

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL  
MUMBAI

ORIGINAL APPLICATION NO.538 OF 2016

DISTRICT : THANE

Dr. Vaijanath D. Kamathewad. )  
Aged : 51 Yrs, Working as Deputy )  
Commissioner, Sales Tax, having office )  
at G-1, 8<sup>th</sup> Floor, New Building, )  
Vikrikar Bhavan, Mazgaon, Mumbai 10 )  
and residing at 301, Yashashree, Next )  
to VSNL Colony, Bandra (E), Mumbai 51. )...**Applicant**

**Versus**

The State of Maharashtra. )  
Through the Principal Secretary, )  
Finance Department, )  
Mantralaya, Mumbai - 400 032. )...**Respondent**

**Shri A.V. Bandiwadkar, Advocate for Applicant.**

**Ms. N.G. Gohad, Presenting Officer for Respondent.**

**CORAM : RAJIV AGARWAL (VICE-CHAIRMAN)**  
**R.B. MALIK (MEMBER-JUDICIAL)**

**DATE : 23.08.2016**



**PER : R.B. MALIK (MEMBER-JUDICIAL)**

**JUDGMENT**

1. This Original Application (OA) is brought by a Deputy Commissioner of Sales Tax facing two departmental Enquiries (D.E.) seeking promotion as Joint Commissioner Sales Tax subject to the outcome of the D.Es. He invokes GAD Circular No.SRV-1075/x dated 2<sup>nd</sup> April 1976 (1976 circular) and GAD G.R. No. एस.आर. व्ही-१०९५/प्र.क.२९/९५/ बरा dated 22<sup>nd</sup> April 1996 (1996 GR). He also seeks parity with his co-delinquents Sarvashri Dinkar Anna Patil, R.D. Bhagat and P.V. Gawande. Shri Patil brought OA 931/2011 (Shri Dinkar Anna Patil Vs. Government of Maharashtra) 02.04.2012 where upon the Respondent State of Maharashtra in Finance Department issued order dated 16.01.2014 subject to the outcome of the D.E. against the said Shri Patil.

2. We have perused the record and proceedings and heard Mr. A.V. Bandiwadekar, the learned Advocate for the Applicant and Ms. N.G. Gohad, the learned Presenting officer (P.O.) for the Respondents.

3. The opening paragraph must have made it clear as to what the facts and facts at issue are.



4. A conjoint reading of the 1976 Circular and 1996 G.R. would result in certain deductions. The mere pendency of the D.E. by itself is no ground to refuse to consider the delinquent's promotion. A conscious decision will have to be taken by the Government about it. Promotion can be considered and even given subject to the outcome of the D.E. if circumstances which are bound to be fact specific permit it. The delinquent could be asked to furnish an undertaking that he would be prepared to undergo the punishment even on the promotional post.

5. It would appear from Exh. 'E' (Page 24 of the Paper Book (P.B)) that the Applicant and 13 other Sales Tax Personnel are facing a D.E. on allegations which are serious. But, we are herein not required to pronounce thereon. The trio named above including Mr. Dinkar Anna Patil are the co-delinquents. They have been promoted. Mr. Patil in addition got another order from this Tribunal (Coram : Hon'ble Vice-Chairman) in OA 300 of 2015, dated 11.3.2016 whereby the Respondents were directed to consider the provisional deemed date of promotion to the post of Joint Commissioner, Sales Tax within the time limit fixed thereby. Mr. Patil, a co-delinquent of the Applicant, therefore, got not one but two promotions subject of course to the conditions, etc.

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6. It is revealed from the document coming into existence as a result of an enquiry under Right to Information Act (RTI) (Exh. 'A', Page 123 of the P.B.) to the Rejoinder dated 7.7.2016 filed by the Applicant that he was found fit for provisional promotion subject to the condition No.6 (Page 124 of the P.B.). That was the select list for the year 2012-13 dated 16.7.2015. The Establishment Board decided as follows (in Marathi). The name of the Applicant is Vajjnath Digambar Kamthewad.

“तसेच सर्वश्री उदय बाळकृष्ण संकपाल व वैजनाथ दिगंबर कामटेवाड या उर्वरित २ अधिका-यांच्या विरुद्ध सुरु असलेल्या विभागीय चौकशीच्या अधिन राहून पदोन्नतीसाठी पात्र ठरविण्यात आले आहे. परंतु श्री. संकपाल व श्री. कामटेवाड यांना विक्रीकर सह आयुक्त पदावर पदोन्नती देणेबाबत सामान्य प्रशासन विभाग, शासन निर्णय, दि.०२/०४/१९७६ मधील तरतुदीच्या अनुषंगाने वित्त विभागाने जाणीपूर्वक निर्णय घ्यावा असा निर्देश आस्थापना मंडळाने दिले आहेत.

३. उपरोक्त वस्तुस्थितीच्या आधारे विक्रीकर सह आयुक्त पदावर पदोन्नतीसाठी पात्र ठरलेल्या ५ अधिका-यांना पदोन्नतीने पदस्थापना देणेबाबत प्रस्ताव विक्रीकर आयुक्त कार्यालयाकडून मागविण्यात यावा. तसेच सर्वश्री. संकपाल व कामटेवाड यांच्याविरुद्ध सुरु असलेल्या विभागीय चौकशीच्या अनुषंगाने त्यांच्याबाबत जाणीवपूर्वक निर्णय घेण्याकरीता विक्रीकर आयुक्त यांचे अभिप्राय मागविण्यात यावेत. मान्यतेअंती पृ.३४९/प.वि.वरील मसूदा निर्गमित करण्यात येईल.”

7. It is, therefore, quite clear that the Applicant was otherwise found fit for promotion. His co-delinquents named above were in fact given provisional promotion. The only reason why the same treatment was denied to the Applicant was that he was facing not one but two DEs. Let us examine the worth of this aspect of Respondent's case.



8. In the first place, on plain language of 1976 Circular and 1996 G.R, it cannot be found that the procedure therein mentioned and the suggested course of action would apply, if only one DE was pending. We cannot read anything there into either directly or indirectly, expressly or by implication.

9. Further, the charge-sheet of the 1<sup>st</sup> D.E. for which in Mr. Patil's OA's relief was given was of 14.1.2010. The alleged events were of the period from 15.12.1998 to 4.1.2002. The relevant period for which the Establishment Board considered the case for promotion was 2012-13. The meeting took place on 16.7.2015. Now, for the 2<sup>nd</sup> D.E, the charge-sheet itself was issued on 16.7.2015. The events were for the period from 12.9.2007 to 11.6.2008. The dates mentioned above would, therefore, make it clear that the meeting took place to consider the promotion on the same date, exactly the same date when the 2<sup>nd</sup> charge-sheet was issued. Therefore, the Establishment Board could not have applied its mind to the same. But the promotion being a single event, the course of action pertaining to the 1<sup>st</sup> event (DE) could not be denied to the Applicant. And most important is what we have mentioned in Para 8 above.

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10. Our constitution frowns upon discrimination between two similarly placed persons. The explanation sought to be offered by the Respondents as and by way of justification is quite untenable. Therefore, the Applicant will have to be placed at par with Mr. Patil and two others named above.

11. Subject to the Applicant complying with his part of the obligation under 1976 Circular and 1996 G.R. within two weeks from today, the Respondents shall consider his case for promotion to the post of Jt. 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 after the compliance herewith by the Respondent. The promotion if and when given will be provisional and subject to the outcome of the two pending DEs against the Applicant.

12. The Original Application is allowed in these terms with no order as to costs.

Sd/-

**(R.B. Malik)**  
**Member-J**  
**23.08.2016**

Sd/-

**(Rajiv Agarwal)**  
**Vice-Chairman**  
**23.08.2016**

Mumbai

Date : 23.08.2016

Dictation taken by :

S.K. Wamanse.

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