

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.716 of 2024

Sri Swapan Malakar (Age 55 years), S/o-Late Sudhan Malakar, a resident of East Narayapur, P.O. Airport, P.S. Airport, District-West Tripura, Pin-799009.

...Petitioner(s)

VERSUS

1. The State of Tripura, being represented by the Secretary to the Department of Revenue, New Capital Complex, P.O. & P.S. New Capital Complex, District-West Tripura, Pin-799010.

2. The District Magistrate & Collector, West Tripura District, Office of the D.M. & Collector, West Tripura, A.K. Road, P.O. Agartala, P.S. West Agartala, District-West Tripura, Pin-799001.

...Respondent(s)

For the Petitioner(s)	:	Mr. Suman Bhattacharjee, Advocate
For the Respondent(s)	:	Mr. Kohinoor N. Bhattacharyya, GA

HON'BLE MR. JUSTICE ARINDAM LODH

Order

24/01/2025

Heard Mr. Suman Bhattacharjee, learned counsel appearing for the petitioner. Also heard Mr. Kohinoor N. Bhattacharyya, learned GA appearing for the respondents-State.

2. This is a case where the petitioner has challenged the departmental proceeding initiated and continued against him. Articles of charges had already been framed. The petitioner had submitted representation against Articles of charges in which he denied his guilt. Later on, in course of proceedings, it is alleged that the District Magistrate & Collector, West Tripura, Agartala had threatened him saying that he would be punished appropriately in the proceedings initiated against him. Thereafter, the petitioner by way of filing a representation to the District Magistrate & Collector, West Tripura, Agartala requested him to withdraw himself as an Inquiring Authority as he is also the Disciplinary Authority as according to petitioner there are reasonable grounds of bias and malice against him. The District Magistrate & Collector, West Tripura, Agartala has not responded to such representation; rather he has fixed the next date for adducing of evidence by the presenting officer.

3. Admittedly, the District Magistrate & Collector is the Disciplinary Authority of the petitioner and from the Articles of Charges it

appear that in the instant case major penalty also may be imposed if the petitioner has not been exonerated from the charges levelled against him.

4. Mr. Kohinoor N. Bhattacharyya, learned GA has defended the action of the District Magistrate & Collector being the disciplinary authority as well as the inquiring authority. Mr. Bhattacharyya, learned GA has emphasized on Rule 14(5) of the CCS(CC&A) Rules, 1965 where it is stipulated that the Disciplinary Authority can be the Inquiring Authority, and particularly, where the delinquent employee admits his guilt.

5. At this juncture, Mr. Bhattacharjee, learned counsel for the petitioner has submitted that the petitioner having threatened of serious consequences, was compelled to admit his guilt. In other words, Mr. Bhattacharjee, learned counsel has tried to persuade this Court that the petitioner was forced to admit his guilt by the authority concerned. However, when proceeding was started with the framing of articles of charges, the petitioner submitted representation where he specifically denied his involvement in the incident. It is further submitted by learned counsel for the petitioner that in his representation the petitioner has alleged bias on the part of the District Magistrate & Collector, West Tripura, Agartala who is the Disciplinary Authority as well as has taken the role of the Inquiring Authority.

6. I have considered the submissions of learned counsel appearing for the parties.

6.1. At the outset, it will be useful to reproduce Rule 14(5) of the CCS(CC&A) Rules, 1965(for short, Rules 1965) which is as under:

“(5)(a) On receipt of the written statement of defence, the Disciplinary Authority may itself inquire into such of the articles of charge as are not admitted, or , if it considers it necessary to do so, appoint under sub-rule (2), an Inquiring Authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the Disciplinary Authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15.”

6.2. I have also taken note of the Office Memorandum dated 29th July, 1976 issued by the Government of India, Department of Personnel & Administrative Reforms where it is categorically stated that the Disciplinary Authority should refrain from being the Inquiry officer if allegations of bias or malice is raised by the Government employee. The said Office

Memorandum dated 29th July, 1976 may be reproduced hereunder for convenience, in *extenso*:

“No. 35014/1/76-Estt(A)
Government of India/Bharat Sarkar
Cabinet Secretariat/Mantrimandal Sachivalaya
Department of Personnel and Administrative Reforms
(Karmik Aur Prashasnik Sudhar Vibhag)

New Delhi, the 29th July, 1976.

OFFICE MEMORANDUM

Subject: Inquiry by the disciplinary authority-Item raised in the meeting of the National Council (JCM) held in Nov., 1975.

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The undersigned is directed to invite attention to the Department of Personnel and Administrative Reforms O.M. No. 39/40/70-Estt(A) dated the 9th November, 1972 which, inter alia, provides that only those inquiry Officers who are free/bias should be appointed by the disciplinary authority to conduct departmental inquiries. It is, further been provided that wherever an application is moved by a Govt. servant, against whom disciplinary proceedings are initiated, against the Inquiry Officer on grounds of bias, the proceedings should be stayed and the application referred to the appropriate reviewing authority for considering the matter and passing appropriate orders thereon. In this connection, the Staff Side raised the following points, at the National Council (JCM) meeting held in Nov., 1975;

- (a) The orders contained in the Department of Personnel and Administrative Reforms O.M. dated 9th November, 1972 are not being implemented in some Departments; and*
- (b) The O.M. dated 9.11.1972 did not contain instructions regarding disciplinary authority inquiring into the case itself.*
- 2. Regarding (a) above, Ministry of Finance etc. are requested to observe and implement scrupulously the aforesaid instructions contained in this Department's O.M. of 9th November, 1972.*
- 3. The second point raised by the Staff Side has been further examined in this Department. According to Rule 14(5) of the CCS(CCA) Rules, 1965, the disciplinary authority may itself inquire into the charges against the accused Government servant or appoint an Inquiry Officer for the purpose. However, it should be possible in a majority of cases, and the more serious ones at any rate, to ensure that the disciplinary authority himself does not conduct the inquiry. It may still be not practicable to ensure in all cases that the disciplinary authority himself would not be the Inquiry Officer. Such a course may be necessary under certain circumstances particularly in small field formations where the disciplinary authority as well as the Inquiry Officer may have to be one and the same person. It has accordingly been decided that unless it is unavoidable in certain cases as mentioned above, the disciplinary authority should refrain from being the Inquiry Officer and appoint another officer for the purpose. Ministry of Finance etc. are requested to note this for information and compliance.*

-Sd-
(R. RAGHAVACHARI)
DIRECTOR (Estts.)”

6.3. There is no dispute as regards the law that under Sub-rule 5 of Rules 1965, a Disciplinary Authority can act as an Inquiring Officer, but, in

my opinion, every proceeding must be fair and transparent. Further, there should not be any doubt in the mind of the delinquent/Government employee about the integrity of the Disciplinary Authority. It is by now well-neigh principle that justice is not only done but it is shown to be done. In the instant case, by way of filing written statement in course of proceeding, the petitioner had denied the guilt which he admitted earlier. The Disciplinary Authority had not proceeded to impose penalty upon the petitioner on the basis of the said admission but decided to conduct full-fledged inquiry. For that purpose, articles of charges have been framed and presenting officer has also been appointed. The next date is fixed for adducing evidence.

7. In my opinion, since the Disciplinary Authority preferred to conduct a full-fledged inquiry, there should not be any apprehension in the mind of the delinquent employee that if Disciplinary Authority takes over the role of the Inquiring Authority, then, he might be deprived of getting proper justice. The petitioner in his written statement has apprehended bias or malice on the part of the Disciplinary Authority.

8. In my opinion, in this situation, following the doctrine of fairness and fairplay, the Disciplinary Authority should not be the Inquiry Officer and the inquiry may be conducted by a person other than the Disciplinary Authority in terms of Rule 14 of Rules, 1965. The Disciplinary Authority shall appoint the Inquiry Officer before the next date of recording evidence positively.

The petitioner has prayed for referring the matter to the Commissioner of Departmental Inquiries. In my opinion, it is absolutely within the domain or discretion of the appointing authority either to appoint Inquiring Authority or to send the matter to the Commissioner of Departmental Inquiries.

With the aforesaid observations and directions, the instant writ petition stands disposed.

JUDGE

Snigdha