

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-1348/2015

New Delhi, this the 27th day of October, 2016

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. Shekhar Agarwal, Member (A)

1. Central PWD Engineers Association,
Through its General Secretary,
P.R. Charan Babu, (EE (civil))
Aged about 51 years,
S/o Sh. P. Suresh Babu
R/o 17-B, Pkt-B, Mayur Vihar,
Phase-II, Delhi-110091,
O/o Central PWD Engineers Association,
'B' Wing, Ground Floor (Outside End),
I.P. Bhawan, New Delhi – 110002
 2. Trayambkeshwar Nath Pandey, (A.E. Civil)
aged about 55 years
S/o Sh. Bhola Nath Pandey,
R/o 23-A, Pkt-B, Dilshad Garden, Delhi-110095
 3. Biswarup Biswas, (A.E. Elect.)
aged about 48 years,
S/o Sh. Late Sh. S.N. Biswas,
R/o Flat No. 29, Plot No.8,
Him Vihar Apartment Patparganj,
I.P. Extn., Delhi-110092
- Applicants

(By Advocate: Mr. M.K. Bhardwaj)

Versus

1. Union of India
Through its Secretary,
Ministry of Urban Development,
Nirman Bhawan, New Delhi,
 2. The Director General
Central Public Works Department,
Nirman Bhawan,
New Delhi.
- Respondents

(By Advocate: Mr. Gyanendra Singh)

ORDER (ORAL)**Hon'ble Mr. Justice Permod Kohli, Chairman**

The applicants in the present OA are serving as Assistant Engineers (Civil & Electrical). It is stated that they are eligible to be considered for promotion as Executive Engineer (Civil & Electrical) as per the statutory Recruitment Rules 1996 and 2012 notified by the respondents. Under these Rules issued under G.S.R. No. 765(E) dated 17.10.2012, the post of Executive Engineer (Civil) is required to be filled up by promotion in the ratio of 33^{1/3} % from AEE(Civil) with four years regular service in the grade and successful completion of two weeks course on Contract Law, E-governance Building Bye-laws and Building Electrification, and 66^{2/3} % by promotion from AE (Civil) with seven years regular service in the grade and possessing degree in Civil Engineering from a recognised University or Institute or any other equivalent qualification, and successful completion of course of two weeks on Contract Law, E-governance Building Bye-laws and Building Electrification. It is stated that certain State Governments and Central Government were not treating the diploma with 10 years experience equivalent to degree. The applicants rely upon Government notification OM No. F .18-19/75/T-2 dated 26.05.1977 which inter alia provide that the diploma in Engineering in appropriate discipline plus total 10 years experience in appropriate fields be recognised as equivalent to degree in Engineering. The said notification is reproduced hereunder:

**No.F16-19/75/T-2
Ministry of Education & Social Welfare
(Deptt. Of Education Technical)
New Delhi-110001 Dated 26 May, 1977**

Sub: Recognition of Technical & Professional Qualification

On the recommendation of the Board of Assessment for Educational Qualifications 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 in 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.

(V.R. Reddy)
Director (Tech.)

To be published in Gazette of India and NCO Code Book.

Copy to :-All Ministries, Departments of the Government of India/State Government/Regional Offices/State Public Service Commissions etc."

2. The grievance of the applicants is that even though the applicants have 10 years experience in their respective disciplines i.e. (Civil and Electrical fields) and being diploma holder engineers, they are not being considered for promotion to the post of Executive Engineer treating their qualification (diploma in Engineering plus 10 years experience in the field) as equivalent to degree in Engineering. The applicants have thus filed the present OA seeking the following reliefs:

"(i) to declare the action of respondents in not recognizing applicant's 10 years technical experience with diploma in Civil/Electrical Engineering, as illegal, arbitrary and unjustified and direct the respondents to consider the case of applicants for promotion to the post of EE (Civil & Electrical) by treating their diploma in Engineering with 10 years technical experience equivalent to degree in terms of Govt. of India notification dated 26.05.1977 and decision of Hon'ble High Court of Punjab & Haryana in CWP No. 11156/2009.

(ii) to all the OA with cost.

(iii) to pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case."

3. From the counter affidavit, it appears that the respondents have not disputed the existence of this notification dated 26.05.1977. Reference is made to various correspondence between the Ministry of Education and Social Welfare (Department of Technical Education), Ministry of Defence and Ministry

of HRD. It is accordingly stated that none of these departments have responded.

4. Sh. Gyanendra Singh, learned counsel appearing on behalf of the respondents, however, submits that he may be allowed further opportunity to seek instructions from the Ministry of HRD. We fail to understand the purpose for the same as the respondents in the counter affidavit have clearly stated that they approached the Ministry of HRD twice, but the said notification is not available with them and no response has been received from the Ministry.

5. The question whether the diploma holders with 10 years experience in particular field can be treated as possessing the degree in Engineering has already been considered by at least two High Courts, as also by this Tribunal in OA No. 2651/2012. Diploma in Engineering with ten years experience in the field has been treated as equivalent to degree in Engineering. After noticing the notification dated 26.05.1977, a Co-ordinate Bench of this Tribunal in OA No. 2651/2012-**Sh. T.R. Sharma & Ors. Vs. Union of India & Ors.** decided on 26.04.2013, issued the following directions:

"14. We direct that the applicants may be considered for grant of this benefit in terms of Government of India Instructions dated 26.05.1977 by which diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL. We further direct that, in any case, recovery of any excess payment will not be made from the applicant. The O.A. is accordingly allowed. There shall be no order as to costs."

6. The Hon'ble Delhi High Court also examined the question of equivalence of qualification of the diploma in engineering with 10 years regular service in the field with degree in engineering in the light of the notification dated 26.05.1977 while considering the question of grant of financial upgradation under ACP Scheme. The question for consideration was whether engineers working in the

Bharat Sanchar Nigam Limited and Mahanagar Telephone Nagar Limited having qualification of diploma with 10 years experience in the field are to be treated at par with the engineers having degree in Engineering to their credit. Relying upon notification dated 26.05.1977, the Hon'ble High Court vide judgment dated 13.10.2014 passed in W.P. (C) No. 6922/2014-**UOI & Ors. Vs. M.P.**

Shrivastava & Ors., held as under :

“8. The last contention with regard to the applicability of the 2001 Office Memorandum, in our opinion, is rendered irrelevant in the light of the previous discussion with regard to the applicant's equivalence of degree qualifications. This Court is of the opinion that having regard to the object of the ACP Scheme, i.e. to alleviate stagnation for long periods and given that the equivalence criteria have been met, the insistence upon eligibility conditions spelt-out in the recruitment rules would render the benefits under the scheme illusory. At any rate, having regard to the declaration of equivalence made by the 26.05.1977 circular, which was applicable in the present case, it cannot be said that the respondents/applicants were ineligible for the second ACP.”

7. A similar view has been taken by Hon'ble Punjab and Haryana High Court in WP(C) 11156/2009 decided on 23.12.2009 relying upon an earlier Division Bench judgment. The relevant observations of the Hon'ble Punjab and Haryana High Court are reproduced as under:

“Civil Writ Petition Nos.11156,1154, 7431 & 9513 of 2009

1. All the writ petitions relate to claim by the respective petitioners that they have diploma certificates from recognized institutes and they also have 10 years of technical experience in the appropriate fields. By a notification issued by the Ministry of Education and Social Welfare, Department of Technical Education, dated 26.05.1977, and acting on the recommendations of the Board of Assessments for Educational qualification and the Recommendation of Defence Director(Technical), the Government of India has decided to recognize such diploma with 10 years experience as equivalent to a degree in engineering. The notification further states that it shall be valid for the purpose of selection to gazette post and service under the Central Government or the State Government. 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 Civil Writ Petition No.11156 of 2009-3-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.

2.

All the writ petitions are allowed in the above terms."

8. In view of the dictum of the aforesaid judgments of the two High Courts, the controversy is no more *res integra*. Sh. Gyanendra Singh has, however, vehemently argued that the notification cannot be applied in the present case. This argument is totally fallacious and cannot be accepted.

9. For the reasons mentioned herein above and the issue having been settled by two different High Court judgments as also by a Co-ordinate Bench of this Tribunal, this OA is allowed. The respondents are directed to consider the applicants for their promotion to the post of EE(Civil and Electrical) considering their diploma in Engineering with ten years experience in the filed (Civil and Engineering) as equivalent to degree in Engineering. The consideration shall be accorded against the quota meant for the AE under the Recruitment Rules. Such consideration shall be against the available vacancies. The applicants along with all eligible candidates in this category shall be accorded consideration in accordance with law within three months from the date of receipt of copy of this order.

(Shekhar Agarwal)
Member (A)

(Justice Permod Kohli)
Chairman

/ns/