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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A. No. 146/2014

Date Of Decision: 28th March, 2019.

**CORAM: R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).**

Shri. Cesar C. Machado,
Age 46 years,
working as Inspector (Preventive Officer),
Goa Customs.
Residing at House No.C-360/1,
Vodlem Bhat, Taleigao, Ilhas, Goa Pin- 403 002.

...Applicant.

(By Advocate Shri S V Marne)

Versus

1. Union of India,
Through the Commissioner, Customs, Central
Excise and Service Tax, ICE Building
Patto, Plot No.2, Panaji, Goa- 403001.
2. The Additional Commissioner (P&V),
Customs and Central Excise,
ICE Building Patto, Panaji, Goa-403001.
3. Shri. Mahesh Kumar Mahto,
working as Inspector (Preventive Officer) in
the office of Commissioner, Customs, Central
Excise and Service Tax, ICE Building Patto,
Plot No.2, Panaji, Goa- 403001.
4. Shri. Sanjaya Kumar, working as Inspector
(Preventive Officer) in the office of
Commissioner, Customs, Central Excise and
Service Tax, ICE Building Patto, Plot No.2,
Panaji, Goa 403001.
5. Shri. Rajkumar Alok, working as Inspector
(Preventive Officer) in the office of
Commissioner, Customs, Central Excise and
Service Tax, ICE Building Patto, Plot No.2,
Panaji, Goa 403001.
6. Shri. Arvind Kumar, working as Inspector
(Preventive Officer) in the office of

Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.

7. Shri. Sanjeev Kumar Sajjan, working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
8. Shri. Jitendra Kumar working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
9. Shri. Boddu V. Ramana Murthy, working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
10. Shri. Satish Ramavtar Porbi working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
11. Shri. Mahesh Kumar Meena working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
12. Shri. Y. M. Kholkar working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
13. Shri. Sushil Kumar Gautam working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
14. Shri Vinay Kumar Singh working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.

15. Shri. Ramesh working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
16. Shri. Pankaj Paul working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
17. Shri Vijay Kishore Tete working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
18. Shri. Bijay Kumar Minj working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
19. Shri. Kishor Nagvekar working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
20. Shri. R. R. Naik working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
21. Smt. Saesha Vishvasrao working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
22. Shri. Stanley Colaco working as Inspector (Preventive Officer) in the office of Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.
23. Shri Edwin Braganza working as Inspector (Preventive Officer) in the office of

Commissioner, Customs, Central Excise and Service Tax, ICE Building Patto, Plot No.2, Panaji, Goa 403001.

....**Respondents.**

(By Advocate Shri R R Shetty and Shri P Khosla)

ORDER (Oral)

PER:- R. VIJAYKUMAR, MEMBER (A).

The applicant has challenged the draft seniority list issued by respondents in their circular No. 14/2010 dt. 06.04.2010 as amended on 10.06.2010 and wherein the applicant was placed at Sl.No. 111 below respondents 3 to 23 who had been placed at Sl.Nos. 90 to 110. The applicant contends that the respondents have misinterpreted the orders of this Tribunal in OA No. 344/2005 and 48/2006 at Para 17 which reads as follows:

"In view of the above discussion, we are of the considered opinion that the applicant holds a lien only on the ministerial cadre post of Preventive Officer and he has a right to be considered for the post of Inspector(PO). Therefore, the respondents are directed to conduct a review DPC within a period of two months from the date of communication of this order to consider the applicant for the post of Inspector(PO). He should be allowed to revert to the ministerial cadre technically and then

considered for promotion as Inspector(PO) in terms of the request made by him in this regard vide letter dated 16.10.2003. If he is found fit, he should be promoted. Those who have already been given promotion to the post of Inspector(PO) shall not lose their seniority on the promotional post as a consequence of promotion of the applicant."

2. As explained by the applicant in his pleadings at Para 4.6, the applicant states that he was not aware of publication of any final seniority list after 11.06.2010 and came to file a representation on 22.07.2013 to which the respondents issued the order No. F.No. 7/9/2012-Estt. dt. 14.11.2013 affirming their conformance with the orders of this Tribunal in the aforesaid paragraph and that the seniority list which was finally issued in Circular No. 59/12 dt. 14.11.2012 was correct. The applicant has then filed this OA on 18.02.2014 challenging these orders.

3. The applicant argues that he had initially been promoted as Inspector(Examiner), Central Excise on 29.04.2003 whereas five of his juniors were

promoted on 07.10.2003 as Inspector(Preventive Officer), Customs. He had challenged these orders in the context of the option available for being promoted as Inspector(Examiner) or as Inspector(Preventive Officer) in OA No. 344/2005 & 48/2006 in which he succeeded with the orders recorded by the Tribunal as reflected above. He was then appointed to the post of Inspector(Preventive Officer) on 22.03.2007 on adhoc basis and on regular basis on 11.04.2008 in compliance with the orders of this Tribunal. During this period, the respondents were appointed or regularly promoted as Inspector(Preventive Officer) on 12.05.2004 and 29.12.2005 all of whom were his erstwhile juniors in the feeder cadre. The respondent Nos. 3 to 11 and 13 to 18 were direct recruits, who entered service in 2004 and 2006. All these persons have been placed above the applicant in the seniority list which is the current grievance of the applicant.

4. At the outset, we would need to

examine the priliminary issue of limitation. It is an admitted fact recorded in the application that all the respondents, both promotees and direct recruits, were promoted as Inspector(Preventive Officer) prior to 2007 and 2008 when the applicant was appointed on adhoc basis and then on regular basis as Inspector(Preventive Officer). This situation was taken cognizance by the respondents by virtue of their interpretation of the orders of this Tribunal in Para 17 extracted above and was contained in the draft seniority list published on 06.04.2010 and as revised on 10.06.2010 to which the applicant had raised no objection within the requisite period of time. The applicant has also filed an MA No. 164/2014 seeking condonation of delay of two years and eight months for the period from 11.06.2010 to 18.02.2014. The learned counsel for the applicant also argues that although his representation dt. 22.07.2013 was filed nearly three years after the publication of the draft seniority list and after the

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seniority list was finalised on 14.11.2012, the fact that the respondents provided him a reply in their orders dt. 14.11.2013 would represent a fresh cause of action. The respondents replied to the OA and also to the MA for condonation of delay. On the aspect of delay, the respondents have argued that a mere disposal of the applicant's belated representation beyond the period of limitation by the respondents is only a subterfuge that cannot yield a fresh cause of action for the applicant to unsettle the settled seniority positions of various persons whose draft seniority list was published, corrigendum issued, and the final list was also published in the year 2012 well before the applicant filed his representation in 2013.

5. The position of law in this matter of limitation has been settled by the Hon'ble Apex Court in *S.S. Rathore Vs. State of Madhya Pradesh* (AIR 1990 SC 10), by which it is held that repeated representations cannot generate a fresh cause of action for the

applicant or representation filed or disposal of the representation which is contrary to provisions of the relevant statute is also barred by limitation. The learned counsel for the respondents also relied on **R. Chettiyar Vs. P. K. Pattabiram 2001(2) SC 133**, to contend that once the applicant has not impleaded the directly recruited persons in the previous round of litigation in OA No. 344/2005 and 48/2006, the applicant will not have any fresh cause of action to implead such directly recruited private respondents in the present OA and to contend that the fresh cause of action has arisen to the applicant against such respondents after so many years.

6. In the absence of any sufficient and good ground for not making a timely representation against the draft seniority list and further, for the delay in filing this OA, this application suffers gravely from delay attracting provisions of limitation under Section 21 of the Administrative Tribunals Act, 1985..

7. In view of the above, the OA is dismissed on grounds of limitation without any order as to costs.

(R.N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

Ram.

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