

DEPUTY REGISTRAR
(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 2ND DAY OF FEBRUARY, 1989.

PRESENT:

Hon'ble Mr. Justice K.S. Puttaswamy,

.. Vice-Chairman.

And

Hon'ble Mr. L.H.A. Rego,

.. Member(A).

APPLICATION NUMBERS 1938 AND 1939 OF 1988

Smt. Margaret Solomon,
Officiating Upper Division Clerk,
Films Division, Government of India,
New Mission Compound,
Lalbagh Road, Bangalore-560 027.

.. Applicant in A.No.1938/1988

Smt. Regina Anand
Lower Division Clerk
Films Division, Government of India,
New Mission Compound,
Lalbagh Road, Bangalore-560 -027.

.. Applicant in A.No.1939/1988

(By Sri S.K.Srinivasan, Advocate)

v.

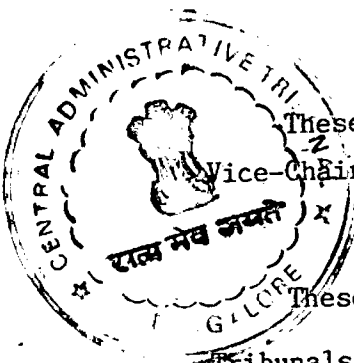
1. The Chief Producer
Films Division, Government of India,
24, Dr.G.Deshmukh Marg,
BOMBAY 400 026.
2. The Director of Administration
Films Division, Government of India,
24, Dr. G.Deshmukh Marg,
BOMBAY 400 026.
3. The Administrative Officer
Films Division, Government of India
24, Dr.G.Deshmukh Marg,
BOMBAY 400 026.
4. Smt. Mary Davassy,
W/o Mr.Davassy, Officiating
Upper Division Clerk, Films Division,
Government of India, No.11, New Mission
Compound, Lalbagh Road, Bangalore-560 027. .. Common Respondents.

(By Sri M.Vasudeva Rao, Standing Counsel)
Sri A.Keshava Bhat, Advocate)

These applications having come up for hearing this day, Hon'ble Vice-Chairman made the following:-

ORDER

These are applications under Section 19 of the Administrative Tribunals Act, 1985 ('the Act').




2. Smt. Margaret Solomon ('Margaret') and Smt. Regina Anand ('Regina'), applicants in Applications Nos. 1938 and 1939 of 1980 joined service as Lower Division Clerks ('LDCs') in 1971 and 1972 respectively in the office of the Branch Manager, Films Division, Bangalore.

3. In conformity with the Recruitment Rules of the Department and the vacancy position thereof, the Administrative Officer, Films Division, Bombay ('AOB') by his Order No.A.12021/1/81-Est.II dated 13-11-1981 (Annexure-A6) promoted the applicants as Upper Division Clerks ('UDCs') on an officiating basis and posted them in the very office they were earlier working at Bangalore. When they were so continuing, the AOB in his Memorandum No.A.12021/65/82-Est.II dated 16-10-1982 (Annexure-A9) offered them promotions as UDCs and ascertained their willingness for the same and continue them in that very office or such other office as may be decided by him, to which both of them expressed their willingness, however, stating that they preferred to be continued at Bangalore. On this, to which we will revert later, the AOB did not make any further order. But, notwithstanding the same, the applicants continued as UDCs at Bangalore without interruption till 19-4-1988.

4. On 20-4-1988, the AOB by his Order No.A.20012/40/83-Est.II dated 20-4-1988 had reverted Regina from the post of UDC, she then held, to the post of LDC and had posted one Smt. Mary Davassy, respondent-4 in that vacancy.

5. In these applications made on 5-12-1988 Regina has challenged her reversion and posting of respondent-4 in her place. Both the applicants had sought for a declaration that their promotions made in terms of the memorandum dated 13-11-1981 (Annexure-A6) of the AOB, were regular promotions and their future conditions of service should be regulated on that basis.



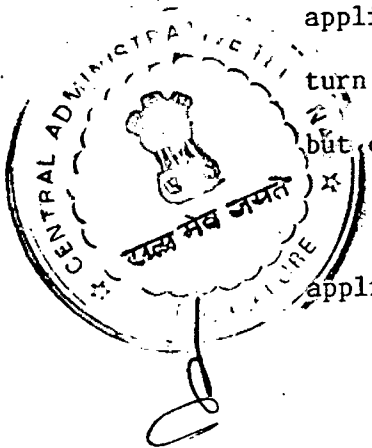
6. In resisting these applications, respondents 1 to 3 have filed their reply and produced their records. Respondent-4 has entered appearance through her Advocate and has supported respondents 1 to 3.

7. Sri S.K.Srinivasan, learned counsel for the applicants, contends that the promotions of his clients in terms of the Memorandum dated 13-11-1981 of the AOB and their posting at ~~Mumbai~~ ^{Bangalore} were regular promotions and were not officiating or ad hoc in nature with due regard to the lapse of time and all other relevant factors and we should so declare these promotions accordingly notwithstanding the inapt expression in the order of the AOB.

8. Sriyuths M.Vasudeva Rao, learned Additional Central Government Standing Counsel appearing for respondents 1 to 3 and A.Keshava Bhat, learned counsel appearing for respondent-4, contend that on the very terms of the promotions made, the applicants cannot claim such declaration.

9. In the Order dated 13-11-1981 in which the applicants were promoted, it is stated that they had been promoted only on an officiating basis. Without any demur, the applicants have accepted the same and have reported for duty. On the very terms of the order, the promotion of the applicants made by the AOB on 13-11-1981 was only on officiating basis and not regular. The mere lapse of time does not convert the officiating tenure into any other tenure, much less regular promotions. Whatever be the other developments, the applicants having accepted the officiating promotions, cannot now turn round and contend that they were not promoted on officiating but on regular basis.

10. On the foregoing, we reject this contention urged for the applicants.



11. Sri Srinivasan next contends that the promotions granted to the applicants by the AOB in his Memorandum dated 16-10-1982 (Annexure-A9) and accepted by them, were in any event regular promotions and they cannot be denied that benefit from that date.

12. Sriyuths Rao and Bhat contend that even the second promotions granted by the AOB on 16-10-1982 were not regular promotions but were officiating which too the applicants had forfeited.

13. The Memorandum dated 16-10-1982 on the true construction of which the question hinges, reads thus:

"No.A-12021/65/82-Est.II
FILMS DIVISION
Ministry of Information and Broadcasting
Government of India

24, Peddar Road, Bombay-26
Dated the 16th October, 1982.

MEMORANDUM

Appointments to posts in different cadres (Group 'C' and 'D'), which are required to be filled by promotion in accordance with the Recruitment Rules prescribed for each post in this Division, are made on the basis of seniority-cum-fitness or by selection. Common All-India seniority in various cadres is being maintained in this Division. This necessitates appointments of persons on select lists for various posts by promotion with posting at places where vacancies exist. Experience has shown that in number of cases persons, who are issued appointment orders on promotion, refuse such promotions. This results in number of posts remaining unfilled for long durations and, in consequence, work in office and production of films etc. suffer.

2. According to the Government orders, where a Government employee does not want to accept the promotion, which is offered to him, he may make a written request that he may not be promoted and such requests would be considered by the appointing authority taking into consideration relevant aspects. If the reasons for refusal of promotion are acceptable to the appointing authority, then next person in the select list is to be promoted. The person refusing promotion stands debarred from promotion for a period of one year from the date of refusal of such promotion. In the event of junior person on the select list accepting the promotion, he would become senior to the person or persons who refuse such a promotion. Keeping in view these instructions and the difficulties experienced in filling of vacant posts, it has been decided, with the approval of the Ministry, to ascertain from all eligible candidates their willingness to accept promotion for the post of UPPER DIVISION CLERK for which the vacancies exist at following places/stations. Only such of the eligible persons, who express their willingness to accept promotion

with posting to places/stations where vacancies exist, will be included in the zone of consideration for drawing up of select lists for higher posts to be filled by promotion in each cadre. Those who express their unwillingness will, thereby stand debarred for one year even for consideration for promotion to a higher post from the date of their written unwillingness.

NUMBER OF VACANCIES

Sl.No.	PLACE	Unreserved	Reserved for	
			SC	ST
1.	BOMBAY	6	NIL	3
2.	NEW DELHI	4	NIL	1
3.	BANGALORE	2	NIL	NIL
4.	VIJAYAWADA	NIL	NIL	1
5.	MADURAI	1	1	NIL
6.	LUCKNOW	1	NIL	NIL
7.	Anticipated vacancy (depending on where the vacancy occurs).	1	NIL	NIL

3. Smt. Regina Anand is one of the eligible candidates to be considered for empanelment for promotion against the above mentioned vacancies. She is, therefore, hereby given opportunity to indicate her willingness or otherwise for accepting promotion against the above mentioned vacancies in writing. It may please be noted that those who give their willingness to accept the promotion, will be liable to be posted at any of the places mentioned above. However, as far as possible, preferences if any, given by persons will be kept in view while making such postings. If there are more persons than number of vacancies at a particular place, the postings at that place will be made strictly in accordance with seniority in the select list amongst such persons.

4. Smt. Regina Anand is requested to score out on the enclosed spare copy of this Memorandum any of the following two alternatives as may not be acceptable to her and complete the other alternative and send it, duly signed, with date so as to reach the undersigned latest on 2nd November, 1982.

Sd/- V.R.Peswani,
Asstt. Administrative Officer
for Administrative Officer.

To

Smt. Regina Anand
Lower Division Clerk
Films Division, Bangalore."

On receipt of this Memorandum, both the applicants have expressed their willingness in these words:

The Administrative Officer,
Films Division, Bombay.

Sir,

I have carefully read and properly understood the contents of the above Memo No.A-12021/65/82-Est.II dated the 16th October, 1982 and hereby give my:-



- (a) Willingness to accept promotion, if offered, against any of the vacancies in the post of UPPER DIVISION CLERK mentioned in para 2 of the Memo mentioned above. If given a choice, I shall prefer posting at Bangalore in that order.

Sd/- Margaret Solomon,
Off. U.D.C."
22-10-1982.

"The Administrative Officer,
Films Division, Bombay.

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Sd/- S.Regina Anand,
Offg. U.D.C."
22-10-1982.

On receipt of these, the AOB had not made any specific order one way or the other. But, the fact remains that both the applicants continued to function as UDCs till 20-4-1988 on which day Regina only was reverted.

14. Firstly, the order made by the AOB on 16-10-1982 is a later order and therefore, the same supersedes his earlier order on the same subject. Secondly, this order has not been annulled or modified by the AOB or any other authority so far. We must, therefore, hold that the order dated 16-10-1982 of the AOB is legally in force, notwithstanding any misunderstanding on the same by him and others.

15. Para 3 of the Memorandum offering the promotions, does not stipulate that the same had been granted officiating or ad hoc basis as done earlier. If this was on an officiating or ad hoc basis, then there was really no necessity to make the same as both the applicants were already working on an officiating basis in pursuance of the earlier Memorandum dated 13-11-1981. On reading this order, in the context and all the relevant circumstances relating to the same, the one and the only conclusion that can be drawn is that the AOB had promoted the applicants on 'regular basis' only against the non-examinee quota of 75% earmarked for LDCs under the Recruitment Rules of the Department.

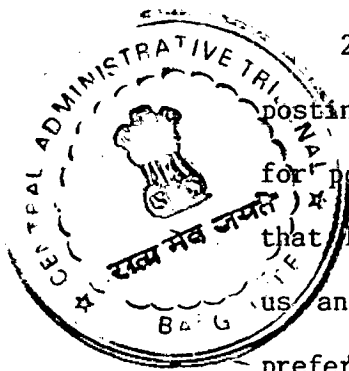
16. The applicants had accepted these promotions unconditionally and without any reservation. The preference expressed by them for posting at Bangalore does not affect their unconditional acceptance of regular promotions given to them in the Order dated 16-10-1982.

17. On the unconditional acceptance by the applicants, the promotions granted on 16-10-1982 had become final and effective from that very date itself. So long as those promotions have not been undone, we must necessarily ^{give to} effect to them from 16-10-1982. On this conclusion itself, we must ignore all the later contrary orders, if any made against the applicants and we do so.

18. We find that Regina had been reverted on 20-4-1988 on a total misunderstanding of the earlier regular promotion given to her on 16-10-1982. In the order dated 20-4-1988 and the reply, respondents 1 to 3 have not set out any justifiable circumstances to her reversion. Even the records placed before us do not establish any justifiable circumstances for her reversion. On this, we must necessarily take exception to her reversion.

19. But, our earlier conclusion does not mean that we should interfere with the posting of respondent-4, who has secured her promotion against examinee quota. Every one of the circumstances pleaded by the respondents justified the posting of respondent-4 to Bangalore. We must, therefore, decline to interfere with her posting.

20. On our earlier conclusions Regina has now to be given a posting as an UDC. She has filed a memo expressing her preferences for posting at Bangalore, Madras and Hyderabad. We need hardly say that Regina has to be posted by the Administration only and not by us and in so doing the Administration is free to accommodate her preferably at the places of her choice, if there are vacancies at those places or at such other place as is found necessary in public



interest. What is true of Regina is also true of Margaret who has not been reverted and disturbed so far.

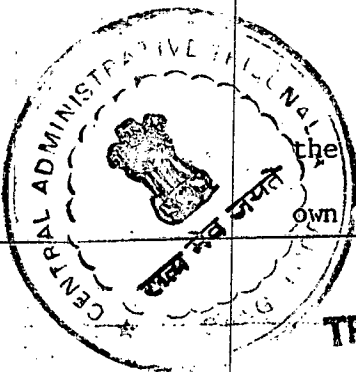
21. On our quashing the reversion of Regina, she cannot be denied her continuous service and seniority.

22. Regina was actually reverted on 9-5-1988. She has approached this Tribunal on 5-12-1988. From 9-5-1988 she has been actually working as an LDC only. Sri Rao prays for time till 28-2-1989 to give a posting to Regina and deny her the difference of salary till then. We are of the view that this request of Sri Rao is reasonable and should be granted.

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

- (1) We declare that the promotions of the applicants to the posts of UDCs from those of LDCs granted in order dated 16-10-1982 of the AOB were regular promotions against the non-examinee quota of the Department.
- (2) We quash Order No.A-20012/40/83-Est.II dated 20th April,1988 (Annexure-A12) only in so far as it relates to the reversion of Regina, Applicant in Application No.1939 of 1988.
- (3) We direct respondents 1 to 3 to give a posting to Regina Applicant in Application No.1939 of 1989 as UDC with due regard to the preference of posting exercised by her. This may be done with expedition as is possible in the circumstances of the case and in any event on or before 28-02-1989. But, till then, Regina shall not be paid the salary of the post of UDC which however will not affect her continuity of service and seniority as UDC from 16-16-10-1982.

24. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.



TRUE COPY

sd/-
VICE-CHAIRMAN.

sd/-
MEMBER(A)

np/

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated :

19 FEB 1989

To

1. Shri Sanjeev Malhotra
All India Law Journal
Hakikat Nagar, Mal Road
Delhi - 110 009
2. Administrative Tribunal Reporter
Post Box No. 1518
Delhi - 110 006
3. The Editor
Administrative Tribunal Cases
C/o Eastern Book Co.,
34, Lal Bagh
Lucknow - 226 001
4. The Editor
Administrative Tribunal
Law Times
5335, Jawahar Nagar
(Kolhapur Road)
Delhi - 110 907
5. M/s All India Reporter
Congressnagar
Nagpur

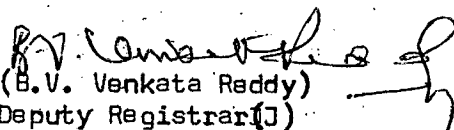
Sir,

I am directed to forward herewith a copy of the undermentioned order passed by a Bench of this Tribunal comprising of Hon'ble

Mr Justice K.S. Puttaswamy Vice-Chairman/~~Member~~ (3)
and Hon'ble Mr L.H.A. Rego Member (A) with a request
for publication of the order in the journals.

Order dated 2-2-89 passed in A. Nos. 1938 & 1939/88(F).

Yours faithfully,


(B.V. Venkata Reddy)
Deputy Registrar(J)

9c

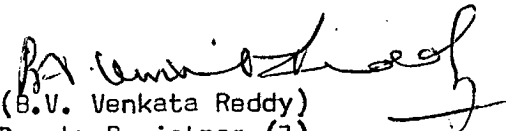
18/2/89
K.H. [Signature]
10-2-89

Copy with enclosures forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi - 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I. Compounds, Nungambakkam, Madras - 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O. Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta - 700 020.
4. The Registrar, Central Administrative Tribunal, C.G.O. Complex(CBD), 1st Floor, Near Konkon Bhavan, New Bombay - 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A, Post Bag No. 013, Thorn Hill Road, Allahabad - 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O. 102/103, Sector 34-A. Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shillong Road, Guwahati - 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathi Towers, 5th & 6th Floors, Opp. Maharaja College, M.G. Road, Ernakulam, Cochin - 682 001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15, Civil Lines, Jabalpur (M.P).
10. The Registrar, Central Administrative Tribunal, 88-A, B.M. Enterprises, Shri Krishna Nagar, Patna - 1 (Bihar).
11. The Registrar, Central Administrative Tribunal, C/o Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanapura, Ahmadabad (Gujarat).
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak - 753 009 (Orissa).

Copy with enclosures also to :

1. Court Officer (Court I)
2. Court Officer (Court II)


(B.V. Venkata Reddy)
Deputy Registrar (J)

d/c

9.8.82
K. N. Venkatesh
10-2-83

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 2ND DAY OF FEBRUARY, 1989.

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7.	Anticipated vacancy (depending on where the vacancy occurs).	1	NIL	NIL

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Offg. U.D.C."
22-10-1982.

On receipt of these, the AOB had not made any specific order one way or the other. But, the fact remains that both the applicants continued to function as UDCs till 20-4-1988 on which day Regina only was reverted.

14. Firstly, the order made by the AOB on 16-10-1982 is a later order and therefore, the same supersedes his earlier order on the same subject. Secondly, this order has not been annulled or modified by the AOB or any other authority so far. We must, therefore, hold that the order dated 16-10-1982 of the AOB is legally in force, notwithstanding any misunderstanding on the same by him and others.

15. Para 3 of the Memorandum offering the promotions, does not stipulate that the same had been granted officiating or ad hoc basis as done earlier. If this was on an officiating or ad hoc basis, then there was really no necessity to make the same as both the applicants were already working on an officiating basis in pursuance of the earlier Memorandum dated 13-11-1981. On reading this order, in the context and all the relevant circumstances relating to the same, the one and the only conclusion that can be drawn is that the AOB had promoted the applicants on 'regular basis' only against the non-examinee quota of 75% earmarked for LDCs under the Recruitment Rules of the Department.

16. The applicants had accepted these promotions unconditionally and without any reservation. The preference expressed by them for posting at Bangalore does not affect their unconditional acceptance of regular promotions given to them in the Order dated 16-10-1982.

17. On the unconditional acceptance by the applicants, the promotions granted on 16-10-1982 had become final and effective from that very date itself. So long as those promotions have not been undone, we must necessarily ^{give to} effect to them from 16-10-1982. On this conclusion itself, we must ignore all the later contrary orders, if any made against the applicants and we do so.

18. We find that Regina had been reverted on 20-4-1988 on a total misunderstanding of the earlier regular promotion given to her on 16-10-1982. In the order dated 20-4-1988 and the reply, respondents 1 to 3 have not set out any justifiable circumstances to her reversion. Even the records placed before us do not establish any justifiable circumstances for her reversion. On this, we must necessarily take exception to her reversion.

19. But, our earlier conclusion does not mean that we should interfere with the posting of respondent-4, who has secured her promotion against examinee quota. Every one of the circumstances pleaded by the respondents justified the posting of respondent-4 to Bangalore. We must, therefore, decline to interfere with her posting.

20. On our earlier conclusions Regina has now to be given a posting as an UDC. She has filed a memo expressing her preferences for posting at Bangalore, Madras and Hyderabad. We need hardly say that Regina has to be posted by the Administration only and not by us and in so doing the Administration is free to accommodate her ^{to} preferably at the places of her choice, if there are vacancies at those places or at such other place as is found necessary in public

interest. What is true of Regina is also true of Margaret who has not been reverted and disturbed so far.

21. On our quashing the reversion of Regina, she cannot be denied her continuous service and seniority.

22. Regina was actually reverted on 9-5-1988. She has approached this Tribunal on 5-12-1988. From 9-5-1988 she has been actually working as an LDC only. Sri Rao prays for time till 28-2-1989 to give a posting to Regina and deny her the difference of salary till then. We are of the view that this request of Sri Rao is reasonable and should be granted.

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

- (1) We declare that the promotions of the applicants to the posts of UDCs from those of LDCs granted in order dated 16-10-1982 of the AOB were regular promotions against the non-examinee quota of the Department.
- (2) We quash Order No.A-20012/40/83-Est.II dated 20th April,1988 (Annexure-A12) only in so far as it relates to the reversion of Regina, Applicant in Application No.1939 of 1988.
- (3) We direct respondents 1 to 3 to give a posting to Regina Applicant in Application No.1939 of 1989 as UDC with due regard to the preference of posting exercised by her. This may be done with expedition as is possible in the circumstances of the case and in any event on or before 28-02-1989. But, till then, Regina shall not be paid the salary of the post of UDC which however will not affect her continuity of service and seniority as UDC from 16-16-10-1982.

24. Applications are disposed of in the above terms. But, in the circumstances of the cases, we direct the parties to bear their own costs.

TRUE COPY

sd/-

VICE-CHAIRMAN. 27/2/89

sd/-

MEMBER(A) 27/2/89

np/

[Signature]
DEPUTY REGISTRAR (JULY 9/12)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE