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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DEHRI
At Ahmedabad.

O.A. No. 148 of 1986.

~~Tax No.~~

DATE OF DECISION 31st July, 1986.

M. M. Desai

Petitioner

B. J. Shethna

Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent;

1. Dayashanker, Asst. Collector of Customs, Valsad

2. Dy. Collector, (P&E) Customs & Central -

Excise, Hqs. Baroda

Advocate for the Respondent(s)

3. The Collector, Customs & Central -
Excise, Baroda

CORAM :

The Hon'ble Mr. P.H. TRIVEDI (VICE CHAIRMAN)

The Hon'ble Mr. P.M. JOSHI (MEMBER)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?



Per :- P.M. Joshi (Judicial Member)

ORAL ORDER

The applicant (holding the position as Inspector of Central Excise at Baroda) has challenged the disciplinary enquiry being conducted by respondent No. 1. His contention is two-fold, firstly, he was not granted the permission for the assistance of ^alawyer and secondly, that the Enquiry Officer (i.e. Respondent No. 1) had, ~~and~~ by and large, entertained a bias against him. The Tribunal while entertaining the application has passed Interim Orders on 18.7.'86. The notices issued in this regard seems to have been served. The applicant has produced relevant records including the receipts passed by the personnel of the Officers of the respondents. On reading the said receipts, we are satisfied that the respondents are duly served with the notices. When the matter is called out the respondents have not made their appearance. They have not shown any cause why the ad interim relief granted earlier should not be confirmed and application should not be admitted. Hence, while admitting the application, we are constrained to pass this order, *ex parte*.

It is stated by the applicant that he had sought the permission for the assistance of a lawyer on 24.12.'85 by addressing a letter to the Deputy Collector (i.e. Disciplinary Authority. Annex. 'A'). His request was rejected vide order dated 6.2.'86 (Annex. 'J'). He therefore submitted his representations to the Collector vide his application dated 10.2.'86. The Collector however was pleased to grant such permission, as prayed for by the applicant, on 23.4.'86 (Annex. 'R'). But in the meantime, it is the case of the applicant, that the Enquiry Officer (Respondent No.1) had proceeded with the enquiry and had examined two witnesses on 3.2.'86 and another witnesses on 30th June, 1986. The Disciplinary Authority has proceeded to record evidence, with the result, an opportunity to cross examine the witnesses, with the assistance of lawyer has been denied to the applicant. In the present case, so far as this aspect is concerned, we cannot but hold that the principles of natural justice have been thoroughly violated. We hold that prejudice has been definitely caused to the delinquent/officer (applicant) and thereby depriving the applicant to properly defend himself.

It is next contended by the applicant that the respondent No. 1 (i.e. Enquiry Officer) had entertained a bias against him and he has every apprehension that he will not get justice at his hands. He has narrated the incidents in the application dated 4th February, '86 (Annex. 'G'). The allegations made in this regard remain uncontroverted. The allegations of the bias are levelled against the Enquiry Officer and he is likely to decide the fate of the applicant, in the proceeding conducted by him. Such a situation if allowed to prevail would be in violation of the rules of natural justice as it cannot be said that the opportunity given to him would be reasonable (See A.S. RAZVI v. D.E.T., AHMD. (S.C.A.)-Miabhoy J.G.L.R. Vol. 5 Page 175). In this view of the matter, it is found imperative, to direct the Disciplinary Authority to make an appointment of another officer who may conduct the enquiry in respect of the articles of charge levelled against the applicant. We therefore, pass the following order :-

"The disciplinary proceedings held by respondent No. 1 be stayed. The competent authority is directed to appoint another officer to hold the enquiry in place of respondent No. 1, as early as possible. The officer when appointed, shall resume the proceedings from the stage of cross examination of the witnesses with the assistance of a lawyer ~~who~~ ^{one} he wishes to engage. The applicant will be at liberty to file a list of witnesses for his defence before the Enquiry Officer or the Disciplinary Authority. To this extent only, the disciplinary ~~an~~ proceeding held by respondent No. 1 stands valid. The answers of the witnesses obtained and recorded by the Enquiry Officer shall not be the part of the record of the enquiry and ^{are expunged} ~~quashed~~ hereby."

In light of our observations and the order passed above it is conceded by Mr. Shethna, the learned counsel for the applicant that no further grievance in this regard now survives and hence the present application is allowed, with no order as to cost.

31.7.'86.

(P.M. JOSHI)
MEMBER

(P.H. TRIVEDI)
VICE CHAIRMAN



M.A. No.91/1986

CORAM : (1) Hon'ble Mr. P.H. Trivedi ... Vice Chairman
(2) Hon'ble Mr. P.M. Joshi ... Judicial Member.

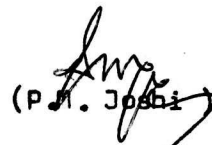
Heard learned advocate for the applicant. He may be given time for filing impugned order in O.A.148/86.

The case is adjourned to 25th September 1986 for further directions.

9-9-1986.



(P.H. Trivedi)
Vice Chairman



(P.M. Joshi)
Judicial Member.