

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI**

ORIGINAL APPLICATION NO. 450 OF 2015

DISTRICT :

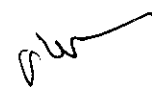
Shri Pratapsing Narsing Patil,)
Aged 63 Yrs, Retd. as Additional)
Commissioner of Sales Tax [VAT-1],)
Having Office at 8th Floor,)
Vikrikar Bhawan, Mazgaon,)
Mumbai -10, R/O. 42, Vibha,)
Bandra [E], Mumbai- 52.)
Address For Service of Notice:)
Shri Arvind V. Bandiwadekar,)
Advocate, Having Office at 9,)
"Ram-Kripa", Lt. Dilip Gupte Marg,)
Mahim, Mumbai – 400 016.)...**Applicant**

VERSUS

The State of Maharashtra,)
Through the Principal Secretary,)
Finance Department,)
Having Office at Mantralaya,)
Mumbai – 400 032.)...**Respondent**

Shri A.V. Bandiwadekar, learned Advocate for the Applicant.

Shri A.J. Chougule, learned Presenting Officer for the Respondents.

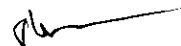


CORAM : Shri J.D. Kulkarni, Member (J)

DATE : 29.01.2016.

JUDGEMENT

1. Heard Shri A.V. Bandiwadekar, learned Advocate for the Applicant and Shri A.J. Chougule, learned Presenting Officer for the Respondents.
2. In this O.A. the Applicant Shri Pratapsing Narsing Patil, the retired Additional Commissioner of Sales Tax has claimed that the impugned letter dated 18.3.2015 passed by Respondent State of Maharashtra be quashed and set aside. Vide letter dated 18.3.2015 the Applicant has been denied the pay fixation and all other consequential service benefits despite the grant of the deemed date of promotion in the post of the Joint Commissioner of Sales Tax w.e.f. 25.6.1992 as against the actual date of promotion effected on 18.6.1998. The Applicant has also claimed all consequential service benefits such as pay fixation and other monetary benefits w.e.f. 25.6.1992 to 18.6.1998 with corresponding revised pay fixation so also fixation of pension etc. In the alternative the Applicant has claimed the direction to the Respondent to notionally fix his pay from 25.6.1992 to 18.6.1998 and accordingly revise the pay fixation, fixation of pension and to pay arrears.
3. The Applicant was appointed as Sales Tax Officer, Class- 2 on 16.2.1972 by way of direct recruitment. The



Applicant was promoted as Assistant Commissioner of Sales Tax on 31.8.1982 Class-I, Senior Assistant Commissioner of Sales Tax on 4.9.1993, Deputy Commissioner of Sales Tax (now Joint Commissioner of Sales Tax) on 18.6.1998 and Additional Commissioner of Sales Tax on 3.12.2007. He came to be retired on superannuation on 31.10.2009.

4. In view of the decision given by the Hon'ble Apex Court on 12.1.2000 seniority of Sales Tax Inspector and Commissioner of Sales Tax was revised and all earlier seniority lists from the year 1972 were revised.

5. The seniority list of the higher cadre such as Sales Tax Inspector etc so also all Joint Commissioner of Sales Tax in between w.e.f. 1.1.1994 to 1.1.2004 were accordingly revised. The objections were called according to the revised seniority list. The Applicant was shown at Sr.No.1 in the seniority and the deemed date in the cadre of Deputy Commissioner of Sales Tax was shown as being 25.6.1992 as against the actual date of promotion that is 18.6.1998. Thus, the Applicant was given deemed date of promotion as Deputy Commissioner of Sales Tax (now Joint Commissioner of Sales Tax) w.e.f. 25.6.1992.

6. On 27.9.2013, the Applicant filed the representation and requested the Respondents to issue revised order of his promotion to the post of Joint Commissioner of Sales Tax giving appropriate deemed date as against the actual date of promotion and also to fix his pay



and to pay all arrears so also pension and other consequential benefits.

7. On 4.12.2013, the Respondents published final seniority list in the cadre of Deputy Commissioner of Sales Tax (now Joint Commissioner of Sales Tax) as on 1.1.1994 to 1.1.2004. In the said circular it was stated that grant of deemed date to the officers will not be entitled for any monetary benefits and the revised seniority list will be only for the purpose of seniority. The Applicant lodged his protest on 18.1.2014, however his representation was rejected on 18.3.2014 without any reason.

8. The Applicant thereafter again filed representation on 28.4.2014. On 18.3.2015 the Respondent issued the impugned letter rejecting the Applicant's claim for promotion w.e.f. deemed date of promotion and all other consequential and monetary benefit and hence this O.A.

9. The Respondent has filed affidavit-in-reply which has been sworn by Shri Yashwant Dattatraya Deshkar, Under Secretary in the office of the Finance Department, Mantralaya, Mumbai. According to the Respondents all the promotions were made on the basis of final seniority list published at relevant time and no junior to the Applicant was promoted before him and therefore Applicant was not entitled to claim promotion and monetary benefits from the deemed date of promotion.



10. It is submitted that the seniority list was revised as per the direction of the Maharashtra Administrative Tribunal and the Hon'ble Apex court.

11. According to the Respondents the provisional seniority list of Joint Commissioner of Sales Tax showing position between 1.1.1994 to 1.1.2001, was published vide the Circular dated 22.7.2013. The officers aggrieved by the provisional seniority list, were given opportunity to lodge their objections, if any within one month from the date of publication of the seniority list and accordingly the name of the Applicant was included at Sr.No.1 in the seniority list. The seniority list was published only for the purpose of seniority. The Applicant was promoted in the post of Deputy Commissioner on 18.6.1998 as per his seniority list for the year 1996 to 1997. However since the select list of the all cadres were revised right from 1974-1975 as per the directions of Apex Court, the deemed date of promotion was given to the Applicant. It has been clearly mentioned in para 3(c) of the seniority list of Joint Commissioner of Sales Tax published on 22.07.2013, that the date i.e. 25.06.1992 is shown only for the purpose of revised seniority as per rule 4(2) (b) of M.C.S. (Regulation of seniority) Rules, 1982.

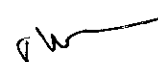
12. It is submitted that the claim of the Applicant has been rightly rejected since no junior to the Applicant has been promoted. The Applicant is therefore, not entitled to any consequential as well as monetary benefit.



13. The Applicant has filed affidavit-in-rejoinder and denied all the adverse contention made by the Respondents. It is stated that without there being name in the seniority list, there cannot be claim for promotion and therefore, the Applicant must be held to be entitled for consequential monetary benefits. It is stated that Government Circular dated 25.2.1965 is illustrative and not exhaustive. It is further stated that the Respondent cannot place on record any circular to show that policy decision was taken to deny to the Government servant the monetary benefits. It is further stated that the Supreme Court Judgement nowhere mentions that the monetary benefits be denied to the persons who are entitled to promotion by way of deemed date of promotion.

14. It is further stated in the rejoinder that the Applicant has been superseded since his name was not included in the seniority list earlier. It is further stated that the Applicant has been shown senior to 60 Joint Commissioner of Sales Tax who were junior to Applicant and were wrongly promoted before the Applicant. It is further stated that para 3 (c) in the Government Circular dated 4.12.2013 is not correct and it is not as per rule and the Respondents ought to have seen that there is no specific bar in those Rules for not to grant monetary benefits.

15. It is further stated that these Government Circulars dated 10.3.1960 and 25.2.1965 are not applicable to the Applicant and the circular dated 14.9.1982 specifically



provides that the employee who is wrongfully superseded must be granted monetary benefits from the deemed date of promotion. It is further stated that the Applicant be brought on par with one Mr. A.G. Deshmukh (retired Additional Commissioner of Sales Tax) who was promoted to senior Deputy Commissioner of Sales Tax and then to Joint Commissioner of Sales Tax and finally to Additional Commissioner of Sales Tax.

16. I have also perused the affidavit-in-reply as well as affidavit-in-rejoinder and various documents placed on record by respective parties. The only material point to be decided in the case is whether the communication dated 18.03.2015 denying the Applicant monetary benefits on account of his revised seniority and deemed date of promotion is legal and proper?

17. Learned Counsel for the Applicant Shri Bandiwadekar invited my attention impugned letter dated 18.03.2015 and particular para no.2 and 3 of the said letter which reads as follows:-

“२. त्यामुळे दि.४ डिसेंबर, २०१३ रोजी प्रसिद्ध झालेल्या अंतिम ज्येष्ठतासूचीत आपल्या ज्येष्ठतेसाठी समायोजनाचा दिनांक दि.२५.०६.१९९२ असा दर्शविण्यात आला आहे. परंतु आपल्या म्हणण्यानुसार हा मानीव दिनांक नाही. सामान्य प्रशासन विभागाच्या दि.२५ फेब्रुवारी, १९६५ च्या परिपत्रकानुसार शासकीय सेवेतील कर्मचारी/अधिकारी यांना ते ज्येष्ठ व पात्र असूनही पदोन्नतीच्या संदर्भात डावलले गेले असल्याचे निश्चित झाले तर त्यांना पदोन्नतीचा मानीव दिनांक देण्यात येतो व तदनुषंगीक वेतननिश्चिती व इतर लाभ देण्यात येतात, परंतु प्रस्तुत प्रकरणी आपणांस पदोन्नतीसंदर्भात डावलले गेले नसल्याने, मानवी दिनांक देण्याचा व त्यानुषंगाने वेतन निश्चिती तसेच इतर लाभ देण्याचा प्रश्न उद्भवत नाही.

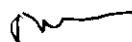


३. तसेच श्री. एस.एच. कुलकर्णी, श्री.आर.व्ही.जाधव, श्री.जी.जी.कोचरेकर इ. हे त्यावेळी सन १९९१-१९९२ च्या निवडसूचीवर पदोन्नतीसाठी पात्र ठरले असल्यामुळे ते आपणास ज्येष्ठ होते कारण आपण सन १९९६-१९९७ च्या निवडसूचीवर पदोन्नतीसाठी पात्र ठरले होतात व आता मा. न्यायालयाच्या आदेशानुसार निवडसूच्यांमध्ये बदली झाल्यामुळे उपरोक्त आपणास ज्येष्ठ असलेले अधिकारी सद्यःस्थितीत आपणास कनिष्ठ ठरले आहेत. परंतु त्यामुळे आपल्या वेतननिश्चितीचा प्रश्न उद्भवत नाही. कारण सुधारित ज्येष्ठतासूचीमधील समायोजनाचा दिनांक हा फक्त ज्येष्ठतेसाठी गृहीत धरण्यात आला आहे व त्यामुळे कोणतेही आर्थिक लाभ देण्यात येणार नाहीत.”

Learned Counsel submits that even though the Applicant has been shown to be senior from 1991-1992 and financial benefits has been denied to the Applicant on the ground that the Applicant was not eligible to be promoted in the year 1991-1992. Learned Counsel for the Applicant submits that it is unjust that the Applicant though shown as senior was not fit for promotion.

18. Perusal of the impugned order dated 18.03.2015 shows that the said order has been passed in view of the judgement of the Apex Court and the Judgment delivered by the Maharashtra Administrative Tribunal (M.A.T.). Both the judgements have been referred in para no.1 of the letter. It seems from the letter that the seniority list was revised in view of the judgement of Hon'ble Supreme Court and M.A.T. and therefore it is necessary to see as to what is the gist of the judgement mentioned in the impugned letter.

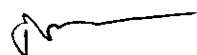
19. The Applicant has placed on record the Judgement in **Civil Appeal No.7717 of 1994 (with I.A.No.7 of 1997 and I.A.No.8 of 1998) Maharashtra Vikrikar Karamchhari Sangathan Vs- The State of Maharashtra & Anr. with**



some directions were given to prepare fresh seniority list for considering the number of employees (Sales Tax Inspectors) appointed directly and number of Sales Tax Inspector promotees to the said post. In view of the said judgement fresh list of seniority has been prepared by Government and in the said seniority list the Applicant seems to have been above placed above some employees, who were earlier shown to be senior to the Applicant.

23. The Government has considered various circulars as regards fixation of seniority and finally issued the impugned letter dated 18.03.2015. It thus seems that the seniority list has been prepared considering the post available by of Rota- Quota for promotees and directly recruited Sales Tax Inspectors. The deemed date given for promotion to the Applicant in the seniority list seems to be fortuitous and there was no intention to grant consequential benefits.

24. In my opinion even though the Applicant is included in the seniority list above the colleagues who were earlier shown to be senior to him, his name has been included in the seniority list in view of the direction of the Tribunal and Apex Court because the common list of promotees and directly appointed Sales Tax Inspectors were revised. To be a senior in the list is different thing and consideration for promotion on account of seniority is totally different aspect.

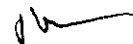


Civil Appeal No.6316 of 1997, The State of Maharashtra & Anr. Vs. Vasant Krishnaji Chavan & Ors. The said judgement is on page no.88 to 119 of the paper book (both inclusive).

20. I have gone through the judgement as aforesaid. It is material to note that in the said judgement the seniority list of Sales Tax Inspectors in the Tax Department, Maharashtra of promotees/departmental candidates against the direct recruits in respect of their placement in the seniority list was challenged. To be more precise, the dispute relates to the fixation of seniority of promotees and direct recruits for the block 1971 to 31st December, 1987 and dispute as regarding determination to seniority of Sales Tax Inspector who were promoted (on absorption) from two different sources namely, Revenue Department and Sales Tax Department, Bombay.

21. In the judgement cited supra, the Division Bench set aside the impugned provisional seniority list and directed to the Government of Maharashtra to prepare fresh seniority list in accordance with the direction contained in the judgment. The order of the Hon'ble High Court was maintained by the Apex Court.

22. Perusal of the judgement of Apex Court clearly shows that it was the dispute between directly appointed Sales Tax Inspectors and the promotee Sales Tax Inspectors and the Rule regarding Rota-Quota were considered and



25. It seems from impugned letter dated 18.03.2015 that the Applicant was not eligible to be promoted in the year 1991-1992. However, he has been shown in the seniority list since the seniority list has been revised. Merely because the Applicants' name was subsequently included in the seniority list in 1991-1992, it can be said that he was entitled to promotion in that year. Promotion depends on so many considerations and not on presentations and assumption as pleads by the Applicant.

26. The Respondents seems to have rightly considered the above aspect and therefore it was specifically mentioned in the impugned letter that the person who were shown senior in the revised seniority list and were entitled to deemed seniority from 1991-1992, will not be entitled to promotion and consequently financial benefits.

27. The learned Counsel for the Applicant has invited my attention to the affidavit-in-rejoinder filed by the Applicant in which it is stated that the very fact that the Applicant has been granted the deemed date of seniority by the Respondent would mean he was entitled to promotion.

28. The learned Counsel for the Applicant submits that the Government Circular dated 25.2.1965 on which the Respondents has placed reliance is illustrative and not exhaustive. This Circular says that monetary benefits will not be available to the Government servant who are granted deemed date of promotion. The Applicant has not challenged the circular dated 25.2.1965 and therefore for the first time



in 2015 he can not be allowed to say that the circular is illegal.

29. In view of the discussion of foregoing para I am satisfied that though the Applicant was held entitled to seniority and was given deemed date of seniority in the year 1991-192, this is itself will not entitle the Applicant to claim consequential promotion from time to time and the financial benefits as claimed. The letter dated 18.03.2015 which is issued on the direction issued by the M.A.T. as well as the Hon'ble Apex Court and also the G.R. dated 25.02.1965, therefore, can not be said to be illegal. Hence following order:-

Order

O.A. stands dismissed with no order as to costs.

Sd/-

(J.D. KULKARNI)
MEMBER (J)

Date : 29.01.2016

Place : Mumbai

Dictation taken by : SBA