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**(2008) 02 JH CK 0031**

**Jharkhand High Court**

**Case No:** W.P.S. No. 3996 of 2007

| | |
|---|---|
| Samsudin Ansari | APPELLANT |
| Vs | |
| State of Jharkhand and Others | RESPONDENT |

**Date of Decision:** Feb. 26, 2008

**Citation:** (2008) 56 BLJR 1489 : (2008) 2 JCR 501

**Hon'ble Judges:** Amareshwar Sahay, J

**Bench:** Single Bench

**Advocate:** A.K. Das and C. Mukherjee, for the Appellant; P. Modi, GP-I, for the Respondent

**Final Decision:** Allowed

**Judgement**

Amareshwar Sahay, J.
Heard the parties.

In this writ application, the petitioner has prayed for quashing of the order dated 18/04/2007, contained in Annexure-5 to the writ application, whereby the petitions has been dismissed from service.

2. The facts in short and that the petitioner was departmentally proceeded for the charge that be being a Driver of Jeep allegedly threw keys of the Car on the table of the Additional Collector, Dhanbad in June 2004 and refused to drive his vehicle.

3. In the departmental proceeding the Enquiry Officer held that the charges against the petitioner were proved and, thereafter, the Disciplinary Authority passed the impugned order for dismissal of the petitioner from service. The said order of dismissal has been challenged by the petitioner in this writ petition.

4. In course of argument, Mr. Das learned Counsel appearing for the petitioner, drew my attention to Annexure-3, i.e. the order sheet of the conducting officer showing that he was directed to dismiss the petitioner from service. The extract of the order dated

05.10.2004/08.10.2004, contained in Annexure -3, is quoted herein below for ready reference:

mik;qDr /kuckn ds vkns"k Kkikad 4148@jk0 fnukad 1-10-04 ds }kjk Jh lElqn~nhu valkjh thi ekfyd jktLo "kk[kk /kuckn ds fo:) foHkkxh; dk;Zokgh lapkyu gsrq v/kksgLrk{kjh dks lapkyu inkf/kdkjh fu;qDr fd;k x;k gS ,oa Jh valkjh dks ljdkjh lsok ls c[kkZLr gsrq funsZ"k izkIr gS A

5. It is submitted that the whole departmental proceeding, initiated against the petitioner, was farce and was conducted in most illegal and arbitrary manner. It was further submitted that though not a single witness was examined in the proceeding to prove the charges against the petitioner but the Enquiry Officer considered a letter said to have been issued by the Additional Collector supporting the allegations made by him and the Enquiry Officer without supplying a copy of the said letter to the petitioner and without giving him an opportunity to cross-examine the said witness, i.e. the additional Collector, has wrongly and illegally held that the charges against the petitioner was found to be established only on the basis of the aforesaid letter of the Additional Collector.

The aforesaid facts, which have been alleged by the petitioner, have not been controverted by the State in their counter affidavit.

6. Considering the facts and circumstances of the case as well as the submissions made by the parties, I find that the submission made by the counsel for the petitioner appears to be correct because the order sheet of the conducting officer, contained in Annexure-3 as noticed above clearly indicates that he was acting in a preconceived mind to punish the petitioner as per the direction of the Deputy Commissioner. I further find that the Enquiry Officer could not have considered the letter of the Additional Collector said to have been written by him in support of his allegation. The Additional Collector did not examine himself in the proceeding but only sent a letter to the Enquiry Officer and thereby the petitioner was deprived of an opportunity to cross-examine the Additional Collector. Therefore, I hold that the enquiry conducted against the petitioner to be not fair. There was violation of principles of natural justice also in conducting the said enquiry. In this view of the matter, the order impugned contained in Annexure-5, which is based on such unfair enquiry cannot be sustained.

7. Accordingly, this writ petition is allowed. The order dated 18/04/2007, contained in Annexure-5 dismissing the petitioner from service is hereby quashed and the mater is remitted back to the Enquiry Officer to conduct a fresh enquiry on the charges framed against the petitioner after giving full opportunity to the petitioner to defend. The Enquiry Officer should complete the Enquiry as early as possible preferably within a period of six months from the date of receipt/production of a copy of this order.