

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.8665 of 2014**

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Md. Obaidullah, aged about 44 years, S/o Md. Hasnain, resident of Barahpura, Bhagalpur, P.S.- Bhagalpur, District- Bhagalpur.

.... .... Petitioner

Versus

1. Union of India through Joint Secretary (Admn.), Central Board of Excise and Customs, New Delhi.
2. Joint Secretary (Admn.), Central Board of Excise and Customs, New Delhi.
3. Chief Commissioner, Central Board of Excise and Customs, New Delhi.
4. Commissioner, Central Excise and Service Tax, Patna.
5. Additional Commissioner (COO), Central Excise and Services Tax, Ranchi Zone, Patna.

.... .... Respondents

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**Appearance :**

For the Petitioner : Mr. Siddhartha Prasad, Advocate

For the Respondents : Mr. S. D. Sanjay, A.S. G.

Mrs. Archana Menakshee, Sr. Standing Counsel

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA**

**And**

**HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)**

**Date: 18-04-2016**

The order dated 27<sup>th</sup> of January, 2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (for short, 'the Tribunal') is subject matter of challenge in the present writ application. The challenge in the Original Application is to an order dated 23<sup>rd</sup> September, 2011 whereby the claim of the petitioner to the up-graded post of Inspector with effect from January, 1998 stands declined.

2. It is the stand of the petitioner that a Circular was issued on 17.09.1997 whereby the posts of Tax Assistant were upgraded to the posts of Inspector. The grievance of the petitioner in an earlier O.A.

No.251 of 2007 was that he has not been promoted against upgraded post of Inspector though some persons similarly situated even junior to the petitioner stood upgraded. He refers to an order passed in O.A. No.657 of 1997 on 14<sup>th</sup> of December, 2004 whereby posts held by similarly situated Tax Assistants were upgraded to that of Tax Inspector.

3. The petitioner earlier filed Original Application No.251 of 2007 which was decided on 10<sup>th</sup> of May, 2011 with the direction to the respondents to pass appropriate order in the light of decision in O.A. No.657 of 1997. In view of the said order, the impugned order dated 23<sup>rd</sup> of September, 2011 has been passed.

4. The claim of the petitioner for up-gradation to the post of Inspector has been declined on the ground that the claim of the petitioner was considered by the D.P.C. held on 9-11 of December, 1997 as per seniority list and after considering the aggregate marks, both of the ACR and the Interview, the petitioner's name did not find place in the list of the candidates for promotion. The learned Tribunal dismissed the writ application on the ground of delay and laches as well.

5. We do not find any merit in the present writ application against an order whereby the claim of the petitioner was considered in the year 1997. The petitioner was not found suitable for up-gradation.

In respect of up-gradation of the post, the petitioner has a right to be considered. He was considered in 1997 and found not suitable. Therefore, he cannot be permitted to raise the dispute about his non-up-gradation in the year 2007.

6. It may be noticed that the petitioner stands promoted on 1<sup>st</sup> of February, 2010 pursuant to the recommendation of the D. P. C. held on 07<sup>th</sup> of September, 2009 after the expiry of the period of punishment which was awarded in pursuance of the charge-sheet served on 22<sup>nd</sup> of April, 2002. The Tribunal has rightly dismissed an original application on account of delay and laches.

7. We do not find any merit in the present writ application. The same is dismissed.

**(Hemant Gupta, J.)**

**(Ahsanuddin Amanullah, J.)**

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