

MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION No.92 of 2018

DISTRICT : PUNE

Shri Rajesh C. Advani)
R/at. Flat No.503, Vigigisha C. H. S.)
opp. Vetalbaba Mandir, S. B. Road, Pune -6.)...**Applicant**

Versus

The State of Maharashtra, through Additional)
Chief Secretary, Finance Department,)
Having office at Mantralaya, Mumbai 32.)...**Respondent**

Shri A. V. Bandiwadekar, Advocate for Applicant.
Ms S. Suryawnashi, Presenting Officer for the Respondents.

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

DATE : 09.04.2019

JUDGMENT

1. Heard Shri A. V. Bandiwadekar, learned Advocate for the Applicant and Ms S. Suryawanshi, learned Presenting Officer for the Respondent.
2. In the present O.A., the Applicant has challenged the order dated 06.04.2017 passed by the Respondent No.1 imposing punishment of withholding next two increments without cumulative effect.
3. After having heard the learned Counsels, it transpired that the Applicant has filed this O.A. invoking jurisdiction of this Tribunal u/s 19 of the Administrative Tribunal Act without availing remedy of filing appeal as provided under Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 (hereinafter referred as M.C.S. (D & A) Rules, 1979).

4. In view of above, the learned Advocate for the Applicant sought permission to withdraw the present O.A. with liberty to file appeal before the Competent Authority as contemplated under M.C. S (D & A) Rules, 1979 and also requested that the directions be given for decision of the appeal within stipulated period without harping on the point of limitation. He further contends that now the Applicant is due for promotion and, therefore, the matter needs to be decided expeditiously.

5. The learned P.O. for the Respondents has no objection for withdrawal of the O.A. with liberty to the Applicant to file appeal.

6. As stated above, in the present O.A. the challenge is to the order of punishment dated 06.04.2017. The Applicant has filed this O.A. on 25.01.2018 well within limitation of one year. Whereas, he was required to file appeal within 45 days before the Competent Authority as contemplated under M.C.S. (D & A) Rules, 1979.

7. Learned Advocate for the Applicant further submitted that the Applicant in his written submission as well as reply to the charge sheet has fairly stated that he was new in the said assignment and, therefore, inadvertently the sales tax was levied @ 10% instead of 2% in case of inter stock transfer from one State to another State. Thus, according to the learned Advocate for the Applicant considering the fairness of the Applicant, punishment of stoppage of two increments without cumulative effect is harsh.

8. As the Applicant has approached this Tribunal directly without filing appeal, the present O.A. is not maintainable and, therefore, the request of the learned Advocate for withdrawal of O.A. so as to avail the remedy of appeal is just and reasonable.

9. Similarly, the period spent by the Applicant for pursuing this remedy in filing O.A. needs to be excluded from the period of limitation u/s 14 of

Limitation Act. Therefore, it would be appropriate that the Hon'ble Competent Authority shall decide the appeal to be filed by the Applicant on merit without harping on the point of limitation within stipulated period.

10. In view of above, the O.A. needs to be disposed of with following directions.

- (A) Allowed to withdraw the present O.A. with liberty to file appeal before the Hon'ble Competent Authority as contemplated under M.C.S. (D & A) Rules, 1979 within two weeks from today.
- (B) The Hon'ble Competent Authority is requested to decide the appeal as early as possible preferably within two months from the date of receipt of appeal memo.
- (C) The Hon'ble Competent Authority is also requested not to harp upon the point of limitation and the appeal be decided on its own merit after giving opportunity of hearing to the Applicant.
- (D) The decision, as the case may be, be communicated to the Applicant within ten days from the date of decision in appeal.
- (E) If the Applicant felt aggrieved by the decision, he is at liberty to take recourse of law as permissible to him.
- (F) No order as to costs.

Sd/-

(A.P. KURHEKAR)
MEMBER (J)

Place : Mumbai

Date : 09.04.2019

Dictation taken by : V.S. Mane

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