

GAHC010165122024



2024:GAU-AS:11741

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

Case No. : WP(C)/4199/2024

JYOTI PRASAD DAS
(ASSISTANT ENGINEER, TINSUKIA MUNICIPAL BOARD),
SON OF LT. TARUN CHANDRA DAS,
R/O- BORDUBI NAVAPUR GAON,
P.O.- HOOGRIJAN,
P.S.- TINSUKIA,
DISTRICT- TINSUKIA, PIN- 786125,
ASSAM.

VERSUS

THE GOVERNMENT OF ASSAM AND 2 ORS
BEING REPRESENTED BY THE JOINT SECRETARY TO THE GOVERNMENT
OF ASSAM,
DEPARTMENT OF HOUSING AND URBAN AFFAIRS,
ASSAM SECRETARIAT, DISPUR, GUWAHATI- 781006, ASSAM.

2:THE DISTRICT COMMISSIONER
TINSUKIA DISTRICT
PIN- 786126
ASSAM.

3:THE CHAIRMAN
TINSUKIA MUNICIPAL BOARD
DISTRICT- TINSUKIA
PIN- 786126
ASSAM

Advocate for the Petitioner : MR. A R SHOME, MR A J GHOSH

Advocate for the Respondent : GA, ASSAM, SC, TMB

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Date of hearing : 27.11.2024

Date of Judgment : 27.11.2024

Judgment & order(Oral)

Heard Mr. Aunindya Ratan Shome, learned counsel, appearing on behalf of the petitioner. Also heard Mr. R. Dhar, learned Addl. Senior Government Advocate, appearing on behalf of respondents No. 1 & 2; and Mr. S. S. Roy, learned standing counsel, appearing on behalf of respondent No. 3/Tinsukia Municipal Board.

2. The petitioner, herein, has assailed the order, dated 09.10.2023, issued by the respondent No. 3, towards placing him under suspension on the basis of certain serious allegations received against him. The petitioner has further presented a challenge to the order, dated 08.01.2024, by which the order of suspension of the petitioner was further extended till conclusion of the Disciplinary Proceeding initiated against him.

3. The petitioner, herein, while working as an Assistant Engineer in Tinsukia Municipal Board, was issued with communications, requiring him to submit his reply pertaining to allegations of demanding bribe. The petitioner replied to the said communication, so received by him and thereafter, the Chairman, Tinsukia Municipal Board, vide order, dated 09.10.2023, proceeded to place the petitioner, herein, under suspension so as to ensure that no documents/records are tampered by him during the conduct of the Disciplinary Proceeding stated to have been initiated against him.

4. The period of suspension of the petitioner was, thereafter, extended vide order, dated 08.01.2024, issued by the respondent No. 3, herein, and it was extended till conclusion of the Disciplinary Proceeding initiated against him.

5. The petitioner being aggrieved of the said order, dated 09.10.2023 and order, dated 08.01.2024, as well as on the ground that the suspension of the petitioner was being so continued without initiation of any Disciplinary Proceeding against him which was contended to be in violation of the law laid down by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary v. Union of India through its Secretary & anr.**, reported in **(2015) 7 SCC 291**, instituted the present writ petition.

6. Mr. Shome, learned counsel for the petitioner, has placed reliance on the decision of the Hon'ble Supreme Court rendered in the case of **Ajay Kumar Choudhary**(supra) and has submitted that the respondent authorities could not have kept the petitioner, herein, under perpetual suspension without initiating any Disciplinary Proceeding against him. It is submitted by the learned counsel that there was no Disciplinary Proceeding initiated against the petitioner till the date of filing of the instant writ petition.

7. In the above premises; Mr. Shome, learned counsel for the petitioner, has submitted that the order, dated 09.10.2023 and order, dated 08.01.2024, would call for an interference from this Court.

8. Per contra, Mr. Roy, learned standing counsel, Tinsukia Municipal Board, appearing for respondent No. 3, has placed on record, a copy of the communication, dated 01.10.2024, issued to the petitioner, herein, by the

Chairman, Tinsukia Municipal Board, instituting a Disciplinary Proceeding against him basing on an allegation of having demanded bribe of Rs. 40,000/- from one Shri Santanu Dutta for clearance of his bill.

9. Mr. Roy, learned standing counsel, Tinsukia Municipal Board, has also submitted that in view of the fact that the Disciplinary Proceeding has been so initiated against the petitioner and the allegations levelled against him being of bribe; the conduct of the petitioner would not mandate his reinstatement in his service by way of revocation of the order of suspension of the petitioner and accordingly, the learned standing counsel has submitted that this Court would be pleased not to interfere with the order of suspension, dated 09.10.2023, issued against the petitioner and permit the Tinsukia Municipal Board authorities to proceed with the Disciplinary Proceeding so initiated against him vide the Show Cause Notice, dated 01.10.2024.

10. Mr. Dhar, learned Addl. Senior Government Advocate, appearing on behalf of the respondent No. 2 i.e. District Commissioner, Tinsukia, has submitted that the allegations levelled against the petitioner, herein, is severe in nature and the same was so brought to the notice of the Tinsukia Municipal Board authorities by the Department of Housing & Urban Affairs, Government of Assam, through the District Commissioner, Tinsukia, and accordingly, the petitioner, admittedly, being involved in a case pertaining to demand of bribe; his continuance in service as an Assistant Engineer in Tinsukia Municipal Board would be detrimental to the interests of the said Tinsukia Municipal Board as well as the public at large.

11. Mr. Dhar, learned Addl. Senior Government Advocate, accordingly, has submitted that in view of the pendency of the Disciplinary Proceeding initiated

against the petitioner, herein; the order of his suspension may not be interfered with by this Court at this stage and the Tinsukia Municipal Board shall be permitted to take the Disciplinary Proceeding so initiated against the petitioner to its logical conclusion.

12. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

13. At the outset, it is to be noted that Mr. Dhar, learned Addl. Senior Government Advocate, appearing for respondent No. 2 i.e. District Commissioner, Tinsukia, had prayed that he be granted a week's time to file an affidavit in the matter on behalf of the said respondent No. 2. However, considering the fact that the District Commissioner, Tinsukia, is, neither, an appointing authority, nor, an appellate authority; this Court had rejected the prayer so made by Mr. Dhar, learned Addl. Senior Government Advocate, and proceed to hear the case, in hand, on its merit.

14. The facts, as noticed hereinabove, is not in dispute.

15. The petitioner, herein, was placed under suspension vide order, dated 09.10.2023, issued by the Chairman, Tinsukia Municipal Board. A perusal of the said order, dated 09.10.2023, would go to reveal that a Disciplinary Proceeding was stated therein, to have already been initiated against the petitioner and accordingly, with a view to ensure that the documents/records are not tampered with by the petitioner during the course of such pending Disciplinary Proceeding; he came to be placed under suspension.

16. This Court has perused the materials available on record and has not found any Show Cause Notice, issued by the Chairman, Tinsukia Municipal Board, instituting a Disciplinary Proceeding against him, prior to issuance of the Show Cause Notice, dated 01.10.2024.

17. It is a settled position of law that a Disciplinary Proceeding can be said to have been instituted only on issuance of a Show Cause Notice/memorandum of charge to a delinquent Officer/employee.

18. In the case on hand; the Show Cause Notice issued to the petitioner on 20.09.2023, was not a Show Cause Notice, per se, instituting a Disciplinary Proceeding against him but was a Show Cause Notice, requiring the petitioner to submit his reply as to why Disciplinary Proceeding shall not be initiated against him with regard to the misconduct committed by him in discharge of his duties.

19. The Disciplinary Proceeding so initiated against the petitioner can be said to have been so initiated only with the issuance of a Show Cause Notice, dated 01.10.2024, under the provisions of Rule 9 of the Assam Services(Discipline and Appeal) Rules, 1964.

20. Accordingly, on the date when the order of suspension, dated 09.10.2023, was so issued in respect of the petitioner, herein; no Disciplinary Proceeding was pending against him and the contentions so made in the order, dated 09.10.2023, that there was a Disciplinary Proceeding pending against the petitioner as on that date, is clearly perverse.

21. The Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary**(supra), has clearly mandated that the currency of a suspension order should not extend beyond 3 months if within this period, the memorandum of charge/charge-sheet is not served on the delinquent Officer/employee. If the memorandum of charge/charge-sheet is so served, a reasoned order must be passed for extension of the suspension period.

22. Accordingly, it is to be understood that the currency of an order of suspension would not extend beyond 3 months if within this period, the memorandum of charge/charge-sheet is not served on the delinquent Officer/employee.

23. Applying the decision of the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary**(supra) to the facts of the present case, it is clear that there being no Disciplinary Proceeding pending against the petitioner as on 09.10.2023, on which date, he was placed under suspension and no such Disciplinary Proceeding having been initiated against him within a period of 3 months from the date of issuance of the order of his suspension, dated 09.10.2023; the order of suspension, dated 09.10.2023, cannot be said to be continuing after a lapse of 3 months from the date of its issuance.

24. In that view of the matter; this Court has no hesitation to hold that the suspension of the petitioner, herein, ceased to have the effect upon completion of 3(three) months with effect from the date of issuance of the order, dated 09.10.2023, and the same cannot be said to be in currency as on date.

25. The extension of the suspension of the petitioner, herein, as effected

vide order, dated 08.01.2024, would also not be sustainable in-as-much as, as of 08.01.2024; no Disciplinary Proceeding stood initiated against him.

26. Accordingly, the order, dated 09.10.2023, and the order, dated 08.01.2024, stands set aside with immediate effect and the petitioner, herein, is now directed to be reinstated in his service, forthwith.

27. However, noticing the allegations so levelled against the petitioner, herein, and appreciating the fact that his continuation may not be called for against a post of sensitive nature; this Court by relying on the further directions as passed by the Hon'ble Supreme Court in paragraph No. 21 of the **Ajay Kumar Choudhary**(supra); directs the respondent authorities to engage the petitioner against a non-sensitive post till conclusion of the Disciplinary Proceeding now initiated against him vide Show Cause Notice, dated 01.10.2024.

28. In this connection, the observation made by the Hon'ble Supreme Court in the case of **Ajay Kumar Choudhary** (supra) in paragraph No. 21, is extracted hereinbelow, for ready reference:

“21. 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 recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize 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.”

29. With the above directions and observations, this writ petition, accordingly, stands disposed of.

30. The copy of the communication, dated 01.10.2024, as well as the Show Cause Notice, dated 01.10.2024, produced by Mr. Dhar, learned Addl. Senior Government Advocate, are kept as a part of the record and marked as 'X' for the purpose of identification.

JUDGE

Comparing Assistant