

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated :

9 NOV 1989

CONTEMPT
PETITION (CIVIL) APPLICATION NO (8) _____ 25 / 88
IN APPLICATION NO. 220/87(F)
W.P. NO (D) _____

Applicant (8)

Shri M.V. Thomas

To

v/s

The Director, Central Institute of Indian
Languages, Mysore

Respondents

1. Shri M.V. Thomas
Lower Division Clerk
Central Institute of
Indian Languages
Manasagangotri
Mysore - 6
2. Shri Revivarman Kumar
Advocate
No. 11, Jeevan Building
Kumara Park East
Bangalore - 560 001

3. The Director
Central Institute of Indian Languages
Manasagangotri
Mysore - 6
4. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith a copy of ORDER/STICKER/EXCEP ORDER
C.P. (Civil)
passed by this Tribunal in the above said application(8) on 3-11-89

[Signature]
DEPUTY REGISTRAR
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE

DATED THIS THE THIRD DAY OF NOVEMBER, 1989

Present : Hon'ble Shri Justice K.S.Puttaswamy ... Vice Chairman
Hon'ble Shri P. Srinivasan ... Member (A)

CONTEMPT OF COURT PETITION NO. 25/1988

M.V.Thomas,
Lower Division Clerk,
Central Institute of Indian
Languages, Mansagangotri,
MYSORE-6.

... Petitioner

(Shri Ravivarma Kumar, Advocate)

vs

Shri D.P.Patnayak,
Director,
Central Institute of Indian
Languages, Mansagangotri,
MYSORE-6.

... Respondent

(Shri M.S. Padmaraajaiah, Advocate)

This application having come up for hearing
before this Tribunal today, Hon'ble Shri P. Srinivasan,
Member (A), made the following :-

ORDER

In this Contempt of Court petition, the
petitioner, who was the applicant in application No.
220/87, has alleged that the respondents in the said
application (No.220/87) are guilty of wilful disobedience
of the directions issued by this Tribunal in its order
dated 6-11-1987 disposing of that application.

2. Shri Ravivarma Kumar, learned counsel,
appears for the petitioner and Shri M.S.Padmaraajaiah,
learned counsel for the respondents. They have
been heard.

P. Srinivasan



3. Though the alleged contempt relates immediately to the direction issued by this Tribunal while disposing of application No. 220/87, it is necessary, in order to understand the full import of the said direction, to go back to an earlier application filed by the same applicant before this Tribunal (No. 501/86) wherein the dispute between the parties really began. The applicant joined as a Lower Division Clerk (LDC) in the Central Institute of Indian Languages, Mysore (CIIL), on 29-4-1980. He holds an MA degree and is qualified in English typing and shorthand. By an order dated 12-12-1985, he was promoted as an Upper Division Clerk (UDC) on officiating basis with effect from 13-12-1985. We may mention here that, at that time, recruitment to Group C and Group D posts in CIIL - the post of UDC falls in the Group C) - was governed by the Central Institute of Indian Languages (Group C and Group D posts) Recruitment Rules, 1970. (1970 Rules for short). Under CIIL, Mysore, there are six Regional Language Centres (RLC) located at Mysore, Bhubaneshwar, Patiala, Pune, Soolan and Lucknow. So far as recruitment to Group C and Group D posts in the RLCs was concerned, a separate set of rules held the field known as the Regional Language Centre (Group C and Group D posts) Recruitment Rules, 1972 (1972 Rules for short). In 1986 or thereabout, the Government of India drafted common rules of recruitment applicable to Group C and Group D posts in the CIIL as well as in the RLCs.

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The said rules were eventually notified on 27-1-1987 under the title of "the Central Institute of Indian Languages and Regional Language Centres (Group C and Group D posts) Recruitment Rules, 1987" (the 1987 Rules for short), but when they were still in the draft stage, the Director, CIIL, brought out, on 4-2-1986, what he called a combined provisional seniority list of LDCs, Language Typists, Store Keepers and Caretakers in CIIL as well as in the RLCs as on 1-1-1986. He did this in view of the draft recruitment rules (which later became the 1987 Rules), which merged the Group C and D Cadres in CIIL and the RLCs into one and provided, inter alia, for promotion to posts or UDCs in CIIL as well as in the RLCs from four feeder cadres in all the institutions taken together, namely, those of LDC, Language Typist, Store Keeper and Caretaker; earlier such promotion was restricted both in CIIL and the RLCs (in the 1970 and 1972 Rules respectively) to LDCs only. The applicant protested against the publication of this combined seniority list, as the draft rules providing for widening the feeder cadres had not yet been notified at the time and represented that till the draft rules were so notified, promotions to posts or UDCs in CIIL should be made only under the old rules, namely the CIIL Group C and Group D Recruitment Rules, 1970 and for that purpose, the seniority list should be only of LDCs in CIIL. However, the Director went ahead with his plan of implementing the draft rules by bringing out another seniority list of officials in the four different



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cadres in CIIL and RLCs on 4-3-1986. Apprehending that promotions to posts of UDC in CIIL would be made in accordance with the draft recruitment rules, following the combined seniority list in the four different cadres in the CIIL and RLCs taken together, and not from the only feeder cadre of LDCs in CIIL provided in the rules then in force, the applicant filed Application No. 501/86 before this Tribunal. When the said application came up for hearing, learned counsel for the respondents, namely, the Director, CIIL, Mysore, filed a memo dated 16-6-1986 submitting that the "selection of UDC made by the Selection Committee of the respondent-institute based on the draft recruitment rules is stayed and will be withdrawn. Hence, the respondents will only follow the existing recruitment rules relating to selection of Upper Division Clerk to the vacancies at the respondent-institute." He further prayed that in view of the said undertaking, the application be dismissed as not surviving for consideration. In these circumstances, a Bench of this Tribunal consisting of Hon'ble Shri L.H.A. Rego and Hon'ble Shri Ch. Ramakrishna Rao, passed an order dated 8-9-1986 disposing of application No. 501/86 in terms of the undertaking given by the respondents therein. However, during the pendency of the said application, the applicant had been reverted from the post of UDC to that of LDC. Dealing with this, the Tribunal in the said order dated 8-9-1986 declined to restore the applicant to the post of UDC since "his earlier appointment from 13-12-1985 was purely temporary and local officiating arrangement until further orders."

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4. After application No.501/86 was disposed of as indicated above, the 1987 Rules were notified on 27-1-1987. The posts of UDC in CIIL not having been filled up by promotion till then, the applicant apprehended that they might be filled up under the new rules of 1987 from the four feeder cadres instead of from the only one of LDC, in which case he would not get promotion. He, therefore, filed Application No. 220/87 before this Tribunal. In the said Application, he mainly challenged the validity of the recruitment rules of 1987 contending that there was no rational basis for widening the feeder cadres to include, besides LDCs, Store Keepers, Caretakers and Language Typists for promotion to posts of UDC. The challenge to the validity of the rules was rejected by this Tribunal in its order dated 6-11-1987 disposing of the said application. While doing so, however, this Tribunal noticed the earlier undertaking dated 16-6-1986 filed by the respondents in application No. 501/86 to which we have alluded earlier in this order. Reference was also made to the judgement of the Supreme Court in Y.V.RANGAIAM & OTHERS VS STATE OF ANDHRA PRADESH 1983 SCC L&S 382 wherein it had been held that vacancies arising before the amendment of recruitment rules should be filled up only according to the rules as they existed when they arose and not in accordance with the amended rules made thereafter. In para 25 of the said order, special stress was laid on "the solemn undertaking of the respondents and the post being kept vacant till 27-1-1987 and even thereafter also. The respondents

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had also displayed a sense of urgency to fill in the post in 1986, albeit under the 1987 Rules, which were yet to be enacted". "In this view", this Tribunal observed, "it would be just and proper for the respondents themselves, to consider the case of the applicant for that very vacancy, under the 1970 and 1972 Rules and thus do him justice." The specific direction in this regard issued by the Tribunal is to be found in para 26(ii) in the following words:-

"We however direct the respondents, to consider the case of the applicant, for promotion to the vacant post of UDC (which existed - prior to 27-1-1987) under the 1970 and the 1972 Rules then in force and pass such orders as the circumstances justify".

5. Thereafter, the respondents took up promotion of persons to posts of UDC in CIIIL. A meeting of the Departmental Promotion Committee (DPC) was held for this purpose on 27-1-1988. In the said meeting, the DPC took into account the combined seniority list in the four feeder cadres in accordance with the 1987 Rules which had been notified on 27-1-1987 and recommended a panel of six persons for promotion. The name of the applicant was recommended for promotion only to the post of Stenographer on a purely temporary and ad hoc basis. The post of Stenographer carries the same scale or pay as that of UDC. While doing this, the DPC disposed of the direction in this Tribunal's order dated 6-11-1987 rather unctuously in the following words: "The suggestion of Central Administrative Tribunal to consider sympathetically the case of Shri M.V.Thomas, LDC for promotion to Upper Division Clerk under the 1970-72 Recruitment Rules was put up before the DPC. On examination of the

various aspects of the case, the DPC decided that Shri M.V.Thomas cannot be given promotion as UDC". Promotion orders to posts of UDC were issued in respect of four out of the six persons recommended by the DPC soon after.

6. The complaint of the petitioner is that even though this Tribunal had, in its order dated 6-11-1987, in application No. 220/87, directed the respondents to consider the case of the applicant for promotion to the post of UDC in a vacancy that was in existence prior to 27-1-1987, the respondents had chosen deliberately to disobey this direction by ignoring the case of the applicant altogether in the DPC held on 27-1-1988. This amounted to contempt of this Tribunal for which the respondents deserved to be punished.

7. Shri Ravivarma Kumar, learned counsel for the petitioner, fervently pleaded that the direction issued by this Tribunal in its order dated 6-11-1987 was very clear. The said order directed the consideration of the applicant for promotion to the vacant post of UDC under the 1970 and 1972 Rules. This Tribunal had also recorded in the said direction that the vacant post of UDC existed prior to 27-1-1987, i.e. before the 1987 Rules were notified. The respondents were bound to carry out this direction for one more reason, namely, that they had themselves given a solemn undertaking on 16-6-1986 in application No. 501/86 that in the selection of UDCs, they would follow only the then existing recruitment rules, meaning thereby the Rules of 1970 and 1972 and not the Rules of 1987. The respondents cannot now be heard to say that the vacancies of UDC for filling up which the DPC meeting was summoned on 27-1-1988 did not exist prior to



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27-1-1987 i.e. prior to the notification of the 1987 Rules, and therefore these vacancies could be filled up only in accordance with the 1987 Rules. Moreover, this was factually incorrect because as early as 13-12-1985 a vacancy of UDC in CIIl had existed and that the applicant was promoted to that post albeit on a temporary and officiating basis and that vacancy was clearly one which had arisen before 27-1-1987 and had been kept vacant even after the applicant was reverted from that post in April 1986 up to and beyond 27-1-1987 till the meeting of the DPC. In any case, by their undertaking given in the context of the applicant's claim for promotion in Application No. 501/86, the respondents had committed themselves to consider the case of the applicant for promotion to the posts of UDC in accordance with the 1970 and 1972 Rules and they could not go back on this. Accepting this undertaking at its face value, this Tribunal had dismissed Application No.501/86 in the hope that the respondents would implement it and it was again on the basis of this undertaking that this Tribunal issued the direction in its order dated 6-11-1987 disposing of application No.220/87, calling upon the respondents to consider the case of the applicant for promotion to the vacant post of UDC under the 1970 and 1972 rules. The respondents had thus clearly only one course of action open to them so far as the applicant was concerned and that was to consider his case for promotion as UDC under the 1970 and 1972 rules and not to ignore him following the 1987 rules. By not following this course, they had deliberately flouted the order of this Tribunal.

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B. Shri M.S.Padmarajaiah, learned counsel for the respondents, countered the arguments of Shri Ravivarma Kumar. He submitted that the undertaking given by the respondents on 16-6-1986 before this Tribunal during the pendency of application No.501/86 was given in the situation prevailing at the time and should be understood in that context. On 16-6-1986, the 1987 rules had not been notified and so promotion to posts of UDCs could be made only under the then existing rules. It was because of this position that the respondents stated that they would only follow the existing recruitment rules relating to the selection of UDCs to the vacancies at the respondent Institute. Promotion in accordance with recruitment rules can be made only to regular vacancies. When the undertaking was given, the respondents had not examined whether any regular vacancies of UDCs existed in CIIl at the time. Thus all that they undertook to do was to fill up regular posts of UDCs, if any, existing at the time in accordance with the then existing rules. However, this Tribunal had apparently gathered the impression from the said undertaking that regular vacancies of UDCs existed in CIIl prior to 27-1-1987 to which promotion could be made under the 1970 and 1972 Rules. It was under that impression - there was no other source of information for this Tribunal - that the direction was issued in the order of 6-11-1987 that the applicant should be considered for promotion to the vacant post of UDC which existed prior to 27-1-1987. Thus the real import of the direction issued by this Tribunal was that if a regular vacancy of UDC existed prior to 27-1-1987 - the respondents having inadvertently led the Tribunal to believe that such a vacancy existed in CIIl - the case of the applicant



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should be considered for promotion under the 1970 and 1972 Rules. As it happened, when the respondents convened a meeting of the DPC to implement the said direction of this Tribunal, they found that the factual position was different from that which this Tribunal had been led to believe by the undertaking given by them (the respondents) in application No.501/86. The actual position was as follows: all regular vacancies of UDC which existed in CIIL up to 1978 - there were six such vacancies - had been filled up by 20-6-1978. On 2-7-1985, the senior-most UDC in position was promoted by way of ad hoc local arrangement as Office Superintendent and posted in the RLC at Mysore and on 15-7-1985, the next seniormost UDC was promoted again by way of ad hoc local arrangement as Office Superintendent at the CIIL, Mysore. Since these promotions were only on ad hoc basis, they did not release any regular vacancy of UDC in CIIL at the time but only temporary vacancies which would become regular as and when the two persons promoted as Office Superintendent were regularised in their posts. Therefore in the temporary vacancies, created by their promotion, the applicant who falls under the general category and a certain Panduranga Naik who belongs to a reserved category, were promoted again on a purely ad hoc basis, as UDC in the interest of work until further orders with effect from 12-12-1985. As the promotions of the applicant and Panduranga Naik were purely temporary and ad hoc, the local arrangement was discontinued in April 1986 and both these persons were reverted to their original posts of UDC. The promotion of the seniormost UDC Shri B.M.Madappa as Office Superintendent in the RLC, Mysore, was regularised only on 27-1-1988 as also the promotion of the next seniormost person, Shri R.Parthasarathy, thus releasing two regular vacancies of UDCs. Therefore after 1978, the

Regular
first vacancy of UDC was on 27-1-1988 by which time the 1987 Rules had already been notified. Shri Madappa could not be regularised in the post of Office Superintendent in the RLC at Mysore, prior to 27-1-1987 because till that date the Group C Cadre in the RLCs was separate from the Cadre in CIIl and Madappa belonged to the CIIl Cadre. It was only on the notification of the 1987 Rules that a unified cadre of Group C posts in CIIl and RLCs, including that of Office Superintendent was brought into existence. Therefore, there being no regular vacancy of UDC in CIIl prior to 27-1-1987, the case of the applicant could not be considered for promotion to that post under the 1970 and 1972 rules, but only under the 1987 rules which had come into existence by the time such a vacancy arose. The validity of the 1987 Rules having been upheld by this ^{AT} ^{HC} Tribunal, promotions had to be made on the basis of (combined seniority list of ~~1985~~ ^{AT of} from the four reader cadres in CIIl and RLCs taken together and in that combined seniority list, the applicant did not come within the zone of consideration. That was how the DPC recommended a panel of 6 persons for promotion as UDC and not the applicant. The respondents had not wilfully disobeyed the direction of this Tribunal but had proceeded on the understanding that it would be applicable only if there was a regular vacancy of UDC in CIIl existing prior to 27-1-1987 and such a vacancy not having been in existence, the applicant unfortunately missed promotion. Shri Padmarajaiah, therefore, submitted that the petition had no merit and should be rejected and the notice to the respondents discharged.

8. We have given the matter the most anxious consideration. It would appear on the first flush that the action of the respondents in not considering the applicant for promotion as UDC in accordance with the



1970 and 1972 Rules flew in the face of the direction issued by this Tribunal. However, on a deeper scrutiny, the position becomes somewhat different. To constitute contempt, it has to be found that the respondents wilfully disobeyed the direction issued by this Tribunal. What do we find here? There can be no dispute that promotion in accordance with the extant recruitment rules, can be made only to regular vacancies in a cadre. In this background, it was not unreasonable on the part of the respondents to assume that in issuing the direction in its order dated 6-11-1987, the Tribunal meant that consideration of the applicant for promotion as UDC under the 1970 and 1972 Rules should be made, if a regular vacancy of UDC in CIIl existed prior to 27-1-1987 and not otherwise. We must also note that the undertaking on which much reliance had been placed by the learned counsel for the petitioner was given on 16-6-1986 when the 1987 Rules had not been notified. In that undertaking, the respondents had stated that selection to the post of UDC based on the draft recruitment rules would be withdrawn and the existing recruitment rules on the subject would be followed. There was no specific statement therein that there were regular vacancies of UDC existing at the time to which promotions could be made under the existing rules, though an indication to that effect could be inferred therefrom. If there were no such vacancies at the time as a matter of fact, the undertaking constituted only a formal statement of the legal position namely that till the draft recruitment rules were notified, the then existing recruitment rules — the 1970 and 1972 Rules — would remain operative and

P. J. [Signature]

and nothing more. Since the respondents now state that there were no regular vacancies of UDC existing prior to 27-1-1987, they cannot be held guilty of violating their own undertaking if they did not make any promotions in accordance with the 1970 and 1972 Rules. Shri Ravivarma Kumar's contention that a regular vacancy of UDC in CIIL could have been released before 27-1-1987 if Shri Madappa had been regularised as Office Superintendent before that date and that the respondents deliberately delayed such regularisation until after 27-1-1987 to spite the applicant has been adequately answered by Shri Padmaraajaiah. Shri Madappa who belonged to the CIIL Cadre could not be regularised in the post of Office Superintendent in the RLC Cadre till the two cadres were merged into one and that happened only on 27-1-1987 when the 1987 Rules were notified. Thus the basis on which the respondents proceeded to act cannot be considered to be so unreasonable as to suggest disobedience of the order of this Tribunal or violation of their own undertaking. It is another matter ^{that} whether they could have acted on a different interpretation of the direction of this Tribunal. If they had acted on the basis of an interpretation of the direction of this Tribunal and their own undertaking which, on the face of it, does not seem unreasonable, they cannot be accused of violating the direction, let alone of wilful disobedience thereto. It may be mentioned at this stage that earlier on in these contempt proceedings, the respondents filed a reply along with a copy of the minutes of the meeting of the DPC which met on 27-1-1988, both couched in language which was in bad taste - we have extracted the offending passage in the minutes earlier -



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but on this being pointed out, the respondents have made amends by apologising for the unfortunate language used by them. It is not necessary to elaborate further on this point.

9. To sum up, we are of the view that the respondents cannot be held guilty of wilful disobedience of the direction issued by this Tribunal in its order dated 6-11-1987. The notice issued to the respondents is discharged and this petition is dismissed. Parties to bear their own costs.



Sd.

(K.S.POTTASWAMY)
VICE CHAIRMAN
TRUE COPY

31/12/89

Sd.

(P.SRINIVASAN)
MEMBER (A)

Praveen Reddy
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE