OA 584/93

OA 70/96

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
MUMBAI

THIS THE 24th DAY OF JUNE, 1999.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.R.K.AHOOJA, MEMBER(A)

OA No.584/93

Ms. Jayashree B.Rana
serving as a Lecturer in
Chemistry in Govt.College Daman
and residing at C/o Bakubhai
J.Rana, Gitakunj Society,
Near Custom House No.15, Vapi
396 191. Dist.Bulsar. ..... Applicant

(By Advocate Shri M.S.Ramammurthy)

Vs.

1. The Union of India,
through the Secretary,
Ministry of Human Resource Development
Shastri Bhavan, New Delhi-110 001.

2. The Administrator of Union Territory
of Daman & Diu,
Secretariate, Moti Daman,
Daman 396 210

3. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.-110 001. ... Respondents

(RESPONDENT No.1 THROUGH SHRI V.S.MASURKAR, ADVOCATE)
(RESPONDENTS 2 & 3 THROUGH MR.V.D.Vadhavkar FOR
SHRI M.I.SETHNA)

OA No.70/96

Ms.Jayashree B.Rana
serving as a Lecturer in Chemistry in
Govt. College Daman and residing
at C/o. Bakubai J.Rana, Gitakunj
Society, Near Custom House, No.15
Vapi 496 191, Dist. Bulsar ... Applicant

(BY ADVOCATE SHRI M.S.RAMAMURTHY)

Vs.

1. Union of India, through the
Secretary, Ministry of Human
Resource Development,
Shastri Bhavan, New Delhi-110 001.

2. The Administrator of Union Territory
of Daman & Diu, Secretariate,
Daman 396 210.

3. The Secretary,
Union Public Service Commission,
Dholpur House,
Sahjahan Road,
New Delhi-110 001.

4. Dr.Rajk... candidate selected in the interview held on 2.7.1993 and 7.7.1993 and who has been offered the post of Lecturer in Chemistry in the Government College Daman by letter dated 4.12.1995 having his address at Shastri Nagar, Meerut .... Respondents

(RESPONDENTS 1 & 2 THROUGH SHRI V.S.MASURKAR,
RESPONDENT NO.3 THROUGH SHRI V.D.VADHAVKAR)

O.A. No.473/98

Ms. (Dr.) Jayshree B. Rana
employed as Lecturer in
Chemistry in the Government College
of Arts, Science and Commerce at
Daman and residing at C/o. Babubhai I.Rana
Gita Kunj Society, Near Custom House No.15
VAPI (PIN 396191)
DIST. Valsad(Gujarat State) .... Applicant

(BY ADVOCATE SHRI M.S.RAMAMMURTHY)

vs.

1. Union of India,
through the Secretary,
Ministry of Human Resources Development
Shastri Bhavan,
New Delhi-110 001.

2. The Administrator
Union Territory of Daman
& Diu, Secretariat,
Daman 396 220

3. The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi-110 001.

4. Shri Mukulkumar Singh,
Quarter No.CD-104 (Sector II)
Dhurva, Ranchi 834 004
(State of Bihar) .... Respondents

(NONE FOR RESPONDENTS 1, 2 & 4,
SHRI V.D.Vadhavkar for Sh.M.I.Sethna,
Advocate for respondent No.3)

Contempt petition No.21 of 1996
IN
O.A. No.584 of 1993

Ms.Jayashree B.Rana
serving as a Lecturer in Chemistry in
Govt.College Daman and residing
at C/o.Bakulbai J.Rana, Gitakunj
Society, Near Custom House No.15
Vapi 396 191, Dist.Bulsar ..... Applicant

(BY ADVOCATE SHRI M.S.RAMAMUTRHY)

Vs.

1. The Union of India,
through the Secretary, Ministry
of Human Resource Development
Shastri Bhavan, New Delhi-110 001

2. The Administrator of Union Territory of
Daman & Dim,
Secretariate, Moti Daman,
Daman 396 210.

3. The Secretary,
Union Public Service Commission
Dholpur House, Sahjahan Road,
New Delhi-110 001.

4. K.V.Goswami
Assistant Secretary
Administration, Secretariate,
Daman & Diu, Nagar Haveli,
Moti Daman, Daman 396 210. .... Respondents

Contempt Petition (Civil) No.11 of 1999
IN
O.A. No.473 of 1998

Dr.Jayshree B.Rana ... Applicant

(By Advocate Shri M.S.Ramamurthy)

vs.

Union of India & ors.

And

Raj Kumar Saxena IAS
Special Secretary(Personnel)
Union Territory of Daman & Diu
Administration,
Secretariate,
Moti Daman ... Respondents

ORDER

JUSTICE K.M.AGARWAL:

All the three O.As have been filed by one Ms.Jayashree B.Rana on different dates in different years. In O.A. No.584/93, the prayer is for declaring her appointed on 14.10.1992 to a permanent post of Lecturer in Chemistry in Government College, Daman and for directing the respondents 1 & 2 to regularise or treat her as permanent against the said post. A further prayer is made for restraining the third respondent, i.e. Union Public Service Commission from selecting or recommending the name of any other person to the said post of Lecturer in the said college. In O.A.No.70/96 the prayer is for restraining the first and second respondents from appointing the 4th respondent or any other person drawn from the panel prepared by the Union Public Service Commission after due process of selection. And in the third O.A. No.473/98 a prayer is made for declaring the selection of the

4th respondent to the said post of Lecturer on the basis of interview held on 10.3.1998 by the Union Public Service Commission and non-selection of the applicant to the said post at the said interview to be arbitrary and illegal.

2. During the pendency of these O.As, CP No.21/96 in O.A. No.584/93 was filed on 15.12.1995 and another CP No.11/99 in O.A. No.473/98 was filed on 30.3.1999. All these O.As and CPs shall stand disposed of by this common order.

3. Briefly stated, the applicant was appointed to the post of Lecturer in Chemistry on ad hoc basis for a period of 6 months only by the second respondent in all the O.As with effect from 17.9.1992 to 16.3.1993 on the recommendations of the Departmental Selection Committee constituted by the 2nd respondent. The appointment was continued for a further period of 6 months from 17.3.1993 to 16.9.1993. It appears that when no further extension was anticipated or expected, the applicant filed her first O.A. in 1993 for the aforesaid reliefs. It also appears that pursuant to the directions made by this Tribunal on 21.6.1993 in O.A.No.584/93, the applicant was also called for interview by the 3rd respondent, but was not selected. One Dr.Raj Kumar was selected and recommended for the said post of Lecturer in Chemistry by Union Public Service Commission and, therefore, the applicant filed her second O.A. No.70/96 for the aforesaid reliefs. Dr.Raj Kumar did not join and, therefore, pursuant to further selection and interview made by the Union Public Service Commission, the name of one Mukul Kumar Singh was recommended by the Union Public Service Commission for appointment to the said post, which is the subject matter of challenge in the last O.A. No.473/98.

4. After hearing the learned counsel for the parties and perusing the record, we find that it is not in dispute that the said post of Lecturer was required to be filled on regular basis only on the basis of the selection and recommendation made by the Union Public Service Commission. As the selection process undertaken

by the Union Public Service Commission for filling up a vacancy takes some time, steps are often taken to fill up the vacancies on ad hoc basis as a measure of stop-gap arrangement. A college may have many candidates for the post and, therefore, it may constitute a selection committee for selecting the best candidate even on ad hoc basis and as a measure of stop-gap arrangement. Accordingly if the name of the applicant was recommended by the Departmental Selection Committee of the first two respondents and on that basis she was appointed to the post on ad hoc basis for a period of 6 months, she cannot claim that she was entitled to be regularised against that post on the basis of her selection by such Departmental Selection Committee. She could continue in the post till expiry of her initial or extended period of ad hoc appointment. In the facts and circumstances of the case, she could claim no right to continue in the post after availability of a regularly selected candidate by the Union Public Service Commission. However, she has been successful in continuing to occupy the post till this date on the basis of interim orders, which were obtained by her from the Tribunal from time to time. Further she cannot claim any right to continue in the post on the ground that for the last about 7 years, she is holding the post, though not regularly selected or recommended by the Union Public Service Commission.

5. The applicant can also not be allowed to claim any right on the basis of the fact that regularly selected and recommended candidates by the Union Public Service Commission have either declined to accept the offer of appointment, or have not joined the post so far. No direction can be made to the respondents to continue the applicant on the post so long as a regularly selected and recommended candidate by the Union Public Service Commission does not come and join the post. On expiry of the period of her appointment, whether

initial or extended, the applicant was bound to vacate the post and must vacate it accordingly, if such period has not been further extended by the respondents 1 & 2 and if she is continuing in service only on the basis of interim direction made by the Tribunal in the aforesaid case. However, it does not mean that if there be need of the college to have Lecturers on ad hoc basis till the regularly selected candidate comes forward to join the post, the applicant should be removed from service and a fresh candidate may be appointed in her place. Since she has continued to occupy the post so long, she may be allowed to continue to hold the post till the regularly selected candidate by the Union Public Service Commission comes forward to join the post, in preference to the fresh candidates, if the first and 2nd respondents feel it necessary to have services of some Lecturers as a measure of stop-gap arrangment till the date of joining duties by the regularly selected candidate.

6. In O.A. No.473/98, the applicant has also challenged the selection of the 4th respondent to the aforesaid post of Lecturer in Chemistry. It was argued that the post was for a candidate holding Post Graduate Degree in Organic Chemistry whereas the 4th respondent held a Post Graduate Degree in Physical Chemistry and, therefore, he could not be selected. The selection process was also tried to be attacked on various other grounds of irregularity and illegality in the selection.

7. We are of the view that the selection is made by the Union Public Service Commission. It must have consisted of an expert on the subject. We cannot, therefore, say or embark upon an enquiry if Post Graduate in Physical Chemistry was or was not equal to Post Graduate in Organic Chemistry. In so far as the procedure of selection is concerned, the applicant cannot be allowed to attack it on such

grounds as have been stated in the application and urged before us, because if such things are allowed to continue, there will be no end to litigation and no selection for any post. Even the Supreme Court in STATE BANK OF INDIA vs. MOHD. MYNUDDIN, AIR 1987 SC 1889, observed as under:-

> "The methods of evaluation or the abilities or the competence of persons to be selected for such posts have also become now-a-days very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post to be nominated by the employer. Of course, the process of selection adopted by them should always be honest and fair. It is only when the process of selection is vitiated on the ground of bias, mala fides or any other similar vitiating circumstances other considerations will arise."

There is no allegation or material to hold that the Members of the Union Public Service Commission suffered from any bias or mala fides while making the selection of the 4th respondent to the post of Lecturer in Chemistry.

CONTEMPT PETITION NO.21/1996 in
O.A. No.584/93

8. The application for contempt bears 6.12.1995 as the date of verification but as per the Office seal the date of its filing is 15.12.1995. Cognizance of any contempt, or initiation of any proceedings for contempt, either on its own motion or otherwise, after expiry of period of one year from the date on which the contempt is alleged to have been committed is barred under Section 20 of the Contempt of Courts Act, 1971. No contempt proceedings on the basis of this CP were initiated at any time within the period of limitation prescribed under Section 20 of the Contempt of Courts Act, 1971. We find from the common ordersheet dated 23.2.1999

...d in all the aforesaid three cases that the counsel for the applicant was directed to serve a copy of CP No.21/96 in O.A. No. 584/93 on the learned counsel for the respondents. This ordersheet recorded after lapse of more than 3 years from the date of filing of application for initiating contempt proceedings directing supply of a copy of contempt application cannot be equated with initiation of proceedings contemplated in Section 20 of the Contempt of Courts Act, 1971. We are also of the view that the alleged technical violations of interim directions of the Tribunal even if held to be contemptuous cannot be said to be of such a nature as to substantially interfering with the due course of justice and, therefore, by virtue of the provisions of Section 20 of the Contempt of Courts Act, 1971, such contempts are not punishable and the alleged contemner cannot be called upon to answer the allegations.

CONTEMPT PETITION NO.11/99 in
O.A. No.473/98

9. By interim order dated 16.6.1998, the respondents were directed to maintain status quo of applicant's post till the next date of hearing. The interim order was directed to be continued to next date from time to time. The last extension was till 31.8.1998. The interim order was not extended on the next two dates of hearing. Then on 29.1.1999 following directions were made by the Tribunal:-

> " By way of interim order we direct that Applicant should be continued in the ad hoc post unless and until she is replaced by a regularly selected candidate. It is further made clear that any appointment of regular candidate who replaces the Applicant, shall be subject to the outcome of this O.A."

The applicant has continued to hold the post till this date of order and, therefore, some such violation of the order as alleged by the applicant on the basis of her own interpretation of the interim order made by the Tribunal, the respondents cannot be punished under the Contempt of Courts Act, 1971 so long as no notice of this CP No.11/99 appears to have been directed by the Tribunal and there is no material to hold that on any other date

contempt proceedings were actually initiated by the Tribunal in this CP No.11/99. Since the application of the alleged contempt appears to be within time under Section 20 of the Contempt of Courts Act, 1971 looking to the allegations and coming to the conclusion that the contempt alleged is not of any such nature that can be said to be substantially interfering or tending to interfere with the administration of justice and, therefore, by virtue of Section 20 of the Contempt of Courts Act, 1971 no person can be punished for any alleged contempt of court.

10. For the foregoing reasons, these OAs fail and are hereby dismissed subject to the observations made in paragraph 5 of this order. No costs. CP No.21/96 and CP No.11/99 are also hereby dismissed.