

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI**

**ORIGINAL APPLICATION NO.562 OF 2014  
(Subject : Minor Punishment)**

**DISTRICT : MUMBAI**

Shri Vasant Shamrao Utikar, )  
Central Railway Quarters No.MS/RB/II/303/30, )  
3rd floor, Nurses Quarters, Dr. B.R. Ambedkar )  
Hospital Campus, Dr. B.A. Road, Opp. Rani Baugh, )  
Byculla (E), Mumbai 27. ) ..... **Applicant**

**Versus**

1. The State of Maharashtra, )  
Through Secretary, )  
Finance Department, )  
3<sup>rd</sup> floor, Mantralaya, Mumbai 400 032. )
2. The Commissioner of Sales Tax, )  
Sales Tax Bhavan, Mazgaon, Mumbai. )
3. Joint Commissioner of Sales Tax, (Recovery Section) )  
Sales Tax Bhavan, Mazgaon, Mumbai. ) ..... **Respondents**

Shri S.S. Dere, learned Advocate for the Applicant.

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

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

**DATE** : **14.06.2019.**

**J U D G M E N T**

1. Heard Shri S.S. Dere, learned Advocate for the Applicant and Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents.

2. Applicant has challenged impugned order and punishment imposed in Departmental Enquiry on 23.05.2013, whereby his next two increments were withheld with cumulative effect invoking jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act.

3. Shortly stated facts giving rise to the Original Application are as follows :-

Applicant was serving as Sales Tax Inspector on the establishment of Respondents No.2 and 3. Respondent No.3 is the Joint Commissioner of Sales Tax who issued charge-sheet dated 10.11.2010, and again issued supplementary charge-sheet on 05.02.2011 for Departmental Enquiry under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979. Accordingly, Shri A.D. Sirpulkar as appointed as Enquiry Officer. The Enquiry Officer conducted enquiry by granting opportunity of hearing to the Applicant and by following the principles of natural justice. At the end of enquiry the Applicant was found guilty for mis-conduct. The Enquiry Officer accordingly submitted report. On receipt of report the show cause notice was given to the Applicant. The Applicant furnished explanation to the show cause notice. On considering the explanation of the Applicant, Special Commissioner of Sales Tax, by order dated 23.05.2013 imposed the punishment of withholding of next two increments with cumulative effect. The Applicant had preferred an Appeal against the order of punishment before the Government which came to be dismissed on 27.12.2013. Being aggrieved by the order of punishment the Applicant has filed present Original Application.

4. At the very outset, it needs to be clarified that the order of punishment has been challenged solely on the ground that the Joint Commissioner of Sales Tax was not competent or empowered to issue the charge-sheet and therefore the punishment is unsustainable in law. Except this ground of competency of Joint Commissioner of Sales Tax, for issuance of charge-sheet to the Applicant, no other ground is raised to challenge the impugned order. Shri S.S. Dere, learned Advocate for the Applicant fairly stated that this is the only ground he want to urge in the O.A. and restricted the submission on the point of competency of Joint Commissioner of Sales Tax to issue the charge-sheet.

5. Shri S.S. Dere, learned Advocate for the Applicant has pointed out that the charge-sheet was admittedly issued by the Joint Commissioner of Sales Tax under Rule 8 of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979, which *inter alia* provides initiation of Departmental Enquiry for major penalties. He sought to content that for issuance of such charge-sheet for major penalties competent authority is Disciplinary Authority i.e. Commissioner of Sales Tax and not the Joint Commissioner of Sales Tax. He, therefore, urged that the punishment imposed upon the Applicant on the basis of charge-sheet issued by the Joint Commissioner of Sales Tax is material illegality going to the root of the case and on that ground itself the order of punishment is liable to be set aside.

6. Par contra, Smt. K.S. Gaikwad, learned Presenting Officer for the Respondents has pointed out that as per the Maharashtra Departmental Enquiries Manual, Appendix 7, the Joint Commissioner of Sales Tax is empowered to initiate the Departmental Enquiry and to issue the charge-sheet for the Departmental Enquiry against Sales Tax Inspector and Head-Clerk. She, therefore, urged that there is no such illegality in the competency in issuance of charge-sheet by the Joint Commissioner of Sales Tax.

7. Here it would be appropriate to reproduce the Maharashtra Departmental Enquiries Manual, शिस्त भंगाची कार्यवाही (सर्वसाधारण), (page 226 of paper book) along with schedule 7 (page 228) which is as follows :

“३.१६. चौकशी प्रधिकरणाची नियुक्ती -

- (१) शासकीय कर्मचा-याने आपल्या बचावाच्या लेखी निवेदनामध्ये कोणताही किंवा सर्व आरोप कबूल केलेले नाहीत असे जर शिस्तभंग विषयक प्राधिकरणास आढळून आले तर किंवा विनिर्दिष्ट तारखेपर्यंत त्याच्याकडून बचावाचे लेखी निवेदन आले नसेल, तर आरोपात काही तथ्य आहे काय याबद्दल शिस्तभंगविषयक प्राधिकरणाला स्वतः चौकशी करता येईल. महाराष्ट्र नागरी सेवा (शिस्त व अपील) नियम, १९७९ द्वारे शिस्तभंगविषयक प्राधिकरणाने स्वतः अशी चौकशी करण्यात परवानगी देण्यात आली असली तरी, चौकशी प्राधिकरण म्हणून दुसरा अधिकारी नेमण्याची नेहमीची पद्धत आहे.
- (२) विभागीय चौकशी ही सर्वसाधारणपणे केवळ परिशिष्ट ७ मध्ये विनिर्दिष्ट केलेल्या अधिका-याकडून किंवा अपचारी ज्या सेवेत असेल त्या सेवेचे नियंत्रण करणां-या नियमामध्ये विनिर्दिष्ट केलेल्या अधिका-याकडून केली जाईल.”

## परिशिष्ट ७ - चालू

१३. १ विक्रीकर विभाग -

(अ)	(एक) विक्रीकर अधिका-या विक्रीकर आयुक्त. व्यतिरिक्त राजपत्रित अधिकारी (दोन) विक्रीकर अधिकारी	शासनाने विनिर्देशपुर्वक पदनिर्देशित केलेले सहायक विक्रीकर आयुक्त.
(ब)	विक्रीकर अधिका-याच्या कार्यालयातील प्रमुख लिपिक किंवा निरीक्षक याव्यतिरिक्त अराजपत्रित कर्मचारी-वर्ग.	विक्रीकर अधिकारी.
(क)	प्रमुख लिपिक व विक्रीकर निरीक्षक	सहाय्यक विक्रीकर आयुक्त/ विक्रीकर उपआयुक्त.

8. As such it is quite clear that the Joint Commissioner of Sales Tax is competent to issue the charge-sheet. Indeed this aspect has been also dealt with by the Enquiry Officer in his report (page 125 of the paper book) and it is held that in view of the provisions of Maharashtra Departmental Enquiries Manual, read with Rule 6(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979, the Joint Commissioner of Sales Tax is competent to issue the charge-sheet against the Sales Tax Inspector. The Learned Advocate Shri S.S. Dere could not point out any specific rule or provision in support of his contention. Indeed provisions contained in Maharashtra Departmental Enquiries Manual and Schedule attached to it ~~which~~ clearly spells that the Joint Commissioner of Sales Tax is competent to issue the charge-sheet.

9. Indeed, on receipt of the Enquiry Officer's report the punishment impugned was withholding next two increments with cumulative effect which is minor punishment under Rule 5(1)(4) of the Maharashtra Civil Services (Discipline and Appeal) Rules 1979. The punishment has been imposed by the Special Sales Tax Commissioner who is the Disciplinary Authority of the Applicant. As such though the charge-sheet was issued for major penalties under Rule 8 of Maharashtra Civil Services (Discipline and Appeal) Rules 1979, on culmination of enquiry minor punishment of withholding of next two increments was imposed which has been maintained in Appeal.

10. As stated above, except the ground of competency of Joint Commissioner of Sales Tax for issuance of charge-sheet no other ground is raised by learned Advocate for the Applicant. Whereas the provisions of Maharashtra Departmental Enquiries Manual read along with Schedule clearly demonstrate that the Joint Commissioner of Sales Tax is empowered to issue the charge-sheet and therefore I see no substance in the submission advanced by learned Advocate for the Applicant in the O.A. and it is devoid of merit.

11. The totally of the aforesaid discussion lead me to sum up that the O.A. is without substance and deserves to be dismissed.

### **ORDER**

Original Application is dismissed without any order as to costs.

Sd/-

**(A.P. Kurhekar)**  
**Member(J)**

prk