

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO.1019 OF 2016

DISTRICT : MUMBAI

Shri Ashok Shriram Jaiswal.)
Aged : 50 Yrs., Working as Deputy Commissioner)
of Sales Tax, Internal Audit Branch, G-3,)
8th Floor, Vikrikar Bhawan, Mazgaon, Mumbai – 10,)
R/o. A-601, Silver Leaf C.H.S, Akurli road,)
Kandiwali (E), Mumbai.)...**Applicant**

Versus

The State of Maharashtra.)
Through Principal Secretary, Finance Department,)
Having Office at Mantralaya, Mumbai.)...**Respondent**

Mr. A.V. Bandiwadekar, Advocate for Applicant.

Ms. S.T. Suryawanshi, Presenting Officer for Respondent.

**CORAM : SHRI JUSTICE A.H. JOSHI, CHAIRMAN
SHRI P.N. DIXIT, MEMBER-A**

Reserved on : 26.09.2018

Pronounced on : 04.10.2018

PER : SHRI P.N. DIXIT, MEMBER-A

JUDGMENT

1. Heard Shri A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. S.T. Suryawanshi, the learned Presenting Officer for Respondent.

2. Admitted facts :-

The Applicant was placed under suspension by the Respondent on 26.04.2002 in view of the criminal offence of alleged acceptance of illegal gratification (Para 6.3 of the O.A, Exh. 'B', Page 22). The Applicant was prosecuted under Sections 7, 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. On 26.06.2009, he was acquitted (Para 6.4 of the O.A.). The Applicant was reinstated on 15.02.2010 (Para 6.5 of the O.A, Exh. 'C', Page 23). The name of the Applicant figured in the select list of 2012-2013 for promotion to the post of Joint Commissioner of Sales Tax. The same was deferred with remark "The proposal of departmental enquiry is submitted to the State Government (Exh. 'E', Page 44, dated 19.03.2013).

3. In the aforesaid background, Applicant expected that he would be promoted and has not been promoted. Applicant has filed present O.A. with following prayer :-

"9(a) By a suitable order / direction, this Hon'ble Tribunal may be pleased to hold and declare that the order dated 30.03.2016 passed by the Respondent to the extent to which the same has failed to incorporate the name of the Petitioner at Sr. No.1 under which he promoted the junior colleagues of the Petitioner to the post of Joint Commissioner of Sales Tax from the post of Deputy Commissioner of Sales Tax and accordingly the Respondent be directed to grant promotion to the Petitioner to the said post and to grant all the consequential service benefits and monetary benefits."

(Quoted from Pages 15 & 16 of Paper-book)

4. The manner in which the prayer has been formulated suggests :

(a) Failure on the part of authorities to include Applicant's name in the promotion list,

(b) Absolute entitlement of the Applicant for promotion.

5. The O.A. has been replied with various averments and *inter-alia* the averments contained in Para 16 of reply, which is quoted below.

“16. With reference to para no.6.15, I say and submit that Applicant was not promoted to the post of Jt. Commissioner of Sales Tax in select list 2012-13 as he was junior while minutes of Establishment Board for select list 2013-14 & 2014-15 clearly states that disproportionate asset case is pending against the applicant hence his name is not recommended for the promotion. Copy of the Establishment Board meeting held on dated 20/06/2016 and issued by letter dated 28/06/2016 is attached herewith and marked as Exhibit R-5.”

6. The text of Exhibit 'R-5' which relates to Applicant reads as follows :

“६. पदोन्नतीसाठी खुल्या प्रवर्गातून विचारश्रेत्रात असलेले खालील अधिकारी त्यासमोर नमूद केलेल्या कारणास्तव **विक्रीकर सह आयुक्त** या पदावर पदोन्नतीसाठी अपात्र असल्याचे आस्थापना मंडळास आढळले.”

अ.क्र.	नाव	प्रवर्ग	ज्ये.क्र.	कारण
१	श्री. अशोक श्रीरामलाल जैस्वाल	खुला	१३९	लाचलुचपत प्रतिबंधक विभागाने अपसंपदेविषयी गुन्हा नोंदविला आहे. सदर प्रकरणी दोषारोप पत्र दाखल करण्यास आणि अभियोग दाखल करण्यास मान्यता दिलेली आहे. सद्यःस्थितीत प्रकरण न्यायप्रविष्ट आहे.

(Quoted from Page 82 of the Paper-book)

7. Conspicuously enough, Applicant has failed to challenge the action of the Respondent in considering and declining to grant promotion to the Applicant. The manner and tenor in which O.A. has been framed, does not prove entitlement of the Applicant for any relief whatsoever. It is always the choice and ingenuity of the litigant to frame his claim or O.A. in appropriate manner.

8. Therefore present O.A. which is based on an assumption of entitlement cannot succeed. Hence, O.A. is dismissed with no order as to costs.

Sd/-

(P.N. Dixit)
Member-A

Sd/-

(A.H. Joshi, J.)
Chairman

Mumbai

Date : 04.10.2018

Dictation taken by :

S.K. Wamanse.

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