

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 05.08.2014

+ **W.P.(C) 4879/2014, C.M. NO.9743-9745/2014**

UNION OF INDIA AND ORS. Petitioners
Through : Sh. Saqib, Advocate.

Versus

SH. T.R. SHARMA AND ORS. Respondents
Through : None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIPIN SANGHI

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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C.M. NO. 9745/2014 (for exemption)

Allowed, subject to all just exceptions.

W.P.(C) 4879/2014, C.M. NO.9743-9744/2014

1. The Union of India, Department of Posts claims to be aggrieved by the impugned order of the Central Administrative Tribunal (CAT) dated 26.04.2013 in O.A. No.2651/2012.

2. The brief facts are that the respondents/applicants were, at the relevant time, working in the erstwhile Department of Telecommunications (DoT). Upon its reorganization into the Bharat Sanchar Nigam Limited (BSNL) and the Mahanagar Telephone Nigam Limited (MTNL), the Department of Posts opted to continue with the Central Government. It is not disputed that the applicants/respondents were initially recruited some time in 1978 and

1979. The Department of Posts framed its rules under the proviso to Article 309 of the Constitution of India with effect from 06.08.1994 (hereafter referred to as the “1994 Rules”). Subsequently, upon the recommendations of an expert committee, the Assured Career Progression (ACP) scheme was brought into force some time in 1999. It is not disputed that the respondents/applicants, on account of the continued stagnation in the same grade, i.e. Joint Engineer, were given the benefit of first financial upgradation some time in 2000. The rules provided for direct recruitment to fill the post of Executive Engineer (EE) through the Engineering Services Examination conducted by the Union Public Service Commission (UPSC). It is not disputed that the applicants/respondents, after completion of considerable periods of service between 1994 and 2000 were promoted to the post of Assistant Engineer (AE) which was, apparently, subsequently redesignated as Assistant Executive Engineer (AEE). On various dates between 2002 and 2003, they were granted the second financial upgradation under the ACP Scheme. Subsequently, on 08.11.2006, a Show Cause Notice was issued to them, demanding as to why the second financial upgradation ought not to be withdrawn and in 2012, the benefit of second financial upgradation was withdrawn. This led to the respondents approaching the CAT, which allowed the plea and quashed the Show Cause Notice and the proposed recovery.

3. It was urged on behalf of the UOI that the ACP scheme benefits are premised upon the incumbent fulfilling the necessary eligibility conditions, including the educational qualifications stipulated in the

rules. Learned counsel highlighted that in terms of Entry-4 of the Schedule IV Part-II to the 1994 Rules read with Rule 7(4), the senior time scale Executive Engineers could be promoted to the extent of 50% from AEE (erstwhile AEs) on the basis of seniority-cum-fitness and 50% on the basis of 8 years' regular service in the grade, provided they possessed a degree in engineering or equivalent. It was argued that the note appended to the Rule was applicable only to the incumbent AEs (AEEs) and that since the respondents/applicants were not incumbents as on the date the rules came into force in 1994, they were disentitled to the benefits. Learned counsel relied upon a clarification issued by the Department of Personnel and Training (DoPT) in the year 2001; the terms of the Office Memorandum dated 18.07.2001 issued by the DoPT stated that the benefits under the ACP Scheme were conditional upon the incumbents satisfying all the eligibility conditions, including their possessing the educational qualifications. It was argued that the CAT, therefore, fell into error in overlooking this salient aspect.

4. Learned counsel submitted that the CAT's reliance upon an Office Memorandum dated 30.03.2007 in respect of employees of BSNL and MTNL was, in the circumstances of the case, misplaced. He argued that those employees are governed by an entirely different set of rules. Learned counsel highlighted that equally, the CAT's reliance upon the Central Government's instructions dated 26.05.1977, to say that ten years' experience with a diploma in engineering is deemed equivalent, was not appropriate. He relied upon the order of

this Court in W.P.(C)1293/2011, i.e. *UOI and Anr. v. S.C. Surliya and Ors.* (decided on 16.10.2012). Before discussing the merits, it would be necessary to extract the relevant part of the rules applicable to the post of EE/senior time scale EE/SW:

<p>4. <i>Sr. Time Scale By Promotion</i> <i>[EE(E)/SW(E)</i></p> <p><i>Rs.3000-100-</i> <i>3500-125-</i> <i>4500</i></p>	<p>(i) 50% from Asstt. Executive Engineers (Elect.) who have completed probation and have rendered not less than 4 years regular service in the grade on the basis of seniority-cum-fitness;</p> <p>(ii) 50% from Asstt. Engineers (Elect.)/Asstt. Surveyor of Works (Elect.)/Engineering Assistant (Elect). Who have completed probation and have rendered not less than 8 years regular service in the grade and possess a degree in engineering or equivalent.</p> <p><i>Note: However, the existing incumbents holding the post of Asstt. Engineer (Elect.) on a regular basis on the date of notification of these recruitment rules shall continue to be eligible for promotion to the post of Executive Engineer (Elect) if they possess a Diploma in Elect. Engg. from a recognized University/Institution or equivalent and 8 years</i></p>
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5. The CAT's findings, as mentioned earlier, are premised upon two reasons – firstly, that the MTNL/BSNL employees who were erstwhile colleagues of the applicants, were given the ACP benefits in terms of the 2007 memorandum whereas the applicants were denied the same treatment – leading to discrimination, and secondly, that the circular of 1977 clarified that 10 years' experience of the diploma holders would be deemed to be a degree in engineering.

6. In the present case, the Rules, especially Entry 4(2), specifically mentioned eight years' regular service in the grade with the necessary qualifications, i.e. "possessed a degree in engineering or equivalent". The CAT relied upon a circular declaring equivalence, issued by the Central Government, dated 26.05.1977. The same is in the following terms:

***"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.”

7. This Court is of the opinion that in the absence of any material contradicting the CAT's inference that the equivalence was applicable and held good, even as on date, the UOI's contentions cannot be accepted. If indeed the UOI is right in contending that equivalence is a matter which has to be considered from service to service and having regard to the time, there has to be some material apart from the bare assertion that the 26.05.1977 declaration of equivalence – which is wide and applicable to “all posts and services under the Central Government” - is not correct. In the absence of any such material, the UOI's contention, in our opinion, was rightly rejected. As far as the decision in *Surliya (supra)* was concerned, the CAT itself noticed that while the 1994 Recruitment Rules, which are in issue in the present case, were undoubtedly considered, the question of equivalence had not been discussed at all. Apparently, the 26.05.1977 circular was not

brought to the notice of the Court at this stage. Therefore, *Surliya* (*supra*) decision is not an authority on the ineligibility of those, like applicants/respondents, who were deemed to possess qualifications equivalent to a degree in engineering and, therefore, entitled to second ACP benefits.

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.

9. For the foregoing reasons, the writ petition lacks in merit. It is accordingly dismissed.

S. RAVINDRA BHAT
(JUDGE)

VIPIN SANGHI
(JUDGE)

AUGUST 05, 2014/ajk