

(2015) 11 MEG CK 0003
In the Meghalaya High Court
Case No : WP(C) No. 110 of 2015

State of Meghalaya

APPELLANT

Vs

MBK Reddy

RESPONDENT

Date of Decision : 05-11-2015

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1969 — Rule (8)(a), Rule 3(2), Rule 6A
Constitution of India, 1950 — Article 226

Citation : (2016) 4 NEJ 542

Hon'ble Judges : T. Nandakumar Singh and S. R. Sen, JJ.

Bench : Division Bench

Advocate : Mr. S. Sen Gupta Addl. Sr. GA, for the Petitioner; Mr H. S. Thangkhiew, Sr. Advocate, Mr. N. Mozika, Mr. P. Nongbri and Mr. L. Byrsat, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

S.R. Sen, J. - The petitioners case in a nut-shell is that:

"The respondent is an IFS Officer of the 1993 Batch who was transferred from Assam to Meghalaya in the year 2001 and joined as Assistant Conservator of Forest in Garo Hills (T) Division on 24.7.2001. During the General Studies (Paper I) examination of the Civil Services (Main) Examination, 1996 at the Bhopal Centre, on 01.11.1996, four fake supplementary answer books (of 32 pages) deceptively resembling the supplementary answer books issued by the UPSC for their examinations were recovered from him. The UPSC filed a complaint with the Director, CBI to investigate the matter. The Respondent was also issued a show-cause notice by the Commission to explain why action should not be taken against him under the rules of the examination. As his reply to the show-cause notice was not found to be satisfactory, it was decided by the UPSC to debar him for a period of ten years w.e.f. 10.11.1997 from all its examinations/selections and his candidature for the Civil Service Examination 1996 was also cancelled. The Central Bureau of Investigation, Bhopal, registered a case against him under

various sections of the Indian Penal Code. The Special Judicial Magistrate, CBI & Economic Offences, Indore held the respondent guilty u/s 417 IPC for which he was sentenced to rigorous imprisonment for three months with a fine of Rs. 500/- and u/s 468 and 471 IPC r/w Section 511 IPC for which he was sentenced to rigorous imprisonment for two years with a fine of Rs. 500/- vide Judgment dated 3.11.2011.

The Respondent being aggrieved by the Judgment of conviction preferred an Appeal before the 4th Sessions Judge, Indore. The Learned Sessions Judge was pleased to dismiss the Appeal vide Judgment dated 08.07.2013 after which the respondent was in judicial custody w.e.f. 29.9.2013. Being aggrieved by the aforesaid dismissal of the Appeal, the respondent filed a Revision Petition before the Hon''ble High Court of Madhya Pradesh, Indore Bench. The Hon''ble High Court of Madhya Pradesh vide order dated 08.10.2013 released Shri M.B.K. Reddy on bail, subject to depositing the fine amount, if any, and on furnishing a personal bond of Rs. 25,000/- with one surety in the like amount for his appearance before the Hon''ble High Court on 25.10.2013 and on such subsequent dates as may be fixed in that behalf. In the meanwhile, the substantive portion of the jail sentence was ordered to remain suspended till hearing of the petition.

The Respondent was in judicial custody w.e.f. 29.09.2013 till he was released on bail by the Order of the Hon''ble High Court of Madhya Pradesh, on 10.10.2013. The Respondent did not inform the Department of his arrest and detention in the aforementioned case and after having been released on bail during the pendency of the Revision Petition in the Hon''ble High Court of Madhya Pradesh, the Respondent submitted his joining report in the Department on 18.10.2013, having been un-authorisedly absent from his duties since 13.07.2013 till 18.10.2013.

The Government of Meghalaya after having come to know of the detention and subsequent release on bail of the Respondent from the CBI, placed the Respondent under suspension vide Notification No. FOR. 147/2011/243 dated 9th December, 2013 with effect from 24.9.2013 in accordance with Rule 3 (2) of the All India Services (Discipline and Appeal) Rules, 1969. The Respondent being aggrieved by the said order of suspension, filed a petition challenging the order of suspension before the Hon''ble Central Administrative Tribunal, Gauhati Bench vide Original Application No.386/2013. The Hon''ble Central Administrative Tribunal, Gauhati Bench vide its impugned order dated 18.11.2014 in Original Application No. 040/0000386/2013 with Misc. Petitions No. 16/2014 and No. 24/2014 has directed the State Government to "?.take the matter to the Cabinet and after its approval may issue fresh orders:-

- (i) For deemed suspension under Rule 3 (2) of the All India Services (Discipline & Appeal) Rules, 1969 for the period of detention, also
- (ii) If the State Government wants to proceed against the officer for his acts of

omission and commission for e.g., non-intimation of being taken into custody vide Chandra Sekhar Saxena (supra) or being absent from duty without properly sanctioned leave, the suspension can be open ended under Rule 3 (1) of the All India Services (Discipline & Appeal) Rules, 1969 beginning from 24.09.2013."

If the State Government is to carry out the orders of the Hon"ble Central Administrative Tribunal, Gauhati Bench, of obtaining Cabinet approval for the suspension of the officer, it would be setting an alien and wrongful precedent in matters governing the service conditions of officers of the All India Services in that, the letter and spirit of the Rules governing the service of All India Service Officers and the Rules of Executive Business of the Government of the State of Meghalaya would be seriously compromised.

The petitioners being aggrieved by the impugned order dated 18.12.2013 are left with no alternative but to file this writ petition."

2. Mr. S. Sen Gupta, learned counsel appearing for and on behalf of the State petitioners, submitted that the contention of the petitioners is only that the learned Central Administrative Tribunal, vide its order dated 18.11.2014 in Misc. application No. 040/00016/2014 and 040/00024/2014 came to the conclusion that since the suspension of the respondent from service amounts to alteration of service it needs Cabinet approval. He vehemently submitted that suspension is not alteration of service. Therefore the learned Tribunal came to a wrong conclusion, hence, this instant writ petition before this Court. The learned counsel could not place any law or authority before the Court to show that suspension is not alteration of service.

3. On the other hand, Mr. H.S. Thangkhiew, learned senior counsel, assisted by Mr. N. Mozika, learned counsel, appearing for and on behalf of the respondent, submits that the entire case is based on false allegations against the respondent and petitioners filed the case against the respondent with a vindictive attitude just to harass him for the reasons best known to them. Learned senior counsel, further contended that a person cannot be suspended after released from detention, therefore, the suspension order which is with retrospective effect is illegal and has no stand in the eye of law .In support of his submissions he referred to All India Services (Discipline and Appeal) Rules 1969 and also relied on the following judgments:-

(1) P.R. Nayak v. Union of India AIR 1972 SC 554; (1972) 1 SCC 332, para 73 p. 364 (Constitution Bench).

(2) Lily Kurian v. Sr. Lewina and others (1979) 2 SCC 124, p 130 para 13.

(3) State of Madhya Pradesh and others v. Shardul Singh 1970(1) SCC 108, p 111 para 9.

(4) Narayan Prasad Rewany v. State of Orissa and anr AIR 1957 Orissa 51(V 44 C 16) p 55 para 14.

(5) MRF Limited v. Manohar Parrikar (2010)11 SCC 374, p 414 para 92.

(6) Chandra Shekar Sexana and etc, v. Director of Education (Basic) UP Lucknow and anr (Full Bench decision) 1997 ALL. L.J. 963, p 972 para 19.

(7) Surya Kumar Chatterjee and anr v. SN Banarjee and others, AIR 1955 Calcutta 365 (Vol. 42, C.N.103), p 366 para 13.

(8) Heman Kumar v. SN Mukherjee AIR 1954 Calcutta 340 (Vol.41 C.N.114) p 343 to 346 para 13 to 16.

(9) Sudhir Ranjan Halder v. State of West Bengal and anr AIR 1961 Calcutta 626 (V 48 C 121) p 690 para 24.

(10) K. Sukender Reddy v. State of Andhra Pradesh and anr (1999)6 SCC 257, pg 259 para 7.

4. Besides that learned senior counsel also argued that Government cannot resort to selective suspension and give examples of two or three cases which are found mentioned at page 16 of the written argument which is on record and they are reproduced herein below:-

"i. Irregularities in implementing the Border Area Development project relating to developing a recreational park in Syndai of Jaintia Hills District ? An FIR was registered in the matter by CID of Meghalaya and while the investigation was being monitored by the Hon"ble Gauhati High Court the I.O filed a charge-sheet. In spite of clear findings of the investigating agency in the final investigation report dated 22.08.2011 (Annexure 10, page 71 of the affidavit in opposition of the Respondent) that a total sum of Rs. 16.6 lakhs have been appropriated by Shri T.T.C. Marak, IFS (who retired only a year ago as PCCF of Meghalaya) he was never placed under suspension. On the contrary he was elevated as Principal Chief Conservator of Forest and Head of Forest Department in 2013-14. In spite of clear orders of the Hon"ble Gauhati High Court (Annexure 10, page 73 of the affidavit in opposition of the Respondent) which was monitoring the investigation the State Govt. did nothing further and never granted prosecution sanction.

ii. Fictitious acquisition of government land ? A huge plot of land which has been in the possession of the State Government since 1955 and continues to remain in their possession over which plantation was raised by the State Government with Government funds were acquired from imposters and payment to the tune of Rs. 8 crores were made by the Forest department. Prima-facie the officials of Forest and Planning Department were responsible for issuing a sanction order for such payment as would appear from the complaint lodged by the Forest Department to the DGP of Meghalaya (Annexure 10 - page 68 of the affidavit-in-opposition of the Respondent) on the strength of which an FIR came to be registered by the CID. Despite such huge loss to the exchequer no official was placed under suspension or even proceeded against departmentally.

iii. Irregularities in implementing Forest Village Development Scheme in Garo

Hills ? The sum involved in the irregular implementation and consequent misappropriation is Rs. 2 crores. Though disciplinary proceedings were drawn against only the DFO despite a large number of officers being involved nobody was placed under suspension. The fact of DFO not having been placed under suspension though being charge-sheeted on ground of large scale misappropriation have been pleaded in para 10 of the affidavit filed by Shri Reddy in the OA before CAT - Annexure 10)"

5. Further the learned senior counsel contended that the entire suspension order issued against the respondent was illegal in the eye of law and prayed that the writ petition may be dismissed.

6. After hearing the submissions advanced by the learned counsel for the petitioners Mr. S. Sen Gupta, as well as senior counsel for the respondent Mr. H.S. Thangkhiew, we find that three issues are involved to be answered in this writ petition. Firstly, whether suspension order dated 9.12.2013 at Annexure-6 of the Counter Affidavit is in accordance with law? Secondly, whether suspension is an alteration of service? and thirdly, whether Government can pass a selective suspension order against its employees?

7. The suspension order dated 9.12.2013 Annexure-6 to the Counter affidavit is reproduced herein below:-

"Government of Meghalaya

Forest & Environment Department

Orders by the Governor

Notification

No. For. 147/2011/24 Dated Shillong, the 9th December, 2013

Whereas Shri, M.B.K. Reddy, IFS (RR-93) Conservator of Forests (GIS & PF), Office of the Principal Chief Conservator of Forests has been found guilty by the Court of Special Magistrate, CBI Cases, Indore U/s 417, 468 and 471 IPC r/w 511 IPC wherein the Learned Magistrate awarded sentence of three months R.I. and fine of Rs. 500/- for commission of offences U/s 471 IPC and two years RI and fine of Rs. 500/- for offences U/s 468 and 471 r/w 511 IPC vide order dated 3.11.2011.

And whereas Shri M.B.K. Reddy filed an appeal against the said Judgment in the Court of 4th Session Judge, Indore on 17.5.2012 wherein the Learned 4th Session Judge, Indore dismissed his appeal on 8.7.2013 and upheld the conviction pronounced by the Learned Special Magistrate, Indore.

And whereas CBI Bhopal vide letter No. 6726/DP/BHP/RC0081997S0003/CBI/BPL dated 19.11.2013 have informed Government of Meghalaya that Shri. M.B.K. Reddy surrendered before the Trial Court on 24.9.2013 and was sent to jail and was released on bail on 10.10.2013.

And whereas Rule 3 (2) of the All India Services (Discipline and Appeal) Rules, 1969 states that a member of the Service who is detained in official custody whether on a criminal charge or otherwise for a period longer than forty eight hours shall be deemed to be suspended by the Government concerned under this Rule.

And whereas having regard to the Rule above, the Governor of Meghalaya is satisfied that it is necessary to place Shri M.B.K. Reddy under suspension.

Now, therefore, the Government of Meghalaya is pleased to place the said Shri M.B.K. Reddy, IFS, under suspension with effect from 24.09.2013 until further orders.

By order and in the name

of the Governor of Meghalaya

Sd/- (M.S. Rao IAS),

Principal Secretary to the Government of Meghalaya

Forests & Environment Department."

8. On perusal of the Suspension Order, it is understood that the respondent was in jail custody w.e.f. 24.9.2013 till 10.10.2013 and thereafter he was released. However, Suspension Order was issued on 9th December, 2013, which is much after his released from jail, that surely amounts to suspension with retrospective effect. It is also noticed that he has been put on suspension w.e.f. 24.09.2013 until further orders. Notice also speaks further that he has been suspended under the provision of Rule 3 (2) of All India Services (Discipline and Appeal) Rules, 1969.

9. Now, to find out whether Suspension Order dated 9th December, 2013, has any legal stand, we look back to All India Services (Discipline and Appeal) Rules, 1969, herein after referred to as Rule 1969. Rule 3(2) of Rule 1969, speaks as follows:-

"3 (2) A member of the Service who is detained in official custody whether on a criminal charge or otherwise for a period longer than forty-eight hours, shall be deemed to have been suspended by the Government concerned under this rule."

10. On perusal of Rule 3 (2) quoted above, it is clear that the suspension should be from immediate effect and cannot be with retrospective effect, as the word "is" has been used in the said Rule of 1969.

Further 6A of the Rule 1969, speaks as follows:-

"6 A Where an order of suspension is made, or deemed to have been made, by the Government of a State under this rule, detailed report of the case shall be forwarded to the Central Government ordinarily within a period of fifteen days of the date on which the member of the Service is suspended or is deemed to have

been suspended, as the case may be."

11. On perusal of Rule 6 A of Rule 1969, it is clear that details of the suspension needs to be forwarded to the Central Government in case of persons belonging to All India Services. But, in this instant case it is an admitted fact that no steps has been taken by the State Government, from that point of view also the Suspension Order dated 9th December, 2013, suffers a serious setback.

Rule (8)(a) of Rule 1969, speaks that :

"An order of suspension made under this rule which has not been extended shall be valid for a period not exceeding ninety days and an order of suspension which has been extended shall remain valid for a further period not exceeding one hundred eighty days, at a time, unless revoked earlier."

12. The said Rule also provided that if no order has been passed under this clause, the order of suspension stands revoked with effect from the date of expiry of the order being reviewed.

13. On perusal of Rule (8) of Rule 1969, it is also clear that maximum suspension period may be 180 days. But here in this case it appears that respondent was put under suspension for almost six months, without any reasons or review which is contrary to the provisions of Rule (8) of Rule 1969. Besides that, no step has been taken under Rule (8).

14. After going through the provisions of the All Indian Services (Discipline and Appeal) Rules, 1969, quoted above, we find that the Suspension Order dated 9th December, 2013 at Annexure-6 is totally in contradictory and against the principles of the Rule of 1969. We are also shocked to see as to how a person can be put under suspension until further order and there was no explanation from the petitioner's side.

15. In the case of Chandra Shekhar Saxena and etc v. Director of Education (Basic), U.P. Lucknow and another reported in 1997 ALL.L.J 963, Hon"ble Allahabad High Court, defined "deemed suspension" wherein the Hon"ble High Court at para 19 observed "deemed suspension" should be confined to the period of detention in custody only and cannot be carried further after release from detention. Para 19 is reproduced herein below :-

"19. In our opinion, different Division Benches gave different interpretation of Sub-rule (2) only for the reason that the expression "as the case may be" and the alternative contemplated thereafter was not correctly appreciated. The logical conclusion is that whenever the Government servant is detained in custody, for that period, he should be deemed to be under suspension irrespective of the reason of detention whether it is on a criminal charge or otherwise or on being sentenced to a term of imprisonment on being convicted. However, this deemed suspension should be confined to the period of detention in custody only and it cannot be carried further after release from detention. If the appointing authority wants to continue this deemed suspension further, a specific order is required to

be passed and for passing such an order, all the requirements provided in Sub-rules (1) and (1-A) of Rule 49-A, as the case may be, should be taken into account. In our considered opinion, the deemed suspension under Sub-rule (2) cannot be carried beyond the period of detention in custody as the basic purpose behind enacting Sub-rule (2) is to render the Government servant non-functional during the period he is deprived of the liberty and he shall be deemed to be under suspension for this period even in absence of any order passed by the appointing authority. One can well imagine the serious consequences if a Government servant is allowed to discharge his duties and functions from the place of his custody. Much has been argued on the basis of the fact that a Government servant may conceal the fact of his detention from the appointing authority and in such circumstances the deemed suspension contemplated under Sub-rule (2) cannot serve any purpose. However, in our opinion, the argument though appears to be attractive, is not acceptable. The deemed suspension will serve the purpose even though detention in custody of Government servant may not be in the knowledge of the appointing authority for some time as it shall save the interest of the Government whenever any order, action or omission of such Government servant done during the period of detention comes in question for consideration. All his actions during the period of detention shall be without authority and cannot bind the Government. Considering the aforesaid purpose, immediate knowledge is not very material. Further, a Government servant under the Conduct Rules is under obligation to inform his appointing authority or the employer about his detention and even if he has not informed, the law will assume all the consequences which flow from the deemed suspension on his detention in custody and one should not have any doubt about such a consequences on an assumption of ignorance of appointing authority of such fact. There is yet a very strong reason for which it appears necessary that deemed suspension envisaged under Sub-rule (2) of Rule 49-A of the Rules should be limited to the period of detention only. The provision is very stringent and leaves no exception or discretion with the appointing authority. The deemed suspension of government employee is bound to follow if he is detained of government employee is bound to follow if he is detained in custody for more than forty eight hours, irrespective of the fact whether the detention is connected with his employment or not. The detention may be for any reason but the consequence of deemed suspension shall follow during the period of detention when the employees is not in a position to render any service. Thus, in our opinion, in order to save the Government employee from unnecessary harassment, it is necessary to limit this deemed suspension only for the period of detention."

16. The Division Bench of Hon"ble Orissa High Court in the judgment of Narayan Prasad Rewany v. State of Orissa and anr AIR 1957 Orissa 51 (V 44 C 16), was pleased to observe that suspension order cannot be passed with retrospective effect. Para 7 of the said judgment is quoted herein below:-

"7. Though the order of suspension is dated 11th September 1948 the applicant

stated that he received it only on the 14th October 1948 and that he was actually relieved of his duties only on the 31st October 1948. These dates, as given by him, have not been contradicted in the counter-affidavit filed by the Director and may, therefore, be taken as correct. The first question for consideration, therefore, is whether an order of suspension can be passed with retrospective effect from the date of the applicant's arrest, namely 12th July 1948.

There is a direct authority in support of Mr. Das's contention that the order of suspension cannot have retrospective effect, especially when a Government servant concerned actually worked in post till 31st October 1948.(see Hemanta Kumar v. S.N. Mukherji, AIR 1954 Cal 340(A). With respect I would agree with the reasons given by the learned Judges of the Calcutta High Court in that decision and held that the order of suspension passed against the applicant would have effect only from the 31st October 1948 when he was actually relieved of his duties and placed under suspension. The applicant is clearly entitled to full salary from the 12.7.1948 to the 31.10.1948."

17. Similar view has been expressed by the Division Bench of the Calcutta High Court in Hemant Kumar v. S.N. Mukherji AIR 1954 Cal 340 (Vol.41 C.N.114), that no order of suspension can be passed with retrospective effect.

18. In the case of Sudhir Ranjan Halder v. State of West Bengal and anr AIR 1961 Cal 626 (V 48 C 121), the Hon'ble Calcutta High Court, observed that dismissal or removal from service with retrospective effect has always been condemned by the Court as illegal and invalid. Para 24 of the judgment is quoted herein below for ready reference :-

"24. Suspension or dismissal or removal from service with retrospective effect has always been condemned by the Court as illegal and invalid. Reference in this connection need only be made to the cases reported in Hemanta Kumar Bhattacharjee v. S.N. Mukherjee, 58 Cal WN 1 : (AIR 1954 Cal 340) , A.R.S. Choudhuri v. Union of India,60 Cal WN 933 : (S)AIR 1956 Cal 662) , Damodar Valley Corporation v. Provat Roy, 60 Cal WN 1023, Abdul Hamid v. District School Board, 24 Parganas, 61 Cal WN 880, Amulya Kumar Sikdar v. L.M. Bakshi, 62 Cal WN 960 : (AIR 1958 Cal 470) , Satyendra Kumar Dutta v. Administrator, District Board, 24 Parganas, 63 Cal WN 250 : (AIR 1959 Cal 536), and a judgment by Bose, J. in Civil Revn. Case No. 2243 of 1954 (Ajit Kumar Ghosh v. Divisional Supdt., Eastern Rly. ? unreported."

19. After perusal of the All India Services (Discipline and Appeal) Rules, 1969, as well as, the judgment given by the Hon'ble High Courts of Allahabad, Orissa and Calcutta, it is clear to us that the suspension order dated 9th December, 2013, is totally illegal and contrary to the provision of law. We find from the above discussion that the suspension order firstly, has been given with retrospective effect, secondly the suspension order was not communicated to the Central Government as required under the Rule 1969 and thirdly, the petitioner was put

under suspension after released from jail custody which is not allowed by the law and made clear by the different High Courts quoted above. Moreover, from record it appears that at that period of time, respondent was on Medical leave and in such circumstances, question of suspension does not arise. We also find that the suspension order is very mechanical and the respondent has been put under suspension until further orders this shows that the authority has issued the suspension order with certain motive. Therefore after applying our thoughts and for the reasons discussed above and after taking into consideration the provision of law, we find that the suspension order dated 9th December, 2013 is null and void.

20. The second question before us is whether suspension is alteration of service?

21. To answer the issue, Hon"ble Supreme Court in the case of State of Madhya Pradesh and others v. Shardul Singh 1970 (1) SCC 108, was pleased to observed the expression "conditions of service" as an expression of wide import. It means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc. Para 8 and 9 is reproduced herein below for ready reference:-

"8. One of the powers conferred under this proviso is to make rules regulating the conditions of service of persons appointed to civil services of the Union or the State as the case may be. The expression "conditions of service" is an expression of wide import. As pointed by this Court in Pradyat Kumar Bose v. The Hon"ble Chief Justice of Calcutta High Court(1955) 2 SCR 1331, the dismissal of an official is a matter which falls within "conditions of service" of public servants. The Judicial Committee of the Privy Council in North West Frontier Province v. Suraj Narain Anand (1948) LR 75 IA 343, took the view that a right of dismissal is a condition of service within the meaning of the words under Section 243 of the Government of India Act, 1935. Lord Thankerton speaking for the Board observed therein:

"apart from consideration whether the context indicates a special significance to the expression "conditions of service" their Lordships are unable in the absence of any such special significance, to regard provisions which prescribe the circumstances under which the employer is to be entitled to terminate the service as otherwise than conditions of the service, whether these provisions are contractual or statutory, they are therefore of opinion that the natural meaning of the expression would include such provision."

In P. Batakotaiah v. Union of India and others (1958) SCR 1052, this Court proceeded on the basis that a rule providing for the termination of the service of a railway official can be made in exercise of the powers conferred on the Government by Sections 241 (2), 247 and 263 (3) of the Government of India Act, 1935.

9. The expression "conditions of service" means all those conditions which regulate the holding of a post by a person right from the time of his appointment

till his retirement and even beyond it in matters like pension, etc."

22. So, it is clear from the judgment given by the Hon"ble Supreme Court quoted above, that suspension amounts to alteration of conditions of service. Therefore, we are of the view that, when a person is put under suspension, it amounts to alteration of conditions of service and if it is so, the Government is bound by entry 22 at page 21 of Rules of Executive Business of the Government of the State of Meghalaya, and needs cabinet approval, which is quoted here in below for ready reference :-

"22. Proposals involving any important alteration in the conditions of Service of the members of any all India Service."

23. Proposal pertaining to alteration of conditions of service of members of All India Service needs to be approved by the Cabinet. In this instant case no approval has been obtained from the Cabinet for the suspension of the respondent. Therefore, from that point of view also, the suspension of the respondent is illegal and we come to the conclusion that suspension highly tantamount to alteration of conditions of service. Therefore, we are not in a position to accept the submission of the Government counsel, Mr. S. Sen Gupta, that suspension is not an alteration of conditions of service. In our view, suspension is definitely an alteration of conditions of service.

24. Hon"ble Supreme Court in the case of MRF Limited v. Manohar Parrikar and others (2010) 11 SCC 374, in para 92 of the judgment was pleased to observed that Business Rules framed under provision 166 (3) of the Constitution are mandatory and must be strictly adhered to, any decision by the Government in breach of these Rules will be a nullity in the eye of law.

25. On perusal of the Judgment passed by the Hon"ble Apex Court in K. Sukhendra Reddy v. State of A.P. and another (1999) 6 SCC 257, it is understood that the Government cannot be permitted to resort to selective suspension, it cannot be permitted to place an officer under suspension just to just to exhibit and feign that action against the officers, irrespective of their high status in the service hierarchy, would be taken.

26. Therefore, after considering the position of law and principle of natural justice we are of the considered view that the Government is not permitted to suspend selectively which is highly illegal, discriminatory and against the principle of jurisprudence. However, at this stage, we do not want to make any comment but cautioned the Government to remain alert in future because from the submission of the learned senior counsel for the respondent, it came to the notice of the court that there are some more guilty officers where even charge sheet was filed but they were not put under suspension. Same treatment Government should give to all employees/officers working under them.

27. On perusal of the additional affidavit dated 30.10.2015, and its Annexure-1, the letter addressed to the Principal Secretary, Forest & Environment

Department, Government of Meghalaya, the Principal Chief Conservator of Forest & HOFF, Meghalaya, has given a very good certificate to the respondent and also requested the Government to consider his promotion and super time scale, as he was found to be very sincere in his duties. In our view, the Government should also consider that letter sympathetically.

28. It is also worth mentioning that the Madhya Pradesh High Court has already suspended his sentence and the matter is pending before the Madhya Pradesh High Court. So, petitioners cannot come to conclusion as on today that he has really committed any offence. A person is innocent always until and unless his guilt is proved in the Court of law.

29. After considering the facts and circumstance of the case, submissions advanced by the learned counsels, documents available on the record and the provisions of law as discussed above, we find there is nothing wrong in the impugned judgment passed by the learned Central Administrative Tribunal, Guwahati, in Original Application No.386 of 2013 dated 18.11.2014. However, we are unable to agree to para 39 of the judgment because respondent has already suffered loss and damages due to illegal act of the petitioners. Moreover, it is clear that suspension can never be with retrospective effect and it is too late for the Government to go for an approval and to correct their wrong and to proceed further. Accordingly, we upheld the impugned judgment dated 18.11.2014 passed by the learned Central Administrative Tribunal except para 39 and strike down para 39 of the judgment for the reasons discussed above.

30. With these observations and for the reasons discussed above, we come to the conclusion that petitioners could not make out any case and accordingly the petition stands dismissed and disposed of.