

GAHC010039242023



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

**Case No. : WP(C)/1074/2023**

GO-2148X SRI VINAY KUMAR SINGH

VERSUS

THE UNION OF INDIA AND 5 ORS  
REPRESENTED BY THE DEFENCE SECRETARY,  
MINISTRY OF DEFENCE, 101-A,  
SOUTH BLOCK, NEW DELHI- 110001.

2:JOINT SECRETARY (BORDER ROADS)  
MINISTRY OF DEFENCE (EARLIER DESIGNATED AS SECRETARY (BRDB))

3:DIRECTOR GENERAL  
BORDER ROADS ORGANISATION  
SEEMA SADAK BHAWAN

4:ADDITIONAL DIRECTOR GENERAL (EAST)

BORDER ROADS ORGANISATION  
HQ ADGBR (EAST)  
JALUKBARI

5:THE MANAGING DIRECTOR  
NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT  
CORPORATION LTD. (NHIDCL)  
MINISTRY OF ROAD  
TRANSPORT AND HIGHWAYS

6:CHIEF VIGILANCE OFFICER

NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT  
CORPORATION LIMITED (NHIDCL)

**Advocate for the Petitioner : MR. D BORAH**

**Advocate for the Respondent : DY.S.G.I.**

**BEFORE**  
**HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

For the Petitioner : Shri D Borah, Advocate.

For the Respondents : Shri SK Medhi, CGC (R-1, 2, 3 & 4),  
Shri RK Talukdar, SC, NHIDCL (R-5 & 6).

Date of Hearing : 12.10.2023.

Date of Judgment : 18.10.2023.

**18.10.2023.**

**Judgment & Order**

A short question arises for determination in this writ petition which pertains to the date when an order of suspension becomes effective. The said issue is in the context of the requirement to make periodic review which is mandatory.

**2.** Before going to the issue to be determined, the basic facts of the case in hand may be narrated as follows.

**3.** The petitioner is posted with the National Highways and Infrastructure Development Corporation Ltd. (NHIDCL) on deputation. Pursuant to certain allegations in the discharge of his duties, an order dated 01.11.2022 has been passed by placing the petitioner under suspension. It is not in dispute that the aforesaid order of suspension was received by the petitioner on 07.11.2022. The

requirement of law to conduct a review within 90 days of the order of suspension was done on 03.02.2023. It is the contention of the petitioner that such review being done beyond the prescribed period of 90 days, the same shall not save the authorities from their responsibility which is mandatory in nature and therefore, the impugned order of suspension is required to be set aside. The contention of the respondents, on the other hand, is that though the date of the order of suspension was 01.11.2022, it was communicated only on 07.11.2022. It is accordingly submitted by the respondents that if the aforesaid date is reckoned, the review done on 03.02.2023 would be within time and therefore, there would be no violation of the law laid down.

**4.** I have heard Shri D Borah, learned counsel for the petitioner. I have also heard Shri SK Medhi, learned CGC appearing for the respondent nos. 1, 2, 3 and 4. Shri RK Talukdar, learned counsel has appeared for the NHIDCL. The materials placed before this Court have been duly perused.

**5.** Shri Borah, learned counsel for the petitioner has submitted that there is no manner of doubt that the order of suspension is dated 01.11.2022. Though the same was received by the petitioner on 07.11.2022, the date for the purpose of the mandatory review within 90 days has to be reckoned as 01.11.2022. It is submitted that the suspension takes effect from the date of the order itself i.e., 01.11.2022 and not from the date of receipt of such order. He submits that though the review has been done, the same was done only on 03.02.2023, which is beyond the period of 90 days. He submits that the period of 90 days had expired on 29.01.2023 before which date, no exercise of review was conducted.

**6.** In support of his submissions, Shri Borah, learned counsel for the petitioner places reliance on the following case laws:

**i) *State of Punjab Vs. Khemi Ram, (1969) 3 SCC 28;***

**ii) *Ajay Kumar Choudhary Vs. Union of India, (2015) 7 SCC 291;***

**iii) *Union of India and Other Vs. Dipak Mali, (2010) 2 SCC 222;***

**7.** In the case of ***State of Punjab*** (*supra*), the Hon'ble Supreme Court has in clear terms laid down that in case of a suspension, the effective date would be the date of the order itself. For ready reference, the relevant paragraph of the said judgement is extracted here in below:

*“17. The question then is whether communicating the order means its actual receipt by the concerned government servant. The order of suspension in question was published in the Gazette though that was after the date when the respondent was to retire. But the point is whether it was communicated to him before that date. The ordinary meaning of the word "communicate" is to impart, confer or transmit information. (Cf. Shorter Oxford English Dictionary, Vol. 1, p. 352). As already stated, telegrams, dated July 31, and August 2, 1958, were despatched to the respondent at the address given by him where communications by Government should be despatched. Both the telegrams transmitted or imparted information to the respondent that he was suspended from service with effect from*

*August 2, 1958. It may be that he actually received them in or about the middle of August 1958, after the date of his retirement. But how can it be said that the information about his having been suspended was not imparted or transmitted to him on July 31 and August 2, 1958 i.e. before August 4, 1958, when he would have retired? It will be seen that in all the decisions cited before us it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and*

*thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actual knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in *The State of Punjab v. Amar Singh* contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid."*

**8.** In the case of ***Dipak Mali*** (*supra*), the Hon'ble Supreme Court has laid down that the period of 90 days has to be reckoned from the date of order of suspension and that the review has to be done within a period of 90 days from the said date.

**9.** In the case of ***Ajay Kumar Choudhary*** (*supra*), the Hon'ble Supreme Court has held that the requirement of making a periodic review within 90 days from the date of suspension is mandatory unless the proceeding itself is initiated by issuance of a show cause notice prior to the expiry of the said 90 days.

**10.** In the instant case, there is no dispute that no disciplinary proceeding was initiated by issuance of any show cause notice before expiry of the period of 90 days from the date of the suspension order.

**11.** Per contra, Shri Medhi, learned CGC has submitted that though the date of the suspension order is 01.11.2022, the same was communicated only on 07.11.2022. He submits that even for the purpose of subsistence allowance, the date is reckoned from 07.11.2022. He accordingly submits that since the effective date of suspension is 07.11.2022, the exercise of review done on 03.02.2023 is within 90 days from the effective date of suspension.

**12.** As regards the case law cited, Shri Medhi, learned CGC submits that the case of ***Khemi Ram*** (*supra*) is not applicable in the instant case as the order was communicated in the instant case only on 07.11.2022. The learned CGC has tried to make a distinction between the date of communication and the date of receipt of the suspension order and therefore, contends that the reasonings given in the case of ***Khemi Ram*** (*supra*) would not be applicable in the instant case.

**13.** So far as the case of ***Dipak Mali*** (*supra*) is concerned, he submits that the said case was prior to the amendment of the relevant provisions vide office memorandum dated 12.07.2007. It is submitted that after the amendment, the concept of effective date of suspension has been introduced and in the instant case, he submits that the effective date of suspension is 07.11.2022.

**14.** Shri Medhi, learned CGC also submits that the allegations against the petitioner are serious in nature and reinstatement may not be in the interest of the justice.

**15.** The rival submissions made by the learned counsel have been duly



considered.

**16.** The suspension order is dated 01.11.2022 and it is not the case of the respondents that on the said date, there was no order or that there were only certain notes in the file. The decision to suspend the petitioner had acquired the form of an order on 01.11.2022 and therefore, it cannot be said that only when the said order of suspension is communicated, it becomes effective. The Hon'ble Supreme Court in the case of ***Khemi Ram (supra)*** has made it abundantly clear that in case of suspension, it is the date of the orders from which such a suspension would take effect. The Supreme Court has also clarified that the matter would be different, in case the order pertains to dismissal or removal of the employee which in that case would take effect from the date when such orders are received by the delinquent.

**17.** The Hon'ble Supreme Court in the case of ***Municipal Corporation of Delhi Vs. Qimat Rai Gupta & Ors.***, reported in **(2007) 7 SCC 309**, has further clarified that it is only an order of Dismissal from service which would require communication.

**18.** The requirement of timely review of an order of suspension is a mandatory one as has been laid down in the case of ***Ajay Kumar Choudhary (supra)***. In the said case, the following has been laid down.

*“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.”*

**19.** Though the learned CGC tried to distinguish the case of **Dipak Mali** (*supra*) by stating that an amendment has been brought to introduce the concept of effective date of suspension, in view of the law laid down by the Hon'ble Supreme Court, in the case of **Khemi Ram** (*supra*), there is no doubt that the date of suspension itself has to be construed to be the effective date of suspension.

**20.** It is the admitted position in the instant case that the review of the order

of suspension was done only on 03.02.2023. It is clear that the said review was not done within the mandatory period of 90 days as required under the law. The Hon'ble Supreme Court in the case of **Dipak Mali** (*supra*) has clearly laid down that review done beyond a period of 90 days would not serve the purpose of law and would have no consequence. In the instant case, it is also admitted that no disciplinary proceeding has been initiated by issuance of any show cause notice prior to the expiry of the said period of 90 days.

**21.** Under the aforesaid facts and circumstances, this court has no other alternative but to hold that the impugned order of review dated 03.02.2023 is unsustainable in law and therefore, would not have the effect of continuation of the suspension order dated 01.11.2022. Consequently, the suspension order dated 01.11.2022 stands set aside and quashed.

**22.** Considering the submission of the respondents that the allegations against the petitioner are serious, while setting aside the order of suspension, it is provided that the respondents would be at liberty to post the petitioner in any non-sensitive post.

**23.** The writ petition accordingly stands disposed of.

**JUDGE**

**Comparing Assistant**