

(2013) 05 JH CK 0016

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5037 of 2011

Dinesh Kumar Singh

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-05-2013

Acts Referred:

Citation : (2013) 05 JH CK 0016

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Ananda Sen, for the Appellant;

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this petition, the petitioner has prayed for quashing the order dated 13.05.2011 passed by the Commissioner, Civil Defence, Jharkhand. One of the main grounds, which has been vehemently argued by learned counsel for the petitioner, is that the same person, who was the complainant, submitted charge sheet, enquired into the charges and passed impugned order of punishment and, thus, there is a blatant violation of rule of fair play and principle of natural justice. The entire proceeding and the order is arbitrary, illegal and is liable to be quashed.

2. The respondents have opposed the writ petition by filing counter affidavit. However, they have not denied the said facts, in the counter affidavit.

3. Learned J.C. to A.G., appearing on behalf of the respondents, has also fairly admitted the said factual position.

4. On perusal of the record, I also find that the same person had issued charge sheet, held enquiry and passed impugned order and awarded punishment of dismissal from service.

5. In The State of Uttar Pradesh Vs. Mohammad Nooh, , the Supreme Court in paragraph-7 observed that the two roles could not obviously be played by one

and the same person. Doing so is against the rule of natural justice and all canons of fair play and the decision arrived at on such process cannot be a valid and binding decision.

6. Same view was taken in the case of " A.U. Kureshi Vs. High Court of Gujarat and Another, .

7. In Mohd. Yunus Khan Vs. State of U.P. and Others, the Apex Court after discussing the earlier decisions, held that if a person appears as a witness in a departmental proceeding, he cannot be an enquiry officer nor he can pass order of punishment as a disciplinary authority. No person can be a judge of his own cause and no witness can certify that his own testimony is true. The principle of natural justice requires that any such person, who has been the complainant/enquiry officer, should not be disciplinary authority and should not pass the order of punishment. Violation of the said principles renders the order null and void.

8. In view of the said law laid down by the Apex Court, the impugned order of punishment dated 13.05.2011, contained in Annexure-14, does not sustain and is, accordingly, quashed.

9. The petitioner shall accordingly be reinstated forthwith. This writ petition is allowed in above terms.