

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,
MUMBAI**

ORIGINAL APPLICATION NO. 813 OF 2016

DISTRICT : MUMBAI

Shri Uday Balkrishna Sankpal,)
Age: 51 years,)
Working as Deputy Commissioner of Sales Tax,)
R/at. Flat No. A-10-1/1, Dahivali Co-op.)
Housing Society, Laxman Mhatre Marg,)
Dahisar West, Mumbai-400 068.)...**Applicant**

VERSUS

1. State of Maharashtra,)
Through, Chief Secretary,)
Mantralaya, Mumbai-400 032.)

2. The Additional Chief Secretary,)
Finance Department,)
Mantralaya, Mumbai-400 032.)...**Respondents**

Smt. Punam Mahajan, learned Advocate for the Applicant.
Smt. K.S. Gaikwad, learned Presenting Officer holding for
Shri N.K. Rajpurohit, learned Chief Presenting Officer for the
Respondents.

CORAM : Shri Rajiv Agarwal, Vice-Chairman

Shri R.B. Malik (Member) (J)

DATE : 11.11.2016

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PER : Shri Rajiv Agarwal (Vice-Chairman)

J U D G E M E N T

1. Heard Smt. Punam Mahajan, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer holding for Shri N.K. Rajpurohit, learned Chief Presenting Officer for the Respondents.
2. This O.A. has been filed by the Applicant who is seeking promotion pending the outcome of the Departmental Enquiry being conducted against him.
3. Learned Counsel for the Applicant argued that the Applicant is facing a Departmental Enquiry initiated by order dated 07.03.2014. The Applicant is due for promotion to the post of Joint Commissioner of Sales Tax. However, he has not been promoted. Many other officers viz. Shri D.A Patil, Shri R.D. Bhagat and Shri P.V. Gavande have been given promotion to the post of Joint Commissioner of Sales Tax during the pendency of departmental Enquiry and were allowed to undergo punishment on the promoted post.
4. The Applicant is ready and willing to undergo minor punishment, if inflicted in D.E., in the promoted post. However, the Applicant has been given discriminatory treatment. There has been no progress in the D.E. against the Applicant for last more than two and half years. Learned

Counsel for the Applicant argued that Hon'ble Supreme Court in the case of **Prem Nath Bali v/s. Registrar, High Court of Delhi & Another : 2015 SCC Online SC 1329**, has held that a D.E. should be completed in 6 months which may be extended to one year. However, in the present case, there has been no progress in the D.E. against the Applicant, though more than two and half years have elapsed.

5. Learned Counsel for the Applicant stated that the meeting of the Establishment Board to consider promotion to the post of Joint Commissioner of Sales Tax was held on 08.07.2015 on the basis of Select list of 2012-13. It is recorded in the minutes that a conscious decision should be taken by the Competent Authority, whether to promote the Applicant and Shri V.D. Kamthevad, as D.E.s were pending against them. Learned Counsel for the Applicant stated that the Additional Chief Secretary, Finance Department recommended that the Applicant be promoted subject to final outcome of D.E., This was done on 09.09.201⁵~~6~~. However, on 16.11.2015, the said authority made a noting that the Applicant should not be promoted as a D.E. was pending against him and also a criminal case was filed against him. As regards criminal case filed against the Applicant, in the Police Enquiry it was found that a false compliant has been filed against the Applicant. B-Summary has been filed in criminal case no. 262/2011 and the observation of the A.C.S. that the Applicant should not be promoted as a criminal case is pending against him is not correct. Learned Counsel for

the Applicant relied on the judgment of this Tribunal dated 23.08.2016 in O.A. No. 538 of 2016. She argued that in terms of Govt. Circular dated 02.04.1976 and G.R. dated 22.04.1996, the Applicant is eligible to be promoted, subject to the outcome of D.E. pending against him.

6. Learned Presenting Office (P.O.) argued on behalf of the Respondents that the State Government has taken a conscious decision not to promote the Applicant. Learned P.O. stated that the Applicant was promoted as Deputy Commissioner of Sales Tax by order dated 15.12.2001. The Applicant was considered for promotion to the post of Joint Commissioner in the meeting of the Departmental Promotion Committee (D.P.C.) for the year 2013-14. Through he was found fit for promotion, he was not actually promoted, as a D.E. was pending against him. In the final seniority list of Deputy Commissioner published on 07.10.2015 (as on 01.01.2014), the Applicant is senior to Smt. Renuka Nandekar and Shri B.N. Patil, who were promoted as Joint Commissioner on 26.04.2013. As regards promotion of Shri Bhagat and Shri Gavande as Joint Commissioner, Learned P.O. stated, that conscious decision was taken to promote them, though D.E.s were pending against them. The Applicant is not only facing a D.E., but a criminal case was also filed against him in Byculla Police Station. Learned P.O. argued that the Applicant is responsible for delay in the D.E. as at least on two occasions he remained absent before the

Enquiry Officer and he cannot claim that he should be promoted as D.E. has not progressed.

7. The Applicant has made certain statements in this O.A. First, he has stated that his juniors have been promoted as Joint Commissioner, while he has been suspended. In the Affidavit-in-Reply dated. 08.09.2011, the Respondent No.2, has admitted in para. 6.11 that in the final seniority list of Deputy Commissioners of Sales Tax as on 01.01.2014, published on 07.10.2015, the Applicant is at Sr. No. 138, while Smt. Renuka Nandekar and Shri B.N. Patil are at Sr.No. 149 and 150 respectively. These officers were promoted as Joint Commissioner by order dated 26.04.2013 (para. 6.8), on the basis of recommendation of D.P.C. on the basis of select list of 2011-12. The Applicant was not considered, as in the provisional seniority list of Deputy Commissioners, he was shown junior to these officers. On these facts, the claim of the Applicant that his juniors have been promoted as Joint Commissioner has to be taken as correct.

8. The Applicant has claimed that he was recommended for promotion pending outcome of D.E. against him by the Additional Chief Secretary (F.D.) on 09.09.2015. Copy of the said noting is on page 86 of the paper book and the file was to be submitted to Minister (Finance) and Hon'ble Chief Minister. However, this note was not approved by these authorities. The claim of the Applicant that a '**conscious**

decision' was taken to promote him is, therefore, not correct. However, it is true that Additional Chief Secretary (Finance) changed his noting on 16.11.2015 (page 87 of the Paper Book) and it was proposed not to promote the Applicant as a D.E. and a criminal case was pending against the Applicant. This note was approved by the Minister and Hon'ble Chief Minister. The Applicant claims that this note is based on incorrect information as the complaint against him filed in Byculla Police Station was found to be false and Police has submitted a 'B' Summary in the Court of Metropolitan Magistrate No. 25, Mazgaon, Mumbai on 21.04.2012. This information is available at Annexure A-14 of the O.A. The Applicant has mentioned these facts in para. 6.23 of O.A. In para. 15 of the Affidavit-in-Reply dealing with para. 6.23 of the O.A., the Respondents have not denied this fact. It appears that no Charge-Sheet in the criminal complaint against the Applicant was filed. The police has not found any substance in the complaint against the Applicant and filed 'B' Summary. As such, the claim of the Applicant that the noting dated 16.11.2015 made by the A.C.S. (Finance) was based on incorrect information in this regard has to be accepted. As no Charge-Sheet was filed against the Applicant, it cannot be said that any criminal case was pending against him.

9. The only issue remains to be decided is regarding the D.E. against the Applicant. It was admittedly started on 07.03.2014. During the final hearing learned P.O. has placed on record a Copy of letter dated 13.10.2016 from the

Commissioner of Sales Tax to the Respondent No.2. It is stated that so far only two dates have been kept for hearing of D.E. by Regional Departmental Enquiry officer, Konkan Bhawan, on 28.09.2015 and 23.08.2016. It is mentioned that the Applicant was absent on both occasions. However, if the Applicant was absent during D.E. proceedings, that cannot be a ground for not holding a D.E. The very fact that first date of hearing was kept more than one and half years after initiating the D.E. and the next date was one year thereafter, clearly proves that the Respondents have not conducted D.E. against the Applicant expeditiously. It is also an admitted fact that E.O. was appointed on 11.11.2014 i.e. almost eight months after the D.E. was ordered on 09.03.2014. Presenting Officer viz. Shri Hinge was appointed on 11.11.2014 and was replaced by Shri Pramod C. Bargaje on 25.05.2015. All these events clearly establish that the Respondents have failed to complete the D.E. against the Applicant within 6 months as per D.E. Manual. Hon'ble Supreme Court in the case of **Prem Nath Bali (Supra)** has held that:

“ 33. Keeping these factors in mind, we are of the considered opinion that every employer (whether state or private) must make sincere endeavour to conclude the Departmental Enquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit. Where it is not possible for the employer to conclude due to certain unavoidable causes arising in

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the proceedings within the time frame then efforts should be made to conclude within reasonably extended period depending upon the cause and the nature of enquiry **but not more than a year.**" (emphasis supplied).

10. In the present case, D.E. has not progressed at all and the Respondents have not made any efforts to ensure that it is concluded within 6 months or at the most within one year. The pendency of this D.E. therefore, cannot be a cause for not considering the Applicant for promotion. So called '**conscious decision**' not to promote the Applicant was based on incorrect or at least misleading information that a criminal cases was pending against the Applicant. G.R. dated 22.04.1996 and Circular dated 02.04.1976 provide for promotion pending finalization of D.E. against a Government Servant. In the present case, Additional Chief Secretary on 09.09.2015 had recommended that the Applicant be promoted pending outcome of D.E. against him. He inexplicably changed his view and submitted inaccurate note on 16.11.2015. The Respondents No.2 has admitted in para 9 of the Affidavit-in- Reply dated 08.09.2016, that Shri Bhagat and Shri Gavande were promoted as Joint Commissioner as " there is only one departmental enquiry in Nafta Sales tax irregularities scam against Mr. Bhagat and Gavande". The Additional C.S. (Finance), considering the nature of charges against the Applicant in D.E. had proposed his promotion on 09.09.2015. No reason, except that a

criminal case was pending against the Applicant, (which was misleading), has been given for changing this view. Considering undue delay in finalizing the D.E. against the Applicant, and the fact that he was found eligible for promotion by the D.P.C., we are of the opinion that the Applicant is eligible to be promoted as Joint Commissioner of Sales Tax, subject to the outcome of D.E. pending against him.

11. Subject to the Applicant complying with his part of the obligation under 1976 Circular and 1996 G.R. within two weeks from the date of this order, the Respondents shall consider his case for promotion to the post of Joint Commissioner, Sales Tax and actually promote him within four weeks of the date of Compliance by the Applicant and communicate its outcome to the Applicant within one week thereafter. The promotion of the Applicant, if given, shall be provisional and subject to the outcome of the pending D.E. against him.

12. This O.A. is allowed in these terms with no order as to costs.

Sd/-

Sd/-

(R.B. MALIK)
MEMBER (J)
11.11.2016

(RAJIV AGARWAL)
(VICE-CHAIRMAN)
11.11.2016

Date : 11.11.2016

Place : Mumbai

Dictation by : NMN

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