

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI

ORIGINAL APPLICATION NO.59, 61 & 90 OF 2016

DISTRICT : PUNE

ORIGINAL APPLICATION NO.59 OF 2016

Smt. Aparna Anand Potnis.)
Retired as Senior Clerk, R/at Hari Om)
Complex, 1207, Kasba Peth, Near Sat Toti)
Police Chouky, Pune 411 011.)...**Applicant**

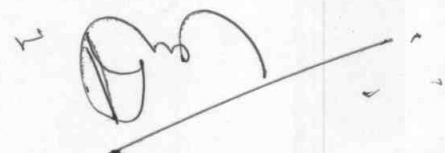
Versus

The Dean.)
B.J. Medical College & Sassoon General)
Hospitals, Pune – 411 001.)...**Respondent**

WITH

ORIGINAL APPLICATION NO.61 OF 2016

Smt. Supriya Vijay Kulkarni.)
Retired voluntarily as Junior Clerk,)
R/at House No.78, Peth Road, Opp.)



Grampanchayat Office, At : Man, Post :)
 Hinjwadi, Taluka : Mulshi, Dist : Pune.)...**Applicant**

Versus

The Dean.)
 B.J. Medical College & Sassoon General)
 Hospitals, Pune - 411 001.)...**Respondent**

WITH

ORIGINAL APPLICATION NO.90 OF 2016

Smt. Jyoti Shivshankar Pirgonde.)
 Retired as Junior Clerk, R/at C/o.)
 Shri P.S. Bake, Municipal Corporation)
 Officers Colony, House No.3502, Railway)
 Lines, Near Pankha Vahir, Solapur 413002)...**Applicant**

Versus

The Dean.)
 B.J. Medical College & Sassoon General)
 Hospitals, Pune - 411 001.)...**Respondent**

Ms. S.P. Manchekar, Advocate for Applicants.

Ms. N.G. Gohad, Presenting Officer for Respondents.



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

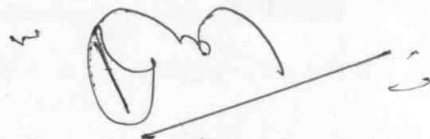
DATE : 14.12.2016

JUDGMENT

1. These three Original Applications (OAs) admit to their disposal by this common Judgment for obvious reasons.

2. The dispute relates to the grant of Time Bound Promotion and Assured Career Progression Scheme which was initially granted to the Applicants but subsequently withdrawn mainly on the ground that the Dean was the competent authority to grant it and moreover, the benefit of the common Judgment in **OA 3/2013 (Shri Sunil R. Pimputkar and others Vs. State of Maharashtra and one another, dated 17th April, 2014)** which in turn relied upon a few earlier Judgments of the Tribunal holding that the denial of temporary promotion was not an undoing in the matter of consideration of Time Bound Promotion, etc. would not be applicable to those that were not the parties thereto.

3. I have perused the record and the proceedings and heard Ms. S.P. Manchekar, the learned Advocate for the Applicants and Ms. N.G. Gohad, the learned Presenting Officer for the Respondent.



4. The facts in so far as they are relevant thereto *inter-alia* are that the Applicants were born on 6.8.1953, 26.8.1953 and 28.2.1948 respectively. They joined as Junior Clerks in January, 1982, 24th October, 1977 and 6th June, 1982 (compassionate appointment) respectively. The Applicant in OA 59/2016 retired on superannuation on 31.8.2011 while the Applicants in the two other OAs took voluntary retirement on 31.12.1998. It is common ground that they were given temporary promotion vide the orders mentioned in the respective OAs and were also given postings. It is again a common ground that these were temporary promotions. In the first OA, it was made clear that the said promotion was subject to finalization of seniority while in the two other OAs, it was categorically mentioned in their respective orders that they were temporarily promoted. It is again a common ground that the Applicants declined to accept the temporary promotions and the reason mentioned was personal. The Time Bound Promotion initially granted to them came to be withdrawn apparently under Condition 2(y) in the G.R. of 8.6.1995. The same needs to be reproduced in Marathi २(य). In the 1st OA, the said G.R. is at Exh. 'A-5' (Page 18 of the Paper Book (PB)).

“२(य): या योजनेअंतर्गत पदोन्नती मिळाली तरी कर्मचाऱ्या-याचे नाव कनिष्ठ (मूळ) संवर्गाच्या ज्येष्ठता सूचीत राहिल. आणि सेवा प्रवेश नियमातील तरतुदीनुसार उपलब्ध रिक्ततेत योग्यवेळी नियमित पदोन्नतीसाठी (Functional Promotion) त्याचा विचार करण्यात येईल. नियमित पदोन्नतीस अपात्र ठरलेल्या कर्मचा-यास या योजनेचा लाभ मिळणार नाही. त्याचप्रमाणे नियमित पदोन्नती नाकारलेल्या कर्मचा-यास देखील या पदोन्नतीचा लाभ मिळू शकणार नाही. या आधीच त्यांना (In-Situ) पदोन्नती



दिली असल्यास मूळच्या पदावर पदावनत करण्यात येईल. तशा आशयाचे बंधपत्र कर्मचा-यांना लिहून द्यावे लागेल. मात्र देण्यात आलेल्या आर्थिक लाभांची वसुली केली जाणार नाही.”

5. The stand of the Respondents in the Affidavit-in-reply repeatedly taken and pursued at the time of addresses by the learned Presenting Officer Ms. Gohad is that the Applicant having declined to accept the promotion, they were disentitled to claim the said benefit. As already hinted above, the benefit earlier granted was withdrawn mainly because the Applicants declined to accept the promotion. The relief herein sought in effect is to quash the refusal by the Respondent vide the letters mentioned in Prayer Clause 10(a) whereby they effectively declined to afford the benefit of the Judgment of this Tribunal in the matter detailed at the outset. A declaration is sought that the Applicants were entitled for restoration of the benefit of Time Bound Promotion granted to them from the dates mentioned in Prayer Clause 10(b). Benefit is also claimed of the G.R. dated 1.4.2010 and consequential benefit of re-fixation of pay and pension along with the arrears. Restoration of the withdrawn benefit is also prayed for.

6. As a matter of fact, in the above reproduced Clause of the 1995 G.R. by using the word, “त्याचप्रमाणेनियमित पदोन्नती नाकारलेल्या” it becomes quite clear as a fall out that the refusal to accept temporary promotion would not be hit by the adverse consequences envisaged by the Respondents. That apart, it is absolutely clear from the Judgment of this Tribunal in **Sunil**

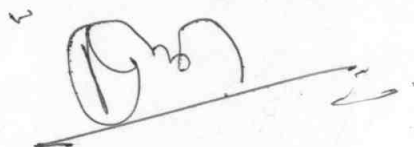
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Pimputkar (supra) that if the temporary promotion was declined, then that would not come in the way of such an employee. A bare perusal of the said Judgment would make it clear that the present Applicants are exactly similarly placed as the Applicants therein. Quite pertinently, this aspect of the matter is not denied even by the Respondent. The only reason why according to them, they are not bound to follow the orders of this Tribunal in **Sunil Pimputkar** (supra) is that the said order would be applicable only to the Applicants therein and the present Applicants who were not parties thereto would not be entitled to the benefit thereof. Now, this is no occasion for me to delve into the academics of the status of this Tribunal in view of the relevant amendment to the Constitution read with the Judgment of the Hon'ble Supreme Court in **L. Chandrakumar Vs. Union of India and others, (1997) 3 SCC 261**. It would be suffice to mention that if the issues determined by this Tribunal are such as to be person specific, then of course, no fact at issue will have been determined and the said order would only be applicable to that particular Applicant. However, there can be instances as is the case over here wherein a certain principle interpreting a particular instrument is clearly discernible and if that is so, then it is not so much a question of extension or non-extension of the benefit to the non-parties as its applicability of the principle enunciated in that particular Judgment. In that case, the State will be in duty bound to effectively apply the said principles even to those who were not the parties thereto. For



example, here the principle laid down in **Sunil Pimputkar's** case by this Tribunal was that declining promotion which was temporary would not hit the said employee under the relevant provisions of the said G.R. It, therefore, comes ill from the Respondents to give an impression as if the employees who were not parties thereto should as if to perform a ritual and secure an order from this Tribunal. It is quite simply so because when the matter comes before this Tribunal, then the legal principle is that the subsequent Bench would be bound by the decision of the earlier Bench. I presume, the State is not necessarily litigation happy. I have no hesitation in holding that the Respondent committed an error by not following in case of the present Applicants the Judgment in the matter of **Sunil Pimputkar** (supra). In deciding that particular matter, the Tribunal relied upon earlier Judgments in the matter of **OA 477/2008 and others (Smt. Shailaja R. Godbole Vs. Director and another, dated 2.7.2009)**. In that connection, Paragraph 11 from that particular Judgment was quoted in **Pimputkar's** case which I also can usefully quote.

“11. I now come to the question of refusal after 1.10.1994 on different dates mentioned by the respondents. A perusal of these orders indicates that the promotions offered were temporary. The same is mentioned either in the body of the order or in the subject matter of the order. A perusal of the scheme of 8.6.1995 clearly reveals that refusal to regular promotion only is contemplated as enough cause as a bar to be considered for time bound promotion. Hence, refusal to temporary promotion



will not debar the applicants from being considered for time bound promotion.”

7. Another Judgment in the matter of OA 966/2011 (Mrs. Anuradha S. Godse and others Vs. State of Maharashtra and one another, dated 13.6.2012 was relied upon in which Smt. Shailaja Godbole's case was relied upon. It was thereafter held in Pimputkar's case that in as much as the Applicants refused only temporary promotions, they could not be denied Time Bound Promotion. It was directed that they should be considered for the grant of Time Bound Promotion, if they were otherwise suitable and the Respondents were directed to consider their cases for Time Bound Promotion and pass suitable orders within two months of that Judgment.

8. It is, therefore, very clear that the principles laid down in Pimputkar's case based on earlier decision of this Tribunal and especially in the context of there being no contrary mandate either from the Hon'ble Bombay High Court or the Hon'ble Supreme Court, the Respondents should straightway have afforded benefit thereof to the present Applicants. **I direct that a copy hereof be forwarded to the Chief Secretary of the Government of Maharashtra directing him to inform all concerned that if a principle of general applicability is capable of being culled out from a particular pronouncement of this Tribunal, then similarly placed employees, though not before the Tribunal should be given the benefit thereof without actually moving this**

Tribunal for relief. If on the other hand, the relief is person specific, then of course, this direction will not apply. **The Registrar of this Tribunal is directed to do the needful in accordance herewith.**

9. Now, that the matter would go back before the concerned authorities to act in accordance herewith, it is quite clear that the Applicants will have to be held entitled to the benefit of the Time Bound Promotion even if it was withdrawn earlier and all consequential orders including re-fixation of pay and pension will have to be made. I, therefore, direct the Respondent to consider these cases for Time Bound Promotion in accordance with the observations hereinabove and to do the needful as herein directed within eight weeks from today. These Original Applications are allowed in these terms with no order as to costs. The Registrar of this Tribunal is hereby directed to comply with the directions in Para 8 above.

Sd/-

(R.B. Malik)
Member-J
14.12.2016

14-12-16

Mumbai
 Date : 14.12.2016
 Dictation taken by :
 S.K. Wamanse.