

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH**

O.A.No.1407-CH-2012

Pronounced on : _____ (Reserved on: 09.09.2013)

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)**

1. Bashir Masih S/o Sh. Surat Masih, aged 53 Years, working as Assistant Engineer, CP-4 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.886, Sector 43-A, Chandigarh.
2. Prem Paul S/o Sh. Hukam Chand, working as Junior Engineer, CP-1 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.902, Sector 38-A, Chandigarh.
3. Sukhdev Singh S/o Sh. Phula Ram, working as Assistant Engineer, CP-6 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.3309, Sector 24-D, Chandigarh.
4. Surjit Singh S/o Sh. Inder Singh, working as Assistant Engineer, CP-VI Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.1153, Sector 43-A, Chandigarh.
5. Mohinder Kumar S/o Sh. Kanhiya Lal, working as Assistant Engineer, CP-3 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.2372, Sector 19-A, Chandigarh.
6. Anil Kumar S/o Sh. Nand Lal, working as Assistant Engineer, CP-3 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.2371, Sector 44-C, Chandigarh.
7. Kashmir Singh S/o Sh. B.R. Thakur, working as Junior Engineer, CP-6 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.1038, Sector 41-B, Chandigarh.
8. Jagbir Chand S/o Sh. Rameshwar Dass, working as Junior Engineer, CP-2 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.2466, Sector 19-C, Chandigarh.
9. Mohan Lal S/o Sh. Daulat Ram, working as Junior Engineer, CP-5 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.114, Sector 2, Dashmesh Enclave, Mundi Kharar, District Mohali (Pb).
10. Kanwar Lalit S/o Sh. Naresh Thakur, working as Junior Engineer, CP-5 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.2096, Sector 21-C, Chandigarh.
11. Sarban Singh S/o Sh. Charan Singh, working as Junior Engineer, CP-3 Division, Engineering Department, Union Territory, Chandigarh, Resident of House No.2027, Sector 27-C, Chandigarh.

----- **Applicants**

Versus

1. Union of India through the Secretary to the Government of India, Ministry of Education and Social Welfare (Deptt. Of Technical Education), New Delhi.
2. Adviser to the Administrator, U.T. Chandigarh, Sector-9, Deluxe Building, Chandigarh.
3. Finance Secretarycum-Secretary Engineering Department, Chandigarh Administration, Chandigarh.

----- **Respondents**

Present : Mr. Yogesh Putney, Advocate, counsel for the Applicants.

Mr. Aman Chaudhary, Advocate, counsel for the Respondents.

O R D E R

HONBLE MR. SANJEEV KAUSHIK, MEMBER (J)

By means of the present Original Application, the applicants have sought the following reliefs :-

Issue direction to the respondents to treat and issue necessary certification for treating the Diploma in Engineering acquired by the applicants coupled with 10 years of service rendered by them, as equivalent to Degree in Engineering for purpose of selection and appointment to the further Gazetted Posts/Higher posts of Sub Divisional Engineer in terms of Ministry of Education & Social Welfare, Department of Technical Education, New Delhi, notification dated 26.5.1977 (Annexure A-1) and also extend them benefit of judgment dated 10.1.2008 in the case of Devinder Singh Malik Vs. Haryana Power General Corporation Limited, Panchkula (CWP No.17974 of 2006) (Annexure A-2) and then consider their cases for appointment/promotion by way of selection to higher post of Sub Divisional Engineers from the dates same are lying/become vacant as per eligibility of applicants with all the consequential benefits of arrears of pay and allowances and seniority etc.

2. The facts are to be noticed first. The applicants who possess the qualification of diploma in Civil Engineering joined the respondent department as Sectional Officers (Junior Engineers) on different dates during 1979 to 1983. Applicant No. 10 was initially appointed in Haryana Public Health Department on 18.8.1992 and he worked there up to 11.9.2003 and thereafter was appointed in the Chandigarh Administration on 12.9.2003.

3. The applicants plead that Ministry of Education & Social Welfare (Department of Technical Education), New Delhi had issued a notification dated 26.5.1977 (A-1), on the recommendations of the Board of Assessments for Educational Qualifications and Recommendations of Defence Director (Tech), indicating that the Government of India have decided to recognize a Diploma in Engineering in an appropriate Discipline plus total ten years of Technical Experience in the appropriate fields as equivalent to the Degree in Engineering. It is the case of the applicants that despite the existence of notification dated 26.5.1997 (A-1) and the applicants being fulfilling the condition of having 10 years service after doing diploma, which has been recognized as equivalent to the Degree in Engineering, their claim for promotion has not been considered on the basis of such recognized qualification. For redressal of their grievance, named applicants had submitted a representation dated 27.8.2012 as supplemented on 12.9.2012 but the respondents have not considered their claim resulting into filing of this Original Application.

4. Pursuant to the notice, the respondents have contested the claim of the applicants by filing a detailed reply. An objection has been taken by the respondents that since by virtue of notification dated 13.1.1992 (R-1) issued by the Government of India, Ministry of Home Affairs, New Delhi, service conditions of the employees of U.T. Chandigarh are same as are the conditions of service of the corresponding categories of posts in the State of Punjab and as such the notification of 1977 would not apply to the applicants. Subsequently, the Chandigarh Administration issued guidelines vide circular No. 2426 dated 26.6.1992 (R-II) with regard to applicability of the Punjab Rules w.e.f. 1.4.1991. It is submitted that till the time the Chandigarh Administration frames its own rules in respect of Group A and B posts with the concurrence of the Government of India and UPSC, the Administration is bound to follow the recruitment rules applicable to the corresponding categories of the posts applicable in the State of Punjab. The Punjab Service of Engineers (Civil Wing), Department of Public Works (B&R Branch) Group A Service Rules, 2005 issued vide notification dated 14.10.2005 (Annexure R-III) are applicable to the posts of Sub Divisional Engineer / Executive Engineer Superintending Engineer and Chief Engineer in the B&R/Public health/Electrical Wings of the Engineering. These rules were further amended by the Punjab Government vide notification dated 24.6.2011 (Annexure R-IV) where certain percentage has been earmarked for each category i.e. 50% by direct recruitment and 50% by promotion from 4 sources for the post of SDE for which the applicants are staking their claim. It is further submitted that in the case of U.T. of Chandigarh & Ors. Vs. Rajesh Kumar Basandhi, Civil Appeal no. 2731 of 1997 decided by Honble Apex Court on 8.9.2003 (R-V) it has been held that whatever rules and regulations relating to conditions of service available in the State of Punjab shall be *ipso-facto* applicable to the corresponding categories of employees in U.T. Chandigarh. Therefore, there is no merit in the claim of the applicants that the notification dated 26.5.1977 can be made applicable to them.

5. The applicants have also filed a replication controverting the submissions made in the reply statement apart from submitting that since the notification dated 26.5.1977 is not in contradiction with the rule applicable to the applicants, the benefit of same has to be granted to them. It is further submitted that the notification dated 26.5.1977 has been interpreted by jurisdictional High Court in the case of Narender Singh Yadav Vs. State of Haryana (CWP No. 5203 of 2010) decided on 23.1.2012, holding that if a diploma holder is having 10 years experience, he is entitled to be considered as if he is possessing the Degree in Engineering in the respective discipline.

6. We have heard Mr. Yogesh Putney, learned counsel for the applicants and Mr. Aman Chaudhary, learned counsel for the respondents.

7. Learned counsel for the applicants argued that the action of the respondents in not extending them the benefit of the decision dated 26.5.1977 qua equivalence of Diploma with 10 years experience as Degree in Engineering, is discriminatory more so when they are seeking only benefit of a judgment. In support of his contention, he submitted that jurisdictional high court in the case of D.S. Malik Vs. Haryana Power Generation Corporation Limited, Panchkula, CWP No. 17974/06 has already considered similar matter and vide its judgment dated 10.1.2008 has held that in view of the notification issue by the Government of India, the benefit is to be extended by the respective states. Obviously, such benefit has to be extended by Central Government as well State Governments and it would include State of Punjab as well. In other words, the benefit cannot be denied to the U.T. Employees which follows the Punjab Rules.

8. The learned counsel for applicants further submitted that following the above judgment, a bunch of petitions have been disposed of by a common order dated 23.12.2009 by the High Court of Punjab & Haryana, vide which the benefit has been extended to similarly situated persons as claimed by the applicants in the present case. He further submits that there is no merit in the objection raised by the respondents that in terms of decision in the case of Rajesh Kumar

Basandhi (supra), the benefit of notification dated 26.5.1977 cannot be extended as their service conditions are governed by the 2005 Rules of the State of Punjab, inasmuch as vide notification dated 26.5.1992, issued by Chandigarh Administration it has been clarified qua the application of Punjab Rules that term condition of service includes probation, seniority, pay of members, relating to discipline, penalties and appeals. It has been further clarified that Recruitment rules made in exercise of the powers conferred upon the Administrator in terms of Article 309 of the Constitution of India, in so far as they do not relate to the conditions of service referred to above, however, shall continue to be in force as the Government of India have only changed the conditions of service of Union Territory Employees on Punjab pattern. Therefore, it is submitted that objection raised by the respondents is not tenable and the original Application deserves to be allowed.

9. Mr. Chaudhary, learned counsel appearing on behalf of the respondents reiterated what has been stated in the written statement.

10. We have given our thoughtful consideration to the entire matter and have gone through the pleadings available on record.

11. The question that arises for our consideration is as to whether the applicants can be extended the benefit of policy decision contained in the notification dated 26.5.1977 or not. There is no quarrel that the applicants are having diploma qualifications and are working with the respondents since 1979. Thus, by now, they are having more than 10 years experience.

12. Admittedly, the notification issued by the Government of India (A-1) mandates that the diploma in Engineering in appropriate discipline plus 10 years technical experience in the appropriate field has been recognized as equivalent to the qualification of Degree in Engineering. The said degree is to be considered as valid qualification for the purpose of selection to gazetted post / service under the Central or the State Government. The same reads as under :-

“ On the recommendations of the Board of Assessments for Educational Qualification and Recommendation of Defence Director (Tech.), the Government of India have decided to recognize a Diploma in Engineering in appropriate Discipline plus total ten years of Technical Experience in the appropriate fields is recognized as Equivalent to Degree in Engineering. It is considered valid for the purpose of selection to Gazetted Posts and Services under the Central Government or State Government. ”

13. A perusal of the above extraction makes it clear that if a person is having diploma with 10 years technical experience in the appropriate field then, he is to be treated as having a qualification which is equivalent to the degree in Engineering.

14. The legality of decision, Annexure A-1 is not question. The issue has already considered by the Jurisdictional high court in the case of D.S. Malik (supra) wherein the Honble High Court has held as under :-

“ In view of the above, it is absolutely clear that the petitioner was entitled to be issued the Degree in Mechanical Engineering as per Notification No. F 18-19/75/T-2 dated May 26, 1977 (Annexure P-8). In the written statement filed by respondents Nos. 3 and 4, it has nowhere been stated that the petitioner was not entitled to be issued the Degree in Mechanical Engineering nor Notification dated May 26, 1977 has been denied.

Much stress has been laid on the point that Mr. H.S. Sandhu, Wing Commander, Chief Test Pilot 3 BRD AF, who had issued the Certificate/Degree (Annexure P-2) to the petitioner had retired from service. Once we are of the view that the petitioner was entitled to be issued the Degree in Mechanical Engineering after he had honourably retired from the service of the Air

Force on September 30, 2003, we would not like to go into the details of the Certificate/Degree (Annexure P-2) in writ proceedings. ”

15. Subsequently, the matter was considered in a bunch of cases titled Ami Lal Saini & Another etc. Vs. Union of India & Others, CWP No. 111156 of 2009 decided on 23.12.2009 (A-5) wherein the Honble High Court has held as under :-

“ It is not denied that all the petitioners have diploma and also the requisite number of years namely, more than 10 years of technical experience in the appropriate fields. They are, therefore, entitled to be recognized as possessing degrees in engineering. This issue was considered in a decision of this Court in Civil Writ Petition No.17974 of 2006 in Devinder Singh Malik Versus HPGCL, Panchkula that a person who holds a diploma with the requisite number of years of experience shall be entitled to be issued with a degree certificate. Following the decision of the Division Bench of this Court, I direct that the respondent No.3 under whom the respective petitioners were in service shall issue the certificate to the effect that by virtue of the possession of diploma with the requisite experience, they shall be treated as having degree in engineering in the respective fields of academic discipline. ”

16. Recently in the case of Narender Singh Yadav (supra), the Honble High Court has reiterated the view taken in earlier two cases.

17. Now we would deal with the question raised by the respondents that the benefit of the notification dated 26.5.1977 cannot be extended to the applicants as the U.T. Administration is following the rules applicable to the employees of State of Punjab for its own employees qua corresponding categories of posts. We find that there is no quarrel that in view of the notification dated 13.1.1992 the rules applicable to the corresponding categories of employees of State of Punjab would apply ipso facto to the employees of U.T. Chandigarh. The Administration has itself issued a notification dated 26.6.1992 clarifying the applicability of Punjab rules qua condition of service and recruitment to service. In other words, these terms are distinct and separate. The recognition of the diploma + 10 years experience as equivalent to Degree in Engineering, is not a condition of service and is not included in the notification dated 26.6.1992. Therefore, there is no bar for extension of benefit of notification dated 26.5.1977 to the applicants.

18. The Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, which are applicable to Group A, B and C service make it clear that the same are general rules relating to recruitment and conditions of service of persons appointed to Group A, B, & C. In para 2 (f) relating to definition of recognized university or institution, it has been clarified that if a notification is issued by the University or institution recognizing any qualification, same would apply qua the employees of State of Punjab as well. Considering the above and also the law laid down by the jurisdictional High Court, we are left with no other alternative except to allow the O.A. and direct the respondents to extent the applicants benefit of notification dated 26.5.1977 along with all the consequential benefits arising therefrom by passing an order, within a period of two months from the date of receipt of a copy of this order. No costs.

(SANJEEV KAUSHIK)
MEMBER (A)

(RAJWANT SANDHU)
MEMBER (J)

Place: Chandigarh
Dated: September ,2013