

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. OA 350/01438/2015

Date of order : 30.9.2015

Present: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Mr. R. Bandyopadhyay, Administrative Member

VIJAY MINZ

VS

UNION OF INDIA & ORS.

For the applicant : Mr.S.Dutta, counsel

For the respondents: Mr.B.B.Chatterjee, counsel

O R D E R (ORAL)Ms.Bidisha Banerjee, J.M.

Heard the Id. Counsels for the parties.

2. The applicant is aggrieved with the charge sheet dated 28.1.15 which has been issued by the Commissioner, Central Excise, Audit-II Commissionerate.

The grounds of challenge are the following -

- (i) It has been issued by an authority who is lower in rank to the appointing authority;
- (ii) The Commissioner while issuing the charge sheet has expressed his opinion in regard to the guilt of the applicant.

As such it has been argued that, the charge sheet has been issued in contravention of the law laid down by the Hon'ble Apex Court in **Oryx Fisheries (P) Ltd. -vs- UOI & Ors. [(2010) 13 SCC 427]** wherein it was observed by the Hon'ble Apex Court that -

"It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

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In the instant case from the underlined portion of the show cause notice it is clear that the third respondent has demonstrated a totally close mind at the stage of show cause notice itself. Such a close mind is inconsistent with the scheme of Rule 43 which is set out below. The aforesaid rule has been framed in exercise of the power conferred under Section 33 of The Marine Products Export Development Authority Act, 1972 and as such that Rule is statutory in nature."

(iii) The third ground of challenge is in regard to the merits of the charges whereby the Id. Counsel for the applicant submitted that during the occurrence of the incident as alleged the applicant was on leave. He has also submitted that taking all these preliminary objections in regard to maintainability of the charge sheet and factual discrepancies he preferred a representation to the Commissioner on 13.7.15 which is yet to be disposed of. However, before addressing the issue and disposal of such representation, the respondents have appointed Presenting Officer and Enquiry Officer on 18.8.15 which is in violation of the principles of natural justice.

3. Ld. Counsel for the respondents submits that he does not have any instruction in regard to the matter. However, he shall have no objection if the authorities are directed to consider the representation in accordance with law and pass a reasoned and speaking order in a time bound manner.

4. In such view of the matter and in the interest of justice, we dispose of this OA with a direction upon the Commissioner of Central Excise to consider the representation preferred by the applicant on 13.7.15, delving into the allegations levelled therein and the preliminary objections raised in regard to the maintainability of the charge sheet, etc, and pass a reasoned and speaking order in accordance with law and in the light of the judgment referred to hereinabove, within two months from the date of communication of this order, and communicate the decision so taken, to the applicant within 15 days thereafter. The authority shall also have the liberty to withdraw the charge sheet, if the need be, and start the proceeding afresh.

5. Till the reasoned and speaking order is issued, the authority shall not proceed with the charge memo already served upon the applicant.

6. The OA is accordingly disposed of. No order is passed as to costs.

(R.BANDYOPADHYAY)
MEMBER (A)

(BIDISHA BANERJEE)
MEMBER (J)

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