

GAHC010159672023



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

Case No. : WP(C)/4365/2023

TARUN BASUMATARY
S/O- LT. MEDHA RAM BASUMATARY,
R/O- VILLAGE- NO. 1 SANTIPUR,
P.O. AND P.S.- UDALGURI,
DISTRICT- UDALGURI, ASSAM,
PIN- 784509.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER OF EXCISE ASSAM,
HOUSE FED COMPLEX, DISPUR,
GUWAHATI- 781006.

2:THE BODOLAND TERRITORIAL COUNCIL
REPRESENTED BY PRINCIPAL SECRETARY
BTC

KOKARJHAR
ASSAM.

3:THE JOINT SECRETARY
EXCISE DEPARTMENT
BTC
KOKRAJHAR.

4:THE DEPUTY COMMISSIONER OF EXCISE-CUM-CHD
EXCISE DEPARTMENT
BTC
KOKARJHAR.

5:THE SUPERINTENDENT OF EXCISE

UDALGURI
P.O. AND P.S.- UDALGURI

Advocate for the Petitioner : MR. S CHAUHAN

Advocate for the Respondent : SC, EXCISE DEPTT.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

16-08-2023

Heard Mr. S. Chauhan, learned counsel for the petitioner and Mr. R.R. Gogoi, learned Standing counsel, Excise Department of the State for the respondent No. 1. Also heard Mr. B. Chaudhury, learned Standing counsel, BTC for the respondent Nos. 2 to 5.

2. The petitioner, an Excise Constable, Mazbat Circle, Udalguri was arrested on 10.10.2022 in ACB P.S. Case No. 46/2022 registered under Section 7 (a) of the Prevention and Corruption Act, 1988 and was detained in custody for more than 48:00 hours.

3. By order under No. CHD/Excise-48/2019/245 dated 11.11.2022, the Deputy Commissioner of Excise, BTC-cum-CHD Excise Department, BTC, Kokrajhar suspended the petitioner from service under the provisions of Rule 6 (2) of the Assam Services (Discipline & Appeal) Rules, 1964 until further orders with a direction that during the period of his suspension, the petitioner will be entitled to draw subsistence allowance as admissible under the law.

4. As the petitioner was not served with any show cause notice for more than 3 months from the date of his arrest, i.e., 10.10.2022 and even after the order dated 11.11.2022 issued by the Deputy Commissioner of Excise, BTC-cum-CHD Excise Department, BTC, Kokrajhar, the petitioner has filed this writ petition for a direction to the respondent authorities to reinstate him in service in terms of the order of the Hon'ble Apex Court passed in the case of *Ajay Kumar Choudhary Vs. Union of India*, reported in (2015) 7 SCC 291.

5. During the deliberation of the matter, Mr. Gogoi, learned Standing counsel, Excise Department

placed before the Court a copy of the written communication under No. CHD/Excise-48/2019/317 dated 01.08.2023 issued by the Deputy Commissioner of Excise-cum-CHD Excise Department, BTC, Kokrajhar and submitted that on 07.07.2023, show cause notice was issued to the petitioner to which he submitted his reply on 31.07.2023 wherein the petitioner rebutted the charges.

6. By the said communication dated 01.08.2023, noted above, the Deputy Commissioner of Excise-cum-CHD Excise Department, BTC, Kokrajhar apprised the Court that the reply of the petitioner dated 31.07.2023 was not found to be satisfactory and as such, on 01.08.2023, the said authority requested the Disciplinary Authority, i.e., the Bodoland Territorial Council, to constitute a Board of Inquiry under Rule 9 (4) of the Assam Services (Discipline and Appeal) Rules, 1964 stating that action as per law against the delinquent employee, i.e., the petitioner, shall be taken by the BTC authority after receipt of the report of the enquiry initiated against him.

7. Rule 2.1.8 of the Manual of Departmental Proceedings Assam, stipulates as follows –

2.1.8. The following principles and procedures with regard to suspension need strict compliance

–

(i) *suspension should be resorted to only in cases where a major punishment is likely to be imposed if the charges are proved;*

(ii) *charges and the statement of allegations should be served within three months from the date of suspension failing which the Government Servant concerned should be reinstated; and*

(iii) *in cases where it is not reasonably practicable to prepare the charges for service within three months from the date of suspension and the continued suspension of the Government servant is considered necessary in the public interest, the authority concerned should move the Personnel Department through Administrative Department well before the expiry of the period of three months with a letter detailing the nature of the allegations and the reasons for which charges could not be prepared so that the Personnel Department could advice whether any further extension of the period of suspension should be permitted or not.*

Where the services of a Government servant are lent to the Central Government, any other State government or to local or other Authority, the Borrowing Authority will have the powers of the Appointing Authority for the purpose of placing the officer under suspension and of the Disciplinary Authority for the purpose of initiating a disciplinary proceeding against him subject

to the provisions of the Assam Services (Discipline and Appeal) Rules, 1964.

8. Apparently, the petitioner was arrested on 10.10.2022 and show cause notice was issued to him by the respondent authorities in the Excise Department, BTC, Kokrajhar only on 07.07.2023 which is much after 3 (three) months/90 (ninety) days from the date of his arrest, i.e., 10.10.2022 as well as from the order dated 11.11.2022 issued by the Deputy Commissioner of Excise, BTC-cum-CHD Excise Department, BTC, Kokrajhar by which he was placed under suspension.

9. For the reasons above, the impugned suspension order of the petitioner under No. CHD/Excise-48/2019/245 dated 11.11.2022 issued by the Deputy Commissioner of Excise, BTC-cum-CHD Excise Department, BTC, Kokrajhar, is not sustainable in law as the respondent authorities in the Excise Department under BTC only on 07.07.2023 issued show cause notice to him after more than 3 (three) months/90(ninety) days from date of his arrest on 10.10.2022 and accordingly, the same being not sustainable under law on completion of its 90 (ninety) days is hereby set aside and quashed.

10. However, it is made clear that the respondent authorities in the Excise Department under BTC shall be at liberty with regard to the posting of the petitioner as in the meanwhile departmental proceeding has been initiated against him that as being clarified by the Deputy Commissioner of Excise-cum-CHD Excise Department, BTC, Kokrajhar vide communication dated 01.08.2023, noted above.

11. With the above observation and direction, this writ petition stands disposed of.

12. Copy of the impugned suspension order of the petitioner under No. CHD/Excise-48/2019/245 dated 11.11.2022 issued by the Deputy Commissioner of Excise, BTC-cum-CHD Excise Department, BTC, Kokrajhar as well as the copy of the communication under No. CHD/Excise-48/2019/317 dated 01.08.2023 of the said authority along with the copy of the format dated 15.07.2023 placed before the Court today by Mr. Gogoi, learned Excise Department, be kept as part of the record.

JUDGE

Comparing Assistant