

(2019) 10 GAU CK 0008

In the Gauhati High Court

Case No : Writ Petition (C) No. 3218 Of 2019

Rakibuddin Ahmed

APPELLANT

Vs

State Of Assam Represented By The Commissioner And Ors

RESPONDENT

Date of Decision : 04-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 167(2)

Assam Services (Discipline And Appeal) Rules, 1964 — Rule 6(1), 6(2)

Citation : (2019) 10 GAU CK 0008

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : I H Saikia

Final Decision : Allowed

Judgement

S.K. Medhi, J

1. A learned Single Judge of this Court has made the present reference vide order dated 22.07.2019 passed in the instant writ petition.

2. The issue involved is with regard to suspension from service of a Government servant as laid down in the Assam Services (Discipline and Appeal)

Rules, 1964 (hereinafter may be referred to as the 1964 Rules). Before going to the Reference, a brief background is required to be narrated.

3. The Honâ??ble Supreme Court in the case of Ajay Kumar Choudhury vs. The Union of India and Anr. reported in (2015) 7 SSC 29 1has laid

down that an order of suspension cannot extend beyond 3(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.

4. Single Benches of this Court in the cases of Biswajit Dey-Vs-State of Assam [WP(C)2401/2019] and Atfur Rahman-Vs-State of Assam

[WP(C)No.6842/2018] vide separate orders have relied upon the principles laid down in Ajay Kumar Choudhury (Supra) and had set aside the orders

of suspension.

5. Since the suspension in the case of Ajay Kumar Choudhury (Supra) was in contemplation of drawal of Departmental Proceeding and not because

of arrest and detention for more than 48 hours, the learned Single Judge in the instant case was of the conclusion that the view rendered in the cases

of Biswajit Dey (Supra) and Atfur Rahman(Supra) may not be the correct view and therefore, the present reference has been made on the following

question:

“whether in a case covered by Rule 6(2) of the Assam Services (Discipline and Appeal) Rules, 1964, the decision of the Hon’ble

Supreme Court in the case of Ajay Kumar Choudhury (Supra) would have automatic application”.

6. At the outset it would be apposite to make a reference to the impugned order of suspension dated 16.02.2019 which is the subject matter of

challenge in the writ petition. For ready reference, the relevant part of the order is extracted herein below:

“GOVERNMENT OF ASSAM

OFFICE OF THE DIVISIONAL FOREST OFFICER:

OFFICE ORDER NO: 12

:GUWAHATI WILDLIFE DIVISION:

BASISTHA, GUWAHATI-29

Dated Guwahati, the 16th Feb/2019

Whereas a report has been received from the Range Officer, Khanapara Wildlife Range vide letter No.KWL/8/Offence/2019/285 dt.16.2.19

and Investigating Officer of the O.R. Case No.DWL/01/2019 dt.14.2.2019 and consequent upon the remand in jail hajot till 1.3.2019

ordered by the Hon’ble Chief Judicial Magistrate, Kamrup (M), for violation of provisions of Wildlife (Protection) Act, 1972, Sri

Rakibuddin Ahmed, Forester-I is place under suspension with effect from 16.02.2019 under provision of Rule 6 (2) of Assam Service

(Discipline and Appeal) Rules, 1964 pending drawing of departmental proceeding. The Head quarter of Sri Rakibuddin Ahmed, Forester-I

is fixed in the office of the Divisional Forest Officer, Guwahati Wildlife Division.

During the period of suspension Sri Rakibuddin Ahmed, Forester-I (u/s) is allowed to draw subsistence allowances under the rule FR 17 (1)

of FR & SR.

Divisional Forest Officer

Guwahati Wildlife Division

Basistha, Guwahati-29â??

7. The petitioner who is a Forester (i). was arrested on 14.02.2019 and vide order dated 16.02.2019, he was suspended from service. The petitioner

was ultimately released on bail only on 07.03.2019 and the Show-cause Notice containing the charges against him was issued on 16.06.2019. In the

meantime, no order was passed reviewing the requirement of continuing the suspension and the said position exists even till date, which is admitted by

both the parties.

8. Since the impugned order specifically states that the order of suspension was both on account of Rule 6(2) of the 1964 Rules as well as pending

drawal of Departmental Proceeding, the learned counsel for the parties had submitted that while answering the reference if it is held that the principles

laid down in the case of Ajay Kumar Choudhury (Supra) would be applicable even in case of a deemed suspension under Rule 6(2), remanding the

matter would only be a futile exercise and therefore, instead of doing the same, the entire writ petition can be taken up for disposal.

9. Since the reference is on the solitary issue as to whether the principles laid down in Ajay Kumar Choudhury (Supra) would be applicable in a case

of deemed suspension, the relevant provisions of the Assam Services (Discipline and Appeal) Rules, 1964 are quoted herein, below for better

appreciation:

â??6. Suspensionâ?" (1) The Appointing Authority or any authority to which it is subordinate or any other authority empowered by the

Governor in that behalf may place a Government servant under suspensionâ?

(a) Where a disciplinary proceeding against him is contemplated or is pending, or

(b) Where in the opinion of the authority aforesaid he has engaged himself in

activities prejudicial to the interest or the security of the State;

or

(c) Where a case against him in respect of any criminal offence is under investigation, inquiry or trial:

Provided that where the order of suspension is made by an authority lower than the Appointing Authority such authority shall forthwith

report to the Appointing Authority the circumstances in which the order was made.

(2). A Government servant who is detained in custody, whether on a criminal charge or otherwise, for a period exceeding forty-eight hours

shall be deemed to have been suspended with effect from the date of such detention, by an order of the Appointing Authority and shall

remain under suspension until further orders:

Provided that where the detention is made on account of any charge not connected with his position as a Government servant or

continuance in office is not likely to embarrass the Government or the Government servant in the discharge of his duties or the charge does

not involve moral turpitude, the Appointing Authority may vacate the suspension order made or deemed to have been made when he is

released on bail or is not otherwise in custody or imprisonment.

(5) An order of suspension made or deemed to have been made under this rule may at any time be revoked by the Authority which made or is

deemed to have made the order or by any Authority to which that Authority is subordinate.â??

10. It would also be apposite to refer to the Manual of Department Proceedings under Rule 6(1) of the 1964 Rules regarding suspension which is

given in Regulation 2.1.8.:

â??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.â??

11. We have heard Shri I. H. Saikia, learned counsel for the petitioner. We have heard Shri D. Mazumder, learned Addl. Advocate General, Assam

assisted by Shri S. Biswas, learned counsel for the Department.

12. Shri Saikia, learned counsel for the petitioner has submitted that the application of the principles laid down in case of Ajay Kumar Choudhury

(Supra) cannot be given a restrictive meaning in view of the background stated by the Honâ??ble Supreme Court before laying down the principle.

Referring to paragraph-20 of the decision, it has been submitted that a comparison has been made to Section 167 (2) of the Cr.P.C, 1973. The

Honâ??ble Supreme Court by drawing support from the earlier decisions has laid down that in a criminal case even in case of allegation of

commission of the most hideous of crimes, non filing of the charge-sheet automatically leads to grant of default bail. For ready reference paragraph-20

of the decision rendered in the case of Ajay Kumar Choudhury(Supra) is quoted herein below:

â??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 Raghubir Singh vs.

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/Chargesheet 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.â??

13. Shri Saikia, learned counsel submits that it is not the reason of suspension which would be relevant in this case and the relevant factors would be the consequence and effect which has also been taken into consideration by this Court in the judgment dated 15.03.2019 rendered in Atfur Rahman (Supra) case.

In view of the same, the learned counsel for the petitioner contends that there is no reason to hold that the principles laid down in the case of Ajay Kumar Choudhury (Supra) would not be applicable in a case of deemed suspension.

14. Shri D. Mazumder, learned Addl. Advocate General, on the other hand, submits that the case of Ajay Kumar Choudhury (Supra) was a case not of deemed suspension but a case of suspension pending drawal of Disciplinary Proceeding. He further submits that Ajay Kumar Choudhury (Supra) was a case of prolonged suspension which was about 6(six) years and therefore, it was under those circumstances that the decision has been rendered. In that view of the matter, without looking into the facts and circumstances of the case, the ratio laid down in Ajay Kumar Choudhury (Supra) cannot be automatically applied. It is also submitted that in the said case of Ajay Kumar Choudhury (Supra), there were a set of Rules and the suspension was extended from time to time. Referring to paragraph-11 of the said case, it is submitted that the principles were laid down only for Disciplinary Proceedings which invariably commence with delay, are plagued with procrastination prior and post the drawing up a memorandum of

charges, and eventually culminate after even longer period. However, it is argued that the facts of the instant case are entirely different.

On the point of reference, the attention of this Court is drawn to the manual No. 2. 1.8 pertaining to Rule 6(2) of the 1964 Rules and it is submitted

that since a set of statutory Rules and manual is there for the State of Assam, the action of the respondent authorities have been done in accordance

with the Rules. It is submitted that the question of periodic review as laid down in the case of Ajay Kumar Choudhury (Supra) would not have any

application in the instant case inasmuch as the suspension is by application of Rule 6(2) i.e. deemed suspension because of arrest and detention for

more than 48 hours.

It is further submitted that the Rules prescribed for provision of appeal against suspension and therefore the need for periodic review in the case of

deemed suspension cannot be said to be mandatory.

15. We have consciously applied our mind to the query raised by the learned Single Judge. Though the case of Ajay Kumar Choudhury (Supra) is a

case where suspension order was issued pending drawal of Disciplinary Proceeding and not a case of deemed suspension, the observation made by

the Honâ??ble Supreme Court in paragraph-20 whereby, the analogy of Section 162(2) Cr.P.C., 1976 has been brought in, we are persuaded to hold

that the principles laid down in the said case cannot be restricted to an order of suspension issued only on contemplation of drawal of Disciplinary

Proceeding and not for deemed suspension.

In our view, the issue should be seen from the perspective of the consequence and effect of suspension which is the same in both the cases. We also

feel that no prejudice, whatsoever, would be caused to the Department by such interpretation inasmuch as no blanket order of revocation of

suspension is passed and it is left to the Department to make periodic review within a period of 3(three) months and decide as to whether such

suspension is required to be extended or not by assigning reasons. Whether such reasons are justified and germane can be the subject matter of a

separate challenge.

In view of the aforesaid discussion, we answer the reference by holding that the principles laid down in the case of Ajay Kumar Choudhury(Supra)

would also be applicable in case of deemed suspension under Section 6(2) of the

1964 Rules.

16. Further, in the instant case, it is seen that the order of suspension is also on account of pending drawal of Disciplinary Proceeding in which case,

periodic review within 3(three) months is otherwise held to be mandatory.

17. Since we have already answered the reference holding that periodic review in the case of deemed suspension is mandatory, the requirement of

remanding the matter to the learned Single Judge would be a meaningless exercise and as agreed to by the parties, while answering the reference, as

above, we are of the opinion that a case for interference of the impugned order dated 16.02.2019 is made out.

Accordingly, the order of suspension dated 16.02.2019 issued by the Divisional Forest Officer, Guwahati Wildlife Division is hereby set aside and

quashed. We, however, hasten to add that the Department would be at liberty to post the petitioner in any non-sensitive post.