

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
REVIEW APPLICATION NO 09 OF 2016
IN
ORIGINAL APPLICATION 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**

**WITH
MISC APPLICATION NO 204 OF 2016
IN
REVIEW APPLICATION NO 09 OF 2016
IN
ORIGINAL APPLICATION NO 300 OF 2015**

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

Versus

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.)...**Respondent**
(**Ori Applicant**)

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 : 24.06.2016

ORDER

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

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2. This Review Application is filed by the Applicant seeking review of the order dated 11.3.2016 in O.A no 300/2015 to the extent that deemed date of promotion to the post of Joint Commissioner may be treated as 17.11.2011 instead of 2.10.2012.

3. Learned Counsel for the Applicant argued that this Tribunal by order and judgment dated 11.3.2016 in O.A no 300/2015, directed the Respondents to consider the Applicant eligible for deemed date of promotion as Joint Commissioner from 2.12.2012. This was done as 2.12.2012 was the date of judgment and order of this Tribunal in O.A no 931/2011. By this judgment dated 2.12.2012, this Tribunal had directed the Respondents to complete the Departmental Enquiry (D.E) pending against the Applicant within 6 months from the date of receipt of the order. However, the D.E has not been completed even now. Learned Counsel for the Applicant argued that the Applicant is deprived of the opportunity to get further promotions as the D.E is prolonged for last more than 6 years. That was the reason as to why this Tribunal directed the Respondents to grant deemed date of promotion in the cadre of Joint Commissioner, so that he may be considered for further promotion, as the D.E was not being concluded against him. Learned Counsel for the Applicant argued that the Applicant had filed O.A no 931/2011 on 17.11.2011. Any relief based on the judgment in that O.A ought to be made applicable from the date of filing of Original Application and not the date of the judgment.

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4. Learned Presenting Officer (P.O) argued that the Applicant will be considered for promotion as Additional Commissioner, as per his seniority in the cadre of Joint Commissioner. The proposal to give deemed date of promotion to the Applicant in the cadre of Joint Commissioner is under consideration.

5. This Tribunal in O.A no 931/2011 by order and judgment dated 2.4.2012 had directed the Respondents to complete the D.E pending against the Applicant since 14.1.2010 within a period of six months. That period has expired long back and even now the D.E against the Applicant is not completed. The Respondent has clearly not implemented the order of this Tribunal. This has caused grave prejudice to the Applicant, who is kept in limbo. The D.E against him is not concluded, though it is pending for more than 6 years and the Applicant is not considered for promotion also as per his seniority. It is alleged that charges against the Applicant are grave in nature. If that be the case there is more reason to pass orders in the D.E against the Applicant expeditiously. The Respondent alone is responsible for delay in finalizing the D.E, considering the fact that the report of the Enquiry Officer was received way back on 5.12.2012. Though the Applicant has been given ad hoc promotion as Joint Commissioner, his promotion to that post was delayed and his juniors were promoted to that post before him. This Tribunal has granted relief to the Applicant in this Original Application that he may be granted deemed date of promotion as Joint Commissioner on the basis of the order and judgment of this Tribunal in O.A no 931/2011,

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which has not been complied by the Respondent till now. The Respondent cannot punish the Applicant by its inaction in not completing D.E against him and prolonging it unduly for more than 6 years. The Applicant is eligible to get promotion, provisionally, subject to the outcome of the D.E against him. This Tribunal has considered the fact of failure of the Respondent to comply with the order of this Tribunal in O.A no 931/2011, while directing the Applicant to be considered for further promotion. The Applicant is definitely entitled to be considered for promotion if the Respondent is unable to conclude the D.E against him. The prayer of the Applicant to consider him for promotion to the post of Additional Commissioner considering the date of institution of O.A no 931/2011, i.e 17.11.2011 as deemed date of promotion to the post of Joint Commissioner, deserves consideration. In the normal course, such deemed date would be the date on which his juniors were promoted as Joint Commissioner. However, considering the fact that the D.E is pending against the Applicant, that relief is not being considered at present.

6. Having regard to the aforesaid facts and circumstances of the case, this Review Application is allowed. The order dated 11.3.2016 in O.A no 300/2015 is modified to read that the Respondent is directed to consider deemed date of promotion to the Applicant to the post of Joint Commissioner as 17.11.2011 and on that basis consider him promotion to the post of Additional Commissioner within a period of three months from the date of this order. There will be no order as to costs.

7. In M.A no 204/2016, the Respondent has sought recall of order dated 29.4.2016 imposing cost of Rs. 5000/- for not filing affidavit in reply in time. The Respondent has expressed regret for delay in filing reply. The order imposing cost of Rs. 5000/- is recalled and M.A is allowed.

Sd/-

(Rajiv Agarwal)
Vice-Chairman

Place : Mumbai

Date : 24.06.2016

Dictation taken by : A.K. Nair.