

**Central Administrative Tribunal
Ahmedabad Bench, Ahmedabad.
O.A. No.537 of 2016
With
O.A. No.10 of 2017
&
O.A. No.11 of 2017**



This the 27th day of July, 2021

(Through Video Conferencing)

**Hon'ble Mr. R.N. Singh, Member (J)
Hon'ble Shri A.K. Dubey, Member (A)**

O.A. No.537 of 2016

1. SMT. MAMTA GADURA,
Widow of Late Shri Anup Chetandas Gadura,
Aged: 68 years
Presently residing at No.D-304, Poornam
Residency
Prominent Hotel Road, Kudasan,
GANDHINAGAR 382421.
2. ANKIT GADURA
Son of Late Shri Anup Chetandas Gadura,
Aged: 33 years
Presently residing at No.D-304, Poornam
Residency
Prominent Hotel Road, Kudasan,
GANDHINAGAR 382421.

..Applicants
(Legal Heirs of the Original Applicant)

(through Advocate: Shri M.S. Rao)

VERSUS

1. Union of India
(Through its Secretary to the Government of India,



Department of Telecommunications,
Ministry of Communications & Information
Technology,
Govt. of India, 20 Ashoka Road,
New Delhi-110001).

2. Bharat Sanchar Nigam Limited
(Through its Chairman & Managing Director)
BSNL Hqrs., Registered & Corporate Office,
Bharat Sanchar Bhavan, H.C. Mathur Lane,
Janpath,
New Delhi-110001.
3. The Principal General Manager (B,W)
O/o PGM/(BW)
BSNL Corporate Office,
Telegraph Office Bldg.,
Kashmere Gate,
Delhi-110006.
4. The Chief Engineer (C)
O/o Chief Engineer (C),
BSNL, Gujarat Zone,
1st Floor, RTSD Bldg., Near Girdharnagar Railway
Crossing, Shahibaug, AHMEDABAD 380004.
5. The Chief General Manager,
O/o CGMT, Gujarat Telecom Circle,
Bharat Sanchar Nigam Limited,
3rd Floor, A Wing, Telephone Bhavan,
CG Road, AHMEDABAD 380006.
6. The Controller of Communication Accounts
O/o Controller of Communication Accounts,
Gujarat Telecom Circle,
Department of Telecommunications,
Ministry of Communications & Information
Technology,
Govt. of India, 7th Floor, P&T Administrative Bldg.,
Khanpur,
AHMEDABAD 380001.

... Respondents
(through Advocates: Shri H.D. Shukla for R-1 & R-6 and

Shri M.J. Patel for R-2 to R-5)



O.A. No.10 of 2017

1. DIGAMBER SINGH
Aged : 57 years (DoB being 01.07.1959)
S/o Shri Digpal Singh
Presently serving as SDE (Civil), BSNL,
Ahmedabad,
Residing at No.7, Park View Apptt.,
Near Asopalav Party Plot,
Near Jodhpur Gam, Satellite Area,
AHMEDABAD 380015.
2. RAJVIR SINGH
Aged L 57 years (DoB being 09.07.1959)
Son of Shri Triloki Singh
Presently serving as SDE (Civil) in O/o EE (Civil),
Div.II, BSNL, Shahibaug, Ahmedabad,
Residing at No.A/3, Simandar Residency-II,
Opp. Vishwakarma Temple, Gota Road,
Chandlodia,
AHMEDABAD 382481.

....Applicants

(through Advocate: Shri M.S. Rao)

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(Through its Secretary to the Government of India,
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Janpath, New Delhi-110001.
3. The Principal General Manager (B,W)
O/o PGM/(BW)
BSNL Corporate Office,



Telegraph Office Bldg.,
Kashmere Gate, Delhi-110006.

4. The Chief Engineer (C)
O/o Chief Engineer (C),
BSNL, Gujarat Zone,
1st Floor, RTSD Bldg., Near Girdharnagar Railway
Crossing, Shahibaug, AHMEDABAD 380004.
5. The Chief General Manager,
O/o CGMT, Gujarat Telecom Circle,
Bharat Sanchar Nigam Limited,
3rd Floor, A Wing, Telephone Bhavan,
CG Road, AHMEDABAD 380006.

... Respondents

(through Advocates: Shri M.J. Patel for R-2 to R-5 and
Shri R.R. Patel for R-1)

O.A. No.11 of 2017

1. AAMRUTLAL DEVABHAI DALWADI
Aged : 60 years (DoB being 07.06.1956)
S/o Shri Devabhai Dalwadi
Retd. SDE (Civil), BSNL, Ahmedabad
Residing at No.14, Madhupuri Tenament,
Opp. Times of India Press, Satellite Post :
Manekbag,
AHMEDABAD 380015.

..Applicant

(through Advocate: Shri M.S. Rao)

VERSUS

1. Union of India
(Through its Secretary to the Government of India,
Department of Telecommunications,



Ministry of Communications & Information Technology,
Govt. of India, 20 Ashoka Road,
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(Through its Chairman & Managing Director)
BSNL Hqrs., Registered & Corporate Office,
Bharat Sanchar Bhavan, H.C. Mathur Lane,
Janpath,
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Kashmere Gate,
Delhi-110006.
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O/o Chief Engineer (C),
BSNL, Gujarat Zone,
1st Floor, RTSD Bldg., Near Girdharnagar Railway Crossing, Shahibaug, AHMEDABAD 380004.
5. The Chief General Manager,
O/o CGMT, Gujarat Telecom Circle,
Bharat Sanchar Nigam Limited,
3rd Floor, A Wing, Telephone Bhavan,
CG Road, AHMEDABAD 380006.
6. The Controller of Communication Accounts
O/o Controller of Communication Accounts,
Gujarat Telecom Circle,
Department of Telecommunications,
Ministry of Communications & Information Technology,
Govt. of India, 7th Floor, P&T Administrative Bldg.,
Khanpur,
AHMEDABAD 380001.

... Respondents

(through Advocate: Shri R.R. Patel for R-1 and R-6
Shri M.J. Patel for R.2 to R-5))



ORDER (Oral)

Hon'ble Mr. R. N. Singh, Member (J):

It is not in dispute that the issue raised in the aforesaid three OAs are identical, relief(s) sought and the grounds therefor are also identical and, therefore, with the consent of the learned counsels for the parties, all the aforesaid three Original Applications have been heard together and are being disposed of vide the present common Order/Judgment.

2. For convenience of writing the present Order/Judgment, the facts are being taken from the OA No.537/2016. The Original Application has been filed by the applicant praying therein for the following reliefs:-

“A. Call upon the respondents herein to place before this Hon'ble Tribunal for its perusal the entire original file/noting file/documents giving rise to the issue of the impugned decision of the BSNL and its authorities and also the consequent issuance of the impugned documents at Annexure-A1 to Annexure-A/4 hereto by the official respondents herein;

B. Upon the close scrutiny and perusal of the aforesaid original file/noting file/

documents, your Lordships may be graciously further pleased to :-



- B-1 hold & declare that the 2nd ACP granted to the applicant herein by BSNL vide its Revised Order No. Staff/13-1/TBP/CE(Civil).SDE-2007/17 dated 15.09.2008, referred to hereinabove, is perfectly legal, valid and proper inasmuch as the applicant herein is lawfully as of right entitled and eligible to the grant of the said 2nd ACP;
- B-2 further hold and declare that even otherwise having regard to the peculiar facts & circumstances of the present case, the applicant herein is as of right entitled to the relaxation of the recruitment rules in question so as to entitle them to the grant of 2nd ACP which in fact was granted to him on 15.09.2008 but subsequently withdrawn on 13.10.2008.
- B-3 quash and set aside (i) the Office Order No.8(2)/2008/CE/BSNL-AHD/567 dated 13.10.2008 at Annexure-A/1 hereto, (ii) Impugned Office Order bearing No.Staff-13-1/TBP/CE(Civil)/SDE/2007/46, dated 25.02.2009 at Annexure-A/2 hereto, (iii) Communication bearing No.400-106/2013-Pers.I dated 16.07.2015 at Annexure-A/3 hereto in so far as it seeks to exclude the cadre of Assistant Engineer (Civil) while extending the relaxation in the mandatory qualification to the cadre of Executive Engineer Civil) and (ii) the inter office communication bearing No.2nd ACP/DMN(BW-II)/2015 dated



18.01.2016 at Annexure-A/4 hereto, declaring and holding the same to be ex facie arbitrary, unreasonable, discriminatory, violative of the principles of natural justice and not permissible in law;

- C. issue appropriate directions to the official respondents herein to forthwith restore the operation & execution of the Revised Order No. Staff/13-1/TBP/CE(Civil)/SDE-2007/17 dated 15.09.2008, referred to hereinabove, with all consequential benefits flowing therefrom including the arrears of difference of salary for the period in question, appropriate revision of pension, arrears of all the retiral dues including the DCRG, Leave Encashment, etc. etc., with interest thereon at the rate of 18% p.a. till its actual payment to the applicant herein.
- D. Impose an exemplary cost of Rs.50,000/- on the BSNL authorities herein towards the cost of this litigation;
- E. Since the applicant is a retired & senior citizen, this Hon'ble Tribunal may be further graciously pleased to decide the present OA on merits on priority basis;
- F. Grant such other and further relief/s as may be deemed fit and proper in the peculiar facts and circumstances of the present case.”

3. The Original Application (OA No.537/2016) has been filed by the applicant (Shri Anup Chetandas Gadura),



who retired while working as SDE (Civil, BSNL, Ahmedabad and during the pendency of the aforesaid OA, unfortunately the applicant is stated to have expired on 28.4.2021. In view of his unfortunate demise, his legal heirs have approached this Tribunal by way of a Misc. Application seeking their substitution in his place and the said Misc. Application has also been admittedly allowed by this Tribunal. The applicant has also filed MA No.352/2016 seeking condonation of delay in filing the aforesaid OA. The applicants in the remaining two OAs have also filed MA Nos.8/2017 and 10/2017 in respective OAs seeking condonation of delay in filing of the respective OAs.

4. Pursuant to notice from this Tribunal, the respondents have filed their replies and have opposed their prayer, as made in the aforesaid Misc. Applications seeking condonation of delay as well as those in the OAs on merit.

5. When these matters are taken up for hearing, it has been put to the learned counsels for the respondents that once the applicants' challenge is against the decision



of the respondents withdrawing the benefits of 2nd ACP granted to them and final decision of the respondents communicated only vide impugned orders dated 16.7.2015 and 18.1.2016, how the OAs are not within limitation.

Though by way of counter replies, the respondents have opposed the said Misc. Applications seeking condonation of delay in filing of the aforesaid OAs, however, learned counsels appearing for the respondents have very fairly submitted that so far as OA 537/2016 is concerned, there is no delay. Moreover, we have considered the pleadings made on behalf of the parties and we have also considered the submissions made by the learned counsels appearing for them. It is not in dispute that this is the third round of litigation on the issue involved in the present OAs. It is also not in dispute that initially the applicants in the aforesaid OAs were accorded the benefits of 2nd ACP by the respondents, however, the said benefits were withdrawn by them vide impugned orders and on account of such orders withdrawing the benefits of 2nd ACP, the applicants have suffered loss in the monthly salary as well as after their retirements in their respective pensions and retiral dues.



Though the learned counsels appearing for the respondents have opposed the said Misc. Applications seeking condonation of delay in filing the remaining two OAs, however, it is not in dispute that applicants in those OAs have also approached this Tribunal within one year of the date of the impugned orders. However, in view of the fact that as there were certain objections from the Registry of this Tribunal and on removal of such objections, the said two OAs got listed in the year 2017. In view of the facts and circumstances, particularly the challenge in the said remaining two OAs is to the final impugned orders issued by the respondents only in the years 2015 and 2016 and also the fact that on account of the impugned action and the orders of the respondents, the applicants have suffered loss in their monthly salary and pension after their retirements from the services of the respondents and the same continues till date, there is a recurring cause to the applicants. In this background, we are of the considered view that aforementioned Misc. Applications seeking condonation of delay in filing the respective OAs

deserve to be allowed and the same are accordingly allowed.



6. The brief background of the case is that the applicants have entered into the services of the erstwhile undivided Post and Telegram Department as Junior Engineer (Civil) in the year 1980. Once the Bharat Sanchar Nigam Limited (BSNL) came into existence, the applicants were deemed to have been on deputation as Junior Engineer (Civil) and they were re-designated as Junior Telecom Officer (Civil). The BSNL in consultation with the Department of Telecommunications, i.e., respondent No.1 introduced a Time Bound Promotion Policy vide letter dated 18.1.2007 (Annexure A/19) and in pursuance to this, the respondents vide order dated 15.09.2008 (Annexure A/22) granted the benefits of 2nd ACP to the applicants and have issued the order of pay fixation vide order dated 23.09.2008 (Annexure A/24). Subsequently, the respondents vide order dated 13.10.2008 have cancelled the aforesaid order dated 15.9.2008 on the ground that the applicants are not



fulfilling the mandatory educational qualification, i.e., graduation in Civil Engineering and minimum eight years of service. Aggrieved by the aforesaid decision of the respondents, the applicants have approached this Tribunal by filing OA Nos.440, 445, 447 and 448 of 2010 and by way of common Order/Judgment dated 14.10.2011 (Annexure A/29) in the said OAs along with another OA, this Tribunal dismissed the abovementioned OAs filed by the applicants therein. The said common Order/Judgment of this Tribunal was challenged by the applicants and similarly placed persons before the Hon'ble High Court of Gujarat at Ahmedabad by filing Special Civil Applications and the Hon'ble High Court of Gujarat vide Common Order/Judgment dated 22.1.2014 (Annexure A/30) in Civil Application No.12964/2013, etc., disposed of the said Writ Petitions and remitted the matters to the Tribunal to consider the case of the applicants afresh without being influenced by any earlier orders. Paragraph 2 of the said common Order/Judgment dated 22.1.2014 of the Hon'ble High Court of Gujarat at Ahmedabad reads as under:-

“2. Heard, Mr. Trivedi, learned Advocate for the applicants/appellants, Mr.



Saiyed, learned Advocate for respondent No.4, Mr. Trivedi submitted that the instructions issued by the Ministry of Education & Social Welfare (Dept. of Education Technical) vice Instructions No. F 18-19/75/T-2, Dated 26.05.1977, are under consideration before various Benches of the CAT and as the same was never placed before the CAT, Ahmedabad Bench, all the matters are remitted to the CAT, Ahmedabad Bench, Ahmedabad, by quashing and setting aside the impugned common order of the CAT, Ahmedabad, Dated : 14.10.2011. The CAT, Ahmedabad, will consider the case of the applicants/appellants, herein, afresh without being influenced by any earlier orders. All Civil applications as well as Writ-Petitions stand *DISPOSED OF*, accordingly.”

7. After hearing the aforementioned OAs preferred by the applicants and other connected case on being remitted by the Hon’ble High Court of Gujarat at Ahmedabad, this Tribunal vide common Order/Judgment dated 17.7.2014 (Annexure A/32) disposed of the said OAs with directions that, as and when, the Hon’ble Supreme Court decides the Special Leave to Appeal (Civil) No.10396/2008, the relief as sought by the applicant may be granted in the terms settled by the Apex Court. Paras 2 to 7 of the common Order/Judgment dated 17.7.2014 read as under:-



“2. The crux of the issue that emerges in the light of the directions of Hon’ble High Court and after the consideration of the application and reply in this OA is whether the circular dated 26.05.1977 of Department of Education and Social Welfare, Government of India by way diploma in Engineering with 10 years of technical experience has been recognized as equivalent to a degree in Engineering for the purposes of recruitment and promotion is applicable to the instant case.

3. The validity of the above mentioned circular has been discussed in two judgments of Punjab and Haryana High Court namely CWP No.5203/2010 and CPW No.17974/2006. It has also been relied upon in OA/2651/2012 by the Principal Bench of CAT in its order dated 26.04.2013.

4. It has also come to our notice that the orders of the Punjab and Haryana High Court dated 10.1.2008 in CPW No.17974/2006 is under challenge in a Petition for Special Leave to Appeal (Civil) No.10396/2008. In this matter, the Hon’ble Supreme Court has on 2-5-2008 passed the following order:

“Meanwhile, there shall be stay of operation of the impugned judgment and order of the High Court.”

5. In view the stay granted by the Hon’ble Supreme Court on the orders of the judgment dated 10-1-2008 in CWP No.17974/2006 of Hon’ble High Court of Punjab and Haryana, the issue of applicability of the circular dated 26-5-1977 of Ministry of Education & Social Welfare (Department of Education Technical), New Delhi remains to be finally settled.



6. The relief sought in this application can be settled only after the decision of the Hon'ble Supreme Court in SLP No.10396/2008. If based on the Apex Court's judgment, the circular dated 26-5-1977 of Ministry of Education & Social Welfare (Department of Education Technical), New Delhi attains validity, the relief sought by the applicant will have to be made available.

7. In view of the above, the OA is disposed of with a direction that, as and when, the Hon'ble Supreme Court decides the Special Leave to Appeal (Civil) No.10396/2008 is decided, the relief as sought by the applicant may be granted in the terms settled by the Apex Court."

The Hon'ble Supreme Court dismissed the SLP (Civil) No.591/2009 vide Judgment dated 17.5.2015 (Annexure A/38). Subsequent to the common Order/Judgment dated 17.7.2014 and the Order/Judgment dated 17.5.2015 of the Hon'ble Supreme Court under reference, the respondents passed the impugned order dated 16.7.2015 (Annexure A/3) and also order dated 18.1.2016 (Annexure A/4). Impugned order dated 16.7.2015 is regarding Educational qualification for promotion to the grade of EE (Civil/Elect.) – Degree in Engineering and its equivalence. The operative portion of the said Order dated 16.7.2015 reads as under:-



“In view of the above endorsements, it has been decided by management to clarify that for promotions to Executive Engineer grade in Civil/Electrical streams, a diploma in appropriate field of engineering with 10 years of experience shall be construed to be equivalent to ‘Degree in Engineering’ in appropriate field as per the requirements of note 2 under Schedule IB of BSNL MSRR-2009.”

The impugned order dated 18.1.2016 is regarding grant of 2nd ACP in view of issuance of BSNL CO clarification dated 16.07.2015 in the matter of “Degree in Engineering and its Equivalence in note 2 under Schedule IB of BSNL MSRR-2009. The relevant portion of the said order dated 18.1.2016 reads as under:-

“This office is in receipt of many representations (individually or through proper channel) from many executives on the similar subject matter. These cases has been examined and I am directed to submit that :

- i. That BSNL MSRR does not cover the scope of ACP through any of its provisions, schedules or notes therein.
- ii. The clarification dated 16.07.2015 is an action by the Management specific to promotions to the Executive Engineer grade in Civil/Electrical streams and has prospective effect w.r.t. any promotions to be undertaken in future.



- iii. Any reference to the DoT OM No.19-13/2012-CWG dated 11.02.2015 is purely for the purpose specifically noted in the clarification dated 16.07.2015.
- iv. The said clarification is not required to be interpreted for any other convenience which the Management did not intend.

This disposes off all the representations on the subject matter. Concerned PCE(C)/CE(C) is requested to inform/reply the concerned executives accordingly.”

8. Shri Rao, learned counsel appearing for the applicants argues that once this Tribunal has disposed of the claim of the applicants in the present OAs vide common Order/Judgment dated 17.7.2014 holding that the applicants may be granted relief in the terms settled by the Hon'ble Supreme Court, it was incumbent upon the respondents to give the benefits of 2nd ACP to the applicants at their own. However, they have failed and neglected to do the same even on their representations and they have passed the impugned order dated 18.1.2016 (Annexure A/4) and they have illegally and arbitrarily rejected the representations of the applicants. Learned



counsel for the applicants further submits that the applicants have been deprived of the benefits of 2nd ACP by the respondents vide the impugned orders, particularly on the ground that the applicants do not possess the degree in respective Engineering (Civil/Elect.) and the benefit of the impugned order dated 16.7.2015 can be accorded prospectively and not retrospectively. Shri Rao also submits that such action of the respondents is illegal, arbitrary and discriminatory in as much as the decision of this Tribunal on the issue is upheld by the Hon'ble High Court of Delhi and the same has attained finality. He further adds that the same is discriminatory as well in as much as the similarly placed persons have not only been granted the benefits of 2nd ACP but have also been granted the actual promotion in spite of the fact that they were not having the degree in Engineering (Civil/Elect.). In this regard, he has referred to the Order/Judgment of Principal Bench of this Tribunal dated 26.4.2013 (Annexure A/35) in OA No.2651/2012, titled **Shri T.R. Sharma and others vs. Union of India and others**. The said Order/Judgment of this Tribunal was challenged by the



respondents before the Hon'ble High Court of Delhi vide Writ Petition (Civil) No.4879 of 2014, titled ***Union of India and others vs. Sh. T.R. Sharma and others***, and the said Writ Petition was dismissed by the Hon'ble High Court of Delhi vide Order/Judgment dated 5.8.2014 (Annexure A/34). The paragraphs 5 to 7 of the said Order/Judgment of the Hon'ble High Court of Delhi dated 5.8.2014 reads as under:-

“5. The CAT’s findings, as mentioned earlier, are remised 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

**(Dept. 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.”

9. Shri Rao, learned counsel appearing for the applicants further submits that subsequent to the aforesaid Order/Judgment of this Tribunal, the Tribunal at Principal Bench vide Order/Judgment dated 27.10.2016 in OA No.1348/2015 by relying upon the aforesaid Order/Judgment of the Hon’ble High Court of Delhi in the case of ***Union of India and others vs. T.R. Sharma and others*** (supra) as also the Order/Judgment of the Hon’ble Punjab and Haryana High Court in WP(C) No.11156/2009 decided on 23.12.2009, allowed the said OA. The relevant

paras of the said Order/Judgment of this Tribunal dated 27.10.2016 reads as under:-



“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 field (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.”

10. It is contended by the learned counsel for the applicants that Orders/Judgments of this Tribunal under reference have attained finality and have also been implemented by the respondents. He further submits that one Shri Majeed Ahmed working as SDE (Civil), and who was also not having the degree in the respective stream of Engineering, has been accorded the benefit of 2nd ACP vide Office Order dated 29.4.2015 (Annexure A/41). He further invites our attention to Office Order dated 29.6.2018 (Annexure RJ/8) to contend that one Shri Dileep Kumar, whose name appears at serial no.37 of the said Office



Order dated 29.6.2018 also possesses the similar qualification, i.e., diploma in Engineering and not 'Degree in Engineering', however, he has been granted the benefits of 2nd ACP whereas the applicants have been discriminated. Learned counsel for the applicants also submits that the applicant in OA No.11/2017 (Amrutlal Devabhai Dalwadi) has also acquired the Degree in Engineering a year prior to his becoming entitled for grant of 2nd ACP.

11. The aforesaid facts have not been disputed by the learned counsels appearing for the respondents. They submit that the Management of the BSNL has taken a decision to treat the Diploma in Engineering with 10 years of service at par with Engineers having Degree in Engineering only vide their Circular dated 16.7.2015 and this decision cannot be construed to apply retrospectively and once the same will be given effect prospectively, the applicants have rightly not been given the benefits of 2nd ACP. No further grounds have been argued on behalf of the parties.



12. We have considered the submissions made by the learned counsels for the parties and we have also perused the pleadings on record.

13. It is not in dispute that the ACP Scheme has been implemented by way of earlier decision of the respondents much prior to the respondents' communication dated 16.7.2015 and when the decision qua as to whether the concerned persons having diploma in Engineering with 10 years of experience shall be eligible to be granted the benefit of 2nd ACP or not, has been considered by the various Benches of this Tribunal, including the Principal Bench and it has been held that the person(s) having diploma in Engineering with 10 years of service shall be entitled to be accorded the benefits of ACP and such Orders/Judgments of this Tribunal passed by various Benches have been upheld by the Hon'ble High Court of Delhi and Hon'ble Punjab and Haryana High Court, as noted hereinabove, circular dated 16.7.2015 of the respondents shall not take away the benefits accrued to the applicants in view of the Judgments of this Tribunal, upheld by the Hon'ble High Courts and implemented by



the respondents. The respondents have themselves initially granted the benefits of 2nd ACP to the applicants in the year 2008. However, the respondents' such decision was re-visited by them and the said benefits have been withdrawn by them, which was the subject matter before this Tribunal as well as before the Hon'ble High Court of Gujarat at Ahmedabad as referred to hereinabove. Once this Tribunal as well as Hon'ble High Courts have ruled that Diploma in Engineering with 10 years of service experience shall be treated at par with a Degree in Engineering in the matter of consideration for grant of benefits under Assured Career Progression Scheme, it is immaterial as to whether the respondents have adopted such proposition vide their impugned circular/letter dated 16.7.2015 (Annexure A/3), without recording therein that the same is applicable prospectively or retrospectively.

14. In view of the aforesaid facts and the Orders/Judgments of this Tribunal (supra) upheld by the Hon'ble High Courts, we are of the considered view that the decision of the respondents to withdraw the benefits of 2nd ACP from the applicants and/or not to grant the same



on the ground that the applicant have not been possessing the requisite qualification, i.e., 'Degree in Engineering, is illegal. Moreso, treating the applicants differently than how the similarly placed persons have been treated is also found to be discriminatory.

15. In view of the aforesaid and for the foregoing reasons, the OAs are partly allowed, the impugned orders dated 13.10.2008 (Annexure A/1) and 25.2.2009 (Annexure A/2) are quashed and set aside. It is further directed that the decision of the respondents vide their letter dated 16.7.2015 (Annexure A/3) shall be applicable in the cases of the applicants as well. The impugned order dated 18.1.2016 (Annexure A/4) is also set aside. The respondents are directed to restore the benefits of the 2nd ACP to the applicants. The respondents are further directed to pass appropriate orders to this effect as expeditiously as possible and in any case within six weeks of receipt of a copy of this Order. We further direct the respondents to refix the pay and consequently their pension and to calculate the arrears of pay, pension and arrears of retiral dues, if any, as expeditiously as possible



and pay the same to the applicants in any case within six weeks thereafter. The respondents shall also make the payment of interest at the rate of 6% on the aforesaid arrears to the applicants within the period as stipulated above. The other connected two OAs are also disposed of in the aforesaid terms.

16. In the result, the present OAs are disposed of in the aforesaid terms. There shall be no order as to costs.

17. Registry is directed to place a copy of this Order in other two connected case.

(A.K. Dubey)
Member (A)

(R.N. Singh)
Member (J)

/ravi/