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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 11681/2025**

SANTOSH KUMAR MOHANTY

.....Petitioner

Through: Mr. Pragyan Pradip Sharma, Senior Advocate with Ms. Smiti Verma, Ms. Purva Kohli and Mr. Aditya Dutta, Advocates.

versus

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Rakesh Kumar, SPC with Mr. Sunil, Advocate for UOI.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **10.04.2026**

CM APPL. 23423/2026 (early hearing)

1. The Petitioner seeks early hearing of the petition. For the grounds and reasons stated in the application, the same is allowed. With the consent of counsel for the parties, the writ petition is called on the Board today itself.
2. The application is disposed of and the date previously fixed stands cancelled.

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3. The Petitioner is presently serving as a Member (Judicial) in the Customs, Excise and Service Tax Appellate Tribunal,¹ Mumbai Bench. It is his case that his appointment is governed by the CESTAT Members

¹ "CESTAT"



(Recruitment and Conditions of Service) Rules, 1987² read with Section 129 of the Customs Act, 1962. He contends that the post of Vice-President in CESTAT has remained vacant since October, 2014. Being the senior-most Member, the Petitioner claims entitlement to be considered for appointment to the said post.

4. In this regard, the Petitioner addressed a representation dated 2nd December, 2024, which was forwarded by the Registrar, CESTAT to the Under Secretary, Department of Revenue, Ministry of Finance, Government of India, *vide* communication dated 16th December, 2024, requesting that the process for filling up the post of Vice-President be initiated expeditiously. The said request, however, came to be rejected by the impugned communication dated 28th March, 2025, which reads as under:

“I am directed to refer to your letter dated 16.12.2024 on the subject cited above and to say that the matter has been examined in this department. In this regard, it is stated that there is no post of Vice-President in CESTAT as the Tribunal (Conditions of Service) Rules 2021 framed under Section 3 of the Tribunal Reforms Act, 2021 do not provide for any such post in respect of CESTAT.

3. *Accordingly, the request of CESTAT for the appointment of Vice President, CESTAT has not been acceded to.*

4. *This issues with the approval of Revenue Secretary.”*

5. Mr. Pragyan Pradip Sharma, Senior Counsel for the Petitioner, contends that the Respondents have erred in concluding that no post of Vice-President exists in the CESTAT. He submits that such reasoning overlooks the statutory mandate contained in Section 129(4) of the Customs Act read along with the 1987 Rules, which expressly provides that the Central Government may appoint one or more members of the Appellate Tribunal to the post of Vice-President or Vice-President(s) thereof.

² “1987 Rules”



6. Without prejudice to the aforesaid submission, Mr. Sharma further contends that the very foundation of the impugned communication, *i.e.*, the reliance on Section 3 of the Tribunals Reforms Act, 2021, is unsustainable in view of subsequent legal developments. In this regard, it is pointed out that the said provision was subject matter of challenge in ***Madras Bar Association v. Union of India***,³ wherein the Supreme Court, while examining various provisions of the Tribunals Reforms Act, held that the impugned provision could not be sustained as it violates the constitutional principles of separation of powers and judicial independence.

7. In these circumstances, it is urged that the Respondents must reconsider the matter by applying their mind to the applicability of the 1987 Rules, which, according to the Petitioner, govern his appointment. Further, it is urged that such reconsideration ought to be undertaken within a time-bound framework, considering the fact that the tenure of the President, CESTAT is due to expire in June and, under the applicable regime, it is the President who is vested with the power of delegation of functions to the Senior Vice-President or Vice-President.

8. Mr. Rakesh Kumar, Standing Counsel for Union of India, does not dispute that there has been a change in the legal position subsequent to the impugned communication, in light of the judgment of the Supreme Court in ***Madras Bar Association***, concerning the applicability of Section 3 of the Tribunals Reforms Act. He submits that, in view of the said development, the Central Government is presently examining the issue not only in the context of CESTAT but also in relation to other Tribunals. He thus proposes that the matter can appropriately be revisited in light of the aforesaid legal

³ (2026) 2 SCC 1.



position.

9. In light of the submissions advanced, and considering that the impugned communication is primarily founded upon Section 3 of the Tribunals Reforms Act, the same is liable to be set aside. Accordingly, the matter is remitted to the Competent Authority in the Ministry of Finance for fresh consideration of the communication dated 16th December, 2024 issued by the Registrar, CESTAT. The Petitioner shall also be entitled to submit an additional representation through the Registrar, CESTAT, which shall be duly forwarded to the concerned Ministry for consideration.

10. It is further directed that the Competent Authority shall, while undertaking fresh consideration, also examine the applicability of Rule 12 of the 1987 Rules, read with Sections 129(4) and 129(7) of the Customs Act.

11. In the event the request made by the Registrar, CESTAT is found to have merit, appropriate consequential directions shall be issued. Conversely, if the decision is adverse, a reasoned and speaking order shall be passed and duly communicated to the Petitioner, who shall be at liberty to avail of appropriate remedies, in accordance with law. The aforesaid exercise be completed within a period of four weeks from the date of this order.

12. It is clarified that this Court has not expressed any opinion on the merits of the case, and all rights and contentions of the parties are kept open.

13. With the above directions, the petition is disposed of along with pending applications.

SANJEEV NARULA, J

APRIL 10, 2026/nk