

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WP(C) No. 37 of 2022

Shri M. Pheijao Singh, aged about 54 years, S/o late M. Amu Singh of Awang Sekmai Bazar, P.O. & P.S. Sekmai of Imphal West District, Manipur, Pin – 795136 functioning as Deputy Director, TA & Hills, Babupara near Kuki Inn- Imphal- 795001.

... .. PETITIONER.

-versus-

1. The State of Manipur, represented by the Additional Chief Secretary/ Principal Secretary/ Commissioner/ Secretary, Tribal Affairs & Hills, Government of Manipur, Secretariat Complex- 795001.
2. The Director, Tribal Affairs & Hills and Schedule Castes Department, Government of Manipur, Babupara near Kuki Inn – 795001.

... .. RESPONDENTS.

WP(C) No. 913 of 2021

Shri M. Pheijao Singh, aged about 54 years, S/o late M. Amu Singh of Awang Sekmai Bazar, P.O. & P.S. Sekmai of Imphal West District, Manipur, Pin – 795136 functioning as Deputy Director, TA & Hills, Babupara near Kuki Inn- Imphal- 795001.

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1. The State of Manipur, represented by the Additional Chief Secretary/ Principal Secretary/ Commissioner/ Secretary, Tribal Affairs & Hills, Government of Manipur, Secretariat Complex- 795001.
2. The Director, Tribal Affairs & Hills and Schedule Castes Department, Government of Manipur, Babupara near Kuki Inn – 795001.

... .. **RESPONDENTS**

BEFORE
HON'BLE THE ACTING CHIEF JUSTICE M.V. MURALIDARAN

For the Petitioners :: Mr. A. Romenkumar, Sr. Adv.

For the Respondents :: Mrs. Ch. Sundari, GA

Date of Hearing and
reserving Judgment & Order :: 28.08.2023

Date of Judgment & Order :: **12.09.2023**

JUDGMENT AND ORDER
(CAV)

W.P.(C) No.37 of 2022 has been filed by the petitioner to quash the impugned order dated 18.12.2021, communicated to the petitioner on 11.1.2022, initiating second departmental proceedings by framing article of charges on selfsame charges as the earlier charges which are under challenge in W.P.(C) No.913 of 2021.

2. W.P.(C) No.913 of 2021 has been filed by the very same petitioner to quash the impugned order dated 25.2.2020 thereby initiating departmental proceedings and framing of article of charges vide order dated 10.6.2020 and to direct the respondents to provide the consequential service benefits as if no departmental proceedings were initiated against the petitioner.

3. Since the prayers in the writ petitions are interlinked with each other, both the writ petitions were heard together and disposed of by this common order.

4. Brief facts which led to the filing of the writ petitions are as follows:

The petitioner, after serving in the Department of TA & Hills, was promoted to the rank of Deputy Director, TA & Hills and was functioning as Drawing and Disbursing Officer in the said Department from 24.4.2014 to 31.8.2016. Thereafter, he was removed from functioning as Drawing and Disbursing Officer. On 25.2.2020, the petitioner was placed under suspension on the ground that disciplinary proceedings were contemplated against him and, accordingly, charges were framed against him vide order dated 10.6.2020. Since the

suspension order was extended violating the provisions of Rule 10(6) and (7) of the CCS (CCA) Rules, 1965, the petitioner has filed W.P.(C) No.688 of 2021 and, this Court, by the order dated 15.11.2021 in W.P.(C) No.688 of 2021, quashed the suspension order and directed the respondents to treat the petitioner to have been reinstated in service with effect from 20.11.2020 with all consequential benefits. According to the petitioner, under Rule 14(24)(a) of the CCS (CCA) Rules, the Inquiring Authority shall conclude the inquiry and submit his report within six months from the date of receipt of the appointment.

4.1. On 22.8.2020, Shri R.K.Dinesh, IAS, was appointed as Inquiring Authority. Again on 17.9.2020, one Shri Gyan Prakash, IAS, Commissioner-cum-Secretary was appointed as Inquiring Authority. Again on 28.9.2021, another officer namely Shri DeveshDeval, IAS was appointed as the Inquiring Authority. Though the first Inquiring Authority was appointed on 22.6.2020, the said authority could not conclude the inquiry within six months.

4.2. The petitioner requested the State authorities to furnish the required documents relied upon by the disciplinary authority to enable him to prepare effective written statement of defence. The respondent authority had constituted a special

audit through the Director, Local and Fund Audit, Manipur to conduct the audit inspection in the Department of TA & Hills. On 24.6.2021, the audit report was submitted to the effect that the petitioner has cleared the amount, except Rs.45,881/- and the said amount was ordered to be recovered immediately. In the said report, it has been stated that the petitioner may be allowed to revoke his suspension order. However, the authority has not put the report into action.

4.3. Challenging the initiation of the departmental proceedings, vide order dated 25.2.2020 and framing of charges dated 10.6.2020, the petitioner has filed W.P.(C) No.913 of 2021 and during the pendency of the said writ petition, the respondent authorities issued the impugned order dated 18.12.2021 which was communicated to the petitioner on 11.1.2022 initiating the second departmental proceedings by framing of charges after withdrawing the earlier article of charges on the same set of facts, for which the earlier departmental proceedings could not be proved which is under challenge in W.P.(C) No.913 of 2021. Aggrieved by the issuance of the second departmental proceedings, the petitioner has filed W.P.(C) No.37 of 2022.

5. Resisting the writ petitions, the respondents 1 and 2 filed affidavit-in-oppositions stating that the petitioner has

already filed W.P.(C) No.688 of 2021 challenging the suspension order dated 25.2.2020 and this Court allowed the said writ petition vide order dated 15.11.2021. In compliance of this Court's order, the authorities have issued an order dated 21.12.2021 thereby reinstating the petitioner with effect from 20.11.2020.

5.1. It is stated that on 10.6.2020, the respondent authorities issued a Memorandum along with article of charges and statement of imputations of misconduct etc. for holding inquiry against the petitioner. However, the same was withdrawn vide order dated 7.12.2021. It is stated that subsequently, vide order dated 21.1.2022 the respondent authorities cancelled the order dated 11.1.2022 on the ground that there was some inadvertent mistake in it.

5.2. It is stated in the affidavit-in-oppositions that the inability of the respondent authorities to supply documents to the petitioner expeditiously may not be viewed as victimization of the petitioner. The impugned order dated 18.12.2021 communicated on 11.1.2022 has not been cancelled vide order dated 21.1.2022. Hence, the allegations of mala fide, illegalities etc. are denied. Since the impugned orders have already been cancelled, no

cause of action survives and, therefore, the writ petitions are liable to be dismissed.

6. Assailing the impugned orders, Mr. A. Romenkumar, the learned senior counsel for the petitioner submitted that the petitioner was functioning as Drawing and Disbursing Officer in the Department of TA & Hills from 24.4.2014 to 31.8.2016 and subsequently he was removed from functioning as Drawing and Disbursing Officer. On 25.2.2020, the petitioner was placed under suspension on the ground that disciplinary proceedings are initiated against him and article of charges were framed against the petitioner vide order dated 10.6.2020. Challenging the suspension, the petitioner has filed W.P.(C) No.688 of 2021 and, this Court, by the order dated 15.11.2021, allowed the said writ petition and directed the respondents to treat that the petitioner have been reinstated in service with effect from 20.11.2020 with all consequential benefits and the said exercise was directed to be completed within four weeks from the date of receipt of a copy of the said order.

7. Mr. A. Romenkumar, the learned senior counsel for the petitioner submitted that under Rule 14(24)(a) of the CCS (CCA) Rules, 1965, the Inquiring Authority has to conclude the inquiry and submit his report within a period of six months from

the date of appointment. Though the Inquiring Authority was appointed and the Inquiring Authority was changed thrice, the first Inquiring Authority has not concluded the enquiry within six months as contemplated under Rule 14(24)(a) of the CCS (CCA) Rules, 1965.

8. The learned senior counsel for the petitioner urged that the departmental proceeding against the petitioner was initiated with cool calculation and deliberate design to humiliate, harass and victimize the petitioner. When the Director of Local and Fund Audit conducted a special audit in the Department of Tribal Affairs and Hills, the said authority submitted his report to the effect that *(a) almost the issue is cleared, except an amount of Rs.45,881/-, which is to be recovered immediately; (b) the petitioner may be allowed to revoke his suspension order immediately. However, the respondent authorities have not acted on the report of the Director of Local and Fund Audit.*

9. The learned senior counsel further submitted that challenging the suspension order dated 25.2.2020 and the initiation of departmental proceedings and framing of article of charges dated 10.6.2020, the petitioner has filed W.P.(C) No.913 of 2021. During the pendency of the said writ petition, the respondent authorities issued the impugned order dated

18.12.2021, communicated to the petitioner on 11.1.2022, initiating second departmental proceedings by the framing of article after withdrawing the earlier article of charges on the same set of facts, for which the earlier departmental proceedings could not be proved which is under challenge in W.P.(C) No.913 of 2021.

10. According to the learned senior counsel for the petitioner, the initiation of second departmental proceedings without the leave of the Court is illegal, mala fide and unjust and also interfering with the administration of justice. In support of his submission, the learned senior counsel for the petitioner has placed reliance upon the decision in the case of *Athokpam Sukhendrajit Singh v. State of Manipur and others*, 2021 (1) MLJ 93.

11. The learned senior counsel for the petitioner, by placing on record the decision in the case of *Ziauddin v. State of Manipur*, (2016) 4 NEJ 323 (MN), submitted that there is no denial in the affidavit-in-opposition filed by the respondents 1 and 2 that the second departmental proceedings on the same set of facts is not permissible.

12. According to the learned senior counsel for the petitioner, if an averment is not specifically denied, such averment is deemed to have to been admitted and judgment can be delivered under Order 12, Rule 6 CPC. In support, the learned counsel for the petitioner placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Indian Bank v. S.N.Engineers and Suppliers, (2018) 4 SCC 606*. Thus, a prayer has been made to quash the impugned orders.

13. Per contra, Mrs. Ch. Sundari, the learned Government Advocate for the respondents submitted that the petitioner has filed W.P.(C) No.37 of 2022 to quash the order dated 18.12.2021 initiating the second departmental proceedings along with framing of charges on selfsame charges of the earlier charges which are under challenge in W.P.(C) No.913 of 2021; that the petitioner has already filed W.P.(C) No.688 of 2021 challenging the suspension order dated 25.2.2020 and this Court allowed the said writ petition on 15.11.2021. In compliance of the order passed in the said writ petition, the respondent authorities have issued an order dated 21.12.2021 reinstating the petitioner with effect from 20.11.2020; that the respondent authorities have issued Memorandum dated 10.6.2020 for holding enquiry against the petitioner and the article of charges

and statement of imputations of misconduct/misbehavior etc. was furnished. But the said Memorandum dated 10.6.2020, whereby charges framed against the petitioner, was withdrawn vide order dated 7.12.2021; that the Government issued an order dated 21.1.2022 thereby cancelling the earlier order dated 11.1.2022 on the ground that there has been some inadvertent mistake.

14. The learned Government Advocate further submitted that the inability of the respondents to supply documents to the petitioner expeditiously may not be viewed as victimization of the petitioner. Since the impugned order dated 11.1.2022 has already been cancelled, no cause of action exists in maintaining the writ petition.

15. Adding further, the learned Government Advocate submitted that during the preliminary hearing, the Inquiring Authority was apprised by the Presenting Officer that the authority desires to issue a modified charge sheet and that the Commissioner, Departmental Enquiry also agreed the proposal of the Inquiring Authority for serving revised charge sheet to the petitioner. As such, vide order dated 18.12.2021, article of charges against the petitioner were framed after the withdrawal of the order dated 10.6.2020. The impugned order dated

18.12.2021 framing article of charges against the petitioner has not been cancelled. Arguing so, the learned Government Advocate prayed for dismissal of the writ petitions.

16. This Court considered the rival submissions and also perused the materials available on record.

17. The petitioner was functioning as Drawing and Disbursing Officer in the Department of TA & Hills from 24.4.2014 to 31.8.2016 and thereafter, he was removed from functioning as Drawing and Disbursing Officer. On 25.2.2020, the petitioner was placed under suspension on the ground that the disciplinary proceedings are contemplated against him. The charges were framed against the petitioner and the gist of charges dated 10.6.2020 are quoted hereunder for ready reference:

“ARTICLE-I

That, while Shri M.Pheijao Singh, Deputy Director (under suspension), Department of Tribal Affairs and Hills, Government of Manipur was functioning as Head of Office and Drawing & Disbursing Officer of the said Department during the period from 24-04-2014 to 31-08-2016 have misappropriated a sum of Rs.3,96,46,031.00 (Rupees Three crores, ninety six lakhs, forty six thousand

and thirty one only) of the Government money.

ARTICLE-II

That during the aforesaid period the said Shri M. Pheijao Singh, Deputy Director (under suspension), Department of Tribal Affairs & Hills, Government of Manipur while functioning as Drawing & Disbursing Officer in the Directorate of Tribal Affairs & Hills, Manipur the programme/scheme namely (a) Post Matric Scholarship for ST Students, (b) Post Matric/Pre-Matric Scholarship to Scheduled Castes students (c) All Schemes related to Scheduled Castes (d) District Officer, Senapati and € CCD Plan (Maram Primitive Tribe) were allocated to him vide orders No. 1/64/99-TD(B)(Pt) dated 6/10/2015 and 1/5/201-TAHSC(Pt) dated 15/10/2016 respectively, he mismanaged the programme/scheme and misappropriated a large chunk of programme/scheme money.

ARTICLE-III

That, during the aforesaid period and while functioning in the aforesaid Office as an Officer in charge of various programme/schemes of the Department in addition to the work of Head of Office and Drawing & Disbursing Officer Shri M. Pheijao

Singh have transacted fund/money of the programmes/schemes by operating Account/funds of the Directorate in utter violation of the Financial Rules, regulations and instruction issued by the Government of Manipur from time to time and utilized the money as if the funds are his private money thereby leading to misappropriation of money to the tune of Rs.3,96,46,031.00 (Rupees three crores ninety six lakh forty six thousand and thirty one only) which is illegal.

ARTICLE-IV

That during the aforesaid period and while functioning in the above said capacity in the aforesaid Office Shri M. Pheijao Singh did not manage properly as per the Scheme Guidelines of the programme/schemes allocated to him, and also did not maintain the papers, documents, information as expected from an officer who functioned as Head of Office and Drawing & Disbursing Officer of the Directorate of Tribal Affairs & Hills, Government of Manipur.

Shri M. Pheijao Singh during the aforesaid period and while functioning in the aforesaid office failed to maintain absolute integrity and devotion to duty and thus unbecoming of a Government Servant leading to violation of

the provisions of the Central Civil Services (Conduct) Rules, 1964.”

19. By the order dated 22.8.2020, the Additional Chief Secretary (TA & Hills), appointed Shri R K Dinesh Singh (IAS), Commissioner, Departmental Enquiry, as the Inquiring Authority to inquire into the charges framed against the petitioner. In the said order, the suspension period was extended for another three months or till their revocation whichever is earlier. Again by the order dated 17.9.2020, Shri H.Gyan Prakash, IAS, Commissioner-cum-Secretary (Social Welfare/Veterinary) & Special Secretary (Home) & Commissioner Departmental Enquiry (DE), Government of Manipur, was appointed as Inquiring Authority to inquire into the charges framed against the petitioner and one Shri N.Kaikho Mao, Joint Director. Again on 28.9.2021, Shri Devesh Deval, IAS, Commissioner Departmental Enquiry (DE), Government of Manipur was appointed as the Inquiring Authority to inquire into the charges framed against the petitioner.

20. On a perusal of the appointment orders of the Inquiring Authority, it is seen that there is no whisper about the cancellation of the first Inquiring Authority in the appointment order of second Inquiring Authority and similarly, there is no

reference about the cancellation of the second Inquiring Authority in the appointment order of third Inquiring Authority.

21. The petitioner has challenged the suspension order dated 25.2.2020 in W.P.(C) No.688 of 2021 and, this Court, by the order dated 15.11.2021, allowed the said writ petition. The operative portion of the order reads thus:

“(a) The writ petition is allowed.

(b) The Impugned suspension Order dated 25.02.2020 is set aside.

(c) The Respondents Authorities shall treat that the Petitioner (M. Pheijao Singh) have been instated in service with effect from 20.11.2020 with all consequential benefits.

(d) The said exercise shall be done within a period of 4 (four) Weeks from the date of receipt of a copy of this order. No cost.”

22. On 21.12.2021, the Additional Chief Secretary (TA & Hills) issued an order reinstating the petitioner into service with effect from 20.11.2020 with all consequential benefits.

23. At this juncture, the learned counsel for the petitioner submitted that the Inquiring Authority appointed on 22.8.2020 could not conclude the enquiry within six months,

which is violative of Rule 14(24)(a) of the CCS (CCA) Rules, 1965.

24. Rule 14(24)(a) of the CCS (CCA) Rules, 1965 reads thus:

“14. Procedure for imposing major penalties.

.....

(24)(a) The Inquiring Authority should conclude the inquiry and submit his report within a period of six months from the date of receipt of order of his appointment as Inquiring Authority.”

25. On a perusal of Rule 14(24)(a), it is seen that the Inquiring Authority should conclude the inquiry and submit his report within a period of six months from the date of receipt of order of his appointment as Inquiring Authority.

26. In the present, the first appointment of Inquiring Authority was made on 22.8.2020 and after about 25 days, again another Inquiring Authority was appointed and, thereafter, about a lapse of one year, another Inquiring Authority was appointed.

27. With regard to the appointment of Inquiring Authority, it is the say of the learned Government Advocate that consequent upon the transfer of the first Inquiring Authority, the second Inquiring Authority was appointed and thereafter, the

second Inquiring Authority was transferred, which necessitated the authority to appoint Shri Devesh Deval, IAS as Inquiring Authority. However, the same is not reflected in the order of appointment of the Inquiring Authority for the second and third time.

28. The learned Government Advocate further submitted that the preliminary hearing of the departmental enquiry against the petitioner was held on 26.10.2021 and during the course of the preliminary hearing the Inquiring Authority was apprised by the Presenting Officer that the authority intends to issue a modified charge sheet.

29. On a perusal of the order dated 7.12.2021 produced by the learned Government Advocate, it is seen that the charges framed against the petitioner dated 10.6.2020 were withdrawn and the proceedings initiated against the petitioner by appointing Shri Devesh Deval, IAS dated 28.9.2021 was also cancelled. In this regard, the affidavit-in-opposition filed by the respondents 1 and 2 in W.P.(C) No.913 of 2021 reads thus:

“2 (iii) The authorities issued Memorandum dated 10.6.2020 for holding enquiry against the petitioner and Article of Charges and statement of imputations of

misconduct/misbehavior, etc. was furnished. But the said Memorandum dated 10.6.2020 whereby charges framed against Shri M. Pheijao Singh but remained without adjudication was withdrawn vide order dated 7.12.2021.”

30. The respondents themselves admitted that the departmental proceedings dated 10.6.2020 was withdrawn without adjudication. While so, on 18.12.2021, the Additional Chief Secretary (TA & Hills) initiated second departmental proceedings against the petitioner by framing article of charges and the same was communicated to the petitioner under letter dated 11.1.2022 of the Under Secretary (TA & H) calling upon the petitioner to submit his written statement of defence within 7 working days i.e. on or before 21.1.2022, with a condition that if the petitioner fails to submit the written statement of defence, the enquiry will be held ex- parte.

31. The gist of article of charges framed against the petitioner dated 18.12.2021 read thus:

“ARTICLE-I

That, M. Pheijao Singh, Deputy Director (under suspension) Department of Tribal Affairs and Hills, Government of Manipur,

Imphal while functioning of Drawing and Disbursing Officer and Head of Office, Directorate of Tribal Affairs and Hills, Manipur during the period from 24.004.2014 to 31.08.2016 have caused a heavy loss to the tune of Rs.34,86,761/- (Rupees thirty four lakh eighty thousand seven hundred sixty one) only of Government of money.

ARTICLE-II

That, M. Pheijao Singh, Deputy Director (under suspension) Department of Tribal Affairs and Hills, Government of Manipur, Imphal while functioning as the Head of Office and Drawing and Disbursing Officer, Directorate of Tribal Affairs and Hills, Manipur during 24.04.2014 to 31.08.2016 have committed an act thereby causing wrongful and heavy loss of Government money to the tune of Rs.1,02,47,367/- (Rupees one crore two lakh forty seven thousand three hundred sixty seven)only.

ARTICLE-III

That, M. Pheijao Singh, Deputy Director (under suspension) Department of Tribal Affairs and Hills, Government of Manipur, Imphal while functioning as Drawing and Disbursing Officer of the Directorate of Tribal Affairs and Hills, Manipur from 24.04.2014 to 31.08.2016 have failed to recover a sum of

Rs.4,28,599/- (Rupees four lakh twenty eight thousand five hundred ninety nine) only from SAIL, Guwahati, Assam which was recoverable from SAIL for the unsupplied item (GCI Sheets).

ARTICLE-IV

That, M. Pheijao Singh, Deputy Director (under suspension) Department of Tribal Affairs and Hills, Government of Manipur, Imphal was functioning as Drawing and Disbursing Officer of the Directorate of Tribal Affairs and Hills, Manipur. The said M. Pheijao Singh did not make any attempt to recover an amount of Rs.79,90,500/- (Rupees seventy nine lakh ninety thousand five hundred) only from M/s.Kamal Polymers Industries, Thangal Bazar, Imphal for the unsupplied item (Water Storage Tank) during his DDO ship of the aforesaid Directorate.

ARTICLE-V

That, M. Pheijao Singh, Deputy Director (under suspension) Department of Tribal Affairs and Hills, was the Head of Office and Drawing and Disbursing Officer of the Directorate of Tribal Affairs and Hills, Manipur from 24.04.2014 to 31.08.2016 in pursuance of the Government of Manipur, Secretariat: Tribal Affairs and Hills

Department order No.26/38/2013-TA&H(Misc) dated 28.03.2014. As Head of Office and Drawing and Disbursing Officer of the Directorate aforesaid M. Pheijao Singh was making transactions of Government fund relating to the Directorate. While transacting fund M. Pheijao Singh have utilized Government money or made payments without observing Financial Rules, instructions of the Government leading to misappropriation of fund amounting to Rs.16,82,109/- (Rupees sixteen lakhs eighty two thousand one hundred and nine) only out of the fund provided for Infrastructure Development under the Department of Tribal Affairs and Hills, Manipur.

ARTICLE-VI

That, during the period from 24.04.2014 to 31.08.2016 M. Pheijao Singh, Deputy Director (under suspension) Directorate of Tribal Affairs and Hills Department, Manipur was functioning as the Head of Office and Drawing & Disbursing Officer of the Directorate of Tribal Affairs and Hills, Manipur. While functioning as the Head of Office and Drawing & Disbursing Officer of the Directorate aforesaid M. Pheijao Singh utilized the Government money as if the Government money was his private money

leading to misappropriation of Rs.3,10,98,184/- (Rupees three crore ten lakh ninety eight thousand one hundred eighty four) only.

ARTICLE-VII

That, M. Pheijao Singh, Deputy Director (under suspension), Tribal Affairs, Hills and Scheduled Castes Development Department, Manipur (now Tribal Affairs & Hills) was functioning as Head of Office and Drawing and Disbursing Officer of the Directorate of Tribal Affairs and Hills, Manipur during the period from 24.04.2014 to 31.08.2016. The said M. Pheijao Singh was operating the Account of the Directorate being No.31391304922 (Savings) maintained in the State Bank of India, Imphal Secretariat Branch, Secretariat Complex, Babupara, Imphal West, Manipur.

As Drawing and Disbursing officer and Head of Office of the Directorate of Tribal Affairs and Hills, Government of Manipur, the said M. Pheijao Singh during the aforesaid period encashed funds through many A.C. Bills. A sum of Rs.65,66,78,414/- (Rupees sixty five crore sixty six lakh seventy eight thousand four hundred fourteen) only was encashed through many AC Bills.

ARTICLE-VIII

That, M. Pheijao Singh, Deputy Director (under suspension), Tribal Affairs and Hills, Department of Tribal Affairs and Hills, Government of Manipur was the Head of Office and Drawing & Disbursing Officer of the Directorate of Tribal Affairs and Hills, Manipur during the period from 24.04.2014 to 31.08.2016 on the issuance of the Order No.26/38/2013-TA&H (Misc) dated 01.04.2014 by the Government of Manipur Secretariat: Tribal Affairs & Hills Department, M. Pheijao Singh as the Head of Office and Drawing and Disbursing officer of the Directorate of Tribal Affairs and Hills, Manipur was operating the Account No.31391304922 (Saving) maintained in the State Bank of India, Manipur Secretariat Branch, Imphal and transacted Government money during the period aforesaid. In the course of such transaction during the aforesaid period the said M. Pheijao Singh as DDO and HoD of the Directorate of Tribal Affairs and Hills, Manipur made payments through cheques and in cash on many occasions in violation of orders and instructions issued by the Government of Manipur and misappropriated a sum of

Rs.72,78,32,968/- (Rupees seventy two crore seventy eight lakh thirty two thousand nine hundred sixty eight) only.

ARTICLE-IX

That, M. Pheijao Singh, Deputy Director (under suspension), Tribal Affairs and Hills Department was functioning as Head of Office and Drawing and Disbursing Officer of the Directorate of Tribal Affairs and Hills, Government of Manipur from 24.04.2014 to 31.08.2016, Mr. N. Kaikho Mao, Joint Director/Tribal Affairs and Hills, on issuance of the Order No.1/5/2014-TAH&SC dated 23.08.2016 whereby declaring the said N. Kaikho Mao as Head of Office and Drawing & Disbursing officer and took over the charges of HoD and DDO from M. Pheijao Singh on 31.08.2016. On this day of 31.08.2016 there was a difference of Rs.13,87,46,829/- (Rupees thirteen crore eighty seven lakh forty six thousand eight hundred twenty nine) only between the Cash Book Balance and Bank Balance.

ARTICLE-X

That, M. Pheijao Singh, Deputy Director (under suspension), Tribal Affairs and Hills Department was functioning as Head of Office and Drawing and Disbursing Officer of the Directorate of Tribal Affairs and Hills,

Government of Manipur from 24.04.2014 to 31.08.2016. The said M. Pheijao Singh allowed Smt. A. Binodhini Devi, Joint Director, Tribal Affairs and Hills Department, Manipur to retire from the post on 02.08.2014 without bringing to the notice of the higher Authority the liabilities standing against Smt. A. Binodhini Devi and the overdrawal of remuneration by Smt. A. Binodhini Devi as OSD. Shri M. Pheijao Singh, Deputy Director (under suspension) Department of Tribal Affairs and Hills and Drawing and Disbursing Officer and Head of Office of the Directorate of Tribal Affairs and Hills, Manipur violated Rule 3 of the Central Civil Services (Conduct) Rules, 1964.”

32. The learned senior counsel for the petitioner has made three-fold submissions. Firstly, the second departmental enquiry without arriving at a finding qua the earlier enquiry on the same set of facts is not permissible in law. Secondly, the authority had constituted special audit by the Director, Local and Fund Audit, Manipur and after conducting the audit, the Director has submitted a report to the effect that the amount recoverable from the petitioner is only Rs.45,881/-. Thirdly, pending W.P.(C) No.913 of 2021 and that too without leave of the Court, the

second departmental proceedings was initiated, which is unjust and unreasonable.

33. It is pertinent to note that with regard to the averments set out in paragraphs 13 to 15 of the writ petition in W.P.(C) No.37 of 2022, the respondents 1 and 2 have filed affidavit-in-opposition in the following manner:

“6. That with reference to para Nos.13, 14 and 15 of the writ petition, it is humbly submitted that the impugned Order No.1/64/2020-TA & H (Pt-4) communicated on 11.1.2022 (Annexure-A/9 to the writ petition) has now been cancelled vide order dated 21.1.2022. Hence, the allegations of mala fide, illegalities, etc. are denied.”

34. In paragraph 7 of the affidavit-in-opposition filed by the respondents 1 and 2, it has been stated as under:

“7. That with reference to para Nos.16 to 19 of the writ petition, it is humbly submitted that since the impugned order has already been cancelled no cause of action survives (sic) and this writ petition is liable to be closed.”

35. The petitioner has filed a rejoinder to the affidavit-in-opposition filed by the respondents 1 and 2. In paragraphs 4 and 5 of the rejoinder, it is has been stated as under:

“4. That at Para 7 of the Affidavit-in-Opposition of W.P.(C) No.37 of 2022 the Respondents have admitted that since the impugned order has already been cancelled no cause of action survives and this Writ Petition is liable to be closed.

5. That the impugned order is order of 11.1.2022 and 18.12.2021 but cancellation order mentions only order of 11.1.2022 (Annexure X-3 Page 10 and 11) but it is mentioned at Para 7 that no cause of action survives.

In view of the position stated above, it is therefore prayed that the order of 18.12.2021 of framing of Article of charges of 2nd Department Proceeding may kindly be quashed, Annexure A/9 of the Writ Petition No.37 of 2022 by allowing the present Writ Petition (C) No.37 of 2022 for the ends of justice so that the case can be closed as contended by the Respondents.”

36. The stand taken by the respondents 1 and 2 in the affidavit-in-opposition and the reply to the rejoinder filed in

W.P.(C) No.37 of 2022 is admittedly contradictory to each other. The respondents 1 and 2 firmly averred in the affidavit-in-opposition that since the impugned order has already been cancelled no cause of action survives and the writ petition (W.P.(C) No.37 of 2022) may be closed.

37. A litigant can take different stands at different times, but cannot take contradictory stands in the same case.

38. In *Suzuki Parasrampuriah Suitings Private Limited v. Official Liquidator of Mahendra Petrochemicals Limited (In Liquidation) and others*, (2018) 10 SCC 707, the Hon'ble Supreme Court held:

“12. A litigant can take different stands at different times but cannot take contradictory stands in the same case. A party cannot be permitted to approbate and reprobate on the same facts and take inconsistent shifting stands. The untenability of an inconsistent stand in the same case was considered in Amar Singh v. Union of India, (2011) 7 SCC 69, observing as follows:

“50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to court and invokes its writ jurisdiction must come with clean hands. He cannot

prevaricate and take inconsistent positions.””

39. When the respondents 1 and 2 contended that the impugned order No.1/64/2020-TA & H (Pt-4) communicated on 11.1.2022 (Annexure-A9 to the writ petition) has now been cancelled vide order dated 21.1.2022, it is unfair on the part of the respondents 1 and 2 in saying that the Government, vide order dated 21.1.2022, cancelled only the letter dated 11.1.2022 issued against the petitioner and the order dated 18.12.2021 framing article of charges against the petitioner has not been cancelled. At the risk of repetition, this Court reiterates paragraph 7 of the affidavit-in-opposition filed in W.P.(C) No.37 of 2022 that *since the impugned order has already been cancelled no cause of action survives and this Writ Petition is liable to be closed.*

40. At this juncture, it is worthwhile to extract the communication letter dated 11.1.2022 hereunder:

“No.1/642020-TA&H(Pt.4)
GOVERNMENT OF MANIPUR
SECRETARIAT: TRIBAL AFFAIRS & HILLS
DEPARTMENT

Imphal, the 11th January, 2022

To
Shri M Pheijao Singh
Deputy Director, TA&H
Manipur

Subject: Submission of fresh Article of Charge.

Sir,

I am directed to refer to the subject mentioned above regarding submission of fresh Article of Charge and request you kindly to submit written statement of defence within 7 (seven) working days i.e. on or before 21st January, 2022 failing which the enquiry will hold ex-parte.

Encl: As stated above.

Yours faithfully,
Sd/-xxx
(Dr. RA Ransing)
Under Secretary (TA&H)
Govt. of Manipur"

41. It is also necessary to extract the contents in the order dated 21.1.2022, referred to by the respondents 1 and 2 and the same reads thus:

"Whereas in pursuance of Office Memorandum being No.1/64/2020-TA&H(Pt-3) dated 7.12.2021 an Office Memorandum

being No.1/64/2020-TA&H(Pt.4) dated 18.12.2021 proposing to hold an enquiry against Shri M. Pheijao Singh, Deputy Director/TA&H, Manipur who was under suspension by then but reinstated vide Order No.1/5/2021-TAH(H) dated 21.12.2021 was served upon the said Shri M.Pheijao Singh, Deputy Director/TA&H, Manipur with a direction to submit his written statement of defence on the charges set out in the Article of Charges (Annexure-I & II) enclosed with the Memorandum dated 18.12.2021 within 15 (fifteen days) of the receipt of the above said Memorandum dated 18.12.2021.

Whereas, Orders being Nos. being No.1/64/2020-TA&H(Pt.3) dated 07.12.22 and No.1/64/2020-TA&H (Pt.3) dated 07.12.2022 have been issued appointing Shri Devesh Deval, IAS, Commissioner, Departmental Enquiry, Government of Manipur as the Inquiring Authority to inquire into the charges framed against the said Shri M. Pheijao Singh and Shri Th. Chandrabir Singh, Retired Deputy Director (Admn), RIMS, Imphal as the Presenting Officer of the case respectively.

Whereas through some inadvertent mistakes, the Tribal Affairs and Hills

Department, Government of Manipur, have issued a letter No.1/64/2020-TA&H (Pt.-4) dated 11.01.2022 to Shri M. Pheijao Singh, Deputy Director/TA&H, Manipur asking him to submit written statement of defence within 7 (seven) working days, i.e. on or before 21.01.2022, failing which the enquiry will hold ex-parte which is nothing but redundant.

Now, therefore it is to order that the letter No.1/64/2020-TA&H (Pt.4) dated 11.01.2022 is hereby cancelled with immediate effect.”

42. The respondents 1 and 2 filed reply to the rejoinder stating that the Memorandum/Order dated 18.12.2021 framing article of charges against the petitioner has not been cancelled. Admittedly, the said stand taken by respondents 1 and 2 is totally inconsistent with the statement made in paragraph 7 of the affidavit-in-opposition filed in W.P.(C) No.37 of 2022. The respondent authorities should not blow hot and cold by taking inconsistent stands and protract the proceedings unnecessarily.

43. Since the letter dated 11.1.2022 is the communication of fresh charges thereby calling upon the petitioner to submit his written submission of defence, the cancellation includes the Memorandum/Order dated 18.12.2021.

The order dated 22.1.2022, nowhere states retaining of the Memorandum/Order dated 18.12.2021. If the intention of the concerned authority is not to cancel the Memorandum/Order dated 18.12.2021, the said authority ought to have stated accordingly in the order dated 22.1.2022. The aforesaid mistake committed by the authority cannot be legalised by saying that only the letter dated 11.1.2022 is cancelled. The cancellation of the communication letter dated 11.1.2022 alone cannot be made, as the said letter accompanied the Memorandum/Order dated 18.12.2021. That is why the respondents 1 and 2 have filed their affidavit-in-opposition dated 28.9.2022 in W.P.(C) No.37 of 2022 that since the impugned order has already been cancelled no cause of action survives and the writ petition is liable to be closed. If the authority concerned has really not cancelled the proceedings, it ought not to have filed such an affidavit praying to close the writ petition. Now taking a volte-face, the respondents 1 and 2 cannot contend that the letter dated 11.1.2022 is alone cancelled and the Memorandum/Order dated 18.12.2021 remained as such.

44. Assuming *arguendo*, the Memorandum/Order dated 18.12.2021 remains as such, as rightly argued by the learned counsel for the petitioner, initiating the second

departmental proceedings by framing of article of charges after withdrawing the earlier article of charges on the same set of facts is not permissible. Admittedly, there is no denial by the respondents 1 and 2 in the affidavit-in-opposition that the second departmental proceedings on the same set of facts is not permissible.

45. The impugned Memorandum/Order dated 18.12.2021 is quoted hereunder for ready reference:

“No. 1/64/2020-TA&H(Pt-4): It is proposed to hold an inquiry against Shri M.Pheijao Singh, Deputy Director (under suspension), Department of Tribal Affairs and Hills, Government of Manipur, Imphal under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehavior in support of each article of charge is enclosed (Annexure-II). A list of documents by which, and a list of witness by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure-III and IV).

2. *Shri M. Pheijao Singh, Deputy Director (under suspension), Department of Tribal Affairs and Hills, Government of Manipur is directed to submit within 15 (fifteen) days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.*

3. *He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He would, therefore, specifically admit or deny each article of charge.*

4. *Shri M. Pheijao Singh, Deputy Director (under suspension), Department of Tribal Affairs and Hills, Government of Manipur Imphal is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, or the Order/directions issued in pursuance of the said rule, the Inquiring Authority may hold inquiry against him ex-parte.*

5. *Attention of Shri M. Pheijao Singh, Deputy Director (under suspension), Department of*

Tribal Affairs and Hills, Government of Manipur, Imphal is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government, if any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Shri M. Pheijao Singh, Deputy Director (under suspension), Department of Tribal Affairs and Hills, Government of Manipur, Imphal is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Central Civil Services (Conduct) Rules, 1964.”

46. While withdrawing the first departmental proceedings under order dated 7.12.2021, the first respondent has stated that the authority intends to issue a modified charge sheet.

47. It is pertinent to note that under Rule 14 of the CCS (CCA) Rules, 1965, under which the disciplinary authority is

initiating the departmental proceedings, there is no provision enabling and empowering the authority to alter, amend, modify the article of charges already issued.

48. The explanation to Rule 14(23) of the CCS (CCA) Rules, 1965 empowers the Inquiring Authority to give a finding different from the original article of charges and it may record its findings on such article of charges. Qua modifying, altering, amending the article of charges, finding can be recorded other than original article of charges. As held by the Hon'ble Supreme Court, the disciplinary authority cannot read any expressions into the provisions of Rule 14 of the CCS (CCA) Rules to modify, alter and amend the original article of charges.

49. On a reading of the article of charges framed during the first departmental proceedings (challenged in W.P.(C) No.913 of 2021) and the second departmental proceedings (challenged in W.P.(C) No.37 of 2022), it is clear that both are similar. As stated supra, there is no specific denial in the affidavit-in-opposition that second departmental enquiry on the same set of facts without logical conclusion of the earlier departmental enquiry is not permissible, being violative of Rule 15 of the CCS (CCA) Rules, and it also amounts to admission by the respondents 1 and 2.

50. In *Kanailal Bera v. Union of India and others*, (2007) 11 SCC 517, the Hon'ble Supreme Court held:

"6. ... Once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. In a given situation further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him another inquiry would be directed to be initiated on the selfsame charges which could not be proved in the first inquiry."

51. An averment made in the petition is expected to be specifically denied by the replying party and if there is no specific denial, such averments is deemed to have been admitted by the respondent.

52. In *T.P.Gopalakrishnan v. State of Kerala*, 2023 (1) SCALE 1, the Hon'ble Supreme Court held:

"38. Thus, it can be said that the present cases pertain to the same set of facts and are in respect of same offences, for the same

period, committed in the same capacity as the previous three cases wherein the appellant herein was already prosecuted in the year 1999. The core allegation in all these five cases pertains to misappropriation by making false entries in the cash book. The allegation of the prosecution that two-thirds of the auction amount was not remitted to the treasury would be covered under the allegations of misappropriation of funds, that the appellant has already been prosecuted for in the year 1999. The appellant is right in contending that the charge in the first three cases were framed on 17.08.1999 which is much after the audit and the prosecution would have been well aware of the misappropriation in respect of the present cases on 17.08.1999.”

53. In the light of the decision in *T.P. Gopalakrishnan*, supra, when we examine the present case, it is clear that the second departmental proceedings pertains to the same set of facts and in respect of the same allegation of the first departmental proceeding and allegedly committed in the capacity as in the previous departmental proceedings, which was cancelled by the respondent authorities.

54. As rightly argued by the learned counsel for the petitioner, the initiation of second departmental proceedings thereby framing of article of charges on the selfsame charges as the earlier charges without the leave of the Court is illegal, mala fide and also interfering with the administration of justice. In other words, W.P.(C) No.913 of 2021 was filed on 13.12.2021 to quash the first departmental proceeding. During the pendency of the said writ petition, the respondent authorities issued the impugned order initiating second departmental proceedings by framing charges on 18.12.2021, which was communicated to the petitioner on 11.1.2022 without the leave of the Court. The argument of the learned senior counsel for the petitioner is that the action of the respondent authorities is not only mala fide, but also an abuse of process of the Court to render W.P.(C) No.913 of 2021 otiose and infructuous. This Court finds some force in the submission made by the learned counsel for the petitioner. Admittedly, the aforesaid plea of the petitioner has not been controverted by the respondents. On the other hand, the respondents have stated in the affidavit-in-opposition filed in W.P.(C) No.913 of 2021 that “*no cause of action survives and the writ petition is not maintainable*”. Similarly, the stand taken in the affidavit-in-opposition filed by the respondents 1 and 2 in W.P.(C)

No.37 of 2022 is that “*since the impugned order has already been cancelled no cause of action survives and this writ petition is liable to be closed*”. The impugned order assailed in W.P.(C) No.37 of 2022 is the order dated 18.12.2021, which was communicated on 11.1.2022. This Court in the earlier paragraph held that the second departmental proceedings initiated against the petitioner for the same set of selfsame charges is not legally sustainable.

55. The learned senior counsel for the petitioner argued that the authority had constituted a special audit done by the Director, Local and Fund Audit, Manipur, and, after conducting the audit, the Director has submitted a report to the effect that the amount recoverable from the petitioner is only Rs.45,881/-. In support, the learned counsel drew the attention of this Court to the report of the Director, Local Fund Audit, Manipur (Annexure-A/8). On a perusal of the audit report, this Court finds that the audit was conducted for the period from 2011-2012 to 2019-20. Upon auditing, the authority submitted the report in respect of the petitioner as follows:

*“C) Shri M. Pheijao Singh, Deputy Director
w.e.f. 25/04/2014 to 30.08.2016*

An amount of Rs.87,68,631/- standing as outstanding advance against Shri M. Pheijao Singh, Deputy Director/former HOO/DDO (TA & Hills) now under suspension w.e.f. 25/02/2020. During the test check of the documents submitted by the office of the TA & Hills and Shri M. Pheijao Singh, Dy. Director/TA & Hills, former HOO/DDO (under suspension) submitted documents to the Director, TA & Hills. It is found that the amount of Rs.87,22,650/- charged to him as liability stands Rs.45,881/- only as an advance as per documents enclosed.

In view of examination/auditing of expenditures incurred by Shri M. Pheijao Singh, almost the issue is cleared excepting the amount of Rs.45,881/-. The amount be recovered immediately.

It is pertinent to mention that Shri M. Pheijao Singh may be allowed to revoke his suspension immediately as per his statement of Accounts occurred during his tenure.”

56. While issuing the first departmental proceedings, the respondents stated that during the period from 24.4.2014 to 31.8.2016, the petitioner had misappropriated a sum of Rs.3,96,46,031.00 of the Government money. In the second

departmental proceedings, the respondent stated that during the period from 24.4.2014 to 31.8.2016, the petitioner had caused loss to the tune of Rs.34,86,761/-, Rs.1,02,47,367/-, 4,28,599/-, 16,82,109/- and Rs.3,10,98,184/- respectively of the Government money and he has failed to make any attempt to recover a sum of Rs.79,90,500/- from M/s. Kamal Polymers Industries. When the auditing authority audited the accounts for the period from 2011-2012 to 2019-2020 and came to the conclusion that the liability stands on the petitioner is only Rs.45,881/-, the misappropriation of the Government money alleged by the respondent authorities in the charge memo is highly doubtful. That apart, the report of the auditor is prior to the initiation of the second departmental proceedings.

57. It is not the case of the respondents that the audit report is not reliable. In paragraph 12 of the writ petition, the petitioner averred that since the audit report is in favor of the petitioner, the authority has not put the report into action, which clearly and abundantly proved the mala fide and bias of the authority. With regard to the averments made paragraph 12 of the writ petition, the respondents 1 and 2 filed affidavit-in-opposition as under:

“5. That with reference to para No.12 of the writ petition, it is denied that there has been any mala fide and bias on the point of authority.”

58. Except the above, no particulars have been mentioned by the respondents in the affidavit-in-opposition that the audit report dated 24.6.2021 cannot be used by the petitioner. As rightly argued by the learned counsel for the petitioner, since the audit report is in favour of the petitioner and Rs.45,881/- is shown as liability of the petitioner out of the charged amount of Rs.87,22,650/-, the respondent authorities are bound to put the report into action. Further, the auditing authority has recommended for revocation of suspension of the petitioner. If the petitioner has committed huge loss to the Government, the auditing authority would not recommend revocation of suspension order.

59. The initiation of departmental proceedings by issuance of article of charges against the petitioner and its subsequent cancellation by the respondent authorities for one reason or the other would definitely prove the cool calculation and malevolent design to harass, humiliate and victimize the petitioner. As stated supra, under Rule 14(24)(a) of the CCS

(CCA) Rules, 1965, the Inquiring Authority has to conclude the inquiry and submit his report within six months from the date of receipt of the order of appointment.

60. Though the respondent authorities initiated departmental proceedings against the petitioner way back in the year 2020, they have not taken keen interest in proceeding further to reach a logical conclusion in the departmental proceedings. In other words, the first enquiry could not be brought to its logical end and the same charges were withdrawn and second enquiry has been initiated on the same set of facts which are split up facts by splitting the article of charges which is admittedly not permissible in law.

61. The role model of governance and decision making thereof should manifest justice, fair play, equity and free from illegalities, arbitrariness. The cardinal principle of governance in a civilized society based on rule of law must create an impression that the decision making is motivated on the consideration of probity, strictly adhering to rule of law, law declared by the Court and the principles of service jurisprudence. This Court is highlighting the above only to show the intention and action of the respondent authorities to victimize the petitioner. Admittedly, in the case on hand, the respondent authorities have taken

inconsistent pleas. Taking the inconsistent pleas by a party makes a conduct far from satisfactory. As rightly argued by the learned counsel for the petitioner, the action of respondent authorities is not only mala fide, but also an abuse of process of the Court. On the whole, this Court is of the considered view that there are merits in the writ petitions. Exercising the arbitrary power, the first respondent has issued the impugned orders, which are not sustainable in the eyes of law and, therefore, the same are liable to be quashed.

62. In the result,

- (i) W.P.(C) Nos. 37 of 2022 and 913 of 2021 are allowed.
- (ii) The impugned order No. 1/64/2020-TA & HILLS dated 25.2.2020 initiating Departmental Proceedings and framing Memorandum with Articles of charges vide order No. 1/64/2020-TA & HILLS dated 10.6.2020 and order No. 1/64/2020-TA & H(Pt-4) dated 18.12.2021 communicated on 11.1.2022 (A/9) initiating Second Departmental

Proceedings with framing of Articles
of charges are set aside.

(iii) There will be no order as to costs.

ACTING CHIEF JUSTICE

FR/NFR

Sushil