

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL,  
MUMBAI**

**ORIGINAL APPLICATION NO.140 OF 2017**

**DISTRICT : PUNE  
SUBJECT : DENIAL OF PAY  
FIXATION**

- 1) Shri Appa Vishnu Veer, )  
Aged 49 yrs, Working as Sales Tax Inspector )  
in the office of the Joint Commissioner of Sales )  
Tax, Nodal-3, Pune, R/o. Sankalp C.H.S., )  
C-2-51-50 Wellesly Road, Shivaji Nagar, )  
Pune – 411 005. )
- 2) Shri Madhukar Shamu Patil, )  
Aged 51 yrs, Working as Sales Tax Inspector )  
In the office of the Joint Commissioner of Sales )  
Tax, Nodal-2, Pune, R/o. Yashashri Swapnashilp,)  
Flat No.8, Survey No.34-1, Road No.13-E, )  
Vidya Nagar, Pune-32. )... **Applicant**

**Versus**

- 1) The State of Maharashtra, )  
Through Principal Secretary, Finance Department )  
Having Office at Mantralaya, Mumbai-32. )
- 2) The Commissioner of Sales Tax (M.S.), )  
Mumbai, Having Office at 3<sup>rd</sup> Floor, Vikrikar )  
Bhawan, Mazgaon, Mumbai-10. )...**Respondents**

**Shri Arvind V. Bandiwadekar, learned Advocate for the Applicant.**

**Shri Dinesh. B. Khaire, learned Special Counsel along with Smt.  
Archana B. Kololgi learned Presenting Officer for the Respondents.**

**CORAM : A.P. KURHEKAR, MEMBER (J)  
DEBASHISH CHAKRABARTY, MEMBER (A)**

**DATE : 25.08.2023.**

**PER : DEBASHISH CHAKRABARTY, MEMBER (A)**

### **JUDGMENT**

1. The Applicants were represented by Shri A.V. Bandiwadekar, learned Advocate and Shri D.B. Khaire, learned Spl. Counsel along with Smt. Archana. B.K., learned Presenting Officer represented the Respondents.

2. The Applicants have filed this O.A. No.140 of 2017 by invoking Section 19 of the Administrative Tribunal Act 1985 has challenged the impugned decision of the Respondents communicated to him by Finance Department's letter dated 17.06.2016 and has sought parity in Fixation of Pay between those who are promoted as Sales Tax Inspectors either on the basis of (i) Regular Promotion based on Seniority and Merit (ii) Functional Promotion based on Limited Departmental Competitive Examination (LDCE) on one hand and the Entry Pay applicable Direct Recruits on the other hand and further also seeks parity in Fixation of Pay between those receiving benefit of Time Bound Promotion through Assured Career Progression Scheme (ACPS) and the 'Entry Pay' applicable to Direct Recruits.

3. The case of the Applicants, is that they were initially appointed as Clerk Typist 1995 and 1996 respectively and later on both of them received benefits of the ACPS in 2008 and thereafter they received Time Bound Promotion to the post of Sales Tax Inspector (STI) in 2012. However, on both occasions they did not receive parity in pay with the Entry Pay of Direct Recruits.

4. The Basic Pay of STI who have got Regular Promotion or Functional Promotion which is fixed at minimum of Pay Band of Sales Tax Inspector (Pay Band Rs.9,300-34,800 + Grade Pay 4,300/-) is fixed at Rs, 9,300/- as compared to the Entry Pay of Direct Recruits (Pay Band Rs.9,300/-34,800/- + Grade Pay4,300/-) which is Rs.10,100/-. The Direct Recruits therefore received Rs.800/- more as Basic Pay than those who got Regular Promotion or Functional Promotion although as

Sales Tax Inspectors they were all in same Pay Band of Rs.9,300-34,800 and Grade Pay of Rs.4,300/-.

5. The issue of parity of Fixation of Pay between those getting Functional Promotion based on LDCE and Direct Recruits were raised in (i) O.A. No.626 of 2014 & (ii) O.A. No.646 of 2014 in which the Tribunal by its Order dated 21.03.2016 had nudged the Respondents to take 'Policy Decision' by observing that those getting Functional Promotional through LCDE were similar to that of Direct Recruits and the Applicants therein deserved to be treated as Direct Recruits. The Tribunal had passed the following orders on 21.03.2016.

"It appears that Pay Anomaly Committee had also not considered this issue. However, considering the fact that the rationale and purpose of appointment on the basis of Limited Competitive Departmental Examination is similar to that of direct recruitment, and both encourage talent in the Government, the Applicants are closer to direct recruits than promotees. The Applicants, therefore, deserve to be treated as direct recruits"

"Having regard to the aforesaid facts and circumstances of the case, the Respondents are directed to consider the case of the Applicants to fix their pay on appointment as Assistants/Sales Tax Inspectors as per Rule 8 of the Maharashtra Civil Services (Revised Pay) Rules, 2009 expeditiously preferably within a period of 3 months from the date of this order. These Original Applications are disposed of accordingly with no order as to costs."

6. The provisions of MCS (Revised Pay) Rules 2009 which relate to the Fixation of Pay of those getting Functional Promotion based on LDCE and Entry Pay of Direct Recruits as was raised in (i) O.A. No.626 of 2014 (ii) O.A. No. 646 of 2014 and decided by Tribunal on 21.03.2016 as well as those averred in the present O.A. No.140/2017 are circumscribed by Rule 7, Rule 8 and Rule 13.

7. The learned Counsel of the Applicant on being queried by the Tribunal as to why Contempt Application was not preferred against the

Respondents to comply with the orders of the Tribunal in (i) O.A. No.626 of 2014 and (ii) O.A. No. 646 of 2014 dated 21.03.2016 fairly admitted that although *prima-facie* there was culpability of the Respondents under Contempt of Court Act, 1971 in implementing the orders the Applicants did not file Contempt Applicants but instead preferred to file present O.A.No.140/2017 with prayer to initiate Disciplinary Proceedings against Respondents for not complying with order of this Tribunal dated 21.03.2016.

8. The learned P.O. informed the Tribunal that the Affidavit-in-Reply has been filed by their Additional Chief Secretary (Expenditure) of Finance Department – Respondent No.1 on 24.04.2017. The learned P.O. further brought to the notice of the Tribunal the recent Finance Department Notification No. RPS – 1122 / CR -6/ Sec. 9 dated 3rd February, 2023 issued by State Government to promulgate the MCS (Revised Pay) (Amendment) Rules 2022 by which appropriate amendments have been made to Rule 7 and Rule 13 of Maharashtra Civil Services (Revised Pay) Rules, 2009, entitles all Government Servants appointed either by nomination or promotion prior to 1 January 2006 and by promotion after 1<sup>st</sup> January 2006 to receive the benefits of 'Step Up' in their Basic Pay so that it shall not be less than the 'Entry Pay' of Direct Recruits.

9. The learned Counsel for the Applicant then stressed that though substantive changes have now be brought in to provide parity in Fixation of Pay at 'Entry Pay' applicable to Direct Recruits and those who got Regular Promotions on Seniority and Merit and Functional Promotion based on LDCE to all categories of Government Servants; he expressed his reservations about the last 'Proviso Clause' of the Finance Department Notification No.RPS-1122/CR-6/Section 9, dated 3<sup>rd</sup> February 2023 which reads as "Provided that this sub-rule shall apply to pay fixation on actual promotion only."

10. The Tribunal thereafter directed the Respondent No.2 to file Affidavit-in-Reply as to how the Finance Department Notification No. RPS-1122/CR-6/Section 9, dated 3<sup>rd</sup> February 2023 will be actually implemented in respect of both the Applicants in the present O.A.No.140/2017 and how will it impact their present Basic Pay being drawn in Pay Band of Rs.9300-34800 and Grade Pay of 4300/-. The contents of the Affidavit-in-Reply filed on 31.07.2023 by Respondent No.2 reproduced under indicates that the Applicants do no stand to benefit from the implementation of the Finance Department Notification No. RPS-1122/CR-6/Section 9, dated 3<sup>rd</sup> February 2023.

“I say that, the Applicant no. 1 was granted time bound promotion on 26/07/2007 and Applicant no 2 was granted time bound promotion on 16/03/2008. After the time bound promotion was granted, the pay scale of both the Applicants got upgraded and thus, in July 2009, the Applicant no. 1 received basic pay of Rs. 10130 and Applicant no. 2 received basic pay of Rs. 10130 in July 2010. I say that, The Applicants were promoted to the posts of STI through LDCE channel in the year 2012. When the Applicant no. 1 was promoted as STI, through LDCE channel, his basic pay was 11480 and the Applicant no. 2 when promoted to the post was STI in October 2012, his basic pay was 11020. As against this, a STI appointed by direct recruitment could get the basic pay of 10100. Thus, when the Applicants were promoted as STIs, they were drawing a higher pay scale than that of the Direct Recruits who could be appointed along with them.

Therefore, the directions of this Hon'ble Tribunal about fixation of pay was restricted only to those who get promoted through Limited Competitive Examination. Hence, in the present case, the Applicants were considered from the point of view of notification dated 03/02/2023. The said notification does not grant any benefit to the State Tax Inspectors who came to be promoted after taking the benefit of time bound promotion. Therefore, the present OA deserves to be dismissed with cost.”

11. The Finance Department Notification No. RPS-1122/CR-6/Section 9, dated 3<sup>rd</sup> February 2023 has brought the order of Tribunal in (i) O.A. No.626 of 2014 and (ii) O.A. No.646 of 2014 dated 21.03.2016 into

implementation by the Respondents not only in respect of Sales Tax Inspector / Assistants, the Applicants therein but in respect of all categories of Government Servants.

12. The Finance Department Notification No. RPS-1122/CR-6/Section 9, dated 3<sup>rd</sup> February 2023 resolves the issue of parity in Fixation of Pay at 'Entry Pay' applicable to Direct Recruits and those who are appointed as Sales Tax Inspector by Regular Promotion based on Seniority & Merit or Functional Promotion based on LDCE. However, the contention of the Applicants that there should also be parity in Fixation of Pay of Direct Recruits and those who receive benefit of Time Bound Promotion through ACPS cannot be considered in the present O.A.No.140/2017 as it falls in the realm of Policy Decision due to the fact that it will entail significant increase in expenditure on Salary and Allowances of the State Government.

13. The ACPS which is given to Government Servants, is only a compensatory mechanism to provide them Financial Benefit of Higher Pay Scales primarily to offset delays in them getting promotion to the next Higher Posts. The 'Proviso Clause' of Finance Department Notification No. RPS-1122/CR-6/Section 9, dated 3<sup>rd</sup> February 2023 makes the amendment only to Rule 7 and Rule 13 applicable to those Government Servants who receive '*actual promotion*'. The fixation of pay of those Government Servants getting benefit of Time Bound Promotion through ACPS is governed by Rule 14 of the MCS (Revised Pay) Rules 2009 which has not being amended by the State Government. The Applicants have not choses to amend the prayers in the present O.A. No.140 of 2017 to challenge the 'Proviso Clause of Finance Department Notification RPS-1122/CR-6/Section 9, dated 3<sup>rd</sup> February 2023. Against this backdrop, the Tribunal is of the considered opinion that Finance Department Notification No. RPS-1122/CR-6/Section 9, dated 3<sup>rd</sup> February 2023 redresses the prayers of the Applicants in this present O.A.No.140 of 2017 and belated but full compliance of the

Orders of Tribunal in O.A. No.626 of 2014 and O.A. No.646 of 2014 dated 21.03.2016.

14. In view of above, we see no merit in the O.A. and challenge to communication dated 17.06.2016 issued by Finance Department is devoid of merit. Hence the Order.

**ORDER**

The Original Application is dismissed with no order as to costs.

**Sd/-**  
**(Debashish Chakrabarty)**  
**Member (A)**

**Sd/-**  
**(A.P. Kurhekar)**  
**Member (J)**

Place: Mumbai  
Date: 25.08.2023  
Dictation taken by: N.M. Naik.

Uploaded on: \_\_\_\_\_