

**CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH**

**O.A.No.343-PB-2013
Orders pronounced on :15.12.2015
(Orders reserved on: 01.12.2015)**

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

1. Om Prakash Kangotra son of Late Sh. Gobind Ram Kangotra, DDK, Jalandhar (Pb.)
 2. Kewal Krishan son of Sh. Daulat Ram, DDK, Jalandhar (Pb.)
 3. Des Raj son of Sh. Lakha Ram, DDK, Jalandhar (Pb.)
 4. Preminder Singh son of Sh. Jagir Singh, HPT Samba (J&K).
 5. Veer Singh Kain son of Sh. Lala Ram, HPT, Dharamshala (HP).
 6. Javinder Singh son of Sh. Sadhu Singh, DDK, Jalandhar.
 7. Bhupinder Singh Thind son of Sh. Joginder Singh, HPT Amritsar (Pb.)
 8. Kartar Chand son of Sh. Rakha Ram, DDK Jalandhar (Pb.).
 9. Jarnail Ram son of Sh. Kabul Ram, DDK, Jalandhar (Pb.)
 10. Pushpendra Kr. Tyagi son of Sh. Mool Chand Tyagi, - do-
 11. Ram Krishan son of Sh. Manghar Ram, -do-
 12. Joginder Pal Saroha son of Sh. Neki Ram, - do-
 13. Sunil Kumar Sharma son of Sh. Bharat Bhushan Sharma, HPT Kupwara (J&K)
 14. Smt. Rita Marwaha wife of Sh. G.K. Marwaha, HPT Samba (J&K).
 15. Sharat Kumar son of Sh. Rameshwar Prasad, -do-
 16. Rajesh Kumar son of Sh. Hazari Mal, HPT Amritsar.
 17. Dharmjit Singh Gill son of Sh. Balwant Singh, DDK Jalandhar.
 18. Mohinder Lal son of Sh. Piari Lal, -do-
 19. Devinderjit Singh son of Sh. Ram Singh, -do-
 20. Bhupinder Singh son of Sh. Gurmail Singh, do-
 21. Som Parkash son of Sh. Mohan Lal, HPT Amritsar.
 22. Devinder Kumar son of Sh. Nirjan Dass, AIR Jalandhar.
- (Applicant at Serial No.1 to 2 are working as Assistant Engineer in the office of Doordarshan Kendra, Bhagwan, Mahavir Marg, G.T. Road, Jalandhar, Punjab and applicant No. 22 is working in A.I.R. Jalandhar.)

----- Applicants

Versus

1. Union of India through Secretary, Ministry of Information and Broadcasting, New Delhi.
2. Chief Executive Officer, Prasar Bharti, PTI Building, New Delhi.
3. Director General, All India Radio, Akashvani Bhawan, Parliament Street, New Delhi.
4. Director General, Doordarshan, Doordarshan Bhawan, Copernicus Marg, Mandi House, New Delhi.
5. Mrs. Sudha Kiran Jain W/o Sh. Praveen Kumar Jain, R/o Flat No. 554, Shanti Van and Radio Colony, H/B Society, Sector 48-A, Chandigarh.
6. Union Public Service Commission through its Secretary, Dholpur House, Shahjahan Road, New Delhi.
7. University Grants Commission, through its Chairman, Bahadur Shah Zafar Marg, New Delhi.
8. Union of India through its Secretary, Ministry of Human Resource Development, Shastri Bhawan, Rajendra Prasad Road, New Delhi.
9. All India Council of Technical Education, through its Secretary, 7th floor, Chanderlok Building, Janpath, New Delhi.

----- Respondents

Present: Mr. D.R. Sharma, counsel for the applicants.
Mr. V.K. Arya, counsel for respondents No.1-4.
Mr. Lalit Rishi, Counsel for Respondent No.5.
Mr. B.B. Sharma, Counsel for Respondent No.6
Mr. Arvind Moudgil, Counsel for R.No.8.
None for Respondents No.7&9.

ORDER

HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. Twenty Two applicants have joined in this Original Application praying for grant of a declaration that they are possessing qualification of Degree in Engineering by virtue of having Diploma in Engineering with the requisite experience in the respective fields of academic discipline in the light of the Government of India notification dated 26.5.1977 (Annexure A-1).
2. The facts which led to filing of the case are that the service of the applicants is governed by the Indian Broadcasting (Engineers) Service Rules, 1981 which have been amended from time to time. Under these rules, Assistant Engineers, after 2 years of regular service, are eligible for promotion to the post of Assistant Director Engineer (ADE), a Junior Time Scale (JTS) post., Therefore, upon 4 years of regular service as ADE, one is eligible for promotion to the cadre of Deputy Director (Engineering), a Senior Time Scale (STS) post.
3. A notification dated 26.5.1977 is alleged to have been issued by the Ministry of Education & Social Welfare, New Delhi providing to recognize a Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate filed as equivalent to Degree in Engineering. The same being relevant is reproduced as under :-

**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 qualifications.

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 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.

**Sd/-
(V.P. Poddy)
Director (Tech.)**

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

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

4. The applicants, thus, plead that their qualification of Diploma in Engineering with 10 years' experience is to be treated as equivalent to Degree in Engineering, thereby,

making them eligible for promotion to higher posts in the department. They submit that juniors to the applicants on the basis of such anomaly have already been promoted to higher posts of Assistant Director (Engineering), A Junior Time Scale Grade of IB(E)S Rs.8000-13500 etc. The applicants submitted representation dated 12.12.2012 (A-1) for treatment of their Diploma as equivalent to Engineering Degree and promotion on that basis but to no avail, hence the Original Application.

5. The respondents have filed a reply and have pleaded inter-alia that the notification, Annexure A-1 has never been issued by the Ministry in question and as such the applicants cannot take any benefit of the same.
6. We have heard available learned counsel for the parties and examined the material available on record.
7. The learned counsel for the applicant vehemently argued that the case of the applicants is covered by decision of our jurisdictional High Court in C.W.P. No. 5203 of 2010 titled Narender Singh Vs. State of Haryana, decided on 23.1.2012; C.W.P. Nos. 11156 of 2009 titled Ami Lal and Another Vs. Union of India decided on 23.12.2009, C.W.P. No. 17974 of 2006 titled Devinder Singh Malik Versus H.P.K. G.C.I. and others decided on 10.1.2008 inasmuch as in those cases the Diploma in Engineering with 10 years of service has been recognized as equivalent to Degree in Engineering and incumbents were granted promotional benefits on that basis and as such the applicants cannot be denied similar benefits.
8. On the other hand learned counsel for the respondents argued that since the authenticity of very notification, upon which those decisions are based is under clouds the applicants cannot be granted any benefit.
9. We have considered the submissions made by learned counsel for the respective parties and examined the material available on record with their able assistance.
10. Respondent No.8, Union of India through its Secretary, Ministry of Human Resource Development, Shastri Bhawan, Rajendra Prasad Road, New Delhi, was called upon to file a reply on the authenticity of the notification of 1977 aforesaid. They have filed a short reply stating as under :-

- “4. Ministry of answering respondent took all possible efforts to procure the original notification, if any, and requested the Central Record Unit (CRU) Section of the Ministry to trace the same. However, it was reported by the CRU Section that the purported file / notification has not been received by them. Further, the Ministry of answering respondent also requested the Department of Publication, Ministry of Urban Development, Government of India, which is the repository of the Gazette Notification published in Government of India Press which also stated that they are receiving several thousands of notifications every year since the year 1962 and had received several enquiries regarding this notification (A-1) and in spite of all possible efforts the said notification is not traceable in their Department. They, also intimated that the required notification is not traceable as the file No. 18-19/75/T-2 dated 26.5.1977 neither quoted part, section, sub-section in which it was supposed to be published nor allocated name of the Press to which it was sent for printing. It is pertinent to mention that the purported notification should have been published in part-I, Section-1 of Gazette of India in Government of India Press at Faridabad as per the Manual of Office Procedure (MOP) being followed by the Ministry in respect of publication of notification.**
- 5. That the copy of the purported notification as mentioned by the applicants bearing No. 18-10/75 T-2 dated 26.5.1977 may have been a fictitious notification that is why it does**

not appear to have been published in the Gazette of India. Thus, views on further promotion cannot be formed on the basis of purported draft notification No. 18-19/75/T-2 dated 26.5.1977 procured by the applicants which appears to be fictitious and thus the O.A. filed by the applicant deserves to be dismissed.”

11. The aforesaid reply was filed by the Respondent No. 8 on 14.10.2015 and a copy thereof was also handed over to office of learned counsel for the applicants on 14.10.2015 itself. There is no counter to this short reply which contains a specific plea that the notification of 1977 fiercely relied upon by the learned counsel for the applicants is fictitious.
12. Learned counsel for the applicants, despite the plea taken by learned counsel for the respondent no. 8 and short reply filed by them that the notification in question is fictitious and as such cannot be relied upon, insisted that the applicants cannot be denied the benefit of the said notification which has been the basis of decisions by Hon'ble Jurisdictional High Court in a number of cases as aforesaid. The plea taken by the learned counsel for the applicants lacks substance and has to be dismissed for the simple reason that in none of those cases the plea of notification being fictitious one was neither raised nor decided upon and as such those decisions have to be taken as per *incuriam* and even otherwise are *sub silentio*.
13. The legal position on the issue is also settled that if a judgment or order is obtained by fraud, it cannot at all be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke had proclaimed that "Fraud avoids all judicial acts, ecclesiastical or temporal". It has been held by highest court of the country that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and nonest in the eye of law. Such a judgment, decree or order, by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. In the leading case of *Lazarus Estates Ltd. v. Beasley*, (1956) 1 All ER 341, Lord Denning observed:

"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud." Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in *personam*. The principle of 'finality of litigation' cannot be stretched to the extent of an absurdity that it can be utilized as an engine of oppression by dishonest and fraudulent litigants."

14. In *S.P. Chengalvaraya Naidu (dead) by LRs. V. Jagannath (dead) by LRs. & Ors.* (1994) 1 SCC 1 the Apex Court had an occasion to consider the doctrine of fraud and the effect thereof on the judgment obtained by a party. In that case, one A by a registered deed, relinquished all his rights in the suit property in favour of C who sold the property to B. Without disclosing that fact, A filed a suit for possession against B and obtained preliminary decree. During the pendency of an application for final decree, B came to know about the fact of release deed by A in favour of C. He, therefore, contended that the decree was obtained by playing fraud on the court and was a nullity. The trial court upheld the contention and dismissed the application. The High Court, however, set aside the order of the trial court, observing that "there was no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". B approached this Court. Allowing the appeal, setting aside the judgment of the High Court and describing the observations of the High Court as 'wholly perverse', it was held that "The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not,

process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation". The Court further held that "A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party". The Court concluded: "The principle of 'finality of litigation' cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants".

15. In *Indian Bank v. Satyam Fibres (India) Pvt. Ltd.*, (1996) 5 SCC 550 the Apex Court stated as under :-

"The judiciary in India also possesses inherent power, specially under Section 151 C.P.C., to recall its judgment or order if it is obtained by Fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the Decree obtained by fraud. Inherent powers are powers which are resident in all courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the Constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business".

16. In *United India Insurance Co. Ltd. v. Rajendra Singh & Ors.*, (2000) 3 SCC 581, by practising fraud upon the Insurance Company, the claimant obtained an award of compensation from the Motor Accident Claims Tribunal. On coming to know of fraud, the Insurance Company applied for recalling of the award. The Tribunal, however, dismissed the petition on the ground that it had no power to review its own award. The High Court confirmed the order. The Company approached the Apex Court. Allowing the appeal and setting aside the orders, the Apex Court held:

"It is unrealistic to expect the appellant company to resist a claim at the first instance on the basis of the fraud because appellant company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the company to file a statutory appeal against the award. Not only because of bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then."

17. The underlying theme of the discussion of aforesaid cases would disclose that a person cannot be allowed to claim that if a judgment has been delivered on untrue facts, then he or she may also be extended the benefit of the same or that if an order has been passed in case of some other employees, then similar benefit cannot be denied to the applicants, as it would amount to negative equality which is not permissible under law.
18. In *Gursharan Singh v. New Delhi Municipal Committee*, 1996 AIR 1175 the Supreme Court refused to invoke Article 14 of the Constitution of India for giving relief to the appellant and observed:

“Under Article 14 guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. If an illegality or irregularity has been committed in favour of any individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State within the meaning of Article 12 of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same, but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law.”

19. In *Secy., Jaipur Development Authority v. Daulat Mai Jain*, (1997) 1 SCC 35 the Hon'ble Supreme Court held as under:

“The illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not: form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalized. In other words, judicial process cannot be abused to perpetuate the illegalities. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back-up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches' of law, similar persons cannot plead, nor the Court can countenance that benefit had from infraction of law and must be followed to be retained. One illegality cannot be compounded by permitting similar illegal or illegitimate or ultra vires acts.”

20. In *State of Haryana v. Ram Kumar Mann*, [1997(3)SCC 321] the Hon'ble Supreme Court ruled that the High Court was not right in; issuing a mandamus to the State to allow the petitioner to withdraw his resignation merely because in another case such a course was adopted. Some of the observations made in that case, which are quite instructive, are extracted below:

“The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent ' has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing misappropriation of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously 'No'. In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right.”

21. In *Faridabad CT. Scan Centre v. D.G. Health Services*, (1997) 7 SCC 752. the three Judges Bench of the Hon'ble Supreme Court over-ruled the earlier decision of the two Judge Bench and held:

"Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the help of Article 14 on the basis that such wrong orders were earlier passed in favour of some other persons and that, therefore, there will be discrimination against others if correct orders are passed against them. The benefit of the exemption notification, in the present case, cannot, therefore, be extended to the petitioner on the ground that such benefit has been wrongly extended to others."

22. In *State of Bihar v. Kameshwar Prasad Singh*, [(2000) 9 SCC 94] the Hon'ble Supreme Court held that an erroneous judgment rendered by the High Court in the matter of seniority of an employee cannot justify a similar direction in case of another employee and observed:

"The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals, others; cannot claim the same illegality or irregularity on the ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits."

23. In *Union of India v. International Trading Co.*, (2003) 5 SCC 437 the Hon'ble Supreme Court ruled that Article 14, does not comprehend negative equality and observed:

"What remains now to be considered, is the effect of permission granted to the thirty two vessels. As highlighted by learned Counsel -for the appellants, even if it is accepted that" there was any improper permission, that may render such permissions vulnerable so far as the thirty two vessels are concerned, but it cannot come to the aid of the respondents. It is not necessary to deal with that aspect because two wrongs do not make one right. A party cannot claim that since something wrong has been done in another case direction should be given for doing another wrong. It would not be setting a wrong right, but would be perpetuating another wrong. In such matters there is no discrimination involved. The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. They have to establish strength of their case on some other basis and not by claiming negative equality."

24. The observations made by the apex court of the country leaves us with no other option except to hold that the applicants cannot be granted benefit sought for by them based on notification of 1977, which has been now termed as fictitious by the relevant authority and or judgments which are based upon the aforesaid fictitious notification. In view thereof, this Original Application turns out to be devoid of any merit and is dismissed. Needles to mention that the interim order dated 20.3.2013 granted in the terms that 'Promotions, if any, come to be made in the meantime, shall be subject to the outcome of the OA' stands vacated.

25. The parties are left to bear their costs.

26. A copy of this decision be forwarded by the Registry to the Secretary, Ministry of Human Resource Development, Government of India, New Delhi, so that they may issue a specific notification on the issue to all concerned clarifying the position so that unscrupulous elements are not in a position to befool the innocent citizens about validity of the qualification as equivalent to degree and that the ineligible may not be able to get benefit of this kind of qualification by treatment of same as full-fledged qualification / degree and if possible by giving a note on the web site itself so that the public may become aware about the actual status of the qualification in question.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Place: Chandigarh

Dated: 15.12.2015