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

Case No. : WP(C)/1076/2025

BHUPESH CHANDRA DAS
S/O. SRI GIRISH CH. DAS, RESIDENT OF HOUSE NO. 2, NAVADOY NAGAR
PATH, GHORAMARA, GUWAHATI, DISTRICT KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND ORS
REPRESENTED BY THE PRINCIPAL SECRETARY, PERSONNEL
DEPARTMENT (PERSONNEL A), ASSAM SECRETARIAT, DISPUR,
GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
(PERSONNEL A) DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI-781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
(PERSONNEL A) DEPARTMENT
ASSAM SECRETARIAT
DISPUR
GUWAHATI-781006

4:UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS (DEPARTMENT OF PERSONNEL
AND TRAINING) GOVT. OF INDIA
NORTH BLOCK
RAISINA HILLS
NEW DELHI-11000

Advocate for the Petitioner : MS N MAHANTA, MR. K N CHOUDHURY, MR. R M DEKA, MR. TANUZ KASHYAP

Advocate for the Respondent : DY.S.G.I., GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 06-03-2025

Heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. D.J. Das, learned counsel for the writ petitioner. Also heard Mr. T.C. Chutia, learned Addl. Sr. Govt. Advocate, Assam appearing for the State/ respondent.

This writ petition is directed against the order dated 06-02-2025 passed by the Secretary to the Govt. of Assam, Personnel(A) Department, appointing a new Enquiry Officer to enquire into the charges brought against the writ petitioner.

According to Mr. Choudhury in view of the specific direction contained in the judgment and order dated 29-10-2024 passed by the learned Single Judge in W.P.(C) No. 1053/2024, there was no scope for the authorities to appoint a new Enquiry Officer and continue with the departmental proceeding. Mr. Choudhury has also invited the attention of this Court to the order dated 09-01-2025 passed in I.A.(C) No. 3844/2024 arising out of W.P.(C) No. 1053/2024 to submit that on a request made by the State, the learned Single Judge had granted extension of time for only one month to conclude departmental proceeding, failing which, adverse consequence were to follow. Under the circumstances, submits Mr. Choudhury, the impugned order dated 06-02-2025, is wholly arbitrary and

illegal.

By referring to and relying upon a decision of the Supreme Court rendered in the case of ***G.M. Tank Vs. State of Gujrat*** reported in ***(2006) 5 SCC 446***, Mr. Choudhury submits that law is firmly settled that after the acquittal of the delinquent in respect of the charges brought in a criminal proceeding, founded on the same set of facts, documents and witness, there is no scope to conduct a departmental proceeding on the same set of charges. As such, a prayer has been made to set aside the impugned order dated 06-02-2025.

Taking note of the grievance expressed in the writ petition and the submission advanced by the petitioner's counsel, this Court, by order dated 28-02-2025, had granted time to the learned Govt. Advocate, Assam to obtain instruction and address the issues raised by the petitioner's counsel. Today, when the matter is called up, Mr. T.C. Chutia, learned Addl. Sr. Govt. Advocate, Assam submits that although there is a direction by the learned Single Judge to conclude the departmental proceeding within specified timeframe which period was subsequently extended for a further period of one month, w.e.f. 09-01-2025, yet, it was open for the department to complete the process by holding further enquiry. Mr. Chutia, however, submits that the department is contemplating to prefer an appeal against the judgment and order dated 29-10-2024. Therefore, there is no necessity for this Court to interfere with the impugned order dated 06-02-2025 at this stage.

After careful examination of the materials on record, I find that the writ petitioner herein, while he was serving as Chief Executive Officer, Darrang Zilla Parishad, was

arrested by Vigilance & Anti-Corruption Cell, Assam in connection ACB P.S. Case No. 24/2017 registered under Section 7/13(1)(d)/13(2) of the Prevention of Corruption Act, 1988. Based on the charge-sheet submitted by the investigating agency, charges were framed against the petitioner and he was made to face trial in connection with Special Case No. 32/2017. On conclusion of trial, the learned Special Judge, Assam had acquitted the petitioner by holding that the charges had not been proved against him. However, a departmental proceeding under Rule 9 of the Assam Service (Discipline & Appeal) Rules, 1964 read with Article 311 of the Constitution of India was also initiated against the petitioner in respect of the same charges. Therefore, after the acquittal of the petitioner in the criminal case, he had approached this Court by filing W.P.(C) No. 1053/2024, *inter alia*, contending that the departmental proceeding having been initiated on the same set of charge and since the same is being sought to be proved by the same documents and same set of witness, the departmental proceeding was not maintainable in view of the law laid down by the Supreme Court in the case of ***Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Ors.*** reported in ***(1999) 3 SCC 679*** as well as ***G.M. Tank (Supra)***.

Taking note of the facts of the case as well as the projection made on behalf of both the sides, the learned Single Judge had passed judgment and order dated 29-10-2024 disposing of W.P.(C) No. 1053/20204 by holding that continuation of the departmental proceeding against the writ petitioner on the same set of allegations, based on same documents and witness, would not be justified after his acquittal in the criminal case, as the same would be unfair and oppressive to the delinquent.

Accordingly, the following directions and observations were made in paragraph 33 of

the judgment and order, which are reproduced here-in-below:

33. As noted above, in the present case, the departmental proceeding and the criminal case are based on identical and similar set of facts and the charge in the departmental case and the charge before the Criminal Court against the petitioner are also one and the same. The listed witnesses in the departmental case were examined in the criminal case and the Criminal Court upon examination of such witnesses has concluded that the prosecution has failed to establish that the petitioner/accused had demanded illegal gratification from the informant. That being so, in the considered opinion of this Court, further continuation of the departmental proceeding against the petitioner is wholly unfair and unjustified.

By the judgment and order dated 29-10-2024, one month's time was granted to the departmental authorities to conclude the departmental proceeding. Instead of doing so, the department had moved an application being I.A.(C) No. 3844/2024, seeking three months extension of time to comply with the order. By the order dated 09-01-2024 passed in I.A.(C) No. 3844/2024, the learned Single Judge had granted one month's time to the department, failing which, adverse consequence, in accordance with law was to follow. The department has not preferred any appeal against the judgment and order dated 29-10-2024. As such, the judgment and order dated 29-10-2024 has attained finality.

The question that would, therefore, arise for consideration, in this case is that, in view of the findings and observations recorded by the learned Single Judge in the order dated 29-10-2024 practically holding that the departmental proceeding initiated against the writ petitioner would not be maintainable in law, until and unless the order passed by the coordinate Bench is interfered with by a superior Court, can the department be permitted to go ahead with the departmental proceeding? The answer to the question, in

the *prima facie* opinion of this Court has to be in negative. This is more so, since the learned Govt. Advocate himself has accepted that unless an appeal is preferred against the order dated 29-10-2024, it would not be permissible for the department to take the said recourse. Mr. Chutia has, however, submitted that the department is contemplating to prefer an appeal against the order dated 29-10-2024 of the learned Single Judge.

Be that as it may, since the petitioner has raised a legal issue urging that in view of the order of the learned Single Judge, further departmental proceeding contemplated against him would be barred and considering the fact that the learned departmental counsel has not been able to put forward any cogent argument countering the same, this Court is left with no option but to examine the matter and also grant an interim order of protection in favour of the petitioner.

Issue notice returnable in 03 weeks.

Since Mr. Chutia has accepted notice on behalf of all the respondents, no formal notice is required to be sent in this case.

Extra copies of the writ petition, requisite in numbers, be furnished to the learned departmental counsel.

On the next date fixed, Mr. Chutia to obtain specific instruction and apprise this Court as to whether, the departmental candidates junior to the petitioner are being considered for nomination to IAS cadre and if so, whether steps have been taken to consider the petitioner's case, in a sealed cover.

Heard on the prayer of interim relief.

Having regard to the overall facts and circumstances of the case, it is hereby provided that the disciplinary enquiry initiated against the petitioner shall remain stayed till the next date.

This order would, however, be subject to order(s), if any, passed by the superior Court in the proposed appeal to be preferred by the department.

List again after 03 weeks.

JUDGE

GS

Comparing Assistant