

GAHC010280032025



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

Case No. : WP(C)/7306/2025

SHRI DIBYAJYOTI SARMAH
SO MUKUT SARMAH, RO VILL HAZARI GAON, PO BARPATHAR, PS
BARPATHAR, DIST GOLAGHAT, ASSAM, PIN 785602

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM, EXCISE DEPARTMENT, JANATA BHAWAN, DISPUR, GUWAHATI
781006

2:THE COMMISSIONER OF EXCISE
HOUSEFED COMPLEX
BELTOLA ROAD
DISPUR
GUWAHATI 781006

3:THE JOINT SECRETARY
GOVT OF ASSAM
EXCISE DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI 781006

4:THE COMMISSIONER AND SECRETARY
GOVT OF ASSAM
FINANCE DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI 781006

5:THE COMMISSIONER AND SECRETARY

BODOLAND TERRITORIAL COUNCIL
KOKRAJHAR
STATION ROAD
KOKRAJHAR
BTR
ASSAM
78337

BEFORE

HON'BLE MR. JUSTICE KARDAK ETE

Advocate for the petitioner : Mr. P.R. Sharma

Advocates for the respondents : Mr. I. Borthakur, SC, Excise Department,
Mr. A. Chaliha, SC, Finance Department,
Ms. B. Bora, SC, BTC

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 02.04.2026

Whether the pronouncement is of the operative part of the judgment : N/A

Whether the full judgment has been pronounced: Yes

JUDGMENT & ORDER

Heard Mr. P.R. Sharma, learned counsel for the petitioner. Also heard Mr. I. Borthakur, learned Standing Counsel, Excise Department for the respondent nos. 1, 2 and 3, Mr. A. Chaliha, learned Standing Counsel, Finance Department for the respondent no. 4 and Ms. B. Borah, learned Standing Counsel, BTC for the respondent no.5.

2. Challenge made in this writ petition to the order dated 21.07.2025 passed by the Secretary to the Government of Assam, Excise Department by which the petitioner is placed under suspension in exercise of the provisions of Rule 6 (1)

(a) of the Assam Services (Discipline & Appeal) Rules, 1964 pending initiation of the departmental proceedings.

3. The case of the petitioner, in brief, is that he was appointed as Excise Inspector vide an order dated 29.10.2022 in the Excise Department, Government of Assam and joined his service on 14.11.2022. The petitioner was transferred to Chirang as Inspector of Excise, Kajalgaon vide order dated 06.12.2024 by CHD, Excise Department, BTC, Kokrajhar. Due to certain administrative issues, the petitioner could joined in the said post only on 19.03.2025.

4. While the petitioner was discharging his duties as Inspector of Excise, Chirang, Assam, a Show Cause Notice was issued to him on 21.06.2025 alleging *inter alia* that the EIB team accompanied by Excise team had found 385 cases of illegal stock of IMFL along with fake holograms, fake labels, fake bottle caps at Santipur in Chirang district which was under the jurisdiction of the petitioner.

5. Thereafter, the Secretary to the Government of Assam, Excise Department vide order dated 21.07.2025 placed the petitioner under suspension with immediate effect in terms of the Rule 6 (1)(a) of the Assam Services (Discipline & Appeal), Rules 1964 pending initiation of the departmental proceedings.

6. The petitioner has submitted his reply on 26.06.2025 to the said Show Cause Notice denying all the allegations in the said Notice. Thereafter, again the petitioner was issued Show Cause Notices dated 01.09.2025 and 22.10.2025.

7. It is the contention of the petitioner that he was placed under suspension on 21.07.2025 and even after lapse of 4 (four) months of the suspension, no memorandum of charges / charge sheet has been served upon him, nor any reasoned order has been passed with regard to the extension of suspension as

it is mandatory under the law to review the suspension order within 90 days from the effective date of suspension.

8. Mr. P.R. Sharma, learned counsel for the petitioner while relying on the judgment of the Hon'ble Supreme Court in the case of ***Ajay Kr. Choudhury vs. Union of India*** reported in ***(2015) 7 SCC 291*** and the judgment and order of this Court submits that the currency of suspension order should not extend between 3 (three) months, if within this period the memorandum of charges / charge sheet is not served to delinquent, if the memorandum of charges or charge sheet is served, a reasoned order must be passed for the extension of the suspension. In the present case, even after lapse of 4 months, no review has been undertaken by the respondent authorities nor any memorandum of charges / charge sheet has been served upon the petitioner. Therefore, the continuous suspension of the petitioner is *dehors* the law and as such, same may be set aside and directed the respondent authorities to reinstate, the petitioner forthwith.

9. Mr. I. Borthakur, learned Standing Counsel for the Excise Department for the respondent nos. 1, 2 and 3 submits that a meeting of the Review Committee was held on 17.10.2025 whereby it has been recommended for extension of the suspension period of the petitioner.

10. On such recommendation, the suspension of the petitioner was extended for another period of 3 (three) months w.e.f. 21.10.2025 vide an order dated 09.01.2026 which was signed by the Competent Authority on 06.01.2026. Therefore, he submits that although the order was not issued within the stipulated period of 90 days, the decision to extend the suspension period by the Competent Authority was made before the expiry of 90 days on 17.10.2025 and as such, there is no illegality in putting the petitioner under suspension by a

reasoned extension order.

11. Considered the submissions of the learned counsel for the parties and also perused the materials available on record.

12. Law on suspension and its extension is well settled by now. In the case of **Ajay Kr. Choudhury** (supra), the Hon'ble Supreme Court has held which is reproduced herein under:

“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 still the stage of his having to pre-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.”

13. In the present case, the petitioner was suspended on 21.07.2025. The 90 days stipulation period for review of the suspension would expire on 21.10.2026. It appears that the respondent authorities by a way of review has taken a decision to extend the period of suspension of the petitioner on 17.10.2025 which would be within the period of 90 days. However, the order was signed on 06.01.2026 by the Secretary to the Government of Assam, Excise Department and issued on 09.01.2026 which is apparently beyond 90 days,

though it is decided to extend the period of the suspension of the petitioner for another period of 3 months w.e.f 21.10.2025 or until further orders. More so, no memorandum of charges / charge sheet has been served upon the petitioner as on date.

14. For the foregoing reasons and applying the law laid down by the Hon'ble Supreme Court, I am of the considered view that the petitioner cannot be put under continuous suspension as no review has been made within a prescribed period of 90 days and no memorandum of charges / charge sheet has been served upon the petition as on date.

15. Accordingly, the suspension order dated 21.07.2025 and the extension order dated 06.01.2026 issued on 09.01.2026 are hereby set aside and quashed.

16. Consequently, the respondent authorities are directed to reinstate the petitioner in his service forthwith. However, it is made clear that the respondent authorities are at liberty to proceed with the departmental proceedings in accordance with law.

17. Writ petition stands allowed and disposed of accordingly.

JUDGE

Comparing Assistant