

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Contempt Petition No.162/93 in
Original Application No.299/90.

Mrs. Sheila Rajan. Applicant.

v/s.

Union of India & Another. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri R.Rangarajan, Member(B).

Appearances:-

Applicant by Shri G.K.Masand.
Respondents by Shri R.K.Shetty.

Oral Judgment:-

Per Shri M.S.Deshpande, Vice-Chairman Dt. 18.3.1994.

We have heard the learned counsel for the parties. The contention on behalf of the original applicant is that a false statement was made about the existence of a ban on creation of new posts and this included upgradation of posts. That statement appears to have been accepted by the Tribunal when it delivered its Judgment in the Original Application. It was open to the applicant at that stage to ask the Tribunal for a direction to produce the documents by which the ban was imposed, but that was not done. When we took up the Contempt Petition No.162/93, the learned counsel for the applicant asked for production of documents and that an objection was raised that the document was a secret document. We overruled the claim of privilege and directed a copy of the communication to be delivered to the learned counsel for the applicant. We have perused the documents ourselves and it is clear from the note below para 2 that all proposals for upgradation of existing posts are to be treated as proposals for creation of new posts in a new pay scales. Prima facie

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therefore there was basis for the statement which was made across the bar before the Tribunal that on account of existence of the ban the upgradation could not be made in respect of the applicant's post. It is not open to us to review the Judgment because there is no application before us for review and in any event we cannot allow a matter which could have been raised before the Tribunal at the appropriate stage to be reagitated by taking the course through a C.P. The Tribunal had accepted that there was a ban on creation of posts and several observations have been made by the Judgment delivered by the Tribunal regarding the ^{con}sequence that might ensue in the present case on account of delay. The final order was for disposing of the application which virtually amounted to the dismissal of the claim. There is no direction to the Respondents which was required to be implemented and the inaction on the part of the Respondents cannot therefore said to be a contempt. We see no merit in the Contempt Application and we dismiss it. At this stage the learned counsel for the applicant urged that in view of the fact that the ban was not applied to other posts and retrospective effect had been given to the upgradation of certain posts and even in ^{the} gazetted cadre, there was discrimination and the ^{due} it could not have been discriminated against on the existence of the alleged ban. That may be a point which can be agitated by the applicant, but it cannot be done by the present C.P. At the most it may furnish a fresh cause of action for the applicant on the basis of which he may be entitled to seek remedy subject to the question of limitation. We therefore, grant liberty to the applicant to pursue the remedy which may be available to her on the basis of a fresh cause of action though we are dismissing the C.P.

2. Shri Shetty, learned counsel for the Respondents states that since we are disposing of the C.P. we should award costs. As we have heard the learned counsel for the parties, it became apparent to us that this is a case where we cannot say that the Respondent Department had acted with utmost rectitude. The allegations made by the applicant show that the Respondents have discriminated in the matter of upgradation and if at all there could have been a case of granting costs, it would be by the Respondents to the applicant. However, we would not go further than be making these observations and we make no order as to costs.

Certified True Copy
Date : 2/4/94.

Delivered
Second Officer 2/4/94
Central Admin. Tribunal
(R. RANGARAJAN) Bombay Bench. (M. S. DESHPANDE)
MEMBER (A) VICE-CHAIRMAN

No. CAT/BOM/DUJL/D.n.299/93/ 36115 Dt. 8/4/1994.

Copy to:

1. Mrs. Sheila Rajan,
C/o Shri G.K. Masand, Counsel
for applicant.

2. Union of India, & ors, through
Shri K.K. Shetty, Counsel
for respondents.

Delivered
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