

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Commercial Complex(BDA),  
Indiranagar,  
Bangalore- 560 038.

Dated: 11<sup>th</sup> Nov '87

APPLICATION NO 220 /87(F)

W.P.No. —

APPLICANT

M.V. Thomas  
To

Vs

RESPONDENTS

Mis. of Human Resources  
Development, N. Delhi and Dr.

1. Sri M.V. Thomas,  
LDC,  
Central Institute of  
Indian Languages,  
Mysore Gangotri,  
Mysore -6.

4. The Director,  
Central Institute of  
Indian Languages,  
Mysore Gangotri,  
Mysore -6.

2. Sri Raviramachandar,  
Advocate,  
11, Icwan Building,  
Kusara Park East,  
Bangalore - 560 001.

5. Sri N. S. Padmarajiah,  
Advocate (Sr. C.G.S.C.),  
High Court Building,  
Bangalore -1.

3. Ministry of Human Resources  
Development,  
Dept. of Education,  
Sastri Bhawan,  
New Delhi - 110 001.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~INTERIM ORDER~~/  
~~INTERIM ORDER~~ passed by this Tribunal in the above said application  
on 6 Nov 87.

**RECEIVED** (Date) 12/11/87

Diary No. (dt.) 7/87

Entered Date: 13.11.87 AM

Encl: as above.

*Hans*  
Section Officer  
(JUDICIAL)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

Dated: this the 6th day of November, 1987.

Present

THE HON'BLE MR. JUSTICE K.S. PUTTASWAMY VICE CHAIRMAN

And

SHRI L.H.A. REGO .. HON'BLE MEMBER(A).

APPLICATION NO.220 OF 1987(F)

M.V.Thomas S/o M.J.Varghese,  
Lower Division Clerk,  
Central Institute of Indian-  
Languages, Manasa Gangotri,  
MYSORE-6.

Applicant

(By Shri Ravivarma Kumar, Advocate for the  
Applicant).

-vs.-

1. The Union of India,  
Ministry of Human Resources  
Development, Deptt.of Education,  
New Delhi.
2. The Director,  
Central Institute of Indian-  
Languages, Manasagangotri,  
Mysore-6.

Respondents.

(By Shri M.S.Padmarajaiah, Senior Standing Counsel for  
Central Government, for respondents)

This application coming on for hearing,

SHRI L.H.A.REGO, HON'BLE MEMBER(A), made the following:

ORDER:



ORDER

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the validity of the Central Institute of Indian Languages and Regional Language Centres Group 'C' Posts Recruitment Rules, 1987 ('1987 Rules', for short) and prayed mainly, for issue of a writ, order or direction, in the nature of a mandamus, to the respondents (R), striking these Rules as illegal, in so far as they permit the incumbents in the cadres of Language Typists, Caretakers, and Store-keepers, in the above Institute and Centres, to be promoted as Upper Division Clerks ('UDCs' for short), as also forbearing the respondents from granting promotion to these incumbents and confining promotion to the cadre of UDCs, only from among the cadre of Lower Division Clerks ('LDCs', for short) and for grant of such other relief deemed proper, in the circumstances of the case.

2. The fact-situation which has occasioned this application is briefly as follows: The applicant has been working as LDC under R-2, with effect from 29-4-1980, and is said to hold a Master's Degree in Arts and to know English typing and shorthand. He came to be promoted as UDC, in the pay scale of Rs.330-560, in the Central Institute of Indian Languages, Government of India, Mysore ('Institute' for short) with effect from 13-12-1985, as a purely temporary and local officiating arrangement, until further orders. The applicant states, that he was

later

later reverted to his substantive post as LDC, even though he was senior and fully qualified and therefore eligible, for regular promotion as UDC and sufficient number of vacancies in that cadre was available to be filled in, for the last over two years or so, according to the Recruitment Rules then in force, namely, the Central Institute of Indian Languages (Groups 'C' and 'D' posts) Recruitment Rules, 1970 ('1970 Rules' for short), and the Regional Language Centres (Groups 'C' and 'D' posts) Recruitment Rules, 1972 ('1972 Rules' for short), which excluded the above three cadres of Language Typists, Caretakers and Store-keepers, for promotion of its incumbents to the cadre of UDCs, but ~~and~~ <sup>under</sup> only the LDCs (to which cadre the applicant belonged) were eligible for promotion.

3. However, on 27-1-1987, in partial supersession of the 1970 and 1972 Rules, except as regards things done or committed to be done prior to this supersession, the 1987 Rules came to be promulgated under Article 309 of the Constitution. But prior to this, on 4-2-1986, R-2 issued a Combined Provisional Seniority List ('CPSL' for short), integrating the cadres of LDCs, Language Typists, Caretakers and Storekeepers in the above Institute and its Regional Language Centres (RLCs, for short) as on 1-1-1986 (Annexure-A), directing the incumbents therein to note their promotion, without however affording them an opportunity, to submit their representation if any thereon. The applicant appears at S.No.14 in this CPSL.



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He states, that he represented against the same. On 4-3-1984, with reference to the said CPSL, R-2 issued a Combined Seniority List /'CSL' for short, (Annexure-B) not designated as Provisional as on 1-1-1986, in respect of all the above 4 cadres in the Institute and its RLCs. But the ranking therein was indicated separately for each of these cadres. The applicant was ranked fourth in the cadre of LDCs, indicated therein. At the end of the CSL, it was stipulated, that incumbents in all these four cadres, who had put in 5 years of service were entitled for promotion, by selection to the cadre of UDCs in the Institute and its RLCs, in accordance with the Recruitment Rules under revision. The incumbents were merely directed to take note of this CSL.

4. The applicant states, that he had represented to R-2 against the CSL but as there was no response, he was constrained to file Application No.501 of 1986 before this Tribunal, which came to be disposed of by an order dated 8-9-1986 (by one of us viz., Shri L.H.A. REGO, MEMBER(A),) which is reproduced at Annexure-C.

5. The respondents had not filed a detailed statement of objections in respect of the above Application No.501 of 1986, but a Memo on 16-6-1986. The said application was disposed of by this Tribunal on 8-9-1986 <sup>according to Annexure C</sup> ~~as above~~ in the light of this memo, wherein it was stated on behalf of the respondents, that the

selection



selection of UDCs made by the Selection Committee of the Institute, based on the draft 1987 Rules would be withdrawn and that the respondents would adhere only to the existing recruitment rules i.e., the 1970 and 1972 Rules relating to the selection of UDCs in the vacancies at the Institute.

6. The applicant contends, that the vacancies in the cadre of UDCs available much earlier to the promulgation of the 1987 Rules, were not filled in by the respondents, and that these rules which had opened the avenue of promotion to the cadre of UDCs, to the incumbents in the other three cadres as well viz., those of Language Typists, Caretakers and - Storekeepers (without even earmarking a quota for each of them), inspite of their having no affinity or relevance to that cadre, which hitherto, was reserved exclusively to the feeder cadre of LDCs, to which he belonged, had gravely impaired his career prospects.

7. The applicant alleges, that in view of the above facts, the integration of all the above four cadres for the purpose of promotion to the cadre of UDCs, is arbitrary and irrational and bears no nexus to the object sought to be achieved, by the impugned 1987 Rules and therefore these Rules are unsustainable. He has approached this Tribunal for redress, on this account.

8. The



8. The applicant and the respondents were represented by their learned counsel, Shri Ravivarma-Kumar and Shri M.S. Padmarajaiah, respectively. The primal attack of Shri Kumar, was on the validity of the 1987 Rules, the main plank of his argument being that the three widely disparate cadres of Language-Typists, Caretakers and Storekeepers which had no affinity and relevance to the cadre of UDCs, from the point of view of the type and nature of work, and the responsibility involved, educational and other qualification, experience and eligibility prescribed for the post of UDCs, were being integrated with the original and the only feeder cadre of LDCs as a queer amalgam, regardless of the nexus with the objective sought to be achieved. <sup>As he said,</sup> This was tending to mar seriously, the service prospects of LDCs, to which cadre the applicant belonged and to violate Article 16 of the Constitution in regard to equality. As further disparity, he pointed out, that while LDCs were recruited on an All-India basis, the incumbents in the other three cadres, were recruited only on a regional basis.

9. Shri Kumar relied on the ruling of the Supreme Court, in the case relating to THE GENERAL MANAGER, SOUTH-CENTRAL RAILWAY & ANR. -vs.- A.V.R. SIDDHANTTI & ORS.,

(1974)

[1974 SCC(L&S)290] (with particular reference to para-20 thereof) to buttress his argument. This paragraph reads as under:

"The fundamental right of equality means that persons in like situation, under like circumstances are entitled to be treated alike. "The constitutional code of equality and equal opportunity", observed this Court in STATE OF JAMMU AND KASHMIR v. TRILOKI NATH KHOSLA AND OTHERS (1974)1 SCC 19: 1974 SCC (L&S) 49, "is a character for equals". So long as employees similarly circumstanced in the same class of service are treated alike, -- the question of hostile discrimination does not arise. The equality of opportunity for purposes of seniority, promotion and like matters of employment is available only for persons who fall substantially, within the same class or unit of service. The guarantee of equality is not applicable as between members of distinct and different classes of the service. The Constitution does not command that in all matters of employment absolute symmetry be maintained. A wooden equality as between all classes of employees regardless of qualifications, kind of jobs, nature of responsibility and performance of the employees is not intended, nor is it practicable if the administration is to run. Indeed, the maintenance of such a 'classless' and undiscerning 'equality' where, in reality, glaring inequalities and intelligible differentia exist, will deprive the guarantee of its practical content. Broad classification based on reason, executive pragmatism and experience having a direct



relation

relation with the achievement of efficiency in administration, is permissible. That is to say, reasonable classification according to some principle, to recognise intelligible inequalities or to avoid or correct inequalities is allowed, but not mini-classification which creates inequality among the similarly circumstanced members of the same class or group."

10. Shri Kumar referred to column 12 of the Schedule, (relating to the conditions stipulated for promotion of incumbents, from the above 4 cadres to that of UDC) to the 1987 Rules, the contents of which are reproduced below:

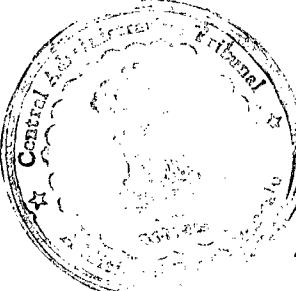
"Promotion from amongst Lower Division Clerks/Language Typists/Storekeepers/ Caretakers of the Central Institute of Indian Languages and Regional Language centres with 8 year's service in the grade and with experience/knowledge in the establishment/account work."

11. He then cited reference to column 8 of the Schedule (relating to the educational and other qualifications, prescribed for the respective 4 feeder cadres namely, that of LDCs, Language Typists, Caretakers and Storekeepers) to the 1987 Rules, with a view to highlight the disparity among these new feeder cadres, as compared to the cadre of UDC. The relevant details in that column are extracted below, to facilitate reference at a glance:



Sl. No.	Feeder Cadre	Pay- Scale Rs.	Educational and other qualifications prescribed as essential.
(1)	(2)	(3)	(4)
(i)	L.D.C.	260-400	i) Matriculate or its equivalent. ii) Minimum speed of 30 words per minute in typewriting ....
(ii)	Language Typists -"-	"	i) Matriculate or its equivalent. ii) 25 words per minute speed in type-writing in the language concerned wherever typewriters are available in the language.
(iii)	Caretaker	"	i) Matriculate or its equivalent. ii) Minimum 2 years' experience in the same capacity in a recognised Institution.
(iv)	Store-keeper	"	i) Matriculate or its equivalent. ii) At least one year's experience in maintenance of stores. iii) Typewriting would be considered as an additional qualification.

12. In the light of the above facts, Shri Kumar asserted, that the three cadres of Language Typists, Caretakers and Store-keepers as compared to the LDCs, had no affinity or relevance to the next promotional cadre of UDC and therefore, the 1987 Rules, which had integrated these cadres for the purpose of promotion to the next higher cadre of UDCs, were arbitrary and illegal and violative of Article 16 of the Constitution and therefore deserved to be struck down.



13. Rebutting this contention, Shri Padmarajaiah argued, that the three feeder cadres of Language - Typists, Caretakers and Storekeepers integrated under the 1987 Rules, were substantially alike, in that the pay scale of Rs.260-6-290-EB-6-326-8-366-EB-8-390-10-400 and the minimum educational qualification namely that of Matriculation or SSLC, were wholly identical except for minor differences in regard to experience etc., in the relevant disciplines. Besides, he affirmed, that the incumbents in these cadres, apart from performing their legitimate duty in their respective disciplines, were now and then required to attend to clerical, as also other work relating to maintenance of stores and accounts, according to exigency and this work, in its nature, experience and responsibility was akin to that performed by the LDCs. Absolute or dead equality of cadres, while considering better service prospects to the incumbents, with resultant increase in efficiency, he submitted, was scarcely feasible; as the very ruling in SIDDHANTTI's case has clearly brought out (on which Shri Kumar had placed strong reliance to substantiate his case). He explained, that the Group 'C' employees in the cadres of Language Typists, Caretakers and Storekeepers in the RLCs, were virtually isolated cadres, as a result of which, career prospects for the incumbents therein were bleak. In order to provide the necessary incentive to these cadres and afford equal opportunity to all, in their career advancement and thereby enhance administrative efficiency,



efficiency, it was deemed expedient and proper, to enact the 1987 Rules with effect from 27-1-1987, by integrating all the four cadres as feeder cadres, for promotion to that of UDC and onwards. Thereby, according to him, the LDCs to which cadre the applicant belonged, were not wholly deprived of their avenue of promotion to the cadre of UDCs but were required to share this avenue equitably, with their confreres in other cadres, which were substantially similar or alike for the reasons aforementioned. As regards the contention of Shri Kumar, that the LDCs were recruited on an All-India basis, as compared to the other three cadres, where the incumbents were recruited on a regional basis, Shri Padmarajaiah sought to repel the same on the score, that this scarcely made any difference. On the contrary, he pointed out, experience revealed that competition on regional basis was much keener.

14. Relying on the Judgment of the Supreme Court in ROSHAN LAL TANDON & ORS. -vs.- UNION OF INDIA & ANR. (AIR 1967 SC 1889), Shri Padmarajaiah emphasised, that once appointed to his post or office, a Government servant acquired a status and his rights and obligations were no longer determined by consent of both parties but by statute and statutory rules which may be framed and altered unilaterally by Government. In other words, the legal position of a Government servant was more one of status than of contract.

15. In order to fortify his contention, ~~further~~,<sup>in</sup> Shri Padmarajaiah also relied on the recent decision rendered by this very Bench of the Tribunal, in an analogous case in T. SOMAIAH v. UNION OF INDIA (Application No. 1730 of 1986(F).

16. We have examined carefully the rival contentions in regard to the validity of the 1987 Rules and the relevant material placed before us. We are satisfied that the four feeder cadres namely, those of LDCs, Language Typists, Caretakers and Store-keepers were to a considerable degree, alike and similar, in regard to essential parameters such as: minimum educational qualification, pay scale, nature of work, experience in relevant disciplines and the responsibility involved and that there was reasonable nexus in integrating these cadres under the 1987 Rules, to help attain the avowed objective of providing more or less equal opportunity of promotion and incentive to similar cadres and thereby preventing stagnation, which existed hitherto, in the concerned cadres. The 1987 Rules are in keeping with the principles enunciated in SIDDHANTTI's case, in so far as integration of similar cadres ~~are~~ concerned, so as to conduce to equality of opportunity to the concerned cadres, in regard to career advancement and in the process, to enhance administrative efficiency. With this object in view, the respondents were well within their right to make these rules, in the light of the ruling in ROSHAN LAL's case.



17. The decision of the Supreme Court in the case relating to RESERVE BANK OF INDIA -vs.- N.C.PALIWAL & ORS. 1976(2) SLR 7747, where the question that arose for consideration, was whether the Reserve Bank had violated the constitutional principle of equality in bringing about integration of non-clerical with clerical services. The Supreme Court, relying on an earlier decision in Kishori Mohanlal Bakshi -vs.- Union of India, in this case observed thus:

"15. .... It is now well settled, as a result of the decision of this Court in Kishori Mohanlal Bakshi vs. Union of India that Article 16 and a fortiori also Article 14 do not forbid the creation of different cadres for government service. And if that be so, equally these two articles cannot stand in the way of the State integrating different cadres into one cadre. It is entirely a matter for the State to decide whether to have several different cadres or one integrated cadre in its services. That is a matter of policy which does not attract the applicability of the equality clause. The integration of non-clerical with clerical services sought to be effectuated by the Combined Seniority Scheme cannot in the circumstances be assailed as violative of the Constitutional principle of equality."

18. The LDCs have not been deprived of their opportunity of promotion to the cadre of LDCs but are only

made to share that opportunity with other cadres comparable to them. The applicant who belongs to the cadre of LDCs cannot, therefore, have any grievance on this score. The date of regular appointment in the respective cadres which are considered similar, has been reckoned as the criterion of seniority, which in our view is just and proper.

19. In the light of the foregoing, we find no merit in the challenge of the applicant to the validity of the impugned 1987 Rules, and therefore uphold that these Rules are valid.

20. The next contention of Shri Kumar was, that the respondents had wilfully, to the detriment of his client, refrained from complying with the judgment pronounced by this Tribunal on 8-9-1986, in Application No.501 of 1986(F) referred to earlier, in the context of the Memo (<sup>referred to</sup> reproduced <sup>in para-5 supra</sup>) filed by ~~the~~ Counsel on behalf of the respondents, before this Tribunal, in the said Application on 16-6-1986. According to Shri Kumar, the memo which was of the nature of an undertaking, was binding on the respondents, who had intently failed to implement it, causing irreparable harm to the applicant, even though adequate number of posts in the cadre of UDCs were available to be filled in, much earlier than the implementation of the 1987 Rules (i.e., <sup>prior to</sup> ~~with effect from~~ 27-1-1987). These posts according to him, ought to have been filled in,

under the 1970 and 1972 Rules, whereunder only LDCs (and not the other three cadres of Language Typists, Caretakers and Storekeepers) were eligible for promotion to the cadre of UDCs and his client would have legitimately earned the benefit of this promotion. In this regard, Shri Kumar strongly relied on the ruling of the Supreme Court (particularly para-9 thereof, which crystallises the law) in the Civil Appeals between Y.V. RANGAIAH & ORS. -Vs.- T. SREENIVASA RAO & ORS. & STATE OF ANDHRA PRADESH AND ORS. -Vs.- SREENIVASA RAO & ORS. 1983 SCC (L&S) 3827, which related to an amendment to the rules dispensing with the original provision for considering LDCs along with UDCs for promotion. The relevant portion of that ruling reads as under:

"9. Having heard the counsel for the parties, we find no force in either of the two contentions. Under the old rules a panel had to be prepared every year in September. Accordingly, a panel should have been prepared in the year 1976 and transfer or promotion to the post of Sub-Registrar Grade II should have been made out of that panel. In that event the petitioners in the two representation petitions who ranked higher than respondents 3 to 15 would not have been deprived of their right of being considered for promotion. The vacancies which occurred prior to the amended rules would be governed by the old rules and not by the amended rules. It is admitted by counsel for both the parties that henceforth promotion to the post of Sub-Registrar Grade II will be according to the new rules on the zonal basis and not on the State-wide basis and, therefore, there was no question of challenging the new rules. But the question is of filling the vacancies that occurred



occurred prior to the amended rules. We have not the slightest doubt that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules."

21. In the light of the ruling in the above case, Shri Kumar contended, that even though adequate number of vacancies in the cadre of UDCs were available much prior to the enactment of the 1987 Rules, the respondents failed to fill in these vacancies under the Old Rules (i.e., the 1970 and the 1972 Rules) thereby denying his client, his legitimate opportunity for promotion to this cadre. He stressed, that according to the principles enunciated in the above judgment, vacancies which occurred prior to the amended 1987 Rules, were governed by the old Rules i.e., 1970 and 1972 Rules and not by the amended 1987 Rules. He alleged, that the respondents had resiled from the undertaking furnished by them on 16-6-1986, before this Tribunal in Application No.501 of 1986(F) (vide para-5 supra) wherein they had assured, that they had stayed the selection of UDCs by the Selection Committee of the Institute, based on the draft 1987 Recruitment Rules and that they <sup>do</sup> same would follow only the existing recruitment rules (i.e., 1970 and 1972 Recruitment Rules) relating to the selection of UDCs to the vacancies in the Institute. Shri Kumar asserted, that it was in the background of this undertaking, that this Tribunal had treated the matter in



Application

Application No.501 of 1986)F) as closed and had observed "that the applicant could have no grievance in this respect for the present"(emphasis supplied). He therefore urged, that in the above circumstances, the said undertaking was binding on the respondents and they should have graciously honoured that commitment, by promoting his client regularly, to the post of UDC under the 1970 and 1972 Rules.

22. Countering this argument, Shri Padmarajaiah submitted, that the law laid down by the Supreme Court, in RANGAIAH's case, was not applicable to the case before us, as the recruitment rules referred to in the former, did stipulate, the drawing up of a panel of incumbents, eligible for promotion to the cadre of UDCs every year, in September. Such a mandate according to him, did not exist either in the 1970 or the 1972 Rules, and therefore, RANGAIAH's case was clearly distinguishable, from the instant case and the applicant could not on that basis, lay claim for promotion as UDC, under the 1970 or the 1972 Rules.

23. We have bestowed careful thought on the pleadings of both sides on this aspect, have examined the relevant material placed before us and perused the judgment rendered by this Tribunal, in Application No. 501 of 1986(F) (on which the present application has a bearing) and the Memo dated 16-6-1986(stated by Shri Kumar to



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to be of the nature of an undertaking) filed by the respondents in that application. The above Memo is reproduced below:

"The undersigned submits on behalf of the respondents that the selection of Upper Division Clerk 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.

In view of this undertaking on behalf of respondent-Institute, the above application does not survive and therefore, the above case may be dismissed in the interests of justice.

Sd.M.S.Padmarajaiah,  
Advocate  
Bangalore,  
dt.16-6-1986. and Senior Central Government Standing Counsel for Respondents."

The respondents have clearly stated in the Memo, that the existing recruitment rules, that were in force, immediately prior to the coming into force, of the 1987 Rules, would be followed in the matter of selection of UDCs, to the vacancies at the respondent-Institute. The applicant, who was temporarily promoted on an officiating basis as UDC, on 12-12-1985, was subsequently reverted to the post of LDC, but he did not take steps to move this Tribunal for stay or for quashing the same. When the application came up for hearing on 8-9-1986, before the Bench comprising one of us (viz., Shri L.H.A.Rego), the

following

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following order was passed:

- "2. Smt.Kripalani, counsel for the applicant, submits that since the post is vacant, her client may be permitted to work against the same.
3. The difficulty, however, arises because the applicant was appointed as UDC, 'on a purely temporary and local officiating arrangement until further orders.' Since he had already been reverted and the post is kept vacant, the applicant can have no grievance in this respect for the present.
4. In the result, the matter is treated as closed and the application is disposed of accordingly."

(Emphasis supplied)

It is thus apparent, that what weighed with the Bench, which passed the order on 8-9-1986 was, that reversion of the applicant to the post of LDC, had already taken place and it having become a fait accompli, there was no scope for granting any relief to the applicant.

24. Shri Kumar placed reliance on the ruling of the Supreme Court in Y.V.RANGAIAH & ORS. -vs.- J.SREENIVASA RAO & ORS. (1983 SCC(L&S) 382). The facts of this case are these:

Under the Andhra Pradesh Registration and Subordinate Service Rules, ('AP Rules') the promoting authority was required to prepare a

panel



panel of promotees to the cadre of Sub-Registrars' from the cadre of Lower Division Clerks as on 1st September of every year on the basis of the eligibility prescribed thereto and suitability. As on 1-9-1976 such a list was not prepared and was even delayed.

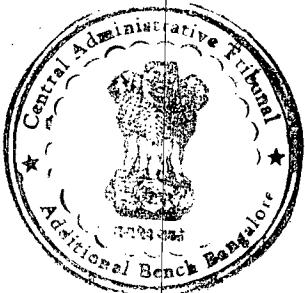
On 22-3-1977 the AP Rules were amended making the Lower Division Clerks totally ineligible for promotion to the posts of Sub-Registrars. Rangaiah and others, who were LDCs, unsuccessfully challenged the same before the Andhra Pradesh Tribunal ('AP Tribunal').

On <sup>48</sup> the appeal by Rangaiah and others, the Supreme Court reversing the decision of the AP Tribunal, expressed its opinion in para-9 of the judgment, which is reproduced at para-20 supra.

In the above case, the rights of the parties had crystallised and they had acquired an indefeasible right, for promotion as on 1-9-1976, as the law then stood, and the Supreme Court gave effect to the same. But that is not the position in the present case. Hence, the ratio in RANGAIAH's case, does not bear on the question in the present case. For these reasons, we see no merit in this contention of Shri Kumar.

25. We have earlier noticed, the solemn undertaking of the respondents and the post being kept vacant

till



till 27-1-1987 and even thereafter also. The respondents 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. This Tribunal however, had on 4-4-1986, in Application No. 501 of 1986(F), by the very same applicant, on the same matter, stayed this action of the respondents. In this view, 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. We have thought it fit to notice this and issue a direction in that behalf, having regard to the fact, that the applicant being found fit, was actually promoted but he was unjustly reverted, which somewhat regrettably was not then challenged by him.

26. In the light of our above discussion, we make the following orders and directions:

- (i) We dismiss this application, to the extent it challenges the 1987 Rules and seeks a direction to promote ~~him~~ <sup>in the applicant,</sup> before 27-1-1987.
- (ii) 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.



sd



27. Application is disposed of in the above terms. No order as to costs.

Sd/-

VICE CHAIRMAN.

Sd/-

MEMBER (A).

- True Copy -

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SECTION OFFICER 11/4  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE

kms :

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\*\*\*\*\*

Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 6 SEP 1988

CONTEMPT

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

Applicant(s)

Shri M.V. Thomas  
To

v/s

Respondent(s)

The Director, Central Institute of  
Indian Languages, Mysore

1. Shri M.V. Thomas  
Lower Division Clerk  
Central Institute of Indian Languages  
Manasagangotri  
Mysore - 6
2. Shri N. Narayanaswamy  
Advocate  
C/o Shri Ravivarma 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 the copy of ORDER/STAY/INTERIM ORDER  
Contempt of Court  
passed by this Tribunal in the above said application(s) on 25-8-88

Encl : As above

*R. V. Subbhash*  
DEPUTY REGISTRAR  
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH: BANGALORE

DATED THIS THE TWENTY FIFTH DAY OF AUGUST, 1988

PRESENT: HON'BLE SHRI JUSTICE K.S. PUTTASWAMY.... VICE-CHAIRMAN

HON'BLE SHRI L.H.A. REGO .... MEMBER(A)

CONTEMPT OF COURT NO.25/88

M.V. Thomas,  
S/o M.J. Varghese,  
Major, Working as  
Lower Division Clerk,  
Central Institute of Indian  
Languages, Manasagangotri,  
Mysore-6.

Applicant

(Shri N. Narayanaswamy.....Advocate)

Vs.

D.P. Patnayak,  
Major, Director of  
Central Institute of  
Indian Languages,  
Manasagangotri,  
Mysore-6.

Respondent

(Shri M.S. Padmarajaiah.....Advocate)

This application having come up for hearing  
before this Tribunal to-day, Hon'ble Shri Justice K.S.  
Puttaswamy, Vice-Chairman, made the following :-

O R D E R

In this petition made under Section 17  
of the Administrative Tribunals Act, 1985 (the Act)  
and the Contempt of Courts Act, 1971 (CC Act), the  
petitioner has moved us to punish the respondent  
for non-implementation of an order made by us in  
his favour on 6.11.1987 in Application No.220/87(F)  
(Annexure-A).



2. The petitioner was working as a Lower Division Clerk (LDC) in the office of the Director of Central Institute of Indian Languages, Mysore (Institute) from 29.4.1980. He was promoted as an Upper Division Clerk (UDC) from 13.3.1982 in the then time-scale of pay of Rs.330-560. But he was reverted from the post of UDC to that of LDC on 7.4.1986, which was challenged by him before this Tribunal in Application No.220/87. On an examination of the rival cases pleaded, we disposed of that application on 6.11.1987 with the following directions:-

"(1) We dismiss this application, to the extent it challenges the 1987 Rules and seeks a direction to promote the applicant before 27.1.1987.

(2) 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."

The petitioner claims that our direction in sub-para (2) of our Order had not been implemented by the authorities in letter and spirit and therefore, Shri D.P. Pattanayak who is currently the Director of Institute is liable to be proceeded with under the CC Act.

3. In his reply, the respondent has asserted that our order had been complied with in letter and spirit.

4. Shri N. Narayanaswamy, learned counsel for the petitioner, contends that the respondent had not complied with the order made by this Tribunal in letter and spirit and had wilfully disobeyed the same and therefore should deal with the matter under the CC Act.

5. Shri M.S. Padmarajaiah, learned Senior Central Government Standing Counsel appearing for the respondent, refuting the contention of Shri Narayanaswamy, states that the respondent has complied with the order of this Tribunal both in letter and spirit.

6. We have earlier briefly set out the facts of the case and the direction made in sub para (ii) of para 26 of our order with which only we are concerned in this case. On that direction, the correctness of which is not now open for examination, the authorities of the Institute were bound to consider the case of the applicant for promotion to the post of UDC to any of the vacancies in that cadre which existed prior to 27.1.1987. Whether that has been done or not is the only question that calls for examination. In order to decide this question, we have to examine the minutes of the meeting of the Departmental Promotion Committee (DPC) held on 27.1.1988 and the order if any made thereon by the Director. On that day, a DPC constituted for the purpose, consisting of the



respondent and six others, met and recorded the minutes as under:

"The suggestion of the Central Administrative Tribunal to consider sympathetically the case of Shri M.V. Thomas, L.D.C for promotion to Upper Division Clerk under the 1970-72 Recruitment Rules was put up before the D.P.C. On examination of the various aspects of the case, the D.P.C. decided that Shri M.V. Thomas cannot be given promotion as U.D.C."

In the very first sentence of the foregoing, the DPC alludes to our direction. But then in the second sentence, the DPC, abruptly declares that the petitioner "cannot be given promotion as U.D.C." Except for this, the proceedings of the DPC does not contain any other reason.

7. Even placing the most charitable construction on the language employed by the DPC, we must very reluctantly and regretfully hold, that the DPC had refused to consider the case of the applicant which is clearly contrary to what we had directed in sub-para (ii) of para 26 of our order. We cannot read the minutes of the meeting of the DPC in any other way. From this it follows we must necessarily take exception to the proceedings of the DPC and direct the DPC to redo the matter in terms of our earlier directions. We are of the view that this is the proper course to be followed first, only whereafter all other questions could be examined, inclusive of the aptness of the language in which the respondent has couched his reply.

8. In the light of our above discussion, we, set aside the proceedings of the DPC at its meeting held on 27.1.1988 and direct the Director of the Institute to convene a fresh meeting of the review DPC and redo the case of the petitioner for promotion in terms of our directions made in our Order dated 6.11.1987 and apprise the Tribunal, the result thereof, to enable further action on this petition under the CC Act. We direct the respondent to comply with this direction with all such expedition as is possible in the circumstances of the case and in any event, within a period of two months from the date of receipt of this order.

10. Call this case on 7.11.1988 for reporting compliance of the directions made today and for further consideration of this case under the CC Act.



Sd/-

(K.S. PUTTASWAMY)  
VICE-CHAIRMAN

Sd/-

(L.H.A. REGO)  
MEMBER(A)

TRUE COPY

*R.V. Venkatesh*  
DEPUTY REGISTRAR (JDL) 6/9  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH  
\*\*\*\*\*

Commercial Complex (BDA)  
Indiranagar  
Bangalore - 560 038

Dated : 9 NOV 1989

CONTEMPT  
PETITION (CIVIL) APPLICATION NO (S) \_\_\_\_\_ 25 \_\_\_\_\_ 88  
IN APPLICATION NO. 220/87(F)  
W.P. NO (D) \_\_\_\_\_

Applicant (s)

Shri M.V. Thomas

To

Respondents

V/s The Director, Central Institute of Indian Languages, Mysore

1. Shri M.V. Thomas  
Lower Division Clerk  
Central Institute of Indian Languages  
Manasagangotri  
Mysore - 6
2. Shri Revivarma 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/STRAK/EXCEP/ORDER  
C.P. (Civil)  
passed by this Tribunal in the above said application(s) on 3-11-89

*A. Venkatesh*  
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, Manasagangotri,  
MYSORE-6.

... Petitioner

(Shri Revivarman Kumar, Advocate)

vs

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

... Respondent

(Shri M.S. Padmajaiah, 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 Revivarman Kumar, learned counsel,  
appears for the petitioner and Shri M.S.Padmajaiah,  
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, Selen 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.

P. J. T. B.

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

P. S. - 1/2

cadres in CII and RLCs on 4-3-1986. Apprehending that promotions to posts of UDC in CII and RLCs would be made in accordance with the draft recruitment rules, following the combined seniority list in the four different cadres in the CII and RLCs taken together, and not from the only feeder cadre of LDCs in CII 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, CII, 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."

P. C. G.

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

P. S. Iyer  
Signature

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 CIIL. 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 of 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 CIL 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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8. 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 CIIIL 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 CIIIL 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 CIIIL - the case of the applicant

P. S. G. S.

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 ADC. 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 senior-most 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 CII and Madappa belonged to the CII Cadre. It was only on the notification of the 1987 Rules that a unified cadre of Group C posts in CII and RLCs, including that of Office Superintendent was brought into existence. Therefore, there being no regular vacancy of UDC in CII 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 <sup>HC</sup> ~~HC~~ Tribunal, promotions had to be made on the basis of (combined seniority list of ~~base~~ from the four feeder cadres in CII 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 CII existing prior to 27-1-1987 and such a vacancy not having been in existence, the applicant unfortunately missed promotion. Shri Padmaraajaiah, 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 CIII 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 Raviverma 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 regularization 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 <sup>that</sup> 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 thereof. 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.PUTTASWAMY)  
VICE CHAIRMAN

3/11/89

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(P.SRINIVASAN)  
MEMBER (A)

*RA Venkatesh*  
DEPUTY REGISTRAR (JUNIOR)  
CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE