

**HIGH COURT OF TRIPURA  
AGARTALA**

**WA No.98 of 2023**

Dr. Mihir Kr. Das, S/o Late Sachindra Ch. Das, R/o Ramnagar Road No.8, P.O-  
Ramnagar, Agartala, District- West Tripura, Pin-799002.

..... Appellant(s)

**V E R S U S**

1. The Tripura State Pollution Control Board to be represented by the Member Secretary, Tripura State Pollution Control Board, P.N. Complex, Gorkhabasti, Agartala, West Tripura, Pin-799006.
2. The Member Secretary, Tripura State Pollution Control Board, P.N. Complex, Gorkhabasti, Agartala, West Tripura, Pin-799006.
3. The Commissioner of Departmental Inquiries, Government of Tripura, P.N. Complex, Gurkhabasti, Agartala, West Tripura, Pin-799006.
4. Sri Bishu Karmakar, Scientist 'B', Tripura State Pollution Control Board, P.N. Complex, Gurkhabasti, Agartala, West Tripura.

..... Respondent(s)

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For Appellant(s) : Mr. P. Roy Barman, Sr. Advocate,  
Mr. Kawsik Nath, Advocate,  
Mr. D. Paul, Advocate.

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For Respondent(s) : Mr. Ratan Datta, Advocate.

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH  
HON'BLE MR JUSTICE S.D. PURKAYASTHA**

Date of hearing and judgment : *19<sup>th</sup> March, 2024.*

Whether fit for reporting : YES

**JUDGMENT & ORDER (ORAL)**

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Kawsik Nath, learned counsel for the appellant. Also heard Mr. Ratan Datta, learned counsel for the respondents.

[2] Writ petitioner has been proceeded against under memorandum of charges dated 20.03.2020 for alleged misconduct in terms of Rule 14 of CCS(CCA) Rules, 1965. He approached the writ Court with the main and primary ground of challenge that respondent No.2 is not competent to act as a disciplinary authority under the Tripura State Pollution Control Board (TSPCB)

as he is a serving Scientist B in TSPCB. He has not been appointed in terms of Section 4(2)(f) and Section 12 of the Water (Prevention & Control of Pollution) Act, 1974. There has been no delegation of authority in terms of Section 12(3)(b) of the Act. The writ petitioner has also raised a ground that respondent No.2, not being a full time Member Secretary, cannot be the Disciplinary Authority in terms of Rule 12(2)(b) of the CCS(CCA) Rules, 1965. The writ Court dealt with both these issues and declined to interfere in the matter. The opinion of the writ Court contained in paragraph No.6 is being extracted hereunder:

“6. I have gone through the aforesaid judgment passed by me in WP(C) 869/2022 (Supra). The relevant portion of the judgment is reproduced here-in-below for convenience:-

“5. I have pondered over the erudite submissions canvassed by learned counsel appearing for the parties and considered the legal positions.

6. “Disciplinary Authority” is defined under Rule 2(g) of CCS Rules which means the authority competent under the CCS Rules to impose on a Government servant any of the penalties specified in Rule 11 of CCS Rules. Rule 12 of CCS Rules prescribes the powers and functions of the disciplinary authorities, which reads as under:

“12. DISCIPLINARY AUTHORITIES:

(1) The President may impose any of the penalties specified in Rule 11 on any Government servant.

(2) Without prejudice to the provisions of sub-rule (1), but subject to the provisions of sub-rule (4), any of the penalties specified in Rule 11 may be imposed on –

(a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf.

(3) \*\*\* \*\* \*

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(4) \*\*\* \*\* \*

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EXPLANATION 1) \*\*\* \*\* \*

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EXPLANATION 2) \*\*\* \*\* \*

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7. On plain reading, it appears that Rule 12(2)(b) of the CCS Rules is relevant to the issue in controversy. Rule 12(2)(b) clearly lays down that a person can be appointed to a civil post by the authority under special order of the President or, where any such order has been made by the appointing authority.

8. To clarify the meaning attached to the expression “disciplinary authority”, the Government of India issued certain orders. One of such orders relates to the officers performing current duties of a post. It says that an officer appointed to perform the current duties of an appointment can exercise administrative or financial power vested in the full-fledged incumbent of the post, but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament [G.I., M.H.A., O.M. No. F. 7/14/16-Ests. (A), dated 24th January, 1963].

Another order speaks that where appointment to hold the current duties of a post involves the exercise of statutory or such other powers conferred on the holders of the post, the appointment should also be notified in the gazette. [G.I., M.F. O.M. No. F. 12(2)-E, II.(A) 60, dated 15th October, 1960].

9. From the above orders, it becomes clear that an officer appointed to perform the current duties of a post cannot be treated as full-fledged incumbent of the post and he

cannot exercise statutory powers. However, statutory or such other powers can be conferred on the holders of the post if such appointment of the officers is notified in the gazette. To sum up, an officer merely looking after the current duties of a higher officer is not competent to exercise the power of disciplinary authority or the appellate authority of the latter, unless and until the appointment of such officer is made by appointing authority being duly notified in the official gazette.

10. At this juncture, I have taken note of the scheme of the Water Act of 1974, which is a central act. It becomes apparent that in pursuance of clause 1 of Article 22 of the Constitution of India, resolutions had been passed by all the houses of the legislature of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal to the effect that the matters relating to prevention and control of water pollution and the maintaining or restoring of wholesomeness of water should be regulated in those States by the Law of Parliament.

11. Sub-section (2) of Section 1 of the Water Act of 1974 envisages that it was applied in the first instance to the State of Tripura including other States, as aforesaid. Sub-section (3) of Section 1 of the Water Act of 1974 provides that it came into force at once to the aforesaid States. Section 4(2)(f) of the Water Act of 1974 is required to be noticed in the context of the case. It provides that:

“4. Constitution of State Boards.— (1) The State Government shall, with effect from such date, as it may, by notification in the Official Gazette, appoint, constitute a [State Pollution Control Board], under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) A State Board shall consist of the following members, namely:—

- (a) xxxxx
- (b) xxxxx
- (c) xxxxx
- (d) xxxxx
- (e) xxxxx

[(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government.]”

12. It is noticed that clause (f) of sub-section (2) of Section 4 was not enacted in the original Water Act of 1974. Clause (f) was inserted by the Amendment Act 53 of 1988 in the original enacted Act of 1974 and it came into force in the State of Tripura w.e.f. 29.08.1988.

13. Now, if both CCS Rules and Water Act of 1974 are conjointly read, it is crystallized that the law as conceptualized for the posts of “Current duties and full-time Member Secretary” is quite distinct and created on different connotations. The two posts should not be mistaken as equivalent. While Rule 12 of CCS Rules speaks of officers merely performing current duties of a post, the concept of the post of full-time Member Secretary embodied in Section 4(2)(f) of the Water Act of 1974 is to give the said post a statutory flavour. A full-time Member Secretary is a statutory post incorporated in the Act of 1974 by Act 53 of 1988 especially for the States of Tripura, Himachal Pradesh and Union Territories to fulfill certain objects the respective governments wanted to achieve.

14. That apart, it is apparent that under Section 4(2)(f) of the Act of 1974, the State Government is statutorily empowered to appoint a full-time Member Secretary having qualification, knowledge and experience of scientific, engineering or management aspects of pollution control. In other words, the State Government is the appointing authority of a full-time member secretary of Tripura State Pollution Control Board.

15. Now what is culled out that a full-time Member Secretary being appointed by the State Government can exercise all statutory powers which includes the power of disciplinary authority as contemplated under Rule 12(2)(b) of CCS Rules apart from the powers conferred upon him, and perform the functions assigned to him in the interest of the State Pollution Control Board.

16. Coming to the context of the present case, the Government of Tripura constituted State Pollution Control Board under the nomenclature Tripura State Pollution Control Board (for short, „TSPCB“) at the behest of the Department of Science, Technology and Environment in terms of Section 4(1) of the Water Act of 1974. To run and govern the TSPCB, the State Government has appointed Dr. Bishu Karmakar as a full-time Member Secretary of the Board. It is not disputed that Dr. Bishu Karmakar possesses all necessary qualifications, knowledge and experience in the field of pollution control. It is admitted that Member Secretary is the disciplinary authority of TSPCB and can exercise the powers of disciplinary authority as embodied in Rule 12(2)(b) of CCS Rules.

17. In the case on hand, the State Government being the appointing authority issued necessary order appointing Dr. Bishu Karmakar as full-time Member Secretary by way notification published in the official gazette. The notification for appointment of Dr. Karmakar may be reproduced here-inbelow, for convenience, in extenso:-

“No. 1966

Registered No. N.E. 930

TRIPURA GAZETTEE  
Published by Authority  
EXTRAORDINARY ISSUE  
Agartala, Thursday, September 19, 2019 A.D. Bhadra 28, 1941 S.E.  
PART-1- Orders and Notifications by the Government of Tripura  
The High Court, Government Treasury etc.  
GOVERNMENT OF TRIPURA  
DEPARTMENT OF SCIENCE TECHNOLOGY & ENVIRONMENT

No. F.11(68)/DSTE/CC/Pt-I/5597-606

Dated, Agartala the  
7th September, 2019

In exercise of the powers conferred by clause (f) of sub-section (2) of section (4) of the Water (Prevention and control of pollution) Act of 1974 (Act 6 of 1974) and in the interest of public service, the Governor, Tripura is pleased to order that Shri Bishu Karmakar, scientist-B, Tripura State Pollution Control Board shall hold the charge of Member Secretary in the Tripura State Pollution Control Board (TSPCB) on full time basis with immediate effect and until further orders. Any other work assigned to him in the Board shall be re-assigned to other officer(s) in the TSPCB, Ex-post facto approval is also accorded to assignment of the charge of Member Secretary, TSPCB to Shri Bishu Karmakar, Scientist-B in addition to his assigned duties w.e.f. 13.08.2019.

By order of the Governor

Sd/-

(Shailendra Singh)

Special Secretary to the  
Government of Tripura”

18. The tenure of appointment of Dr. Bishu Karmakar has been further extended vide notification dated 6/05/2021 which is also notified in the official gazette of the Government of Tripura. The notification dated 6/05/2021 is reproduced here-in-below:

“No. 1135

Registered No. N.E. 930

TRIPURA GAZETTEE  
Published by Authority  
EXTRAORDINARY ISSUE  
Agartala, Thursday, June 30, 2022 A.D. Asadha 9, 1944 S.E.  
PART-1- Orders and Notifications by the Government of Tripura  
The High Court, Government Treasury etc.  
GOVERNMENT OF TRIPURA  
DEPARTMENT OF SCIENCE TECHNOLOGY & ENVIRONMENT BIGYAN,  
PRAJUKTI O PARIVESH BHAWAN  
GORKHABASTI: P.N. COMPLEX  
AGARTALA:TRIPURA

No.F.8(1)/DSTE/ENV/Pt-IX/3106-166

Dated, 06/05/2021

## NOTIFICATION

In partial modification of the Notification No. F.11(68)/DSTE/CC/Pt-1/5597-606 dated 07.09.2019 issued by the Department of Science, Technology & Environment, Government of Tripura, Shri Bishu Karmakar, Scientist-B, Tripura State Pollution Control Board (TSPCB) holding the Charge of the Member Secretary, TSPCB on full time basis will continue to hold the Charge of the Member Secretary, TSPCB on full time basis till completion of the recruitment process of the eligible candidates to this post of Member Secretary as per the “Tripura State Pollution Control Board [Prevention & Control of water Pollution (Amendment)] Rules, 2021.

This is issued with the approval of Hon’ble Council of Ministers, Govt. of Tripura vide Memorandum No. F.1(1)-GA(CAB)/2021-C dated 23.04.2021.

Sd/-

(Saradindu Choudhury)

Secretary  
Govt. of Tripura”

19. The above notifications crystallize that the appointment of Dr. Bishu Karmakar has been made in exercise of the powers conferred under clause(f) Sub-section 2 of Section 4 of the Water Act of 1974 by the order of the Governor.

That the Member Secretary of TSPCB can exercise all statutory powers and perform all statutory duties as disciplinary authority in the interest of TSPCB as contemplated under Rule 12(2)(b) of the CCS Rules has not been disputed by learned counsel appearing for the petitioner. To reiterate, it is the only grievance of the

petitioner that Dr. Bishu Karmakar not being appointed through regular recruitment process and merely holding the post temporarily acted as disciplinary authority, which is not permissible under Rule 12 of CCS Rules, since, according to learned counsel for the petitioner, this power is exclusively vested with a permanent i.e. regularly appointed Member Secretary.

20. I am constrained to say that Mr. Nath, learned counsel fails to visualize the distinctive features as regards the appointment of the officers performing current duties of the higher post and the full-time Member Secretary under TSPCB and misconstrued both Rule 12(2)(b) of the CCS Rules and Section 4(2)(f) of the Water Act of 1974.

21. I have already stated and analyzed the law that the post of full-time Member Secretary under TSPCB is a post recognized under the statute (Water Act of 1974). The incumbent Officer of the said post being duly appointed under Section 4(2)(f) of the Water Act of 1974 as enumerated here-in-above can exercise all statutory powers derived direct from the Act of Parliament or rules made under various Articles of the Constitution in addition to the performance of normal day to day administrative or financial function. Needless to say that CCS Rules, 1965 is framed in exercise of the powers conferred by proviso to Article 309 and clause (5) of Article 148 of the Constitution of India.

22. As a sequel, I do not find any infirmity or legal impediment in the order passed under impugned memorandum dated 20.03.2020 by Dr. Bishu Karmakar, the full-time Member Secretary of TSPCB to hold inquiry under Rule 14 of CCS (CC&A) Rules, 1965 against the petitioner herein.

23. Accordingly, the instant writ petition stands dismissed being devoid of merit. However, there shall be no order as to costs”

Since the factual aspects of the present writ petition is similar and identical to the subject-matter of the case of *Sri Subrata Majumder* (supra), this writ petition is also, therefore, dismissed in the same terms.”

[3] Since the writ petition was dismissed, the writ petitioner is before us in appeal. In appeal the same grounds of challenge have been reiterated relying upon the Section 4(2)(f) and Section 12 of the Water (Prevention & Control of Pollution) Act, 1974 read with Rule 12(2)(b) of CCS (CC&A) Rules, 1965.

[4] Mr. P. Roy Barman, learned senior counsel for the writ petitioner, has placed reliance on the following decisions in support of his plea that the person holding current charge cannot perform statutory duties:

- (i) *Ajaib Singh versus Gurbachan Singh and others* reported in *AIR 1965 SC 1619*.
- (ii) *Union of India and another versus Raghuwar Pal Singh* reported in *AIR 2018 SC 1411*.
- (iii) *Girja Shankar Shukla versus Sub-Divisional Officer, Harda and others* reported in *AIR 1973 MP 104 (FB)*.

[5] It is submitted that the decision of the full bench of the Madhya Pradesh High Court has been referred to in the case of *Ramakant Shripad Sinai Advalpalkar versus Union of India and others* reported in *1991 Supp(2) SCC*

733 and affirmed. Based on this submission learned senior counsel for the writ petitioner submits that the respondent No.2 is incompetent to hold a disciplinary enquiry against the writ petitioner who is serving as a Scientist C in TSPCB. Therefore, the impugned judgment deserves to be set aside. The memorandum of charges issued against the petitioner dated 20.03.2020 be also quashed.

[6] Learned senior counsel for the petitioner has also taken a plea that Sri Bishu Karmakar holding the post of Member Secretary, TSPCB i.e. respondent No.2 being a Scientist-B, junior to the writ petitioner, cannot act as a Disciplinary Authority in view of the principles enshrined under Article 311(1) of the Constitution of India. The TSPCB is a statutory body and comes within the definition of instrumentality under Article 12 of the Constitution of India. The authority subordinate to an employee cannot be allowed to act as a disciplinary authority as it would be incomplete teeth of the settled principles of service jurisprudence.

[7] Mr. Ratan Datta, learned counsel for the respondent has taken this Court to the averments made in the counter affidavit before the writ Court. He submits that the learned writ Court has duly taken note of the nonfiction issued in exercise of Section 4(2)(f) of the Water (Prevention & Control of Pollution) Act, 1974 whereby the petitioner was appointed on full time basis as a Member Secretary of the TSPCB till further orders with the rider that any other work assigned to him in the Board shall be re-assigned to other officers in the TSPCB. This notification dated 07.09.2019 has been issued in the name of the Governor by the Department of Science Technology & Environment, Government of Tripura which is competent to take such a decision. He has also referred to the subsequent notification dated 06.05.2021 which was also taken note of by the learned Single Judge whereby one Shri Bishu Karmakar, Scientist-B, TSPCB

who is holding the charge of respondent No.2 that is Member Secretary, TSPCB has been allowed to continue to hold the charge of the Member Secretary, TSPCB on full time basis till completion of the recruitment process of the eligible candidates to this post of Member Secretary as per the "Tripura State Pollution Control Board [Prevention & Control of Water Pollution (Amendment)] Rules, 2021. He submits that both these notifications have been duly notified and are issued upon the approval of the Hon'ble Council of Ministers of the Government of Tripura.

[8] Learned counsel for the respondent has also referred to the notification of the central Government contained in O.M. dated 15<sup>th</sup> October, 1960 and the O.M. dated 24<sup>th</sup> January, 1963 both of which have been taken note of by the learned Single Judge to hold that Sri Bishu Karmakar holds the post of respondent No.2-Member Secretary, TSPCB. He has been appointed as a full time Member Secretary and is empowered to exercise statutory powers. He submits that therefore the legal competence of the present incumbent to the post of respondent No.2 cannot be disputed. He is empowered not only to perform administrative and financial duties but also all statutory duties of the post of Member Secretary, TSPCB in view of the conferment of power upon him in terms of Section 4(2)(f) read with Section 12 of the Water (Prevention & Control of Pollution) Act, 1974 including that of the disciplinary authority in respect of the writ petitioner.

[9] We have considered the submissions of the learned counsel for the parties and taken note of the relevant pleadings placed from record. We have also gone through the impugned judgment rendered by the learned writ Court. The appointment of Sri Bishu Karmakar has been made on full time basis by decision of the Council of Ministers of the Government of Tripura in exercise of powers

under Section 4(2)(f) of the Water (Prevention & Control of Pollution) Act, 1974 and duly notified in the extraordinary Gazette. He is not appointed on current charge basis which could confine his discharge of duties to routine administrative and financial matters only. This appointment has been made till a full time Member Secretary is appointed through direct recruitment. We have gone through the findings and reasons recorded by the learned writ Court. We approve of the reasons rendered by the writ Court on issues concerning the appointment of Sri Bishu Karmakar, as Member Secretary, TSPCB, i.e. respondent No.2. Section 4(2)(f) deals with the constitution of the Central Board & State Board and Section 12 of the Water (Prevention & Control of Pollution) Act, 1974 contains the terms & conditions of service of the Member Secretary of the Board. These provisions are to be interpreted in a manner that serves the object and purpose of the Act. Under these provisions the State Government has been empowered to appoint and constitute a State Pollution Control Board to exercise the powers conferred and perform the functions assigned to the board under the Act by way of a notification. The notification of the State Government appointing Sri Bishu Karmakar as a Scientist-B under the Tripura State Pollution Control Board on full time basis to discharge the functions of the Member Secretary, TSPCB is not under challenge. As such, the incumbent appointed by a statutory exercise of power by the State Government is fully empowered to discharge the functions of a full time Member Secretary of the State Pollution Control Board and also to act as a disciplinary authority over the employees subordinate to him. As such, we fully endorse the view expressed by the learned Writ Court.

[10] Learned senior counsel for the writ petitioner has relied upon the decisions rendered by the Apex Court in the case of *Ajaib Singh versus Gurbachan Singh and others* reported in *AIR 1965 SC 1619; Union of India*



*and another versus Raghuwar Pal Singh* reported in *AIR 2018 SC 1411* and *Girja Shankar Shukla versus Sub-Divisional Officer, Harda and others* reported in *AIR 1973 MP 104 (FB)*. The case of *Ajaib Singh* (Supra) relates to Preventive Detention Act, 1950 wherein the District Magistrate only is empowered to pass an order of detention and to review the detention order. An officer of the rank of Additional District Magistrate (ADM) could not have exercised the statutory power conferred upon District Magistrate during vacancy in the office of the District Magistrate, more so, since powers of detention cannot be exercised by any officer below the rank of District Magistrate. The instant judgment is, therefore, not applicable to the present case. The decision relates to the power exercisable under the Preventive Detention Act, 1950. Therefore, is not applicable to the present case. In the case of *Union of India and another* (supra) we find that one H.S. Rathore was made the Director-in-charge without approval of the competent authority while he was an Agriculture Officer. He had proceeded to make certain appointments exceeding his authority. In those circumstances, the Apex Court by referring to the office memorandum dated 24.01.1963 issued by the Ministry of Home Affairs held that an officer appointed to perform the current duties of an appointment can only exercise administrative or financial powers but he cannot exercise statutory powers derived from acts of parliament or Rules & Regulations. In the present case the appointment of Sri Bishu Karmakar has been made by exercise of statutory power by the State Government on the basis of the decision of the Council of Ministers, on full time basis. As such, the instant decision also does not apply to the case at hand. Similarly, in case of *Girja Shankar Shukla* (supra) it is noticeable that the incumbent Shri Arun Kumar Kshetrapal was holding the current duty charge of the post when the Collector had proceeded on leave. Shri Arun Kumar

Kshetrapal, Sub-Divisional Officer was placed in current charge of the duties of Collector during that period when the elections were held to the post of President and Vice President of the Municipal Council. In those circumstances, the learned Full Bench of the Madhya Pradesh High Court after referring to the provisions of Section 55 of the Madhya Pradesh Municipalities Act and the Madhya Pradesh General Clauses Act, held that the Sub-Divisional Officer holding current charge is competent to exercise the statutory powers conferred on the Collector under Section 55 of the Act. However, at the same time it was made clear that but for the statutory provisions the Sub-Divisional Officer would be competent to discharge the administrative functions but not the statutory functions attached to the post. The decision therefore does not apply to the case at hand. Therefore, we do not find any substance in the grounds of challenge so far as it relates to the competence of Sri Bishu Karmakar, the full time Member Secretary of TSPCB to act as a disciplinary authority in all such matters. However, in the instant case we find that Sri Bishu Karmakar is a Scientist-B under the TSPCB and is junior to the writ petitioner-Dr. Mihir Kumar Das who is Scientist –C. This fact is not in dispute. In that event Mr. Bishu Karmakar being junior to the delinquent employee i.e. the appellant herein should not act as the disciplinary authority. The principles enshrined in Article 311(1) of the Constitution of India would apply in such a case as the State Pollution Control Board is a statutory body created under the Act of Parliament.

[11] In this regard, reliance is placed upon a decision of the Apex Court in the case of *P.V. Srinivasa Sastry & Ors.* reported in (1993) 1 SCC 419, paragraph 4 thereof is quoted hereunder:

“4. Article 311(1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State “shall be dismissed or removed by an authority subordinate to that by which he was appointed”. Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority? It is well

known that departmental proceeding consists of several stages: the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after the conclusion of the inquiry. Article 311(1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding."

[12] Learned counsel for the petitioner submits that the proceedings have been kept in abeyance since 31<sup>st</sup> March, 2021 by the Inquiry Officer [copy of the order of the Inquiry Officer is placed at p-48] taking note of the objection made by the petitioner regarding the competency of the disciplinary authority. It is also pointed out that the memorandum of charges was initiated on 20<sup>th</sup> March, 2021 [Annexure-3]. Learned senior counsel for the respondent-Board on instruction also states that the inquiry proceedings have not proceeded after it was kept on hold by order dated 31.03.2021 passed by the inquiry authority.

[13] We are, therefore, of the view that interest of justice would be better served if the disciplinary proceeding is initiated afresh on the memorandum of charges by a disciplinary authority who is not subordinate to the petitioner in the organization.

[14] As such, the impugned memorandum of charges dated 20.03.2020 whereby the disciplinary proceedings had been initiated under the orders of Mr. Bishu Karmakar, Member Secretary, TSPCB cannot be sustained in the eye of law. It is accordingly quashed. The TSPCB/Disciplinary Authority shall initiate a fresh proceeding in respect of the same charges against the petitioner and take a

decision on conclusion thereof in accordance with law in a time bound manner. Accordingly, the instant appeal is allowed on the aforesaid point and to the extent indicated above.

Pending application(s), if any, also stands disposed of.

**(S. D. PURKAYASTHA), J**

**(APARESH KUMAR SINGH), CJ**

*Munna S*

