the requirement and rigours which has been laid down by the Hon'ble Supreme Court in the case of Ajay kr. Choudhury (supra) would also be applicable to a case of deemed suspension.

5. The learned counsel has also drawn the attention of this Court to two Minutes of Meeting. By the first Minute of Meeting held on 09.11.2023, though the discussion is on the aspect of review of the suspension, it is submitted that on that date, no exercise of review, as such was done. He submits that the review was done for extending the suspension only on 14.02.2024 by which time the period of 90 days was already over. He has submitted that though the memorandum of charge has been served in the meantime, that is beyond the prescribed period of 90 days and will not have any effect on the law laid down regarding the requirement of timely review.

6. Per contra, Shri Borthakur, the learned counsel for the Department has submitted that the first meeting held on 09.11.2023 was on the specific issue of review of the suspension of the petitioner along with some other Officers. He submits that the intimation of the release of the petitioner on bail was given to the Department only on 01.09.2023 when the representation was made and therefore, the meeting held on 09.11.2023 said to be on the aspect of review of the suspension, was within time. It is submitted that the charges against the petitioner are grave and reinstatement may not be in the interest of justice.

7. The rival submissions have been duly considered.

8. The aspect of timely review of an order of suspension is no longer res integra. The Hon'ble Supreme Court in the aforesaid case of Ajay kr. Choudhury (supra) has, in categorical terms laid down the requirement of review of suspension within 90 days if the charge memo has not been issued in the meantime. For ready reference, the relevant observations are extracted herein below:

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

9. As indicated above, a Division Bench of this Court has held that cases of deemed suspension under Rule 6 (2) of the Rules of 1964 would also have to be treated with the same rigours as laid down in the case of Ajay Kr. Choudhury (*supra*).

10. In the instant case, the order of suspension is of 13.07.2023. Though the aforesaid order does not reveal that it has been passed on the grounds of the petitioner being arrested on the previous day, it is the arrest and detention of the petitioner which had triggered the authorities to pass the aforesaid order of suspension. Nonetheless, since the order of suspension states that it has been passed pending drawal of a departmental proceeding, this Court will proceed with the assumption that the suspension is not a deemed suspension.

11. Be that as it may, the requirement of timely review of an order of suspension is a mandatory requirement. In the instant case, the Department has relied upon a Minutes of Meeting held on 09.11.2023. A perusal of the aforesaid meeting, though would give an impression that the same was on the aspect of reviewing certain cases including cases of suspension, the Minutes do not reflect that there was any application of mind or any orders passed towards extending the order of suspension. The order of review appears to be done in a Minutes of Meeting held on 14.02.2024 whereby a conscious decision was taken to extend the suspension which includes the suspension of the petitioner. In any event, both the meetings were held beyond the prescribed period of 90 days from the date of suspension. This Court is unable to accept the submissions made on behalf of the Department regarding the knowledge of the release of the petitioner on bail which was through a representation dated 01.09.2023. Such knowledge is irrelevant to the issue as it is immaterial as to when the petitioner had informed about his arrest. In any case, the arrest and detention was not because of any offence unconnected with the office but with an offence directly connected with the office and therefore, it cannot be contended that the authorities were unaware of such arrest or release. The aforesaid discussion would also not have much relevance as the order of suspension which is passed on 13.07.2023 is pending drawal of Department proceeding and not for the arrest and detention of the petitioner.

12. As already observed above as per the law laid down by the Hon'ble Supreme Court and also by the Division Bench of this Court, the review done for extending the suspension which is beyond the period of 90 days cannot save the employer from the legal obligations cast upon them. The order of suspension dated 13.07.2023 is accordingly interfered with and the petitioner is directed to be reinstated in service. The posting order should be issued within a period of 15 days from the date of furnishing a certified copy of this order.

13. At this stage, Shri Borthakur, the learned Standing Counsel for the department has reiterated the seriousness and gravity of the offence.

14. Considering the above, while the suspension has been interfered with a direction for reinstatement, the authorities are at liberty to post the petitioner in any non-sensitive post. It is further made clear that this order directing evocation of the suspension order shall not, in any way, affect the ongoing disciplinary proceeding which is to be done strictly in accordance with law.