GAHC010152102024

2026:GAU-AS:10270

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

Case No. : WP(C)/3862/2024

VIJAY KUMAR SINGH
SON OF LATE MUKHDEO SINGH, RESIDENT OF MAKUM ROAD, POST OFFICE AND POLICE STATION- TINSUKIA, PIN- 786125, DISTRICT- TINSUKIA, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SPECIAL SECRETARY TO THE GOVERNMENT OF ASSAM, PUBLIC WORKS ROADS DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
DISPUR
GUWAHATI- 781006

3:THE ADDITIONAL CHIEF ENGINEER
PUBLIC WORKS ROADS DEPARTMENT
EASTERN ZONE
DIBRUGARH- 786001

4:THE STATE ENQUIRY OFFICER
ASSAM
ASSAM SECRETARIAT (CIVIL)
DISPUR

GUWAHATI- 78100

Advocate for the Petitioner : MR. JYOTIRMOY ROY, MR. A DEKA,MR. S BORTHAKUR,MR. A. GAYAN,DIPTI CHAKRAVARTY,MR. T K MISRA,MR. P K MUNIR

Advocate for the Respondent : SR. GA, ASSAM, SC, PWD

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

24/07/2026

Heard Mr. S Borthakur, learned counsel for the petitioner and Mr. P Nayak, learned Additional Advocate General, Assam, appearing for the respondents.

2. The petitioner in the present writ petition has raised a grievance with regard to non-consideration of his case for promotion from the cadre of Assistant Executive Engineer to the cadre of Executive Engineer in the Public Works (Roads) Department. The petitioner has further prayed for a direction upon the respondent authorities to conclude the departmental proceedings instituted against him, vide issuance of a Show Cause Notice dated 25.09.2018.

3. The petitioner, herein, while working as an Assistant Executive Engineer at Tinsukia, came to be placed under suspension, vide an order dated 01.07.2017, in pursuance to his arrest in connection with CM's SVC Vigilance P.S. Case No. 07/2017. Thereafter, a departmental proceeding was instituted against the petitioner, vide issuance of a Show Cause Notice dated 25.09.2018.

The petitioner, being aggrieved, by his prolonged suspension, had assailed the order of his suspension dated 01.07.2017, before this Court by way of instituting a writ petition, being WP(C) No. 220/2018.

This Court vide an order dated 01.10.2018, had directed for the prospective revocation of the order of suspension of the petitioner and directed for reinstatement of the petitioner in his service. The petitioner was, accordingly, reinstated in his services.

The petitioner submitted his Show Cause Reply on 30.04.2019 to the Show Cause Notice dated 25.09.2018. Thereafter, it is seen that the respondent authorities have convened a meeting of the Departmental Promotion Committee for considering the cases of the incumbents in the cadre of Assistant Executive Engineer for promotion to the cadre of Executive Engineer. The said Departmental Promotion Committee in the meeting so convened, had, however, not considered the case of the petitioner, noticing the departmental as well as criminal proceedings instituted against him.

It is further projected by the petitioner that a perusal of the minutes of the Selection Committee meetings held over the period of time, brought on record, in the present writ petition, reveals that the case of the petitioner on consideration on merits was also not kept in the sealed cover. It is projected that the petitioner in the Seniority List of Assistant Executive Engineer, circulated vide a Notification dated 05.02.2024, was placed at serial No. 1.

It is in the above background that the petitioner has instituted the present writ petition, praying for the reliefs, noticed hereinabove.

4. Mr. Borthakur, learned counsel for the petitioner, by reiterating the facts

noticed hereinabove, has submitted that the departmental proceedings instituted against the petitioner, vide the Show Cause Notice dated 25.09.2018, had not been taken to its logical conclusion. He submits that an Enquiry Officer has been appointed in the matter, however, the said enquiry has not been concluded and no enquiry report has been submitted by the Enquiry Officer.

4.1 Mr. Borthakur, learned counsel for the petitioner submits that on account of the long pendency of the departmental proceeding, a prejudice has been caused to the service interest of the petitioner. He submits that a direction is called upon to be issued by this Court to the respondent authorities, requiring the conclusion of the departmental proceedings within a definite time frame.

4.2 Mr. Borthakur, learned counsel for the petitioner has further submitted that the departmental proceeding and/or criminal proceeding pending against an employee, would be of no consequence for consideration of his case on merits by the constituted Departmental Promotion Committee for promotion to the next higher grade. However, he submits that when an employee is under cloud, the recommendation of the Selection Committee in respect of such employees, is required to be kept in a sealed cover, which is mandated to be opened only after the conclusion of the proceedings pending against such employee.

4.3 Mr. Borthakur, learned counsel for the petitioner submits that although, the Selection Committee was required to consider the case of the petitioner on merits and keep its recommendation in a sealed cover, the minutes of the meetings of the Selection Committee, reveals that the case of the petitioner was not considered at all. He submits that the respondents have justified the non-consideration of the case of the petitioner, by projecting that the petitioner had

not submitted his Annual Property Returns as well as his ACRs.

4.4 Mr. Borthakur, learned counsel for the petitioner submits that the said contention is not tenable, inasmuch as, the ACRs/APARs of the petitioner were being forwarded after the same was processed in the matter required to the competent authority of the department. He also submits that the petitioner had submitted the Annual Property Return (APR) as per the procedure mandated. Accordingly, he submits that there is no reason as to why the case of the petitioner was not considered by the Selection Committee and the recommendation kept in a sealed cover.

4.5 Mr. Borthakur, learned counsel for the petitioner, in view of the long delay occasioning in conclusion of the departmental proceedings instituted against him, has prayed that the petitioner be promoted on adhoc basis as Executive Engineer, pending finalization of the departmental proceedings instituted against him.

5. Per contra, Mr. Nayak, learned Additional Advocate General has submitted that it is a settled position of law, which is also revealed from the Office Memorandums, issued by the Government of Assam in this connection that an employee, against whom, a departmental and/or criminal proceeding is so pending is to be considered by the Selection Committee for promotion on merits and the recommendation of the Selection Committee in respect of such employee, is to be kept in a sealed cover.

5.1 From the affidavit filed by the respondents, Mr. Nayak, learned Additional Advocate General further submits that the ACRs/APARs of the petitioner as well as his Annual Property Return's not being furnished at the appropriate time, a

due consideration of the case of the petitioner was not permissible to be so made. He submits that the case of the petitioner was placed before the Departmental Promotion Committee in its meeting held w.e.f. 2020 to 2025. However, the case of the petitioner was not permissible to be considered on merits in absence of his ACRs/APARs.

5.2 Mr. Nayak, learned Additional Advocate General, has further submitted that the promotions in the Public Works Department is made by also reckoning the gradings given to an Officer in the zone of consideration for assessing the merit of such candidates. He submits that in absence of the ACRs/APARs of the petitioner, given the procedure prescribed, the merit of the petitioner, being not permissible to be determined, no recommendation came to be made in respect of the petitioner by the Departmental Promotion Committee. Accordingly, Mr. Nayak submits that the Selection Committees were prevented from taking recourse to the sealed cover procedure in respect of the petitioner, only on the ground that the merit of the petitioner was not permissible to be so assessed by it in absence of the ACRs/APARs. He, however, submits that the departmental proceeding as well as the criminal proceeding instituted against the petitioner not having concluded, so as to ensure that the petitioner is not caused any prejudice on conclusion of such proceedings in his favour, the Selection Committee has already kept 1 (one) post of Executive Engineer reserved for the petitioner.

5.3 With regard to the prolonged pendency of the departmental proceedings instituted against the petitioner, Mr. Nayak, learned Additional Advocate General has submitted that the departmental proceeding instituted against the petitioner admittedly has not concluded and the same is still pending at the enquiry stage.

He submits that this Court may pass appropriate orders for an expeditious conclusion of the departmental proceedings instituted against the petitioner, with a further direction, requiring the petitioner to also fully co-operate in the matter.

6. I have heard the learned counsel for the parties and also perused the materials available on record.

7. From the submissions of the learned counsel for the petitioner as well as the contentions raised in this writ petition, the grievance of the petitioner is that the departmental proceeding instituted against him, vide issuance of the Show Cause Notice dated 25.09.2018, has not been taken to its logical conclusion, till date. The further projection is that on account of the pendency of the said departmental proceeding, the petitioner's case for promotion was not taken up by the Departmental Promotion Committee in its meetings held over the period of time, after a departmental proceeding was instituted against him.

8. It is an admitted position that the departmental proceedings instituted against the petitioner, vide Show Cause Notice dated 25.09.2018, have not been concluded, till date. The respondents in the present writ petition has not brought on record any material to justify the delay occasioning in conclusion of the departmental proceedings instituted against the petitioner. A departmental proceeding instituted against a delinquent is to be so concluded expeditiously and in terms of the Manual of the Disciplinary proceedings, it is provided that such proceedings have to be so concluded within a period of 6 (six) months. An expeditious conclusion of a departmental proceeding is both in the interest of the delinquent as well as the department, inasmuch as, the delay occasioning in conclusion of such proceeding may at a point of time also result in such

proceedings, being not permissible to be so taken forward in absence of documents as well as witnesses for many reasons like, superannuation, death, destruction of documents, etc. Accordingly, the proceedings instituted against the petitioner vide the Show Cause Notice dated 25.09.2018, not having been concluded, this Court directs the respondent authorities to conclude the said proceedings, within a maximum period of 6 (six) months, from the date of receipt of a certified copy of this order from the petitioner.

9. Having concluded with regard to the manner in which the disciplinary proceeding instituted against the petitioner would now be taken to its logical conclusion, this Court would now consider the grievance raised by the petitioner, with regard to his non-promotion to the cadre of Executive Engineer. The petitioner being under a cloud on account of departmental as well as criminal proceedings instituted against him, he is not entitled to be promoted to the next higher cadre of Executive Engineer. The policy of the Government of Assam in this connection not having been provided for an adhoc promotion, such adhoc promotion would not be permissible for this Court to direct to be effected in respect of the petitioner.

10. The petitioner has contended that the case of the petitioner was not considered by the Departmental Promotion Committee in its meetings held over the period of time after the issuance of the Show Cause Notice dated 25.09.2018, which is projected to have caused a prejudice to him, inasmuch as, in the event the petitioner is exonerated from the charges framed against him in the departmental as well as the criminal proceedings, he would be left with no reference point to claim his promotion to the cadre of Executive Engineer.

11. The Hon'ble Supreme Court in the case of ***Union of India & other Vs.***

K. V. Jankiraman & Others, reported in ***(1991) 4 SCC 109,*** had held that when a Show Cause Notice has been issued in a departmental proceeding and a charge-sheet has been issued in a criminal proceeding, the employee concerned is to be deemed to be under a cloud and his case on consideration on merits by the Departmental Promotion Committee/Selection Committee is to be kept in a sealed cover. Accordingly, in the case of the petitioner, a violation of the said decision of the Hon'ble Supreme Court is found to have occasioned. The said decision of the Hon'ble Supreme Court was applied in the State by way of issuance of an Office Memorandum dated 09.05.2006.

12. The provisions of the said Office Memorandum have also been found to have been violated. However, before proceeding further, this Court would notice the submissions made by Mr. Nayak, learned Additional Advocate General in this connection.

13. Mr. Nayak, learned Additional Advocate General has submitted that the Departmental Promotion Committee, being required to determine the merit of the candidates before it by reckoning the gradings given to such candidates in his ACRs/APARs, the ACRs/APARs of the petitioner not being available, the Departmental Promotion Committee was not in a position to consider the case of the petitioner on merits. Accordingly, the Departmental Promotion Committee had not resorted to the sealed cover procedure in his case.

14. It is further projected that the petitioner had also not submitted his Annual Property Returns, which is again a mandated document for the purpose of considering the case of an employee for promotion. The said reasoning given by Mr. Nayak, learned Additional Advocate General justifies the non-consideration of the case of the petitioner for promotion to the next higher rank

of Executive Engineer. The petitioner being still under a cloud on account of the pendency of the departmental as well as criminal proceedings against him, at this stage, this Court refrains from issuing any direction for holding of a review Departmental Promotion Committee meeting for consideration of the case of the petitioner.

15. However, in the event, the petitioner is found to be not blameworthy in the disciplinary proceedings pending against him and also in the criminal proceedings instituted against him, wherein, charge-sheets have already been filed, the respondent authorities shall have the case of the petitioner considered on merits by convening a Review Departmental Promotion Committee meeting, with regard to all the Departmental Promotion Committee meeting convened after the Show Cause Notice dated 25.09.2018 was issued to the petitioner. In the event, the committee recommends for such promotion in respect of the petitioner, the petitioner be promoted to the cadre of Executive Engineer with retrospective effect, i.e., w.e.f. the date his juniors in the cadre of Assistant Executive Engineer was so promoted at the first instance. The petitioner, under such circumstances would also be entitled to have his case considered for promotion to the next higher cadres, if in the meanwhile, such promotion, on consideration was extended to his juniors.

16. The petitioner on his such promotion shall be entitled to notional fixation of his pay, but would be entitled to seniority in the cadre of Executive Engineer and/or the next higher cadres. The said procedure as now directed to be followed by the respondent authorities, would redress the grievance of the petitioner of a prejudice being caused to him on account of the Selection Committee, not keeping the consideration made in his case in sealed cover.

17. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant