

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH**

ORIGINAL APPLICATION NO 300 OF 2015

DISTRICT : MUMBAI

Shri Dinkar Anna Patil,)
Joint Commissioner of Sales Tax,)
Office of Commissioner of Sales Tax)
9th floor, Vikrikar Bhavan, Mazgaon,)
Mumbai 400 010 and residing at)
701, Praneel CHS, Nanda Patkar Rd)
Vile Parle [E], Mumbai 400 057.)...**Applicant**

Versus

The Government of Maharashtra)
Through Principal Secretary,)
Finance Department, Mantralaya,)
Mumbai 400 032.)...**Respondents**

Shri M.D Lonkar, learned advocate for the Applicant.

Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman)

DATE : 11.03.2016

ORDER

1. Shri M.D Lonkar, learned advocate for the Applicant and Smt Kranti S. Gaikwad, learned Presenting Officer for the Respondents

2. This Original Application has been filed by the Applicant challenging the decision of the Respondent not to consider the case of the Applicant for grant of deemed date of promotion to the post of Joint Commissioner of Sales Tax, on the strength of select list for the year 2008-09.

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Sales Tax Officer, Class-I (now redesignated as Assistant Commissioner of Sales Tax) on 11.9.1988. A Departmental Enquiry (D.E) was started against the Applicant on 14th January, 2010 along with others. The Applicant filed O.A no 211 of 2010 challenging the aforesaid D.E against him. By order dated 30.3.2011, the Original Application was dismissed but with the directions to complete the D.E within a period of one year from the date of order. As the D.E was not completed and the Applicant was overlooked for

promotion to the post of Joint Commissioner of Sales Tax, he filed O.A no 931 of 2011 before this Tribunal. This O.A was disposed of by order dated 2.4.2012 with the direction that the final order should be passed in the D.E against the Applicant within 6 months from the date of receipt of the order. If no final order is passed by that date, the Applicant was directed to be promoted to the post of Joint Commissioner of Sales Tax, subject to the outcome of the D.E. M.A no 117/2013 was filed in O.A no 931/2011 seeking extension of time by 8 months to pass final order in the Departmental Enquiry. This M.A was rejected by order dated 10.5.2013 by this Tribunal. The Applicant was promoted to the post of Joint Commissioner of Sales Tax by order dated 16.1.2014, subject to the decision in the pending D.E. The Applicant had submitted representation dated 1.2.2014, seeking deemed date of promotion in the post of Joint Commissioner on the strength of select list for the year 2008-09. However, by letter dated 15.12.2014, he has been informed by the Respondent that he was promoted on ad hoc basis pending decision in the D.E against him. ^{and} However, unless final order is issued in the D.E against him, his ad hoc promotion cannot be regularized and his representation for granting deemed date of promotion cannot be considered. Learned Counsel for the Applicant argued that the Respondent is himself responsible for delay in finalizing D.E against him. The Applicant is being punished by denying him deemed date in the post

of Joint Commissioner and his juniors have been promoted as Additional Commissioner. Learned Counsel for the Applicant relied on the judgment of Hon. Supreme Court in the case of Prem Nath Bali Vs. Registrar, High Court of Delhi & Another in Civil Appeal no 958 of 2010. It has been held that a D.E should be completed within six months as an outer limit and not more than a year. In the present case, Enquiry Officer has submitted his report on 31.10.2012. However, the Respondent has not passed any final order in the D.E against him. Other co-delinquent of the Applicant have been promoted. The Applicant may, therefore, be directed to be considered for provisional promotion to the post of Additional Commissioner of Sales Tax.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent that the D.E against the Applicant along with 14 others by order dated 14.1.2010. The report of the Enquiry Officer was received on 31.10.2012. The reply of the Applicant to the show cause notice was received on 5.12.2012. However, as the proposal regarding punishment to be imposed on the Applicant has not been received, the final order imposing punishment could not be issued. Learned Presenting Officer argued that the Applicant cannot be given deemed date of promotion in the post of Joint Commissioner, though he was in the select list for the year 2008-09 until the final orders are passed in the D.E pending

against him. He cannot be given promotion in the post of Additional Commissioner, also, on the same ground.

5. It is seen that this Tribunal has passed the following orders:-

(i) In O.A no 211 of 2010 (with other O.As) order dated 30.3.2011.

This Tribunal declined to quash the charge sheet dated 14.1.2010. However, the Respondents were directed to complete the disciplinary enquiry within a year from the date of the order.

(ii) In O.A no 931 of 2011, this Tribunal by order dated 2.4.2012 directed the Respondent as below:-

“We direct that the departmental enquiry pending against the Applicant ought to be completed and final order should be passed within a period of six months from the date of receipt of this order. If no final order is passed by that date, then the Applicant shall be promoted to the post of Joint Commissioner of Sales Tax, subject to the outcome of the departmental enquiry.”

(iii) In M.A no 117 of 2013 in O.A no 931 of 2011, by order dated 10.5.2013, this Tribunal refused to grant any extension of time and held that M.A was

totally devoid of merit. Paras 5 & 6 of the order reads:-

“5. While hearing the above Original Application, it was brought to our notice as mentioned in paragraph (6) of our judgment and order dated 2nd April 2012 passed in the above Original Application that as many as eight Assistant Commissioners of Sales Tax were promoted as Deputy Commissioner of Sales Tax pending the Departmental Enquiry. In paragraph (7) of the said judgment also mentions that two other officers were also facing Departmental Enquiry were promoted from the post of Joint Commissioner of Sales Tax to the post of Additional Commissioner of Sales Tax. In the said judgment, we had taken into account the fact that even the Hon’ble Chief Minister had directed that the Departmental Enquiry should be completed immediately by a communication dated November 2011. However, till date the Departmental Enquiry has not been completed.

6. Perusal of the above Miscellaneous Application indicates that the applicant being the original respondent is merely dragging its feet and not passing any final order with regard to the said Departmental Enquiry.”

It was noted by this Tribunal in the order dated 2.4.2012 in O.A no 931/2011 that other co-delinquent were granted promotion pending Departmental Enquiries against them. Though the Respondent was directed to promote the Applicant as Joint Commissioner, if no final order was passed in the D.E against him within 4 months from the date of the order of this Tribunal. The Applicant should have been promoted on or shortly after 2.10.2012 (a few days latitude can be given depending on when the order dated 2.4.2012 was received by the Respondent). However, the Applicant was actually promoted by order dated 16.1.2014, though M.A was dismissed on 10.5.2013. The Applicant is definitely eligible for provisional deemed date of promotion on the basis of order of this Tribunal dated 2.4.2012 in O.A no 931 of 2011 as Joint Commissioner from 2.12.2012. It is also seen that despite two orders of this Tribunal, the D.E is not completed, though the report of the Enquiry Officer was received on 31.10.2012 and the Applicant has replied to the Show Cause Notice on 5.12.2012. It is incomprehensible that despite more than 3 years have lapsed after proceedings are otherwise fully completed, no final order is passed in the D.E against the Applicant. It is quite clear that the Respondent alone is responsible for not finalizing D.E against the Applicant, when it should have been possible to pass final orders within a short period after his reply to show cause notice was received on 5.12.2012. The Applicant cannot be made to

suffer for the inability of the Respondent to conclude the D.E against him.

6. In view of the above, the Respondent is directed to consider the provisional deemed date of promotion of the Applicant to the post of Joint Commissioner of Sales Tax as 2.10.2012 and on that basis consider him for promotion to the post of Additional Commissioner of Sales Tax. This exercise should be done within a period of 3 months from the date of this order. This Original Application is allowed in these terms with no order as to costs.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 11.03.2016

Dictation taken by A.K. Nair.