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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.03.2022

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.23723 of 2021
and
W.M.P.No.24971 of 2021

V.Kannathasan
Deputy Director,
Office of the Additional Director General (Audit),
Chennai Zonal Unit, Chennai - 600008. ...Petitioner

Vs.

1. The Revenue Secretary,
   Department of Revenue,
   North Block, New Delhi.

2. The Chairman,
   Central Board of Indirect Taxes & Customs,
   Department of Revenue,
   North block,
   New Delhi.

3. The Member (Admn)
   Central Board of Indirect Taxes & Customs,
   Department of Revenue,
   North block, New Delhi.

4. The Under Secretary to Government of India,
   Ministry of Finance, AD-II Section,
   Central Board of Indirect Taxes and Customs (CBIC),
   North Block, New Delhi. ...Respondents

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India, to issue writ of Mandamus, directing and commanding the respondents to quash the CBIC Office Memorandum in CBIC Order F.No.32012/25/2018-AD-II, dated 16.08.2021 and (b) to quash the disciplinary proceedings in charge memorandum 47/2016, dated 06.12.2016, on the file of the CBIC Office Memorandum in F.No.C-14011/38/2010-Ad-V and (c) to consider the petitioner and pass orders directing the respondents to promote the petitioners to the post of Additional Commissioners with effect from 07.05.2018.

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For Petitioner : Mr.P.Manish

For Respondents: Mr.V.Sundareswaran
Senior Panel Counsel

O R D E R

This petition has been filed to direct and command the respondents to quash the CBIC Office Memorandum in CBIC Order F.No.32012/25/2018-AD-II, dated 16.08.2021, to quash the disciplinary proceedings in charge memorandum 47/2016, dated 06.12.2016, on the file of the CBIC Office Memorandum in F.No.C-14011/38/2010-Ad-V and to consider the petitioner and pass orders directing the respondents to promote the petitioners to the post of Additional Commissioners with effect from 07.05.2018.

2.Brief facts of the case:

On 12.08.1994, the petitioner joined as Appraiser at Custom House, Tuticorin and subsequently, promoted as Assistant Commissioner and then as Deputy Commissioner. Whileso, on 06.12.2016, the Central Bureau of Investigation (CBI) has registered a disproportionate Asset case against the petitioner in C.C.No.04/2013 in RC.No.59/A/2009 before the Court of learned XII Additional Special Judge for CBI cases, Chennai, and the learned Judge vide order dated 26.04.2018, has acquitted the petitioner and other accused persons. Whileso, on 30.06.2015, the Department has promoted few officers who are juniors to the petitioner as Joint Commissioner on ad hoc basis and the petitioner's name was kept in a “Sealed Cover” by the Department Promotion Committee (DPC) since the criminal case is pending against the petitioner. Hence, the petitioner has sent a representation dated 10.09.2018 to the Chairman, Central Board for Indirect Taxes and Customs by enclosing a copy of the acquittal order for promotion but the same was rejected by the Department in view of the pendency of the Disciplinary Proceedings. Aggrieved over the same, the petitioner has filed an application in O.A.No.1616 of 2019 before the Tribunal and by an order dated 05.12.2019, the Tribunal has direct the respondents to pass a speaking order in the light of the DOPT OM dated 24.02.2003 within a period of three months. Further, the Enquiry Authority vide its report dated 28.08.2018 held that the imputation of charges as 'Not Proved'. But the disciplinary authority did not agree with the same and remitted the case back to the same enquiry officer. Further, the Central Board of Customs and Indirect Tax vide its order in F.No.32012/25/2018-Ad-II, dated 16.08.2021, in O.A.NO.310/01616/2019, has rejected the request of the petitioner. Hence, the writ petition.

3.The learned Senior Panel Counsel appearing for the

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respondents would submit that the present writ petition is not maintainable on the ground that the petitioner is having efficacious alternative remedy before the Central Administrative Tribunal as per the Act.

4.The learned counsel for the petitioner does not have any dispute on the submission made by the learned Senior Panel Counsel appearing for the respondents.

5.Heard the learned counsel on either side and perused the materials placed on record.

6.In view of the above facts and circumstances of the case and the submissions made by the respective learned counsels, the petitioner is permitted to approach the Central Administrative Tribunal by seeking his remedy within a period of three weeks from the date of receipt of a copy of this order. The learned Senior Panel Counsel may not have any objection, if the petitioner approached the Tribunal within prescribed time as specified by this Court, by excluding the period of limitation, which is pending before this Court.

7.With the above liberty, this Writ Petition is dismissed as not maintainable.No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Revenue Secretary,
   Department of Revenue,
   North Block, New Delhi.

2. The Chairman,
   Central Board of Indirect Taxes & Customs,
   Department of Revenue, North block, New Delhi.

3. The Member (Admn)
   Central Board of Indirect Taxes & Customs,
   Department of Revenue,
   North block, New Delhi.

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4. The Under Secretary to Government of India,
   Ministry of Finance, AD-II Section,
   Central Board of Indirect Taxes and Customs (CBIC),
   North Block, New Delhi.

Copy To

1. The Registry,
   Central Administrative Tribunal,
   Chennai.

2. The Section Officer,
   E.R. Section,
   High Court,
   Madras - 104.

   With a direction to return the Original impugned order after replacing the same to the Petitioner.

+1cc to M/s.V.Sundareswaran, Advocate, S.R.No.19690

W.P.No.23723 of 2021
and
W.M.P.No.24971 of 2021

GP(CO)
RGA(21/04/2022)

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