

(2002) 08 GAU CK 0031

**Gauhati High Court (Itanagar Bench)****Case No:** Writ Petition (C) 3 (AP) of 2002

Raj Kumar Lal

APPELLANT

Vs

State of Arunachal Pradesh and  
AnotherRESPONDENT

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**Date of Decision:** Aug. 12, 2002**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Penal Code, 1860 (IPC) - Section 120(B), 409

**Citation:** (2003) 96 FLR 946 : (2002) 3 GLR 544 : (2003) 1 GLT 117**Hon'ble Judges:** I.A. Ansari, J**Bench:** Single Bench**Advocate:** T.C. Khetri, for the Appellant; R.H. Naban, Addl. Sr. G.A., for the Respondent

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**Judgement**

I.A. Ansari, J.

This application made, under Article 226 of the Constitution of India, by the petitioner, who is Deputy Director of School Education (under suspension), Tawang District, Tawang, raises two important questions, namely, (i) whether appointment of Respondent. No. 2 (who is informant of Tawang Police Station Case No. 21/2000 u/s 409/120(B) IPC lodged against the petitioner) as Enquiry Officer in the departmental proceedings drawn against the petitioner on the same/similar facts, which have given rise to the police case aforementioned, is legal, proper, justified and/or valid and (ii) whether, during pendency of Tawang Police Station Case No. 21/2000 aforementioned, departmental proceedings drawn against the petitioner can be allowed to proceed.

2. Since a large number of legal battles and departmental proceedings have preceded the filing of this writ petition, it is but natural that facts, necessary for disposal of this writ petition, are somewhat cumbersome in nature. In a narrow compass, however, petitioner's case may be put as follows :

The petitioner joined as Assistant Director (Material) in the State Resource Centre for Adult Education under the Directorate of Education, at Itanagar, on 12.10.89. Since his appointment, the petitioner has been subjected to frequent and premature transfers, he has been involved in false criminal cases and departmental proceedings, he has been unjustly placed under suspension and denied promotion. Left with no alternative, the petitioner instituted Civil Rule No. 2533 of 1993 and on the basis of the judgment and order dated 6.9.1994, passed therein, the petitioner was promoted, but his harassment by way of subjecting him to premature transfers has continued. When the petitioner was sought to be prematurely transferred from his present post of Deputy Director of School Education, Tawang, to Bomdila, to act as Principal of Higher Secondary School at Bomdila, the petitioner made a representation, dated 2.8.2000, which was forwarded to the Government by the respondent No. 2. As the Government did not respond to the petitioner's representation aforementioned, he instituted Writ Petition (c) No. 4330 of 2000 and vide order, dated 9.8.2000, passed in this case, petitioner's transfer was stayed. Having come to know of the stay order passed in the said writ petition, the respondent No. 2 became hostile to the petitioner and lodged a complaint, vide his letter No. TC-45(PT)/2000, dated 7.9.2000, addressed to the Superintendent of Police, Tawang District, Tawang, implicating the petitioner on false accusation of misappropriation/over-drawal of money, which resulted into registration of Tawang Police Station Case No. 21/2000 (corresponding-to GR Case No. 23/2000) u/s 409/120(B) of the Indian Penal Code against the petitioner. Notwithstanding the pendency of the petitioner's application for pre-arrest bail made before this Court, he was arrested by the police in connection with the case aforementioned, but was subsequently enlarged on bail by order, dated 27.11.2000, passed by learned Judicial Magistrate, First Class, Tawang, Arunachal Pradesh. In the meanwhile, however, the petitioner was placed under suspension by an order bearing No. SEDN/41 /93/PT, dated 13.11.2000, which was communicated to the petitioner vide Memo No. SEDN/41/93/PT, dated 15.11.2000, but for several months, thereafter, neither disciplinary proceeding was initiated, nor was the petitioner paid subsistence allowance. In the past also, when the petitioner was, similarly, involved in disciplinary proceedings, his subsistence allowance was not paid to him for a long period and the petitioner had to approach this Court seeking direction(s) for obtaining his subsistence allowance. Though the petitioner prayed for revoking his suspension by submitting applications, dated 12.12.2000 and 3.1.2000, the same was not revoked and it was only after the petitioner submitted a reminder thereto by his letter, dated 10.4.2001, that by Memorandum No. SEDN/41/93/PT, dated 9.4.2001, issued by the Respondent No. 1, the petitioner was given notice of a departmental proceeding drawn against him and was accordingly served with article of charges, statements of imputations, etc. In the meanwhile, police had already submitted, on 31.12.2000, charge-sheet against the petitioner, in Tawang Police Station Case No. 21 /2000 aforementioned. Moreover, after the issuance of the Memorandum, dated 9.4.2001 aforementioned, Tawang police examined, on

19.4.2001, the respondent No. 2 as a prosecution witness/ informant of the case and submitted, on 19.4.2001 itself, a supplementary charge-sheet against the petitioner. Immediately upon being served with the Memorandum, dated 9.4.2001, aforementioned, the petitioner vide his letter, dated 30.4.2001, requested the respondent No. 1 to furnish copies of the documents relied upon and listed in Annexure-III to the said Memorandum, but the copies thereof were not furnished to the petitioner and he had to submit, under such constraints, the written statement of his defence vide his letter, dated 3.5.2001. In his written statement, the petitioner stated, inter alia, that on the same/similar set of facts a criminal case, as aforesaid was pending against the petitioner, he was, on account of the pendency of the criminal case, handicapped and not in a position to effectively represent himself in the departmental proceedings inasmuch as he was unable to disclose his defence and he could not have been compelled to disclose his defence until before the trial of the criminal charge(s), on the same allegations as were made in the departmental proceedings, was over. This apart, despite the fact that the respondent No. 2 was the informant of Tawang Police Station Case No. 21/2000 aforementioned, which was lodged against the petitioner, the Chief Secretary to the Government of Arunachal Pradesh vide his order No. SEDN/41/93/PT, dated 4.7.2001, appointed the respondent No. 2 as Enquiry Officer to enquire into the charges formulated against the petitioner. The petitioner vide his representation, dated 20.7.2001, objected to the appointment of respondent No. 2 as Enquiry Officer. Though the petitioner was granted station leave permission by the State Government for a period of 40 days from 17.12.2001 to 27.1.2002 for the purpose of enabling him to hold consultations with his legal advisers in connection with the Writ Petition (C) No. 4330 of 2000 aforementioned and also for enabling him to visit his home town, Gorakhpur, to attend to some domestic work, the respondents No. 2, being hostile to the petitioner, fixed 28.12.2001 for holding enquiry against the petitioner. The petitioner claims that left with no other alternative, he has, now, approached this Court seeking redress of his grievances.

3.1 have heard Mr. T. C. Khetri, learned counsel for the petitioner, and Mr. R.H. Nabam, learned Addl. Senior Govt. Advocate who has appeared on behalf of the State respondents.

4. Before entering into the merit of this writ petition, it needs to be noted that this Court vide order, dated 20.12.2001, passed in this case, stayed further progress of the departmental proceedings drawn against the petitioner and the same accordingly stands stayed.

5. It is also worth noticing, at the very outset, that though the respondents have contested this case, they have not filed any affidavit-in-opposition. Situation thus, this Court has to proceed treating the statements of facts averred in the writ petition and also in the additional affidavit of the petitioner as admitted facts. A reference may be made, in this regard, to the case of [Smt. Naseem Bano Vs. State of](#)

[U.P. and others](#), . This position is, in fact, not disputed by the learned counsel for the respondents.

6. Shorn-off the lengthy details of the case placed by the petitioner, the essential facts, which surface unscathed, are that a departmental proceeding stands drawn against the petitioner for allegedly misappropriating diverse sums of money, while functioning as Deputy Director of School Education, Tawang. With regard to the same/similar allegation of misappropriation, the respondent No. 2, admittedly, in his capacity as Deputy Commissioner, Tawang, vide his letter, dated 7.9.2000 (Annexure-C to the writ petition) lodged a written complaint to the Superintendent of Police, Tawang, which resulted into registration of Tawang P.S. Case No. 21/2000 under Sections 409/ 120(B) IPC aforementioned against the petitioner and upon investigation, the respondent No. 2 has been cited as a witness/ informant by the police in the charge-sheet filed by the police.

7. In the face of the above admitted facts, there can be no escape from conclusion that the respondent No. 2, however honest he may be, is, indeed, an important and interested witness on behalf of the prosecution and in such a situation, making him Enquiry Officer to enquire into the truthfulness and/or correctness of the allegations, which he (respondent No. 2) had himself, admittedly, made/ complained of, can, by no stretch of imagination, be regarded as a fair and just appointment. In fact, despite petitioner's protest to the appointment of the respondent No. 2 as Enquiry Officer, the authority concerned appears to have remained rigid and maintained studded silence, which, to say the least, is the positive sign of being not only insensitive, but also highly unfair to the petitioner.

8. Coupled with the above, insistence of the respondents to continue to proceed with the departmental enquiry, without awaiting disposal of the criminal case, is contrary to, and in disregard of, well settled position of law that when the criminal action and the disciplinary proceedings are founded upon the same set of facts, the disciplinary proceedings shall be kept stayed/suspended until the criminal action comes to an end. I am guided to adopt this view from the law laid down in the case of [Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others](#), , wherein the Apex Court has, while laying down the law on the subject, observed as follows :-

"The view expressed in the three cases of this Court seem to support the position that while there could be no legal bar for simultaneous proceedings being taken, yet, there may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent-employee to seek such an order of stay or injunction from the Court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the Court will decide in the-given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial.....

In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal.

The appeal is allowed and the order of the High Court is vacated and that of the trial court as affirmed in appeal is restored. The appellant shall be entitled to costs. Hearing fee is assessed at Rs. 2000." (emphasis is applied by me)

9. In view of the fact that the departmental proceeding drawn against the petitioner is substantially on the same set of facts as those on which rest the criminal case launched against the petitioner, it will be, undoubtedly, wholly unfair to force the petitioner to disclose his defence in the departmental proceeding until the criminal trial is over. When viewed from this angle, there remains no room for doubt that the disciplinary proceeding drawn against the petitioner ought to have been kept stayed/deferred/suspended until decision of the criminal trial.

10. In fact, Mr. Nabam has not been able to assign any reason as to why the respondent No. 2 was made the Enquiry Officer in the disciplinary proceedings aforementioned and as to why the State Government has insisted on maintaining the respondent No. 2 as Enquiry Officer despite the fact that the respondent No. 2 was the one, who had lodged the complaint with the police against the petitioner alleging misappropriation of Government funds by the petitioner. Mr. Nabam has also not been able to justify as to why the disciplinary proceeding was insisted to be continued during the pendency of the criminal case aforementioned, which involve the same set of facts/witnesses/documents as the departmental proceeding, particularly, when the petitioner had made it clear that he was unable to project his defence effectively in the departmental proceeding on the ground that the criminal case was pending against him on the same set of facts.

11. In the result and for the reasons discussed above, this writ petition succeeds. The Impugned orders dated 6.7.2001 and 14.12.2001 (Annexure-F and Annexure-L respectively to the writ petition) are hereby set aside and quashed and the departmental proceeding drawn against the petitioner is directed to be kept in abeyance until conclusion of the criminal trial arising out of Tawang P.S. Case No. 21/2000 aforementioned. Lest the pendency of the criminal trial delays the finalisation/disposal of the departmental proceeding, the learned Judicial Magistrate, Tawang, who is in seisin of Tawang P.S. Case No. 21/2000 aforementioned, is hereby directed to expeditiously disposal of the case in accordance with law.

12. Send forthwith a copy of this judgment and order to the learned Judicial Magistrate, First Class, Tawang, aforementioned.

13. With the above observations and directions, this writ petition shall stand disposed of.

14. No order as to costs.