

**THE HIGH COURT OF TRIPURA
AGARTALA**

W. P. (C) No.34 of 2010

W. P. (C) No.37 of 2010

W. P. (C) No.40 of 2010

In W. P. (C) No.34 of 2010

Shri Bikash Dutta, Fireman,
Kamalpur Fire Station, Kamalpur, Distt. Dhalai,
(Now on deputation to Kanchanpur Fire Station)

.....**Petitioner**

- Vs -

1. The State of Tripura,
Represented by the Secretary, Home Department,
Government of Tripura, Capital Complex, Agartala.
2. The Director, Fire Services,
Tripura, Agartala.

.....**Respondents**

In W. P.(C) No.37 of 2010

Shri Sajal Sukla Das, Fireman,
Kamalpur Fire Station, Kamalpur, Distt. Dhalai,
(Now on deputation to Kanchanpur Fire Station)

.....**Petitioner**

- Vs -

1. The State of Tripura,
Represented by the Secretary, Home Department,
Government of Tripura, Capital Complex, Agartala.
2. The Director, Fire Services,
Tripura, Agartala.

.....**Respondents**

In W. P.(C) No.40 of 2010

Shri Ranjan Ghosh, Fireman,
Kamalpur Fire Station, Kamalpur, Distt. Dhalai,
(Now on deputation to Kanchanpur Fire Station)

.....**Petitioner**

- Vs -

1. The State of Tripura,
Represented by the Secretary, Home Department,
Government of Tripura, Capital Complex, Agartala.
2. The Director, Fire Services,
Tripura, Agartala.

.....**Respondents**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners : Mr. D. K. Biswas, Advocate
 For the respondents : Mr. T. D. Majumder, GA
 Date of hearing and delivery : **05.01.2015**
 of judgment and order
 Whether fit for reporting : **YES / NO**

Judgment and Order (Oral)

Heard Mr. D. K. Biswas, learned counsel appearing for the petitioners as well as Mr. T. D. Majumder, learned Government Advocate appearing for the respondents.

02. All these writ petitions are taken up together as the impugned orders of identical nature have been passed in gross violation of the principle of natural justice and also on relegating the provisions of Rule 16(1)(b) of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 whereby it has been provided that if any inquiry is held in regard to the mis-conduct as alleged such inquiry has to be mandatorily carried out in terms of sub-rules (3) to (23) of Rule 14 of the CCS (CCA) Rules, 1965.

03. Mr. Biswas, learned counsel for the petitioners while referring to the impugned memorandum dated 27.11.2009, Annexure-3 to each of the writ petitions, has drawn attention of this Court that it has been observed by the Director, Fire Service, Government of Tripura, Agartala that "*The undersigned has gone through the reply dated 02.11.2009 as furnished by said *....., Fireman and has also gone through the inquiry report, statement of witnesses etc. and found that the reply of *....., Fireman is not convincing enough.*"

*The name of each of the petitioners separately appears viz. Sri Bikash Dutta in the W.P.(C) No.34 of 2010, Sri Sajal Sukla Das in the W.P.(C) No.37 of 2010 and Sri Ranjan Ghosh in the W.P.(C) No.40 of 2010

*It has been clearly brought out that the Fireman *..... had in fact committed the misconduct mentioned above."*

04. As indicated in the respective memorandum dated 27.11.2009, the name of the individual petitioner has been changed. There is no dispute that the petitioners were neither invited to participate in the said inquiry nor a copy of the inquiry report or the statements of the witnesses as referred etc. were supplied to them for setting up their defence. Mr. T. D. Majumder, learned GA has however added that no such statements of witnesses are available in the records.

05. Be that as it may, initially the proceeding was drawn up by issuing show cause to the petitioners why for the misconduct as detailed therein, they shall not be proceeded against under Rule 16 of the CCS (CCA) Rules, 1965. In reply, they denied the allegations squarely and each petitioner has submitted that the said show cause notice is mala fide and the outcome of a conspiracy.

06. The respondents have asserted in no uncertain terms in the para 18 of the counter-affidavit as under:

"That, in reply to the averments and/or contentions made in para 8 & 9 of the petition I have to state that the averments and/or contentions are totally incorrect, baseless and thus disputed. As the punishment imposed to the Petitioner is a minor one, and which is based on materials on record such as the reply of the Petitioner, the statements of witnesses recorded by the authority, and the inquiry report, which reveals that the Petitioner committed the misconduct and hence the question of arbitrariness and quashing of the same does not arise at all."

07. Having regard to the averments made in the writ petitions as well as in the reply filed by the respondents and the records as appended to the writ petitions, this Court is of the view that the Director, Fire Services has denied the petitioners the reasonable opportunity for setting up their defence in terms of safe-guards provided in sub-rule (3) to (23) of Rule 14 of CCS (CCA) Rules, 1965, even though an inquiry in the allegations of misconduct has been carried out. Thus, the entire proceeding is vitiated in law. This Court would have remitted the matter back for fresh inquiry but it appears that the final order was passed on 27.11.2009, almost 5 years back and as such this Court is of the considered opinion that if the matter is remanded, the petitioners would further be prejudiced.

08. Having regard to this, all the writ petitions are allowed and the impugned memoranda/orders are set aside. The increment that has been withheld by virtue of the impugned orders be released within a period of three months from today with arrear of pay that would accrue for release of the increment from the day when it was supposed to be released, if the impugned orders were not there.

09. However, in the facts and circumstances, there shall be no order as to costs.

JUDGE