

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO 1084 OF 2017**

DISTRICT : MUMBAI

Mrs Yogita Jitendra Medhekar)
Working as Sales Tax Inspector at Goods and)
Service Tax, [GST], Office, Bandra,)
Kurla Complex, Behind Family Court,)
Bandra [E], Mumbai 400 051.)
R/o : Plot 452, Swami Palace, 5th floor,)
Block No. 402, Sai Section, Ambernath [E],)
Maharashtra.)...**Applicant**

Versus

1. The State of Maharashtra)
Through Additional Chief Secretary,)
[Finance], Finance Department,)
Mantralaya, Mumbai 400 032.)
2. The Commissioner,)
Goods & Service Tax, [G.S.T],)
(Erstwhile Sales Tax) Bhavan, Mazgaon,))
Mumbai 400 010.)
3. The Special Commissioner,)
G.S.T Bhavan, Mazgaon,)
Mumbai 400010.)
4. The Additional Commissioner,)
G.S.T Bhavan, Mazgaon,)
Mumbai 400 010.)
5. The Joint Commissioner,)
Goods & Service Tax, (G.S.T),)
Bhavan, Suburban Bandra Kurla)
Complex, 3rd floor, Mumbai 400 001.)...**Respondents**

Shri D.B Khaire, learned advocate for the Applicant.

Ms Archana B.K, learned Presenting Officer for the Respondents.

CORAM : **Shri Justice A.H Joshi (Chairman)**
Shri P.N Dixit (Member) (A)

RESERVED ON : **25.10.2018**

PRONOUNCED ON : **30.10.2018**

PER : **Shri Justice A.H Joshi (Chairman)**

ORDER

1. Heard Shri D.B Khaire, learned advocate for the Applicant and Ms Archana B.K, learned Presenting Officer for the Respondents.

2. The applicant herein holds the post of Sales Tax Inspector since December, 1998. By order dated 13.12.2017, Exh. 'C', applicant was temporarily promoted as Sales Tax Officer.

3. Maharashtra Sales Tax Officers Departmental Examination Rules, 1973, provides for mandatory requirement of passing departmental examination.

4. During applicant's tenure as Sales Tax Officer, 7 chances could to have been available to the applicant, out of which, the examination was conducted only on 4 occasions. Applicant had availed all four chances and in all 4 occasions applicant has failed to pass the departmental examination.

5. Applicant attained 45 years of age on 7.7.2006.

6. By impugned order dated 2.11.2017, applicant has been reverted to the post of Sales Tax Inspector. Impugned order also directs that

exemption from passing Departmental Examination granted in favour of the applicant by order dated 19.8.2016 is thereby revoked.

7. The applicant has approached this Tribunal by challenging the impugned order.

8. The foundation of applicant's claim is contained in paras 6.12 & 7.2 summary whereof is as follows:-

- (a) Applicant had availed only five chances during her tenure as Sales Tax Officer.
- (b) That the order is arbitrary.
- (a) Extra chance is granted to Shri M.D Chavan, Shri R.F. Navale, Shri S.P Shinde, Shri G.K Lad and Shri G.V Lad. However, similar chances are not afforded to the applicant.
- (b) Rule 7(c) which provides that reversion of a candidate who does not pass Departmental Enquiry does not apply to the applicant because she has crossed 45 years of age.
- (e) Rule 7(c) which provides for reversion of a candidate, who does not pass departmental examination, does not apply to the applicant because she has crossed 45 years of age.
- (f) The chances for appearing examination availed by her in January 2008 pertains to the application for examination submitted by her while she was working as Sales Tax Inspector, and therefore said chance ought not be taken into account as availment of a chance during the tenure after promotion.
- (g) Officers who are similarly situated has not been reverted.

9. Applicant's averments about discrimination are contained in para 7.5.

10. Applicant's claim contained in the averments which are referred to in foregoing paragraph No. 8 have been replied by the State with pleadings contained in paragraphs no 21 to 23 of the reply, which is seen at page 97 to 103. The substance of long pleading in reply is as follows:-

- (i) Passing of examination is mandatory.
- (ii) A candidate who fails to pass departmental examination within the chances provides, is liable to be reverted.
- (iii) A candidate who is reverted and passes examination later on could be re-promoted.
- (iv) A candidate is eligible for re-promotion upon receiving exemption due to crossing of 45 years of age.
- (v) A candidate who is re-promoted is entitled for counting seniority from the date of re-promotion.
- (vi) Applicant shall be considered for promotion in future treating that she is eligible by giving due credit to her exemption as and when her turn comes for promotion on the basis of seniority-cum-fitness. Para 23.4 at page 105 of O.A reads as follows:-

“It is submitted that the applicant will be considered for re-promotion to the post of Sales Tax Officer as per amended Rule 4(A) vide notification dated 17.11.1980, in the next D.P.C year as per her seniority in the cadre of Sales Tax Inspector.

(Quoted from page 105 of O.A)

- (vii) Applicant was afforded in all six chances, out of which two chances were availed by the applicant, while she was serving as Sales Tax Inspector and four chances while she was serving as Sales Tax Officer, which include two extra chances.
- (viii) Candidates who are is given more number of chances than the chances availed by the applicant, are either belonging to backward classes to whom extra chance has to be given or the candidates who could not/did not avail of prescribed and special chances.

11. Applicant’s averments about discrimination pleaded in para 7.5 of O.A have been replied by the State by averments contained in para 22.2 to 22.11. Those paras reads as follows:-

“22.2 The candidates mentioned by the applicant in Exhibit-K, who availed 7 chances are from reserved category and have been sanctioned 7th chance as per the provisions of G.R. dated 24

August 1976, whereby candidates from reserved category are given one more chance and one more year to pass the Departmental Examination, than is permissible under the Rules to other candidates.

22.3 The candidates from open category who have availed 6 chances have availed it as per provisions of Rule 4(a) / 4(b) and Rule 5 of Maharashtra Sales Tax Officer's Departmental Examination Rules, 1973.

22.4 The candidates from open category but have availed 7 chances have availed it as per provisions of Rule 7 of Maharashtra Sales Tax Officer's Departmental Examination Rules 1973 considering the circumstances under which they were not able to clear the examination in 6 chances.

22.5 Mr. G.K. Lad candidate in open category mentioned by the applicant in Exhibit-K, has been granted 7th chance, as his result for the examination of July' 2004 was withheld by M.P.S.C. upto 25.11.2007. Hence he could not avail the chances in January 2005, July 2005, January 2006, July 2006 and January 2007. Hence he was given additional chance for the examination of July' 2007 as per the Rule (7) of Maharashtra Sales Tax Officer's Departmental Examination Rules 1973, but he failed and hence was reverted as per Rule 4 (C) of Maharashtra Sales Tax Officer's Departmental Examination Rules, 1973 vide order dated 03.03.2008. He was re-promoted vide order dated 27.11.2012 as per Rule 4(A) of Notification dated 17.11.1980 (Amendment to Maharashtra Sales Tax Officer's Departmental Examination Rules, 1973).

22.6 Mr. G.V. Lad, open category candidate mentioned by the applicant in Exhibit-K, did not apply for the Sales Tax Officer Departmental Examination conducted in July' 2004 as he was working as Sales Tax Inspector then and giving Sales Tax Officer Departmental Examination was optional, but at the time when examination was held he was already promoted as Sales Tax Officer but could not avail that chance as he had not applied for that Examination. Hence he was given additional chance for July' 2007 examination. So the contention of the applicant that the conduct of the respondents is discriminatory and arbitrary is not correct and is denied.

22.7 It is further submitted that, Rule 4(b) of Maharashtra Sales Tax Officer's Departmental Examination Rules, 1973 provides for passing the Departmental Examination within two years. Rule 9 provides that the examination will be held twice a

year in January and July of each year by the Maharashtra Public Service Commission (M.P.S.C.). Rule 5 of Maharashtra Sales Tax Officer's Departmental Examination Rules, 1973 provides for two extra chances to appear for the Departmental Examination under exceptional circumstances by the Government. Rule 4(c) of Maharashtra Sales Tax Officer's Departmental Examination Rules, 1973 provides that in the event of failure to pass the examination in the prescribed time candidates shall be liable for reversion to the post held by him prior to their promotion. Rule 8 of Maharashtra Sales Tax Officer's Departmental Examination Rules 1973 provides for exemption from passing the Departmental Examination on attaining the age of 45 years. Plain reading of Rule 8 provides for exemption from passing the Departmental Examination on attaining the age of 45 years, but it needs to be read in relation with Rule 4(b), Rule 5 and Rule 4(c) of Departmental Examination Rules.

22.8 Thus i) if a candidate gets promoted after attaining the age of 45 years then Rule 8 is directly applicable and the candidate is entitled to get the exemption from passing Departmental Examination.

(ii) if a candidate gets promoted before attaining the age of 45 years and attains age of 45 years before exhausting all 6 chances as per Rule 4 (b) and Rule 5 of Maharashtra Sales Tax Officer's Departmental Examination Rules 1973. Here, after application of Rule 4(b) and/or Rule 5 Rule 8 comes in picture and candidate is liable to get exemption from passing the Departmental Examination on attaining the age of 45 years.

(iii) if a candidate gets promoted before attaining the age of 45 years and exhausts all 6 chances as per Rule 4 (b) and Rule 5 of Maharashtra Sales Tax Officer's Departmental Examination Rules 1973, before attaining the age of 45 years and does not clear the examination, then the candidate is liable for reversion as per Rule 4(c), to the post held by him prior to the promotion. In this scenario Rule 8 comes in picture after application of Rule 4(b), Rule 5 and Rule 4(c).

22.9 The Applicant availed 4 chances to pass as per Rule 4(b) and 2 extra chances as per Rule 5 of Maharashtra Sales Tax Officer's Departmental Examination Rules 1973 upto January 2013 to pass the departmental examination, i.e. before completing the age of 45 years on 07.07.2016. The applicant failed to pass the examination in prescribed time. Hence first as per Rule 4 (c) of Maharashtra Sales Tax Officer's Departmental Examination Rules 1973 Applicant was liable for reversion to the lower post i.e. Sales

Tax Inspector and then after attaining 45 years of age Rule 8 comes in picture.

22.10 It is submitted that the applicant will be considered for re-promotion to the post of Sales Tax Officer as per amended Rule 4 (A) vide notification dated 17.11.1980, in the next year's D.P.C. as per her seniority in the cadre of Sales Tax Inspector. Thus, it is submitted that the action of the respondent to revert the applicant is legal and as per law and is in accordance with Maharashtra Sales Tax Officer's Departmental Examination Rules, 1973.

22.11 In O.A. 461/2007 filed before this Hon'ble Tribunal, on the similar subject, this Hon'ble Tribunal vide order dated 18.08.2008 has upheld the reversion order. Copy of Judgment dated 18.08.2008 in O.A.No.461/2007 is annexed hereto and marked as **EXHIBIT "R-2".**

(Quoted from pages 99, 100, 101, 102 & 103 of O.A)

12. Applicant was under obligation to prove by producing date and evidence to show that candidates who are similarly situated, i.e. who have completed 45 years of age did not pass examination, are junior to applicant, yet they are continued on promotional post.

13. There is no specific rejoinder from the applicant to the facts pleaded by Respondent-State in reply quoted in foregoing paragraphs, namely, para Nos 22.2, 22.3, 22.4, 22.5 and 22.6.

14. This Tribunal has considered rival submissions.

15. This case proceeds in the admitted and proved background, namely:-

- (a) Applicant was promoted while she had yet to pass the departmental examination.
- (b) Applicant failed to pass the departmental examination despite availing mandatory chances and two extra chances.
- (c) No other junior person to the applicant who has attained 45 years of age, has got exemption and is junior to the applicant, is retained on promotional post.

16. The reversion order is passed while keeping in line with Rule 4(c) of Maharashtra Sales Tax Officer's Departmental Examination Rules, 1973, as amended upto date.

17. Department has come with a case that applicant's case would be considered in annual D.P.C meeting and she would be considered for promotion by giving due credit to the exemption available to the applicant on account of attaining 45 years of age.

18. Applicant has failed to show that impugned order is contrary to any mandatory provisions of law or otherwise, violative of any fundamental rights or discriminatory.

19. In the result, applicant has failed to show any error or illegality in the executive action of reverting the applicant. Impugned action is not punitive. Applicant's averments about discrimination are denied by Respondents, as well the same is duly explained. Applicant's pleading of discrimination is not proved to be factually correct.

20. Hence Original Application has no merit and is dismissed.

21. Parties are directed to bear respective costs.

Sd/-
(P.N Dixit)
Member (A)

Sd/-
(A.H. Joshi, J.)
Chairman

Place : Mumbai
Date : 30.10.2018
Dictation taken by : A.K. Nair.