

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.1520 OF 2009

DISTRICT : NASHIK

Shri Sudhakar A. Pagar.)
Smt. Nirmala Sudhakar Pagar.)
Aged : Adult, Widow of Deceased Govt.)
Servant, Occu.: Household, Residing at)
Saraswati Nagar, New Adgaon Naka,)
Panchvati, Nashik.)
**)...Applicant
(Heir & Legal
Representatives of
Deceased Petitioner)**

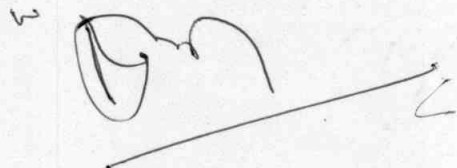
Versus

1. The Treasury Officer.)
District Treasury Office, Nashik.)
2. The Additional Chief Secretary,)
Finance Department, Mantralaya,)
Mumbai - 400 032.)
)...Respondents

Shri B.A. Bandiwadekar, Advocate for Applicant.

Shri A.J. Chougule, Presenting Officer for Respondents.

P.C. : R.B. MALIK (MEMBER-JUDICIAL)



DATE : 26.09.2016


JUDGMENT

1. The deceased Applicant whose wife has been impleaded after his death brought this Original Application (OA) against the order whereby his request for grant of Time Bound Promotion / Accelerated Career Progression Scheme came to be rejected and a further relief was sought for extension of the said benefits to him.

2. The deceased Applicant (to be hereinafter called Applicant) was appointed as Junior Clerk in the Office of the Respondent No.1 – Treasury Officer, Nashik on 23rd December, 1981. He passed the Post Recruitment Examination on 10.5.1995 and claimed to have become entitled to the Time Bound Promotion in accordance with the G.R. dated 8.6.1995 w.e.f. 1.10.1994 after completing 12 years of regular service on 24.12.1993. But that order came to be made on 6.1.2000 which became effective from 10.5.1995. He was also allowed to cross the Efficiency Bar on 11.5.1995 in the pay scale of 950-1500 for which the orders were made on 24.11.1997. He voluntarily retired on 1.1.2003. On 23rd January, 2004, an order came to be made, a copy of which is at Exh. 'D' (Page 18 of the Paper

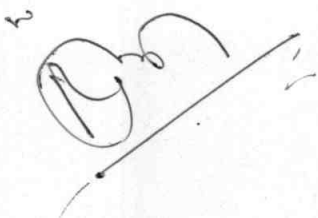


Book (P.B.)). Thereby, the Time Bound Promotion that came to be granted to him on 10.5.1995 came to be withdrawn and he was told to refund an amount of Rs.38,503/- in a lump sum at once. The Applicant brought an **OA 155/2004 (Shri Sudhakar A. Pagar Vs. State of Maharashtra and 3 others)** a copy of the order dated 6.8.2004 in that OA made by the then Hon'ble Vice-Chairman is there on record. It is clear from the said order that by the order dated 23rd January, 2004 just referred to, the Time Bound Promotion given to the Applicant was cancelled four years after the said order was made and one year after his retirement voluntarily. It is, therefore, quite pertinent to note that the *terafirma* of this particular OA and that disposed of OA was the same viz. the order dated 23rd January, 2004. The Hon'ble Vice-Chairman by his order above referred to was pleased to find no merit in the said OA and rejected the same. He held *inter-alia* that the Applicant having not passed the post recruitment examination within the prescribed time and chances suffered in the matter of seniority and in so far as his grievance that one of his juniors Shri J.D. Dhamode was given Time Bound Promotion, it was held that a statement was made that even his case would be revised against him.



3. It is, therefore, very clear that in so far as the present facts are concerned, the Applicant's fate had already been sealed by a judicial order made by this Tribunal which having not been challenged has become final, conclusive and binding.

4. It so happens that a few colleagues of the Applicant S/S Shantaram Gaikwad, Shankhpal Anna, Chandrashekhar Deshpande and Smt. Vijaya Maind, who were exactly similarly placed as the Applicant brought Original Applications substantially on the facts such as they are in this particular OA. By a common Judgment of 30th October, 2015, I allowed those applications holding *inter-alia* that those Applicants were eligible for being considered for the benefit of Time Bound Promotion / ACP Scheme after completion of 12 years of service from initial appointment, regardless of whether they cleared the departmental examination within the time limit and attempts, etc. provided they were otherwise eligible. The crux of the matter was that I held that the relevant date in the matter of computation for any other aspect of service condition might be the date of appointment or any other date depending upon the nature of the service condition. However, as far as Time Bound Promotion and ACP were concerned, the relevant date would be the date of initial

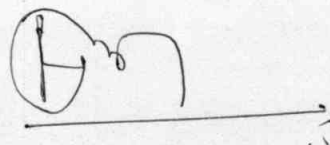
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appointment. In this behalf, reliance was placed by me on a few decided cases including in **Writ Petition No.5494/2000 (State of Maharashtra Vs. Uttam Pawar, dated 20th October, 2000 (DB)(Mumbai)** and in that particular Judgment, I also referred to **K.C. Sharma and others Vs. Union of India and others (1997) 6 SCC 721.**


5. Relying thereupon as well as in a common Judgment rendered by me in a large number of other OAs including **OA 732/2011 (Dr. Shankar B. Kasabe Vs. The Secretary, Public Health Department and others and other OAs decided on 8.6.2016,** Mr. B.A. Bandiwadekar, the learned Advocate for the Applicant told me that the claim of the Applicant in this OA for Time Bound Promotion also could not have been negated. He also relied upon a G.R. of the year 2009 in support of his contention. The learned Presenting Officer (PO) Shri A.J. Chougule while opposing this OA invited reference to an order of the A'bad Bench of this Tribunal in **OA 465/2013 (Kalyansingh H. Taji Vs. State of Maharashtra and 4 others, dated 14.3.2016).**

6. In my opinion, however, as far as the present Applicant is concerned, as I mentioned earlier, his fate became sealed by the order against him in OA 155/2004 discussed above. In none of the Judgments that I relied

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upon in my own earlier Judgments and in none of the G.Rs has it been laid down that the rights concluded before rendering of those Judgments and issuance of those instruments could also be reopened and reconsidered. It is no doubt true that at the first blush, it does appear that the two group of similarly placed persons cannot be treated differently, but that is something which one cannot help because the Applicant had challenged the same impugned order which is even the basis hereof and that was decided against him and that order has become conclusive and binding. I am, therefore, constrained to hold that the present OA will have to be rejected. But, it is clear that the entitlement of the Applicant for pensionary relief, etc. which may have been given to the Applicant and as a family pension to his wife also for which documents have been produced by the Respondents will not be in any manner interfered with. With this abundant clarification, the Original Application stands hereby dismissed with no order as to costs.

 26.09.16
(R.B. Malik)
Member-J
26.09.2016

Mumbai

Date : 26.09.2016

Dictation taken by :

S.K. Wamanse.

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