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**CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH: KOLKATA**

O.A.No.350/01129/2015.

Date of hearing:

Date of order: 20/11/18

**CORAM:**

HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)  
HON'BLE MS. NANDITA CHATTERJEE, MEMBER (ADMN.)

**UTTAM KUMAR RAY**, Aged about 51 years,  
Son of Late Biswanath Ray residing at Village-  
North Bawali (Kalitala), Post Office-Bawali,  
Police Station-Noadkhali, Dist. 24-Parganas  
(South), Kolkata-700137 and at present working  
to the post of Senior Tax Assistant in the office  
of the Deputy Commissioner, Barasat Central  
Excise Division, Kolkata-III Commissionerate,  
180, Shantipally, Rajdanga Main Road, Kolkata-  
700107.

.....Applicant

**-Versus-**

1. Union of India service through the Secretary,  
Ministry of Finance, Department of Revenue,  
Government of India, North Block, New Delhi-  
110 001.
2. The Chairman, Central Board of Excise &  
Customs, Government of India, Ministry of  
Finance, North Block, New Delhi-110 001.
3. The Commissioner of Central Excise, Kolkata-1,  
Commissionerate Customs House, 15/1, Strand  
Road, Kolkata-700001.
4. The Principal Collector, Central Excise &  
Customs, East Zone, Customs House, 15/1,  
Strand Road, Kolkata-70001.

*ldl*

5. The General Manager, Eastern Railway, Kolkata  
17, N.S.Road, Fairlie Place, Kolkata-700001.
6. Pradip Kumar Ghosh, the Superintendent,  
Central Excise Department in the office of  
Central Excise & Customs, Kolkata-1,  
Commissionerate, Customs House, 15/1, Strand  
Road, Kolkata-700001.

.....Respondents

For the Applicant: Mr. P.C.Das, Counsel

For the Respondents : Mr. S.K.Das, Counsel

Mr. B.B.Chatterjee, Counsel

Mr. A.K.Manna, Counsel

## O R D E R

**A.K.PATNAIK, MEMBER (JUDL.):**

An Original Application has been filed under section 19 of  
the Administrative Tribunals Act, 1985 seeking the following reliefs:-

- "a) To quash and/or set aside the appointment  
of the private Respondent to the post of  
Inspector under Sports Quota which he  
has obtained in terms of the notification  
for recruitment of meritorious Sportsmen-  
Inspector of Central Excise Department,  
Kolkata dated 22<sup>nd</sup> October, 1986 who  
obtained the appointment in a fraudulent  
manner and who did not participate in the  
selection process for the said post.
- b) To pass an appropriate order directing the  
respondent authority to issue appointment  
order in favour of the applicant to the post  
of Inspector against the sports quota who  
duly participated in the selection process  
for the said post and have been declared  
successful in both written test and viva  
voce in terms of the notification for  
recruitment of meritorious Sportsmen-  
Inspector of Central Excise Department,  
Kolkata dated 22<sup>nd</sup> October, 1986 and to  
give effect to his appointment with effect  
from the date when the private respondent  
has got the same along with all  
consequential benefits;

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- c) To pass an appropriate order directing the respondent authority to consider the detailed representations made by the applicant dated 25<sup>th</sup> February, 1987 and dated 30<sup>th</sup> March, 1987, 4<sup>th</sup> May, 1987, 8<sup>th</sup> June, 1987 and 15.1.2015 before the Central Board of Excise & Customs in respect of considering his case for appointment to the post of Inspector, Central Excise, Kolkata against the sports quota with effect from the date when the private respondent has got the same along with all consequential benefits."

2. The Applicant's submissions, as advocated through his Ld. Counsel is that a selection had been conducted for appointment as Sportsmen Inspector and that the applicant who was working as a Sepoy with the respondents, had applied as an in-service candidate in response to the same. He had thereafter appeared in the written test as well as the interview and according to the applicant he had successfully qualified in the said examinations and was eligible for appointment as an Inspector with the respondents.

The Respondent authorities however had illegally appointed respondent No.6 who had neither been eligible as an in-service candidate as he was a Railway employee nor had qualified in any selection process. Although the applicant had made a series of representations on February, 1987, March, 1987, May, 1987 and January, 2015, the Respondents authorities not having favoured him with a reply or a decision the applicant was constrained to approach the Tribunal for redressal of his grievances.

Vall

3. Per contra, reply has been filed by respondent Nos. 1, 2, 3 and 4 on behalf of Central Excise & Customs as well as Ministry of Finance and also by respondent No.5 on behalf of Eastern Railway. Respondent No.6 was represented by his Ld Counsel during hearing.

The official respondents 1 to 4 have averred that the applicant was appointed as a Sepoy in 1984 and had responded to a notification dated 22.10.1986 for recruitment of meritorious Sportsman (Inspector). Although the applicant had appeared for the written test, he failed to be successful in the said selection process.

The Respondent Nos. 1 to 4 have strongly contended that the matter is hopelessly barred by limitation as the applicant has approached the Tribunal after a lapse of 30 years and it is difficult to trace documents after such a long period; further, records of his representations may not have been retained under the record disposal system. Respondent Nos. 1 to 4 also categorically deny receipt of any application dated 15<sup>th</sup> January, 2015, at their end. The same views have been reiterated by the official respondent No. 5 the Eastern Railway that although a reference made by applicant under RTI Act, 2005 was promptly responded to, documents relating to Inter Railway Football Tournament held in 1986 are not available in the office of Eastern Railway after such a long period. Respondent No. 1 to 4 have also furnished an order of the Central Information Commission dated 5.2.2009 (Annexure R-3 to their supplementary reply) in which the

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Central Information Commission has disposed of the appeal of the applicant as follows:-

“Appellant called, present. Respondents absent.

Respondents have informed appellant that the records he as sought through his RTI- application dated 4.2.2008 are over 20 years old (of 1986 vintage) which they could not locate despite diligent search. Records seem to have been lost through sheer afflux of time.

As the records are non existent its disclosure cannot be authorized.

Appeal closed ”

5. The points of determination in this matter are –

- (i) Whether the application deserves to be dismissed on grounds of limitation;
- (ii) Has the appointment of the private respondent No.6 contravened the statutory rules in this regard;
- (iii) Has the applicant been able to establish his claim that he was the only eligible candidate to be appointed pursuant to the notification dated 22.10.1986 (Annexure A-1 to the OA).

6. Undoubtedly, in the present case there is no explanation to the inordinate delay in filing this OA. However, during hearing learned counsel for the applicant vociferously argued that the applicant is a senior citizen and being a superannuated employee has approached the Tribunal to receive consequential retirement benefits, in case he succeeds in this OA.

According to the applicant respondent N.6 was illegally and fraudulently appointed as because respondent No.6 was never an employee of the respondent authorities but was with the ministerial cadre of the eastern railway. Further it has been alleged that Respondent No.6 had never participated in any selection process and

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that his appointment is void ab initio. But no document has been produced in support of such claim which would establish that the respondent No.6 was applying as an insider candidate.

Neither the applicant nor the respondents have furnished before us the notification vide which selection to the post of Sportsmen Inspector was advertised in the year 1986. In the absence of the same it is difficult to understand as to whether the said selection was only to be made from insider candidates or whether there was scope for outsiders to be selected as direct recruits as Sportsmen Inspector with the respondent authorities. It also cannot be ascertained as to the exact number of vacancies that were sought to be filled up and whether the applicant was the only insider applicant for this purpose. Further no record has been produced so to conclusively establish that private respondent No.6 had been selected through the very same selection process in which the applicant had participated.

The official respondents did not provide any documents to disprove the allegation levelled by the applicant in the matter of selection of Respondent No.6. Recruitment rules of the post of sportsmen inspector of respondent authorities Nos. 1 to 4 has not been furnished either. Accordingly it is not possible to conclude as to whether the appointment of respondent No.6 was made in contravention of the rules.

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During hearing learned counsel for respondent No.6 furnished before us a certificate of respondent No.6 having been certified by IFA as a qualified footballer.

It is trite law that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. At the same time law is well settled that a wrong can be rectified by the authorities at any point of time.

Annexure-R/1 to the reply of the respondent No.5 is an office circular dated 25.7.2008 on preservation of records which states as follows;

"In connection with your letter cited above, it is reiterated that no paper/document related to Inter-Railway Football Tournament held in 1986 is available in Sports Cell of Eastern Rly. as the information sought for is about 22 years old.

As per the prevalent norms relating to Establishment matter, only certain types of documents/papers viz. recruitment/representation in post/service policy/retranchment (general principles) etc. are required to be retained permanently and documents/papers relating to all other issues are retained for 1-10 years. The instant case being 22 years old and relates to an ordinary importance, documents/papers for Inter-Railway Football Tournament held in 1986 have not been retained.

In view of the position explained above and for non-availability of the relevant documents/papers of Inter-Railway Football Tournament held in 1986, this railway is not in a position to provide any information on the subject matter at this distant date.

Position explained above may please be appreciated."

7 In view of the discussions made above we are constrained in the absence of recruitment rule and selection notification to remand the matter back to the respondent authorities. Accordingly we hope and trust that Respondent Nos. 1 to 4 would have preserved the Recruitment notification for selection of sportsmen/inspector in 1986.

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We hence direct the competent respondent authority particularly respondent No.3 namely the Commissioner of Central Excise, Kolkata to ascertain the details from the service records of both the applicant as well as that of respondent NO.6 and from the notification issued in 1986 on the appointment of sportsmen inspector examine the appropriateness of the claim of applicant by giving an opportunity of hearing to both the applicant and respondent No.6. Applicant as well as respondent No.6 are directed to attend such hearing with all documents relevant to establish their claims Upon consultation of records and hearing the applicant and respondent No.6, respondent No.3 will thereafter decide on the claim of the applicant and convey such decision to the applicant and respondent No.6 with a speaking and reasoned order issued in accordance with law. The entire exercise shall be completed within a period of 16 weeks from the date of receipt of a copy of this order.

With the aforesaid observation and direction this OA stands disposed of. No costs.

(Ms.Nandita Chatterjee)  
Member (Admn.)

(A.K.Patnaik)  
Member (Judicial)

RK/PS