

**UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff

Cause No.1:02-CV-1475 SEB-VSS

VS.

INDIANA DEPARTMENT OF

TRANSPORTATION,

Defendant.

CONSENT DECREE

This Decree is in full and final resolution of the above-captioned complaint, and in full and final resolution of EEOC Charge Nos. 240982586, 240991333, and 240A01218.

This action was brought by the United States against the Indiana Department of Transportation ("INDOT") to enforce the provisions of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq. ("Title VII"), following receipt by the Department of Justice from the Equal Employment Opportunity Commission ("EEOC") of EEOC Charge Nos. 240982586, 240991333, and 240A01218 filed by Tarlochan Bansi.

The United States alleges that INDOT violated Title VII when it improperly considered Mr. Bansi's national origin (Indian-American) in making its decision to deny Mr. Bansi a promotion to a vacancy in the Highway Engineer Supervisor 3 classification as a Preliminary Engineering Studies Section Manager in the PreEngineering and Environment Division in or about December 1997; and in failing or refusing to take appropriate action to remedy the effects of the alleged discriminatory treatment of Mr. Bansi.

INDOT has denied and continues to deny all allegations of unlawful discrimination, liability or wrongdoing on its part, or on the part of any of its employees or agents. In entering into this Consent Decree, INDOT does not admit any violation of law, and this Consent Decree may not be used as evidence of liability in any other proceeding.

Desiring that this action be settled by an appropriate Consent Decree and without the burden of protracted litigation, the United States and INDOT agree to the Court's jurisdiction over the parties and the subject matter of this action. Furthermore, the United States and INDOT waive, for the purposes of this Consent Decree, hearings and findings of fact and conclusions of law. This Consent Decree resolves all issues raised in the Complaint of the United States, and the United States and INDOT accept this Consent Decree as final and binding among themselves. This Consent Decree, being entered with the consent of the United States and INDOT, shall not constitute an admission, adjudication or finding on the merits of this action.

In resolution of this action, the United States and INDOT hereby AGREE and the Court expressly APPROVES, ENTERS and ORDERS the following:

I. SPECIFIC RELIEF

In full and final settlement of the claims of the United States for relief on behalf of Tarlochan Bansi, as well as in full and final settlement of the claims of Mr. Bansi, who, by his signature to this Decree and the release attached as Appendix A has signified his acceptance of the relief to be provided him pursuant to this Decree, INDOT agrees to do the following:

1. INDOT agrees to pay Mr. Bansi a back pay award of \$35,233, of which \$29,483 is to be considered principal and \$5,750 is to be considered interest. INDOT agrees to separately pay the appropriate employer's contribution to the Social Security fund due on the \$29,483 award for back pay, if applicable; i.e., the employer's contribution shall not be deducted from the monetary award to Mr. Bansi. INDOT shall deduct from the back pay part of the award appropriate deductions for federal, state and local income taxes; FICA; federal Medicare taxes; and any other taxes that INDOT is required by law to deduct from the salaries and benefits of INDOT employees.
2. INDOT agrees to contribute to Mr. Bansi's retirement account adjusted retirement benefits of \$2,992, which represents the amount the State would have contributed to Mr. Bansi's retirement account had he been promoted to the Highway Engineer Supervisor 3 classification on December 12, 1997.
3. INDOT agrees to place Mr. Bansi in the Executive Broadband classification as the Environment/Planning and Engineering Consultant Services Manager in the Environment, Planning and Engineering Consultant Services Section of the Environment, Planning and Engineering Division with an effective date of the first pay period following the date of the Court's approval and entry of this Consent Decree. The job responsibilities of the Consulting and Special Projects Manager shall be as set forth in the job description attached as Appendix B.
4. INDOT agrees to make a request through appropriate channels to provide Mr. Bansi with an office space commensurate with that of the Section Managers in the Environment, Planning and Engineering Division at the earliest possible date.

5. INDOT, by and through its officials, agents and all persons in active concert or participation with INDOT in the performance of employment or personnel functions, agrees not to engage in any act or practice that unlawfully retaliates against Mr. Bansi because he has formally or informally complained of or otherwise opposed an allegedly discriminatory employment practice or policy under Title VII, filed a charge under Title VII with the EEOC or any state or local fair employment practices agency, or participated or cooperated in any proceeding under Title VII, including, but not limited to, the initiation, investigation, litigation, or administration of this case or this Consent Decree.

6. INDOT agrees to continue to maintain Mr. Bansi's EEOC charges, and references to such charges, separate from his personnel files and/or records.

7. To obtain the monetary relief and the employment relief set forth in Paragraphs 1-4 of this Decree, Mr. Bansi has executed a release attached as Appendix A to this Consent Decree, fully releasing INDOT, the State of Indiana, and their officers, agents, employees, and successors, known and unknown, from liability for any injuries or costs allegedly incurred by Mr. Bansi arising out of EEOC Charge Nos. 240982586, 240991333, and 240A01218.

8. INDOT agrees to provide Mr. Bansi with the monetary payment and related benefits set forth in Paragraphs 1,2 and 4 of this Decree by the second pay period after the date of the Court's approval and entry of the Consent Decree. INDOT agrees, as set forth in Paragraphs 1 and 3 of this Decree, to place Mr. Bansi in the Executive Broadband classification as the Environment/Planning and Engineering Consultant Services Manager in the Environment/Planning and Engineering Consultant Services Section of the Environment, Planning and Engineering Division by the first pay period after the date of the Court's approval and entry of the Consent Decree.

II. GENERAL RELIEF

9. INDOT agrees not to undertake any act or practice that unlawfully discriminates against any employee because of that employee's national origin.

10. INDOT agrees that whenever an applicant for a vacant Highway Engineer Supervisor ("HES") or Executive Broadband position is interviewed as part of the selection procedure for filling such a position, a written list of job-related questions shall be prepared by INDOT's designated selecting official(s) and all applicants shall be asked the same questions in addition to whatever other related follow-up questions the interviewer(s) deem appropriate. Any questions asked in addition to the standard written questions and each applicant's answers to all questions shall be summarized in writing by the interviewer(s),

11. INDOT agrees that selecting official(s) shall state in writing the basis for the final selection or rejection of each applicant.

12. INDOT agrees that in filling any HES or Executive Broadband position, INDOT shall utilize nondiscriminatory selection procedures that do not rely on

the use of national origin.

13. INDOT agrees to provide employment discrimination awareness training to all supervisory and management personnel of INDOT, as well as to any other individuals employed by INDOT who participate in the process by which individuals are selected for a promotion by INDOT. INDOT agrees that a description of the training shall be submitted to counsel for the United States within ninety (90) days from the date of entry of this Decree.

(a) The training sessions will begin within one hundred twenty (120) days after the date of the approval and entry of this Consent Decree by the Court, and continue until completed, which completion shall occur within one hundred eighty (180) days from the date of the commencement of the training sessions.

(b) INDOT agrees to maintain written confirmation that all required employees have received the above described training.

III. RECORD KEEPING AND REPORTING

14. INDOT agrees to retain for the duration of this Consent Decree all records, in whatever form (including any computer disks and computer, video or audio tapes), necessary to monitor the implementation of this Decree.

15. INDOT agrees to retain, for the duration of this Decree, all vacancy announcements, advertisements, employment applications, personnel files, interview questions, interview notes, eligibility lists, correspondence, memoranda, and any other records pertaining to hiring for HES or Executive Broadband positions.

16. INDOT agrees to retain all records that come into its possession relating to complaints or charges of employment discrimination based on national origin in promotions to HES or Executive Broadband positions filed against INDOT, whether made to a local, state or federal agency or through any internal grievance process. INDOT agrees to provide copies of such complaints or charges to counsel for the United States within thirty (30) days of its receipt of such complaints or charges. In addition, upon reasonable notice to INDOT without further order of this Court, the United States shall have the right to inspect and copy all documents related to such complaints or charges, including INDOT's investigation and resolution of such charges, with the exception of those documents protected by attorney client or work product privilege or other applicable privilege. INDOT will provide the United States with a privilege log identifying any documents that it contends constitute attorney client or work product material that INDOT has withheld.

IV. COMPLIANCE

17. If a dispute arises concerning compliance by a party with any provision of this Consent Decree, or if due to a change in circumstances, a party desires to request modification of a term or terms of the Consent Decree, the parties shall engage in good faith efforts to informally resolve the issue before seeking

action by the Court. Prior to moving the Court for resolution, a party shall provide the other party with written notice of the dispute or proposed modification of the Consent Decree, stating with particularity any alleged issues of noncompliance, or in the case of a proposed modification, the reasons supporting such a modification. The parties will provide each other with a full and fair opportunity to informally resolve the issue prior to court intervention. If the parties are unable to informally resolve the issue within forty-five (45) days after written notice of a dispute or proposed modification has been given by one party to the other party, any party may move the Court for resolution. The burden of establishing noncompliance with any provision of the Consent Decree or any need for modification of the Consent Decree is on the moving party.

V. NOTIFICATION OF THE PARTIES

18. The following shall serve as the correct addresses for purposes of all correspondence directed to the parties.

For the United States:

David J. Palmer
Chief
Employment Litigation Section
Civil Rights Division U.S. Department of Justice
950 Pennsylvania Avenue, N.W
Washington, D.C. 20530

For INDOT:

Anne M. O'Connor
Chief Legal Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N755
Indianapolis, Indiana 46204-2249

Patricia Orloff Grow
Deputy Attorney General
Office of the Attorney General
IGCS, 5th Floor
302 West Washington Street
Indianapolis, Indiana 4620

VII. JURISDICTION OF THE COURT

19. This Court shall retain jurisdiction of the matters covered by this Consent Decree for a period of two (2) years from the date of entry of this Consent Decree for such action as may be necessary or appropriate to effectuate the purposes of the Decree. This period may be extended by order of this Court for good cause shown, and the burdens, standards and procedures set forth in paragraph 17, above, are incorporated and restated as though fully set out herein.

20. Each party shall bear its own costs, including attorneys' fees, except that the parties shall retain the right to seek costs for any matter which, in the future, may arise from this Decree and require resolution by the Court.

DONE AND ORDERED this _____ day of _____, 2003.

United States District Judge

Agreed and Consented to:
On behalf of Plaintiff
United States of America
Transportation

On behalf of Defendant
Indiana Department of

R. ALEXANDER ACOSTA
Assistant Attorney General
For Civil Rights

WILLIAM B. FENTON
SONYA A. RAO
U.S. Department of Justice
Attorneys
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dated: _____

PATRICIA ORLOFF GROW
MARGARET WIELENBERG
Deputy Attorneys General
Office of the Indiana Attorney General
Indiana Government Center South, 5th Floor
402 West Washington Street
Indianapolis, IN 46204

ANNE M. O'CONNOR
Chief Legal Counsel
Indiana Department of Transportation
100 North Senate Avenue, Room N755
Indianapolis, Indiana 46204-2249

J. Bryan Nicol
Commissioner
Indiana Department of Transportation

Dated: _____

Tarlochan Bansi
Dated: _____

APPENDIX A

RELEASE

United States v. Indiana Department of Transportation,

Cause No. 1:02-CV-1475 SEB VSS (S.D. Ind.)

For and in consideration of the acceptance of the relief offered me pursuant to the provisions of the Consent Decree entered in United States v. Indiana Department of Transportation, Cause No. 1:02-CV-1475 SEB- VSS (S.D. Ind.), I, Tarlochan Bansi, hereby release, acquit and forever discharge the Defendant Indiana Department of Transportation, the State of Indiana, and all their present and former members, officers, agents, employees, successors, known and unknown, from any and all actions of any kind, causes of action, claims, demands, grievances, charges, liens, liabilities, damages, costs (including, but not limited to, all attorney fees), interest, loss of services, expenses and compensation (including, but not limited to, back wages and benefits), including but not limited to on account of or in any way growing out of any and all known and unknown personal injuries, losses and property damage, and injuries to constitutional rights, arising out of this action and EEOC Charge Nos. 240982586, 240991333, and 240A01218.

I understand that the relief offered to me by the Defendant Indiana Department of Transportation in consideration for this release does not constitute an admission by the party released of the validity of any claim raised by me or on my behalf.

This release constitutes the entire agreement between the Defendant Indiana Department of Transportation and myself, without exception or exclusion.

I acknowledge that a copy of the Consent Decree in this action has been made available to me.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF, AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED,

Signed this ____ day of _____, 2003.

Tarlochan Bansi

Subscribed and Sworn to before me this ____ day of _____ 2003.

_____ My commission expires: _____ .

NOTARY PUBLIC

APPENDIX B

Executive Broad Band EXBB

(formerly Highway Engineer Supervisor 3)

Environment/Planning and Engineering Consultant Services Manager

Environment/Planning and Engineering Consultant Services Section

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Incumbent is responsible for administering and coordinating the Consultant Services Function. Incumbent assures maximum efficiency and utilization of personnel to meet the Highway

operating needs and goals in Environment/Planning and Engineering Consultant Services Function. Incumbent reports and is directly accountable to the Environment/Planning and Engineering Division Chief. Staff may be assigned to report to the Incumbent as necessary.

Essential Duties include:

- Coordinates the activities of the Environment/Planning and Engineering Consultant Services and supervises subordinates as assigned;
- Establishes long and short range goals with priorities and deadlines on projects which are distributed to subordinates as assigned;
- Develops and effects necessary policies and procedures to administer and control Environmental/Planning and Engineering consultant contract administration;
- Directs the administration and operation of Environmental/Planning and Engineering Consultant Services;
- Provides direction, guidance, assistance and coordination with other divisions in the overall work program within the Indiana Department of Transportation ("Department"), especially as it relates to consultant services in environment, planning, public involvement and engineering efforts;
- Provides decisions concerning contract administration and project development problems and undertakes appropriate action;
- Provides review of consultant performance with the input of Division staff for

assurance of
production quality and quantity to fulfill designated goals;

- Provides and directs the familiarization to all employees in the Division with the work rules, policies, standards and procedures of the Department for consultant services, and the quality and quantity of work to be maintained in Environment/Planning and Engineering Consultant Services;
- Formulates and recommends to the Chief, Environment/Planning and Engineering Division the annual resource requirements to the Environment/Planning and Engineering Consultant Services;

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Environment/Planning and Engineering Consultant Services Manager

Environment/Planning and Engineering Consultant Services Section

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- Directs the consultant selection process, negotiation of design contracts, administration of the contracts, payment for contract work, and coordination and scheduling of project development;
- Prepares memorandums, guidelines, and issues verbal instruction to Division employees and assigned subordinates for the processing of work through Environment/Planning and Engineering Consultant Services;
- Confers with citizens, businessmen, government officials and consultants in explaining and resolving Environment/Planning and Engineering concepts and consultant contract details;
- Serves as a technical advisor in lawsuits filed against the State;
- Receives, processes and distributes all correspondence received;
- Performs related work as required;
- Counsels with assigned subordinates on performance standards, career objectives and solving of grievances or complaints by assigned subordinates;
- Examines and recommends personnel actions affecting assigned subordinates;

- Performs performance evaluations of assigned subordinates;
- Prepare recommendations of personnel functions and transactions of assigned subordinates.

I. JOB REQUIREMENTS

- Thorough knowledge of engineering, planning, public involvement, or environmental principles and practices typically developed through obtaining minimally a BA, BS, or BSCE and application of higher education in the highway industry;

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Environment/Planning and Engineering Consultant Services Manager

Environment/Planning and Engineering Consultant Services Section

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- Extensive knowledge of highway statutory, Departmental, and administrative laws, rules, and regulations with regard to Environment/Planning and Engineering consultant contracting; thorough knowledge of the AASHTO Bridge and Road Specifications, ASTM Specifications, Geometric Design Manuals, INDOT Specifications, and INDOT Action Plan, Bridge Design Manual, Road Design Manual, Federal planning requirements, NBPA and other environmental requirements, INDOT public involvement requirements and INDOT Standards relative to Environment/Planning and Engineering Consultant Services;
- Thorough knowledge of the Department, its structure and function, and ability to integrate and coordinate Environment/Planning and Engineering consultant administration and activities with personnel from other divisions in the Department;
- Knowledge of supervisory and administrative skills and methods and the ability to effectively manage Environment/Planning and Engineering Consultant Services and subordinates as assigned; ability to plan, formulate, and carry-out programs, policies and administrative matter;
- Ability to communicate technical and non-technical problems both verbally and in writing;
- Ability to effectively communicate and work cooperatively with consultants, INDOT personnel, FHWA, other outside agencies, and the general public.

II. DIFFICULTY OF WORK

- Position is broad in scope requiring extensive judgment involved in recognizing, assessing, and resolving a variety of situations encountered during the planning, organizing, and execution of the Environment/Planning and Engineering Consultant contracting operation. Guidelines vary with tasks undertaken from generally accepted to non-existent. Incumbent utilizes personal initiative and judgment in order to resolve situations which are highly unusual, complex, new and unprecedented particularly in the development of planning, NEPA, environmental, engineering and public involvement documents by consultants, and the development of agreements with consultants. Considerable technical and administrative judgment is required in adopting or making significant compromises to fit these situations based on the overall Environment/ Planning and Engineering consultant contracting goals and objectives.

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Executive Broad Band EXBB

(formerly Highway Engineer Supervisor 3)

Environmental Planning and Engineering Consultant Services Manager

Environment/Planning and Engineering Consultant Services Section

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III. RESPONSIBILITY

- Incumbent is responsible for effectively working with consultants and INDOT staff in the development and accomplishment of consultant contract administration for Environment/Planning and Engineering Consultant Services projects. The incumbent must ensure that all functions within the Environment/Planning and Engineering consultant contracting operation are properly executed and coordinated with each other and are in accordance with the policies, standards, and objectives promulgated by the Department.

- Incumbent plans and administers Environment/Planning and Engineering consultant contract administration goals and objectives based on highway guidelines. General instructions concerning goals and objectives are discussed with the Chief, Environment/Planning and Engineering Division, but incumbent utilizes initiative and judgment in seeking sources and coordinating efforts of consultant staff and in-house staff. All major projects and programs are reviewed by the Chief, Environment/Planning and Engineering Division, Deputy Director, Office of Planning and Intermodal Transportation and other Department Executives for compliance with federal and state standards, regulations and guidelines.

IV. PERSONAL WORK RELATIONSHIPS

- Incumbent interacts with Consultants and in-house staff for administering and coordinating the contract administration of Environment/Planning and Engineering project development. Incumbent interacts with the Commissioner; Chief Engineer, Deputy Directors, Chief, Environment/Planning and Engineering Division and Central Office division staffs, District function heads, other professional, para-professional, and clerical personnel within the Department and various outside representatives for the purpose of effectively administering and coordinating highway plans and programs within the Department organization as they apply to the Environment/Planning and Engineering Consulting Services function.