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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY,
CAMP AT PANAJI.

OA. 514/90
Stamp Application No.G-2/90.

Shri A.G.N.Fernandes. ... Applicant
V/s.

Collector of Customs &
Central Excise, Panaji. ... Respondent.

Coram: Hon'ble Vice-Chairman, Shri G.Sreedharan Nair,
Hon'ble Member(A), Shri M.Y.Priolkar.

Appearances:-

Shri T.T.Sreedharan,
Counsel for the applicant.

Oral Judgment:-

(Per Shri G.Sreedharan Nair, Vice-Chairman) Dt. 11.7.1990

The applicant who is presently working as D.O.S. under the respondent was a candidate for being considered for promotion to the Executive post of Preventive Officer/Inspector of Central Excise to be held in the year 1986. It is alleged that by memorandum dt. 31.3.1986 he was directed to appear for the interview before the DPC, but though he was present in the interview hall he was not interviewed. It is stated that the representation was submitted by him to the Principal Collector of Customs when the reply dated 4.12.1986 (Ex.'A') was received intimating him that as per the letter of Ministry of Finance, Government of India dt. 6.10.1975, is no longer eligible to be considered for promotion to the post of Preventive Officer.

2. Accordingly, the applicant, aggrieved by the said communication made in memorandum a representation was made by him to the Chairman, ~~of~~ Central Board of Excise and Customs on

it is alleged (4)

12.7.1988 followed by a reminder on 6.3.1990 but till date no reply has been received.

3. The applicant prays for an order directing the respondents to conduct an interview for promoting him to the post of Preventive Officer. It is further prayed that the ~~fourth~~ DPC be directed to be held on or before 27.1.1991 since the applicant will be attaining the age of 45 years by then.

4. We have heard counsel of the applicant and have perused the application and the documents. Though advocate Mr.T.T.Sreedharan appearing on behalf of the applicant made a persuasive plea for admitting the application, we are not impressed.

5. It is not in dispute that the scheme for promotion of Ministerial Officers to the Executive cadre is governed by the instructions contained in the letter issued by the Ministry of Defence, Government of India on 6.10.1975, a copy of which is at (Ex.'B'). It is specifically provided therein that those Ministerial Officers who were considered once for promotion in the normal course in the past but were found unfit may be given one more chance for consideration for promotion in the normal course, if they are below 45 years of age. Reference was made by the Counsel of the applicant to the Circular dt. 14.3.1986 issued by the Customs House, Bombay, wherein also the aforesaid direction is reiterated. It is not in dispute that the applicant was first considered for promotion before he completed 38 years of age, in the

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year 1982 and that after completion of 38 years he was again considered in the year 1984. Hence in view of the instructions contained in the aforesaid letter of Government, and reiterated in the Circular dt. 14.3.1986 the applicant is no longer eligible to be considered for promotion to the post of Preventive Officer. It was argued by the counsel of the applicant that though the applicant was considered in the year 1982 and in the year 1984 since he was never intimated that he was found unfit for promotion, he cannot be debarred from taking the test a third time. This submission cannot be accepted. It may be that the applicant was not specifically told that he has not been found fit. But it cannot be denied that the applicant was unaware that persons who participated in the test along with him and who were found fit have since been promoted. There is also the circumstance that despite having taken the first test in the year 1982 the applicant took the test in the year 1984, and had made his claim for taking the test a third time in 1986. Before doing so he never wanted to be informed about the results of the previous tests.

5. The applicant was not called for the actual interview in the year 1986 when it was noticed that he was considered once before he attained 38 years of age and was again considered after he crossed the age of 38. This is evident from the impugned memorandum dt. 4.12.1986. As such the non-consideration of the applicant cannot be said to be arbitrary, unfair or illegal. It is only in consonance with the instructions contained in the

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Government of India letter referred to above which had been holding the field since the year 1975.

6. Apart from what is stated above the application is highly belated and is ex facie barred by limitation as the impugned memorandum was issued on 4.12.1986. The fact that the applicant had been submitting representations even after receipt of the said memorandum does not bring the action within the prescribed period. It may be pointed out that the impugned memorandum itself has been issued by way of response to the representation of the applicant against his not being considered for promotion in the year 1986.

7. The application is rejected.

M.Y.
11.7.86

Dr. S. S. Nair
11.7.86

(M.Y.PRIOLKAR)
MEMBER(A)

(G.SREEDHARAN NAIR)
VICE-CHAIRMAN