

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO.304/2022(D.B.)

Pramod s/o Ganpatrao Pingre,
aged about 52 years, Occupation: Service,
Resident of House No. 105,
Akhil Vishwabharati Housing society,
New Katol Naka, Nagpur District: Nagpur.

Applicant.

Versus

- 1) State of Maharashtra,
through its Principal Secretary,
Finance Department, Mantralaya,
Mumbai- 32.
- 2) The Commissioner of State Tax,
GST Bhavan, Mazgaon, Mumbai.
- 3) Special Commissioner of State Tax,
3rd Floor, GST Bhavan, Mazgaon, Mumbai.

Respondents

Shri S.Y.Deopujari, Ld. Counsel for the applicant.
Shri S.A.Sainis, Ld. P.O. for the respondents.

Coram:- Hon'ble Shri Justice M.G.Giratkar, Vice Chairman &
Hon'ble Shri Nitin Gadre, Member (A).

Dated:- 14th August, 2024.

JUDGMENT

Heard Shri S.Y.Deopujari, learned counsel for the applicant and Shri S.A.Sainis, learned P.O. for the respondents.

2. The case of the applicant in short is as under-

The applicant is working as Sales Tax Inspector Class-II. The service record of the applicant is clean. The applicant has completed 10 years of service of Class-II Officer on 26.12.2017. The applicant is eligible for promotion to the post of Assistant Sales Tax Commissioner. Though, the applicant is entitled for getting the benefits of next promotion, superseding the claim of applicant his juniors have been granted the promotion to the post of Assistant Sales Tax Commissioner. Therefore, the applicant has approached to this Tribunal for direction to the respondents for the following reliefs-

i) It be declared that the action of the Respondents No.1 not to include the name of the applicant in the Selection List of Sales Tax Officers for the year 2020-2022 which are to be promoted to the post of Asst. Commissioner of Sales Tax (Annexure A-1), is illegal and unsustainable under the facts and circumstances of the present case,

ii) the impugned action of the Respondents not including the name of the applicant in the selection list of Sales Tax Officers for the year 2020-2021 and including the names of the officers junior to him thereby granting promotion/proposing to grant promotion to them to the post of Asst Sales Tax Commissioner be quashed and set-aside, as being unsustainable

in the eyes of law and being issued with colourable exercise of power;

iii) It be further held and declared that the Office order dated 25.2.2022 (Annexure A-1) is illegal and therefore it is liable to be quashed and set aside and it be quashed and set aside accordingly.

iv) the respondents be directed to include the name of applicant in the selection list of the Sales Tax Officers enclosed along with communication dated 25.2.2022 (Annexure A-1) which are to be promoted to the post of Asst. Sales Tax Commissioner, at appropriate place as per his position in the seniority list of Sales Tax Officers and grant him promotion accordingly and extend all benefits of said promotion with effect from the date on which the other candidates have been granted promotion in the said section list to the applicant which would have otherwise become applicable for the same in normal course;

v) any other relief this Hon'ble Tribunal deems fit and proper under the peculiar facts and circumstances of the case be granted to the Applicant in the interest of justice.

(12) Interim Relief sought for :-

(i) The applicant has demonstrated a prima facie unimpeachable case to succeed before this Hon'ble Tribunal, As stated in the application the impugned action of the Respondents of denying promotion to the applicant and granting promotion to his juniors without following the prescribed procedure is illegal which is nothing but a colourable exercise of power. The applicant submits that the applicant has put in almost 28 years of unblemished service, and now deprived of his legitimate claim of promotion to the next higher post, when his juniors have been granted said promotion on untenable grounds. Hence Under these circumstances the applicant hereby pray to this Hon'ble

Tribunal to direct the Respondents to include the name of the applicant in the selection list of candidates due for promotion/promoted to the post of Sales Tax Commissioner as enclosed along with the communication dated 25.2.2022 (Annexure-A-1) and grant him promotion accordingly from the date from which the other candidates mentioned in the said list are held entitled/eligible for the said promotion, by way of interim relief, during the pendency of present application.

OR

Grant stay to the communication dated 25.2.2022 (Annexure A-i) till the final decision of the present application in the interest of justice.

The applicant hereby submits that he will be put to irreparable loss and injury if the interim relief as prayed is not granted to the applicant,

(ii) Grant ad-interim and ex-parte relief in terms of the prayer Clause (i) above.

(iii) Grant any other relief which deems fit by this Hon'ble Tribunal in the facts and circumstances of the case.

3. The O.A. is strongly opposed by the respondents. It is submitted by the respondents that the applicant is facing departmental enquiry. Therefore, he is not promoted. Hence, the O.A. is liable to be dismissed.

4. During the course of submission, the learned counsel for the applicant has pointed out Judgments of the Hon'ble Supreme Court in the case **Union of India Vs. K.V.Jankiraman and Others reported in AIR (1991) SCC 109 decided on 27.08.1991** and **Union**

of India and Others Vs. Anil Kumar Sarkar(2013) 4 SCC 161 decided on 15.03.2013.

5. The Hon'ble Supreme Court in the above cited Judgments have held that the promotion cannot be withheld because of the pendency of criminal case or departmental enquiry. Temporary promotion can be granted subject to the decision of criminal case or departmental enquiry. The respondents have started departmental enquiry in the year 2021. Still that departmental enquiry is pending. The respondents are not completing departmental enquiry and promotional benefits of the applicant is withheld because of the pendency of departmental enquiry. In view of Judgments of the Hon'ble Supreme Court in the case of **Union of India Vs. K.V.Jankiraman and Others reported in AIR (1991) SCC 109 decided on 27.08.1991** and **Union of India and Others Vs. Anil Kumar Sarkar(2013) 4 SCC 161 decided on 15.03.2013** the respondents should have promoted the applicant temporarily subject to the decision of the departmental enquiry. Hence, we proceed to pass the following order-

ORDER

1. The O.A. is allowed.

2. The respondents are directed to promote the applicant temporarily subject to the decision of the departmental enquiry.
3. No order as to costs.

(Nitin Gadre)
Member(A)

(Justice M.G.Giratkar)
Vice Chairman

Dated – 12/08/2024
rsm.

I affirm that the contents of the PDF file order are word to word same as per original Judgment.

Name of Steno : Raksha Shashikant Mankawde.
Court Name : Court of Hon'ble Vice Chairman
& Hon'ble Member (A).
Judgment signed on : 12/08/2024.
and pronounced on