

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 21.05.2014

OA No. 128/2011

Mr. C.B. Sharma, counsel for applicant.
Mr. Mukesh Agarwal, counsel for respondents.

Heard learned counsel for the parties.

Order is reserved.

M. Nagarajan
(M. NAGARAJAN)
JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

Date 09.7.2014

Order pronounced today in the
Open Court by the Hon'ble Bench.


09/7/14
COURT OFFICER

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Original Application No. 128 of 2011

This the 9th day of July, 2014

**CORAM : HON'BLE SHRI ANIL KUMAR, MEMBER (A)
HON'BLE SHRI M.NAGARAJAN, MEMBER (J)**

Bhupendra Singh son of Shri Jagat Singh, resident of Quarter No.3, Postal Staff Quarters, Postal Colony, Shastri Nagar, Jaipur. **Applicant**

By Advocate : Mr.C.B.Sharma

V/s.

1. Union of India, through its Secretary to the Government of India, Department of Posts (DOP), Ministry of Communication and Information Technology, 20 Ashoka Road, Dak Bhawan, New Delhi – 110 001.
2. Union of India through its Secretary to the Government of India, Department of Telecom (DOT), Sanchar Bhawan, New Delhi. **Respondents**

By Advocate : Mr.Mukesh Agarwal

PER : HON'BLE SHRI M.NAGARAJAN, MEMBER (J)

ORDER

The applicant is an Assistant Engineer (Civil) working in the Department of Post at Postal Civil Sub Division-I, Shastri Nagar, Jaipur. He is also holding the additional charge of the post of Executive Engineer (Civil), Postal Civil Division, Jaipur. The main grievance of the applicant in this O.A. is as to his promotion to the cadre of Executive Engineer (Civil). According to the applicant he is entitled to be promoted to the cadre of Executive Engineer (Civil), but the same has been denied to him by the respondents on the ground that he did not have the prescribed qualification for the post of Executive Engineer (Civil).

.....

(OA/128/2011 - CAT, Jaipur Bench)

2. In support of the grievance and claims, the brief facts as stated by him in this O.A. are that he was appointed to the post of Junior Engineer (Civil) on 12-9-1978 in the erstwhile Posts and Telegraph Department. Subsequent to his appointment in the year 1978, the Posts and Telegraph Department which was under the Ministry of Communication was bifurcated into two Departments namely Department of Telecom and the Department of Posts. Consequent upon the bifurcation, the staff working in the erstwhile Posts and Telegraph Department was also bifurcated taking into account the nature of work. But, the Civil Wing of erstwhile Posts and Telegraph Department was kept as common cadre. Thereafter, by a letter dated 09-6-1993 (Annexure-A/3) a separate Civil Wing cadre up to the Group 'B' level for the Department of Posts was formed and as a consequence of the same, options were invited for absorption in the Civil Wing of the Department of Posts vide letter dated 12-7-1993 (Annexure-A/4). Pursuant to the above invitation, the officials who have opted for the Postal Wing have been absorbed in the Department of Posts w.e.f. 01-4-1993. The applicant opted for absorption in Department of Posts and accordingly, he was absorbed in the Department of Posts vide Annexure-A/5 in the cadre of Junior Engineer (Civil) which is a Group 'C' post. In the year 1993 whilst the applicant was holding the post of Junior Engineer (Civil), he was absorbed in the Department of Posts as already stated. According to him as on the date of absorption in the cadre of Junior Engineer (Civil) in the Department of Posts, he was due for promotion to the post of Assistant Engineer (Civil) on the basis of seniority in the Department of Posts, but his case was not considered for promotion as Assistant Engineer (Civil) in spite of the fact that he has all the

प. ८५

(OA/128/2011 - CAT, Jaipur Bench)

eligibility criterion for being considered for promotion to the cadre of Assistant Engineer (Civil).

3. In the year 1992 Recruitment Rules were notified by the Postal Department on 11-11-1992 for recruitment to the cadre of Assistant Engineer Civil and Electrical. As per the said Recruitment Rules, 50% of the posts of Assistant Engineer Civil and Electrical are required to be filled up by way of promotion from amongst the Junior Engineers having eight years of regular service. By taking into consideration of the eligibility criteria i.e. eight years of regular service in the cadre of Junior Engineer, he was considered for promotion to the cadre of Assistant Engineer (Civil) and he was promoted to the post of Assistant Engineer (Civil) on regular basis on 12-6-1997.

4. The Department of Telecom also notified the Recruitment Rules for Group 'A' service on 15-7-1994. The cadre of Executive Engineers (Civil) falls under the Group 'A' service. As per the Telecom Department Recruitment Rules notified on 15-7-1994, the post of Sr. Time Scale [Executive Engineer (C) Surveyor of Works (Civil)] is required to be filled up only by way of promotion. In other words, it is a 100% promotional cadre. 50% of the promotional vacancies in respect of the post of Executive Engineer (Civil) is required to be filled up by way of promotion from the cadre of Assistant Executive Engineers (Civil) who have completed probation and have rendered not less than four years of regular service in the grade on the basis of seniority-cum-fitness and the remaining 50% of posts are required to be filled up from the cadre of Assistant Engineers (Civil)/Assistant Surveyor of Works (Civil)/ Engg. Asstt. (Civil) who have completed probation and have rendered not

— T. —

(OA/128/2011 - CAT, Jaipur Bench)

less than eight years of regular service in the grade and possess a degree in Engineering or equivalent. The notice appended to the said rules reads as under:

“However, the existing incumbent is holding the post of Assistant Engineer (Civil) 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 if they possess a Diploma in Civil Engg. from a recognized university/ Institution or equivalent and 8 years regular service in the grade.”

The above note appended to the said rules makes it clear that as on the date on which the rules came into force, such of those officials holding post of Assistant Engineer (Civil) on regular basis were entitled to be considered for promotion to the post of Executive Engineer (Civil) irrespective of the fact that they possess a degree in Civil Engineering from a recognized university/ institution or equivalent and they have eight years of regular service in the cadre of Assistant Engineer (Civil).

5. The applicant claims that though he was entitled for promotion to the cadre of Assistant Engineer (Civil) immediately on completion of eight years of service i.e. in the year 1986 he was not promoted, but he was granted promotion in the year 1997. He contends that respondent no.2 has prescribed qualification of a degree in Engineering in the Rules of 1994 without any basis. The Department of Posts further notified Recruitment Rules to the post of Junior Engineer (Civil) vide notification dated 21-11-1995 vide Annexure-A/7. According to him column 8 of the said rules prescribes three years diploma in Civil Engineering as qualification for direct recruitment in respect of Junior Engineer (Civil) and the same is a basic qualification and on that basis further promotion should be allowed.

6. Government of India took a decision for formation of BSNL and in pursuance of the said decision taken by the Government of India BSNL was

मा. उ. का. अ. ८

(OA/128/2011 - CAT, Jaipur Bench)

formed by a notification dated 30-9-2000 which came into effect w.e.f. 01-10-2000. On formation of BSNL the officials working in the Department of Telecom stood transferred to the newly formed BSNL. On formation of the BSNL it invited options from Group 'B' officials for absorption and in pursuance of the same though he opted for absorption in BSNL, his request for absorption in the BSNL was rejected by a letter dated 26-8-2004 on the ground that he was already absorbed as a Junior Engineer (Civil) in the Department of Posts. By referring to the provisions contained in the Recruitment Rules of CPWD, he made representation to respondent no.2 for being considered for promotion to the cadre of Executive Engineer (Civil). But the Department of Telecom has not considered his request for promotion to the cadre of Executive Engineer (Civil). The applicant submits that the Department of Telecom has no basis to act as a Cadre Controlling Authority in view of the fact that no posts are available in the Department of Telecom. He further submits that the Department of Telecom is proposing to hold the Departmental Promotion Committee for the cadre of Executive Engineer (Civil) and issued the office memorandum dated 18-1-2011 (Annexure-A/1) requesting the Department of Posts to provide the details of educational qualifications duly certified in respect of the Assistant Engineers (Civil) working in the Department of Posts, whose names were listed in the Annexure to the said OM dated 18-1-2011. In the annexure to the said OM dated 18-1-2011, the name of the applicant does not figure. Hence, being aggrieved as to the action of the Department of Telecommunications in not including his name in the annexure to the OM dated 18-1-2011 (Annexure-A/1), the applicant has presented the O.A. with the prayer to declare that the O.M. dated 18-1-2011 (Annexure-A/1) is illegal.

TR. L. T. -

(OA/128/2011 - CAT, Jaipur Bench)

He also prays that the rules of 1994 (Annexure-A/6) be struck down in so far as the qualification of degree in Engineering for promotion to the cadre of Executive Engineer (Civil) and for a direction to the respondents to delete the qualification of degree in Engineering for promotion to the post of Executive Engineer (Civil) and as a consequence of the same for a further direction to grant promotion to the cadre of Executive Engineer (Civil) on the basis of his seniority in the Department of Posts. Alternatively he prays for a direction to relax the qualification for the purpose of promotion to the cadre of Executive Engineer (Civil) by invoking Rule 16 of the Rules of 1994 or to adopt the rules of CPWD/MES for the purpose of promotion to the post of Executive Engineers and a further declaration is sought by the applicant that the action of Department of Telecom treating the Department of Telecom and Department of Posts as one for the purpose of Civil Wing is illegal and for a direction to respondents to act as per the decisions taken while formation of the BSNL and further respondent no.1 be further directed to act as cadre controlling authority to the cadre of Assistant Engineer and thereafter higher cadres.

7. Pursuant to the notice of the O.A., the respondents entered appearance and filed their detailed reply. With regard to the prayer of the applicant to strike down the Rules of 1994 it is contended by the respondents in their reply that prescription of qualification for a particular post is the domain of the employer. It is specifically contended therein that it is settled position of law that unless it is established that the qualification prescribed in a relevant rule in respect of a particular post has no nexus with that of the object sought to be achieved or that it violates any of the constitutional provisions, no qualification prescribed under a particular rule can be

7. 15/2

struck down either by Tribunal or any Court. It is further submitted by the respondents that the Posts & Telegraphs Building Works (Group "A") Service Rules, 1994 have been formed in consultation with the Department of Personnel and Training (DoPT), Union Public Service Commission (UPSC) and after vetting by the Ministry of Law and Justice, the rules have been notified. The Recruitment Rules are framed keeping in view the specific functional needs of the posts, administrative efficiency and career prospects as well as the Government policy governing promotion to various posts. The policy of Government of India is that the educational qualification prescribed for the post of direct recruitment shall also be insisted upon for promotion in respect of scientific and technical posts. The post of Executive Engineer is a technical post and in view of the same as per the policy, the degree in Engineering is prescribed for promotion to the post of Executive Engineer from the cadre of Assistant Engineer. With regard to the contention and prayer of the applicant for declaration that the action of the Department of Telecom in treating the Department of Telecom and Department of Post one Department for the purpose of Civil Wing is illegal, the respondents in their reply submitted that Civil Wing Group 'A' and Group 'B' posts are borne both in the Department of Telecommunications and the Department of Posts. The cadre control of (Group 'A') officers of the Posts and Telegraphs Building Works Group 'A' service has not been transferred to Department of Posts and the same continues to remain with DoT. The respondents have taken a specific plea that in view of the admitted fact that the applicant does not have the prescribed qualification for he being considered for promotion to the post of Executive Engineer (Civil), the prayer or declaration sought by the applicant in respect of the impugned memo dated 18-1-

(OA/128/2011 - CAT, Jaipur Bench)

2011 (Annexure-A/1) cannot be granted. With the above contention, the respondents have prayed for dismissal of the O.A.

8. Heard Mr.C.B.Sharma, learned counsel for the applicant and Mr.Mukesh Agarwal, learned counsel for the respondents. Perused the pleadings and documents annexed to the pleadings of both parties. As already observed the main grievance of the applicant in this O.A. is relating to his promotion to the cadre of the Executive Engineer (Civil). It is also an admitted fact that the applicant does not possess the qualification prescribed in the relevant recruitment rules for him being considered for promotion to the cadre of Executive Engineer (Civil). Thus, one of his main prayers in this O.A. is to strike down the rules called the Posts & Telegraphs Building Works (Group "A") Service Rules, 1994 in so far as the same prescribes the qualification of degree in Engineering for promotion to the post of Executive Engineer (Civil). As such before dealing with the other reliefs sought by the applicant, at the first instance it is necessary for us to decide whether the applicant is entitled for the prayer for striking down that portion of rule as sought by him.

9. It is settled position of law that prescription of qualification and other condition of service including avenue of promotion and criteria to be filled for such promotion pertain to the field of policy and the same lies within the executive discretion and jurisdiction of the State. We may observe the principles laid down by the Hon'ble Supreme Court in the case of *P.U.Joshi & Ors. v. Accountant General Ahmedabad & Ors.* 2003 SCC (L&S) 191 which reads as under:

"Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled

4.4.4

(OA/128/2011 - CAT, Jaipur Bench)

for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cadres / categories of service, as may be required from time to time by abolishing the existing cadres / posts and creating new cadres / posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.” (Para 10)

10. The above principles were reiterated by the Hon’ble Supreme Court in the case of *Union of India v. Pushpa Rani & Ors.* (2008) 2 SCC (L&S) 858. At para 37 of the judgment the Hon’ble Supreme Court held as under:

“37. Before parting with this aspect of the case, we consider it necessary to reiterate the settled legal position that matters relating to creation and abolition of posts, formation and structuring/restructuring of cadres, prescribing the source/mode of recruitment and qualifications, criteria of selection, evaluation of service records of the employees fall within the exclusive domain of the employer. What steps should be taken for improving efficiency of the administration is also the preserve of the employer. The power of judicial review can be exercised in such matters only if it is shown that the action of the employer is contrary to any constitutional or statutory provision or is patently arbitrary or is vitiated due to mala fides. The Court cannot sit in appeal over the judgment of the employer and ordain that a particular post be filled by direct recruitment or promotion or by transfer. The Court has no role in determining the methodology of recruitment or laying down the criteria of selection. It is also not open the Court to make comparative evaluation of the merit of the candidates. The Court cannot suggest the manner in which the employer should structure or restructure the cadres for the purpose of improving efficiency of administration.”

11. The respondents in their reply had taken a specific stand that the Posts & Telegraphs Building Works (Group “A”) Service Rules, 1994 have been framed in

IT. 150P-1

(OA/128/2011 - CAT, Jaipur Bench)

consultation with the DoPT and UPSC. The degree in Engineering or equivalent for the post of Executive Engineer (Civil) is prescribed in view of the specific functional needs of the posts, administrative efficiency and career prospects as well as the Government policy governing promotion to various posts. The policy of the Government of India in making appointment for scientific and technical post by way of promotion is to prescribe the one and the same qualification for making appointment to the said post by way of direct recruitment. As such the Policy cannot be dubbed either illegally or arbitrary as contended by the applicant. In view of this by applying the principles laid down by the Hon'ble Supreme Court in the case of *P.U.Joshi and Pushpa Rani (supra)*, we refuse to grant the prayer for striking down the qualification prescribed for the Executive Engineer (Civil) under the said rules called the Posts & Telegraphs Building Works (Group "A") Service Rules, 1994 (Annexure-A/6).

12. The next question that arises for consideration is whether impugned memo dated 18-1-2011 (Annexure-A/1) is liable to be interfered with. The impugned memo dated 18-1-2011 (Annexure-A/1) had been issued by the Department of Telecommunications to the Department of Posts. On a perusal of the said OM we find that by referring to the provisions of the rules which occupies the field of promotion to the post of Executive Engineer (Civil) from the cadre of Assistant Engineer (Civil), the Department of Telecommunications requested the Department of Posts to provide them the details of educational qualifications, duly certified, in respect of Assistant Engineer (Civil) working in the Department of Posts whose names were listed in the annexure. In the annexure to the OM dated 18-1-2011 the name of the applicant does not figure. The applicant brought to the

(OA/128/2011 - CAT, Jaipur Bench)

notice to the respondents/ department that he being an Assistant Engineer (Civil) has a qualification for being considered for promotion to the cadre of Executive Engineer (Civil). Admittedly the applicant does not have the prescribed qualification, whereas it seems that the Assistant Engineers whose names find place in the annexure to the said OM dated 18-1-2011 are holders of degree in Engineering and as such the Department of Telecommunications requested the Department of Posts to certify the fact whether all those Assistant Engineers whose names find place in the annexure to the OM dated 18-1-2011 have the qualification prescribed in the rules. As such the non-inclusion of the name of the applicant in the annexure to the OM dated 18-1-2011 cannot be faulted upon and hence, we reject the prayer of the applicant for quashing the OM dated 18-1-2011.

13. In support of the prayer of the applicant to declare that the action of the Department of Telecom in treating it and the Department of Posts as one for the purpose of Civil Wing, the learned counsel for the applicant Mr.C.B.Sharma argued that the first respondent i.e. the Secretary to the Government of India, Director General, Posts and Chairman addressed a letter dated 19-12-2007 vide Annexure-A/12 to the Secretary, Department of Telecommunications suggesting that in the interest of organisations involved as also officers of the Civil Wing cadre, the cadre management of the P&T Civil Wing work be transferred to the Department of Posts. Replying to the reliance placed upon Annexure-A/12, the learned counsel for the respondents, Mr.Mukesh Agrawal submitted that as regards transfer of cadre control, the decision to manage cadre control of Postal Civil Wing officers in the grades up to Group "B" has already been conveyed to the Department of Posts vide DOT DO letter dated 30-5-2008, but as the absorption

(OA/128/2011 - CAT, Jaipur Bench)

process of Group "A" officers in the BSNL/ MTNL has not been yet completed the cadre control of Group "A" service is continued to remain with the Department of Telecommunications and as such the argument of the learned counsel for the applicant cannot be accepted and consequently the declaration sought by the applicant in this regard cannot be granted. It is an admitted fact that the Posts and Telegraphs Department under the Ministry of Communication were bifurcated into the Department of Telecommunications and Department of Posts. In pursuance of New Telecom Policy 1999, the Government of India has decided to corporatise the service provision functions of Department of Telecommunications (DoT). Accordingly, it was decided to transfer the business of providing Telecom Services in the country currently run and entrusted with the Department of Telecom Services (DTS) and the Department of Telecom Operations (DTO) as was provided earlier by the Department of Telecommunications to the newly formed Company, viz., Bharat Sanchar Nigam Limited (the Company) w.e.f. 01-10-2000. After the formation of BSNL, initially the officers in the Grades up to Group 'C' were rendered to the control of the postal department and subsequently the control of postal civil wing officers in the grade up to Group 'B' has been conveyed to the Department of Post vide D.O. letter dated 30-5-2008. It is not the case of the applicant that the process of absorption of Group 'A' officers of BSNL/ MTNL has been completed. We notice that after the formation of the BSNL, options were invited by the BSNL and officers were absorbed in the BSNL and the same was completed in respect of the officers up to Group 'B' level but the process of absorption is yet to be completed. Thus, in view of the fact that the BSNL itself came to be formed by a notification dated 30-9-2000 w.e.f. 01-10-2000 and steps

(OA/128/2011 - CAT, Jaipur Bench)

are being taken up for absorbing the members of both the Telecom Department and the Postal Department into BSNL and the same was completed up to the level of Group 'B' officers and the process of absorption in respect of Group 'A' officers in respect of BSNL is ongoing, we are of the opinion that till such time the process of absorption of Group 'A' officers of BSNL is over, the action of the Department of Telecom treating it and the Department of Post for the purpose of Civil Wing particularly in respect of the post of Executive Engineer as one cannot be dubbed as illegal or arbitrary as contended by the applicant.

14. Learned counsel for the applicant Mr.C.B.Sharma by inviting our attention to Rule 16 of the Posts & Telegraphs Building Works (Group "A") Service Rules, 1994 argued that the Rule 16 confers power upon the government to relax any of the provisions to the said rules with respect to any class or category of persons and as such by taking into account of the fact that many number of posts which are required to be filled up by way of promotion from cadre of Assistant Engineer are lying vacant for want of Assistant Engineers with the prescribed qualifications and hence the qualification of degree in Engineering prescribed for promotion to the cadre of Executive Engineer is required to be relaxed in the interest of administration. It is a settled position of law that no mandamus lies without a demand from the concerned. As already noted the grievance of the applicant is relating to promotion to the cadre of Executive Engineer. In that connection he has made representation to the respondents. We have perused representation of the applicant dated 20-5-2010 at Annexure-A/14 and another representation dated 28-10-2010 at Annexure-A/16. On perusal of the representation of the applicant at Annexure-A/14 and A/16, we find that the

राजस्थान

(OA/128/2011 - CAT, Jaipur Bench)

applicant has not made any request to the respondents to relax the qualification. The claim for promotion of the applicant in his said representation is not based upon the said Rule-16. He has not at all requested the respondents to exercise the power under said Rule-16. Thus, in the absence of a demand by the applicant to the respondents to exercise the power conferred upon under Rule-16, we are not inclined to issue any direction to the respondents to relax the qualification. However, the applicant is at liberty to make a representation for claiming promotion by referring to the said Rule-16.

15. Finally, the learned counsel for the applicant Mr.C.B.Sharma argued that though the applicant does not possess a degree in Engineering in view of the fact that the Government of India has decided to recognise Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate field as equivalent to degree in Engineering, the applicant is entitled to be considered for promotion to the post of Executive Engineer holding that he has the prescribed qualification. In support of this submission he invited our attention to a notification issued by the Ministry of Education and Social Welfare, Department of Technical Education New Delhi 110 001 dated 26-5-1977. We perused the said notification dated 26-5-1977 issued by Ministry of Education & Social Welfare at Annexure-A/19. A perusal of the same reveals that a decision was taken by the Government of India to recognise the Diploma in Engineering in appropriate discipline plus total ten years of technical experience in appropriate fields as equivalent to degree in Engineering. Under the recruitment rules called the Posts & Telegraphs Building Works (Group "A") Service Rules, 1994, the eligibility criteria prescribed for filling up the post of Executive Engineer (Civil) is (i) 50%

17. 18. 19.

(OA/128/2011 - CAT, Jaipur Bench)

by way of promotion from the cadre of Assistant Executive Engineers (Civil) who have completed probation and have rendered not less than four years regular service in the grade on the basis of seniority-cum-fitness and (ii) 50% from Asstt. Engineers (Civil) Asstt. Surveyor of Works (Civil)/ Engg. Asstt. (Civil) who have completed probation and have rendered not less than eight years regular service in the grade and possess a degree in engineering or equivalent. Under the said notification dated 26-5-1977 (Annexure-A/19) a diploma in Engineering with 10 years of technical experience is recognised as equivalent to degree in Engineering.

But it is not made clear that whether the notification issued of the year 1977 is still in force or either withdrawn or modified. Mr.C.B.Sharma, learned counsel for the applicant in support of the claim of the applicant for promotion to the post of Executive Engineer submitted that since the applicant has more than ten years of service and being a diploma holder, is entitled to be considered for promotion to the cadre of Executive Engineer (Civil) holding that the diploma plus 10 years experience is equivalent to the degree in Engineering in view of the notification dated 26-5-1977. He placed reliance upon the judgment of the Principal Bench of this Tribunal in O.A. No.2651/2012. The claim of the applicants in the said O.A. No.2651/2012 before the Principal Bench was as to benefit of second ACP granted to them. The second ACP benefit which was granted to the said applicant in O.A. No.2651/2012 was withdrawn on the ground that they did not possess necessary qualification for promotion to the level of Executive Engineer and were also not entitled to second upgradation. The Principal Bench of this Tribunal in the order dated 26-4-2013 in the said O.A. No.2651/2012 observed as under:

4.4

“11 The respondents have also completely ignored the instructions of Government of India issued on 26.05.1977 by which diploma in Engineering with 10 years of technical experience has been recognized as equivalent to degree in Engineering. The respondents reply is silent on this issue. The applicants have also relied upon the ruling in the case of Narendra Singh Yadav CWP No.5203 of 2010 decided on 23.01.2012 in which the Hon’ble High Court of Punjab & Haryana has allowed petition on the grounds that diploma with ten years experience is equivalent to degree in Engineering based on the same instructions of Government of India.”

16. Replying to this submission of the learned counsel for the applicant, Mr.Mukesh Agarwal, the learned counsel for the respondents submitted that the orders of the Hon’ble High Court of Punjab and Haryana in the case of *Narendra Singh Yadav v. State of Haryana* in CWP No.5203 of 2010 decided on 23-1-2012 is based on the judgment of the Division Bench of the Hon’ble High Court of Punjab & Haryana High Court at Chandigarh in CWP No.17974 of 2006 titled as *Devinder Singh Malik v. Haryana Power Generation Corporation Ltd., Panchkula & Ors.* decided on 10-1-2008. He further submitted that the judgment of the Hon’ble Punjab & Haryana High Court in *Devinder Singh Malik (supra)* is a subject matter before the Hon’ble Supreme Court in S.L.P. No.10396/2008 and Hon’ble Supreme Court vide its order dated 02-5-2008 was pleased to stay the operation of the judgment of the Hon’ble High Court of Punjab & Haryana. We have perused the copy of the order dated 02-5-2008 in the said SLP No.10396/2008. However, it is not made known whether the interim order dated 02-5-2008 of the Supreme Court is still in force or modified or vacated. Under the circumstances and in view of the position that a diploma with 10 years technical experience is recognised as equivalent to the degree in Engineering by the Government of India in the notification dated 26-5-1977 and based on which the Hon’ble High Court of Punjab & Haryana has held that diploma with 10 years

(OA/128/2011 - CAT, Jaipur Bench)

experience is equivalent to engineering, which judgment also was relied upon by the Principal Bench of this Tribunal in its order dated 26-4-2013 in O.A. No.2651/2012, we are of the opinion that the applicant is at liberty to make a representation bringing to the notice of respondents about the said notification dated 26-5-1977 (Annexure-A/19) and the order dated 26-4-2013 in O.A. No. 2651/2012 of the Principal Bench of this Tribunal. If the applicant makes any representation, the respondents are directed to consider the same in the light of the judgment of the Hon'ble High Court of Punjab & Haryana in the said *Narendra Singh Yadav's* case (*supra*) in C.W.P No.5203/2010, decided on 23-1-2012 and the orders dated 26-4-2013 in O.A.No.2651/2012 on the file of the Principal Bench of this Tribunal and the orders that have been passed by the Hon'ble Supreme Court of India in the said S.L.P.No.10396/2008 and to pass a speaking and reasoned order relating to the claim of the applicant for promotion to the cadre of Executive Engineer within a period of three months from the date of receipt of a copy of this order.

OA is disposed of with above observations. No order as to costs.

—
(M.Nagarajan)
Member (J)

Anil Kumar
(Anil Kumar)
Member (A)

nc/