

CENTRAL ADMINISTRATIVE TRIBUNALMUMBAI BENCH, MUMBAI.ORIGINAL APPLICATION NO. 665 OF 2014.WithORIGINAL APPLICATION NO. 692 OF 2014.WithORIGINAL APPLICATION NO. 724 OF 2014.

Date of decision: Monday 2nd day of January,
2017.

CORAM: - HON'BLE SHRI. A.J. ROHEE, MEMBER (J).
HON'BLE MS.B. BHAMATHI, MEMBER (A).

OA No. 665/2014**1. Shri Govind Sakli Epili**

S/O Sakli Dahanu Epili Age-37
years. Chargeman (T),
Ordnance Factory, Ambarnath,
Pin.421 502.
R/o. Flat No.501, Indira Palce,
Kansai Section, Ambarnath (E),
Dist. Thane Pin no.421 501.

2. Shri Deepak Harichandra Gawale

S/O Harichandra Babu Gawale
Age-32 years,Chargeman (T),
Ordnance Factory, Ambarnath,
Pin.421 502.
R/o. Flat No.02, Rushab Appt,
B Wing, Heramb Co-Op Society,
Gandhar Naagr,
Dist. Thane Pin no.421 301.

...Applicants.

(Applicants by Advocate Shri. S.V. Marne)

Versus**1. Union of India**

Through the Secretary,
Ministry of Defence,
South Block,
New Delhi-110 001.

2. The Director General,

Ordnance Factories,
Ordnance Factory Board,
10 A, Shahid Khudiram Bose Road,

Kokatta 700 001.

3. The General Manager,
 Ordnance Factory,
 Ambernath, Dist. Thane,
 Pin 421 502. **Respondents.**
 (Respondents by Advocate Smt. H.P. Shah)

Connected with
OA.No. 692/2014

1. Vishal S/o Vinod Kanaskar,
 Aged:36 years, Occu. Working as
 Chargeman (Tech.) at Ammunition
 factory Khadki, R/o. Plot No.2,
 Dream Bungalow, Sreedarshan Colony,
 Near Dhanori Jakat Naka,
 Pune-411032.

2. Vijaykumar Satyadhari Gautam,
 Aged:40 years, Occu.Occu. Working as
 Chargeman (Tech.) at Ammunition
 factory Khadki, R/o.Type-I, 2/11,
 Rangehills Estate, Khadki,
 Pune-411020.

3. Prashant Sidharudh Wamne,
 Aged:30 years, Occu.Occu. Working as
 Chargeman (Tech.) at Ammunition
 factory Khadki, R/o. Type-H,
 36/7, Rangehills Estate,
 Khadki, Pune-411020.

. **Applicants.**

(Applicants by Advocate Shri. R.S. Khobragade)

Versus

1. Union of India,
 Through the Secretary,
 Ministry of Defence (Production),
 New Delhi-01.

2. Chairman/Director General,
 Ordnance Factory Board,
 Ayudha Bahavan, 10-A,
 Shaheed Khudiram Bose Road,
 Kolkata-700001.

3. General Manager,
 Ammunition Factory Khadki
 Dist. Pune-03. **Respondents.**
 (Respondents by Advocate Shri. V.S. Masurkar)

Connected with
OA No. 724/2014

1. Yogesh S/o Dinkar Patil,

Aged: 38 years, Occu. Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. Ordnance Factory Jawahar Estate, Bhandara-441906.

2. Jagdish S/o Dnyaneshwar Narnaware,

Aged: 40 years, Occu: Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. Ordnance Factory Jawahar Estate, Bhandara-441906.

3. Prafulla S/o Laxmanrao Take,

Aged 35 years, Occu: Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. Ordnance Factory Jawahar Estate, Bhandara-441906.

4. Nitesh S/o Suresh Gadge,

Aged: 37 years, Occu: Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. Ordnance Factory Jawahar Estate, Bhandara-441906.

5. Anil S/o Sukhdeo Naranje,

Aged: 45 years, Occu: Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. Ordnance Factory Jawahar Estate, Bhandara-441906.

6. Nilesh S/o Punjaram Thote,

Aged: 33 years, Occu: Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. Ordnance Factory Jawahar Estate, Bhandara-441906.

7. Sushilkumar S/o Vasanta Deshmukh,

Aged: 31 years, Occu: Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. Ordnance Factory Jawahar Estate, Bhandara-441906.

8.Dinesh S/o Sopan Barai,

Aged:33 years, Occu:Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. Ordnance Factory Jawahar Estate, Bhandara-441906.

9.Deoraj S/o Chandrabhan Dhurve,

Age:38 years, Occu: Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. Ordnance Factory Jawahar Estate, Bhandara-441906.

10.Amit S/o Ravishankar Tiwari,

Age:35 years, Occu: Working as Chargeman (Tech.) at Ordnance Factory Chandrapur, R/o.18-A, Type-III Sector-4, State Area Ordnance Factory Chandrapur-442501.

11.Ashokumar Ramteke S/o M. R. Ramteke,

Age:42 years, Occu:Working as Chargeman (Tech.) at Ordnance Factory Bhandara, R/o. 5-A Type-III Sector-3, State Area, Ordnance Factory Chandrapur-442501.

...*Applicants.*

(Applicants by Advocate Shri. R.S. Khobragade)

Versus

1.Union of India,

Through the Secretary,
Ministry of Defence (Production),
New Delhi-01.

2.Chairman/Director General,

Ordnance Factory Board,
Ayuda Bhavan, 10-A,
Shaheed Khudiram Bose Road,
Kolkata-700001.

3.General Manager,

Ordnance Factory,
Jawahar Nagar,
Bhanadara, Dist. Bhandara-441906.

4.General Manager,

Ordnance Factory Chanda,
Post. Bhadrawati,
Dist Chandrapur-01.

...*Respondents.*

(Respondents by Advocate Shri. V.S. Masurkar)

Reserved on :- 07.12.2016.

Pronounced on :- 02.01.2017.

O R D E R

Per : Ms. B. Bhamathi, Member (A)

O.A. 665 of 2014, O.A. 692 of 2014

and O.A. 724 of 2014 have been filed by the respective applicants under Section 19 of the Administrative Tribunals Act, 1985. The applicants are aggrieved by the impugned order directing all the Ordnance Factories (OFs) to revert chargeman (T) to lower post, if promotion was granted on the basis of diploma qualifications obtained through Distance Education Mode (DEM) from JRN Rajasthan Vidyapeeth University (JRN RV in short) which is alleged to be not approved by affiliated to AICTE by respondents. The above OAs were heard together and are being disposed of by a common order as the applicants' cases are admittedly similarly situated. The impugned orders and reliefs prayed for are the same.

2. In the above mentioned OAs, applicants are seeking for the following

reliefs:-

Reliefs sought in **OA No. 665 of 2014**:-

a) This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the respondents and after examining the same the impugned order dated 24th October 2014 be quashed and set aside and the respondents be restrained from reverting the applicants from the post of Chargeman (T).

b) Costs of the application be provided for.

c) Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed."

2.1. Reliefs sought in **OA No. 692 of 2014**:-

(i) Call for the records of proceedings pertaining to the recruitment process and service records pertaining to the promotional post of chargeman (Tech.) belonging to applicants from the file of Respondent No 1 to 3 and peruse the same;

(ii) Hold and declare that the impugned letter dated 21/24.10.2014 issued by the Respondent No. 2 (Annexure-A-1) is illegal, arbitrary, malafide and unconstitutional;

(iii) Quash and set aside the impugned letter dated 21/24.10.2014 issued by the Respondent No. 2 (Annexure-A-1) is illegal, arbitrary, malafide and unconstitutional.

(iv) Hold and declare that the applicants are eligible and entitled

for the post of Chargeman (Tech) and they were rightly considered and granted the promotion to the post of chargeman (Tech);

(v) Grant any other relief as this Hon'ble Tribunal deems fit in the facts and circumstances of this case;

(vi) Allow this Original Application."

2.2. Reliefs sought in OA No. 724 of 2014:-

"(i) Call for the records of proceedings pertaining to the recruitment process and service records pertaining to the promotional post of Chargeman (Tech.) belonging to applicants from the file of respondents and peruse the same;

(ii) Hold and declare that the impugned letter dated 21/24.10.2014 issued by the Respondent No. 2 (Annexure-A-1) and show cause notice dated 04.11.2014 (Annexure-A-2) issued by the Respondent No. 4 to the Applicant No. 10 and 11, is illegal, arbitrary, malafide and unconstitutional.

(iii) Quash and set aside the impugned letter dated 21/24.10.2014 issued by the Respondent No. 2 (Annexure-A-1) and show cause notice dated 04.11.2014 (Annexure-A-2) issued by the Respondent No. 4 to the applicant No. 10 and 11, is illegal, arbitrary, malafide and unconstitutional.

(iv) Hold and declare that the applicants are eligible and entitled for the post of Chargeman (Tech) and they were rightly considered and granted the promotion to the post of chargeman (Tech);

(v) Consequently, direct the respondents to continue the applicants on the post of chargeman (Tech), in the interest of justice with full pay, allowances, seniority and other consequential benefits;

(vi) Grant any other relief as this Hon'ble Tribunal deems fit in the facts and circumstances of this case;

(vii) Allow this Original Application with cost."

3. *Facts and contentions of applicants*

in O.A. 665 of 2014:-

3.1. Applicants were promoted in skilled grade in 2004 and 2006, respectively. The next promotion post is the post of Chargeman Technical (T).

3.2. Both the applicants passed diploma course in mechanical engineering through DEM from Rajasthan Vidyapeeth, Udaipur a deemed university (notified by UGC on 12.01.1987) and later on called as JRN, Rajasthan Vidyapeeth University (JRN RV) notified on 19.08.2003. They got diploma in 2007 and 2010, respectively, from JRN RV.

3.3. Accordingly, applicants had applied pursuant to notification of R-3 dated

09.06.2007 and 13.04.2010 under LDCE for the post of chargeman (T) for the years 2007 and 2010, respectively. The notification wrongly prescribed "diploma or equivalent qualification certificate in respective field duly affiliated to AICTE", which was against the provisions of SRO 66, which prescribes qualification for Direct Recruitment (DR) & not for promotion through LDCE. However, notwithstanding the above, on clearing LDCE selection process, both the applicants were promoted to the post of Chargeman (T) vide orders dated 08.12.2007 and 13.10.2010, respectively. They were subsequently confirmed in the grade of chargeman (T) on 06.03.2010 and 27.11.2013, respectively after completion of probation. The applicants' next promotion from the post of Chargeman (T) is to the post of Junior Works Manager (JWM). The applicants were looking forward to their promotion to the post of JWM. At such a stage the applicants were shocked, when they came to know about issuance of impugned order stating that

investigations have been carried out by CVO/OFB in the light of complaint regarding irregularities in appointment/ promotion through LDCE to the post of Chargeman (T) with diploma qualification not approved by AICTE. Hence, the applicants are to be reverted back to their parent post that they held prior to such appointment/ promotion. All OFs were directed to take similar immediate action for identification of such individuals and take further action for reversion vide order dated 10.10.2014.

3.4. The said post of Chargeman (T) in OF is governed by SRO 13(E) of 1989 as amended by SRO 191 of 28.11.1994 and later amended by SRO 66 on 14.06.2003. As per SROs 13(E) read with SRO 191, the requisite qualification for DR to the post of Chargeman (T) was diploma of 3 years or equivalent affiliated to AICTE. No such qualification or separate qualification was prescribed for promotion. The post of Chargeman (T) is to be filled up 25% by DR, 25% by LDC from amongst skilled persons in

all categories and 50% by promotion. The qualification for DR alone was amended by SRO 66 in 2003 requiring 3 years diploma or equivalent qualification in respective field and due affiliation with AICTE for the post of Chargeman (T).

3.5. On 07.02.2004 the MHRD wrote to VC of JNRNU stating that all degrees/ diplomas awarded by institutes, which are deemed to be universities under Section 3 of the UGC Act, stand automatically recognized for purposes of employment under Central Government without any formal orders for recognizing such degrees.

3.6. AICTE itself had mentioned vide letter dated 04.11.2004 that it is not mandatory for a deemed university to take prior approval of AICTE for starting technical programme in regular or distance education mode.

3.7. On 07.04.2006, the Government of India clarifying the rules of UGC & AICTE stated that a deemed university need not get approval of AICTE to start any programme in

technical or management education leading to award of degrees in disciplines covered by AICTE Act 1987, subject to maintaining standards of AICTE in the various courses.

3.8. Similar stand was taken by HRD when the Minister, HRD spoke in Rajya Sabha on 22.08.2006, while demarcating responsibilities of the UGC and AICTE. Vide reply dated 26.09.2012 to applicant no. 2, the said position has been reiterated by respondents.

3.9. One Imtiaz Khan, a DR candidate who got diploma from JRN RV in mechanical engineering through DEM was given appointment as Chargeman (T) by OFB based on MHRD letter dated 07.04.2006. R-2 has accepted that diploma awarded by JRN RVU is recognized qualification for DR under SRO 66 as will be seen from OFB letter dated 16.06.2008 and reply under RTI dated 12.05.2014 regarding appointment of Imtiaz Khan.

3.10. UGC has issued letter dated 13.11.2007 to the VC, JRN RV stating that the

Distance Education Council (DEC) has already conveyed approval for courses upto 2005, as well as given provisional approval for 2007-2008 to conduct courses under the DEM without requirement of any separate approval from UGC. The list of courses between 2001-2005 and 2007-2008 run by JRN RVU was sent to UGC as sought for on 13.11.2007 was sent on 13.12.2007. The list includes diploma courses in mechanical engineering.

3.11. In the above background, the applicants apprehended that they would be reverted from the post of Chargeman (T) to the lower grade without following the principles of natural justice as was done by Ordnance Factory (OF) Chanda where 21 individuals were reverted by order dated 10.10.2014. The said order dated 10.10.2014 did not specify the institutes which were allegedly not approved by AICTE. Hence, 21 individuals (including applicants) working in three different factories approached this Hon'ble Tribunal by filing **OA No. 633/2014** challenging the order dated 10.10.2014. In

the said OA, the applicants had obtained diploma certificates from IME Mumbai, JRN RVU, GPDL Pune and Yashwant Rao Chavan Maharashtra Open University, Nashik. Interim orders were passed on 16.10.2014 directing the respondents not to give any effect or further effect to the order dated 10.10.2014.

3.12. R-2 thereafter issued letter dated 21.10.2014 stating that the matter has been reviewed by the competent authority and it was decided to withdraw the letter dated 10.10.2014, which was eventually withdrawn. Simultaneously, respondents issued the impugned letter dated 21/24.10.2014 with reference to JRN RVU only. The said letter is a copy of the earlier letter dated 10.10.2014, stating therein that diploma qualification acquired from JRN RVU, through DEM was not approved by AICTE and that therefore the same does not conform to the provisions of the SRO 66 and hence the applicants i.e. incumbents appointed/promoted on the basis of diploma

qualifications acquired from JRN RVU are required to be reverted.

3.13. The SRO 13 (E) read with SRO 191 and SRO 66 prescribes qualifications only for direct recruitment to the post of Chargeman (T) which is not applicable for LDCE. The respondents cannot insist on qualification of Diploma for effecting promotion to the post of Chargeman (T). Therefore, the requirement of diploma cannot be made applicable to LDCE also. LDCE is just a different mode/ method of effecting promotions. LDCE does not and cannot mean DR. The term DR refers to consideration of candidates from open market who do not work in the organization concerned. As against this LDCE is exclusively for departmental candidates. The only distinction between promotion and LDCE is while promotions are effected directly on the basis of seniority, LDCE gives an opportunity to meritorious candidates to earn promotion, who are relatively lower in the seniority list. The selected candidates in LDCE are also

arranged in the order of merit thereby offering a chance to junior meritorious candidates to supersede senior counterparts. Since, SRO 13 E read with SRO 191 and SRO 66 do not prescribe qualification of diploma for LDCE. Even for the sake of arguments, if it is held that the diploma certificates awarded to the applicants are not approved by AICTE, the same can have no effect on the promotions earned by the applicants through LDCE.

3.14. The applicants are being reverted without giving them any opportunity of hearing. The applicants were unaware about any investigations that have been carried out, resulting in a mass reversion order in violation of principles of natural justice.

3.15. It is arbitrary on the part of R-2 to arrive at a conclusion on the basis of imaginary interpretation that the Diploma courses undergone by the applicants are not approved by AICTE. Even, then the said conclusion can at best be applied prospectively and cannot have any

retrospective application to the cases of the applicants, who have since long been promoted on the basis of the said certificates. R-2 arrived at a conclusion during the last 11 years that diploma certificates issued by JRN RVU is recognized by AICTE and accordingly promotions/appointments were granted to more than 100 individuals across the country. Hence, merely because there is change in the opinion of R-2 in the year 2014, it does not mean that the promotions of all the individuals granted during the last 11 years have become invalid. The order dated 24.10.2014 arbitrarily states that it has been decided that all the individuals promoted from the year 2003 onwards on the basis of diploma certificates issued by the 4 institutes should be reverted as skilled workers in the Grade pay of Rs. 1900/-, when they are already enjoying a higher grade pay of Rs. 4200/-. It is pertinent to note that the next higher post of JWM, is a gazetted post in the Grade pay of Rs. 4600/-.

3.16. The issue about the separate approval of AICTE to courses run by a deemed university is no longer res integra and it is covered by the judgment of the Hon'ble supreme Court in the case of Bharathidasan University Vs. AICTE (2001) 8 SCC 676, in which it is held that AICTE is not intended to be controlling or supervising authority over the university, merely because university also imparts courses of technical education. It is further held that there is no necessity to seek prior approval of AICTE to commence a course in technical education in any university. Following the above judgment of the Hon'ble Supreme Court, the Hon'ble Punjab & Haryana High Court has held in the case of Vikas Kumar Vs. Haryana State Pollution Control Board, that Diploma Certificate awarded by JRNRV, as a deemed university, is valid. In another case of Vinod Kumar Vs. Haryana State Agriculture Marketing Board, the Hon'ble Punjab & Haryana High Court has once again held that the degree issued by JRNRVU is valid for the

purposes of consideration of candidature of petitioner therein in the selection.

3.17. In various notification issued after SRO 66 dated 27.05.2003 respondents have been altering the requirement of AICTE approval. In notification dated 13.04.2010 it was mentioned that the candidates possessing required qualification from an Institute recognized by Government of India were also eligible. Hence, in the said notification it was stated that the recognition by Government of India was sufficient and affiliation by AICTE was not required. Similarly, in the notification issued for direct recruitment in the year 2010 it was mentioned that the requisite qualification would be "Diploma or equivalent qualifications from AICTE/ UGC approved Institute." In the notification for LDCE dated 08.10.2011 it was mentioned that the eligibility qualification was "Diploma Certificate issued by the Institute recognized by Government of India". Hence, it is clear that the respondents have never

maintained a uniform position that the diploma course must be from an Institute affiliated to AICTE. On the contrary impression was created that diploma courses done through Institutes approved/ recognized by Government of India/ UGC were also acceptable. Hence, the respondent no. 3 is estopped from reverting the applicants on the ground that Diploma Certificate awarded by JNRNU are not approved by AICTE.

4. *Facts and contentions of applicants in the O.A. 692 of 2014:-*

4.1. In this case the applicants are similarly aggrieved by the impugned order of 21/24.10.2014 issued by R-2 to R-3 directing to take action of reversion of those employees who were promoted through LDCE to the post of Chargeman (T) based on the Diploma obtained from the JNRNU, not being approved/ affiliated to AICTE. They are further aggrieved by the action of the R-3 as it was orally informed to the applicants that the action of reversion will be initiated without giving show cause notice.

4.2. The applicants are working in the post of Chargeman (T) at Ammunition Factory Khadki. The applicants had completed the diploma course in Mechanical Engineering through DEM from JRN RVU. Applicants responded to Circular No. 102 on 10.10.2011 for filling up of vacancies in the post of Chargeman (T) in terms of the three SROs on the same eligibility criteria through LDCE for 2011-12. In the circular, at para 2, it is stated as "the candidate must possess three years diploma or equivalent qualification certificate in the respective field, duly affiliated by AICTE". In para 7 it is also specifically stated that "However, all candidates must obtain a certificate from the concerned examination Board/ University/ Institution to the effect that their diploma/ degree/ post-graduate courses are approved by AICTE or Government of India as the case may be." Accordingly, the applicants participated and passed in the LDCE and were appointed as Chargeman (T). Vide order dated 14.08.2012, R-2

issued a communication and directed R-3 to take action of reversion of the applicants in this OA.

4.3. The AICTE has issued a similar letter dated 05.08.2010 to Airports Authority of India stating that the qualification acquired by individuals through DEM is recognized for the purpose of employment to posts and services under the Central Government provided these have been approved by Distance Education Council (DEC)-IGNOU and wherever necessary by AICTE. It is specifically stated that it has been the policy of the AICTE, not to recognize the qualification acquired through DEM and therefore technical degrees acquired through DEM, from any university/ deemed university, are not approved by AICTE.

4.4. An objection dated 31.12.2012 on the same issue, came up before R-3 on the subject of LTAR-Irregular acceptance of unrecognized diploma certificates. Respondents after considering all the letters of AICTE and notification of

Government of India had given findings in the letter dated 21.03.2013 stating therein that the candidates who are holding diploma/degree from the JNRNU correspondence/ part time courses are eligible to appear in LDCE for the post of Chargeman.

4.5. The UGC issued a letter dated 27.05.2013 stating that the Hon'ble Supreme court of India in its judgment and order delivered on 25.04.2012 in **Civil Appeal No. 1145/2004 and Civil Appeal No. 5736-5745 of 2004**, had ruled that the colleges affiliated to a university do not come under the purview of the definition of Technical Institution as defined under section 2 (h) of the AICTE Act, 1987. In such a case, AICTE cannot directly control or supervise the affiliated colleges.

4.6. On 31.05.2013 UGC issued an order which stated that by virtue of statute 28 of IGNOU Act 1985 DEC came into existence in 1991. The DEC was responsible for promotion and coordination of the open university and distance education system and for

determination of its standards. However, vide notification dated 04.05.2013, statute 28 stood repealed and consequently DEC of IGNOU also stood dissolved.

4.7. Earlier in exercise of its power conferred under Section 20 (1) of UGC Act, 1956 Government of India issued order dated 29.12.2012 entrusting UGC to act as a regulator for higher education through Open and Distance Learning (ODL) mode and if universities offer any program/course in ODL mode, they would require recognition from UGC.

4.8. In view of the above letters issued by the government authorities and statutory bodies from time to time it is apparent that the applicants' qualification is not only approved by the UGC and DEC but also by the MHRD, Government of India at the relevant time of acquiring of the diploma qualification. The DEC was the appropriate body to give the approval to the courses and in such cases as per the own policy of the AICTE, their approval was not required. Even

presently, the UGC will be the appropriate body for the approval and not the AICTE for the diploma certificate acquired through DEM from the deemed universities.

4.9. The eligibility criteria in the circular for LDCE 2011-12 cannot be given an acute meaning. The requirement of AICTE approval diplomas is a general statement and it is a requirement wherever it is necessary. It cannot be said that diplomas acquired through Deemed universities should be mandatorily approved by the AICTE, though AICTE is not an authorized body to grant some approval. Some of the Ordnance Factories have retained the DR and LDCE recruits for the post of Chargeman (T). Such employees have acquired the same qualification from ELIM Sikkim University, IME, AMIE etc. which are also not approved by the AICTE and, they are continuing in the said post. Some universities, such as, ELIM Sikkim University and one Deemed University from Kerala State are neither approved by UGC nor AICTE, but employees who have

acquired diplomas from these universities were considered and presently they are working as Chargeman (T) in various OFs. Hence, the respondents are discriminating by allowing similarly situated employees to work on the post of chargeman (T) after passing the LDCE and denying the same to the applicants.

5. *Facts and contentions of applicants*

in the O.A. 724 of 2014:-

5.1. All applicants have completed the Diploma course in Mechanical Engineering from JRN RVU. In response to circular dated 05.08.2011 and 12.08.2011, applicants appeared and passed in the LDCE as per the same eligibility criteria. On passing the LDCE the applicant were promoted to the post of Chargeman (T) on 19.07.2012 and 20.07.2012, with R-2 and 4 respectively. The applicants joined the promoted post. The respondents held that the selection of applicant under LDCE is not in order based on Diploma Certificate not being approved by AICTE and not being as per SRO-66. They have

held their appointment and promotion irregular and these are required to be reverted back.

5.3. Rest of the contentions of the applicants in this OA are similar to that of **OA No. 692/2014.**

Reply of the respondents in OA No. 665/2014.

6. In the reply to the said OA, the respondents have disputed and denied the contentions in the OA. They have relied upon the AICTE letter dated 22.12.2011 in which it is stated that JRN RVU does not come under the purview of AICTE. Further, SRO 66 contains, provisions regarding educational qualification, which applies to both DR and promotion through LDCE.

6.2. An investigation has been carried out by the CVO/ OFB against a complaint received through CVC/ MOD regarding alleged irregularities in the appointment/ promotion through LDCE to the post of Chargeman (T) based on Diploma qualification acquired from the institution called JRN RVU, which is not approved by the AICTE, and not being in

conformity with the provisions of the SRO 66. Hence, the applicants' promotion/appointment through the LDCE based on diploma qualification acquired from JNRNU not approved by AICTE is irregular and hence the applicants are fit to be reverted back to the said posts.

6.3. Respondents have also relied upon the AICTE letter dated 28.10.2010 which states as follows:-

"It has been the policy of the AICTE, not to recognize the qualifications acquired through Distance Education mode at Diploma, Bachelors & Master's level in the field of Engineering, technology including Architecture, Town Planning, Pharmacy, Hotel Management & Catering Technology, applied Arts & Crafts and Post Graduate Diploma in Management (PGDM). AICTE only recognize MBA and MCA programme through Distance Mode."

6.4. As per amendment of SRO 13(E) issued vide SRO 191, the educational qualification prescribed for DR will apply in case of promotees being filled through LDCE. Further LDCE 2010 notification issued by Ordnance Factory Board had laid down by eligible criteria is as follows:-

“Eligibility - The candidates must possess the educational qualification required for direct Recruitment of CM-II(T&NT) as laid down in SRO-13E dated 04.05.1989 as amended by SRO 191 of 28.11.1994 and SRO 66 dated 27.05.2003.”

7. Contentions of the respondents in
OA No. 692/2014 and 724/2014.

7.1. In reply to the said OAs, the contention of the applicants has been disputed and denied.

7.2. It has been submitted that CAT Allahabad Bench in its common order dated 12.12.2014 in a group of OAs have elaborately analyzed all legal aspects pertinent to the issue of non-acceptance of qualification in technical/ engineering disciplines obtained through DEM for appearing in LDCE for fast track promotion to the post of Chargeman (T). The Tribunal has dismissed the 24 OAs challenging the impugned orders of R-2 relying on the principles laid down in ***Banarasi Das Vs. State of UP-AIR 1956 (SC) 520, R.Prabha Devi***

& Ors. Vs. Govt. of India & Ors - AIR1988

(SC) 902 and supreme Court (SLP (C) No.

35793-96/12). It is also submitted that the recognition of the Universities and Autonomous colleges, as far as the syllabus and recognition of technical and management courses are concerned, AICTE is the nodal agency. Indian Ordnance Factories is an industrial establishment and having core competency to manufacture and supply arms and ammunition to the Armed Forces. The Chargeman (T) in the supervisory cadre are required to supervise this important production activity. R-2 constituted a high level committee to look into the qualification required to meet the core competence of the supervisory staff. This committee recommended in 2013 that no qualification through distant mode (in technical discipline) can be acceptable for appearing in the LDCE for Chargeman (T &NT) i.e. Technical and Non-Technical.

7.3. As per note 10 of SRO 13E it is open to R-2 to lay down requisite

qualification rules for selection of candidates as observed by the Apex court in **Banarsi das (Supra)**.

8. No rejoinder has been filed in OA No. 692/2014 and 724/2014. However, in the rejoinder filed by the applicant in OA No. 665/2014, it has been contended that the reliance of the respondents on letter dated 22.12.2011 of AICTE is completely misleading. The letter only contends that JRN RVU does not come under the purview of AICTE. Nowhere does it say that JRN RVU is not approved by AICTE. It is not required that the institute which is notified as deemed university would need any approval of AICTE.

8.1. It is further stated that the Chairman UGC had constituted a committee to consider the request of JRN RVU for ex-post fact approval of the courses through Distant Education Mode (DEM). By letter dated 03.07.2006 the UGC conveyed ex-post facto approval for students admitted under the DEM from 01.06.2001 to 31.08.2005 which was

further extended till 31.05.2007 vide letter dated 01.05.2007.

8.2. An MOU dated 10.05.2007 was signed between UGC, AICTE and DEC by which it was decided to form a Joint Committee to oversee the implementation of MOU and to design action plan for approval and monitoring of institutions offering technical programmes through distance and mixed modes. The said joint committee granted approval to JRN RVU for the year 2007-08 which was conveyed vide letter dated November 2007.

8.3. Vide order dated 30.04.2013 passed by the Hon'ble Chhattisgarh High Court in WP No. 5537/2009 in the case of S.K. Bharati & Ors. Vs. State of Chhattisgarh. It is held that AICTE has no role to play for granting recognition to Diplomas awarded by JRN RVU. This finding was given on the basis of a statement made by the AICTE. Accordingly, the petitioners were directed to be considered for appointments on the basis of diploma awarded by JRN RVU.

8.4. The IGNOU has stated that once the

Universities are approved by the DEC, the students acquiring qualifications from such Universities are eligible to be considered for Government jobs as per notification dated 01.03.1995.

8.5. Vide letter dated 28.08.2012, the MHRD has stated that JRN RV is deemed to be a university recognized by Central Government and that if deemed university has obtained approval of Tri-partite Agreement to run the courses under the DEM, the approved diplomas awarded by them would be valid for employment under Central Government. AICTE itself has signed tri-partite agreement with DEC & UGC for approving/ recognizing courses awarded through DEM. In any case, having been recognized as a deemed university, approval of AICTE is not required for courses run by deemed universities.

8.6. In **MP. No. 556/2016 (in OA No. 665/2014)** for production of documents, it is further stated by applicants that during the pendency of the OA, the Government of India has issued Gazzette notification dated

10.06.2015 notifying that all degrees/ diploma/ certificates including technical education degrees/ diplomas awarded through Open and Distance Learning (ODL) mode of education by the Universities established by the Act of Parliament or State Legislature, Institutions deemed to be Universities under sections 3 of the UGC Act 1956, stand automatically recognized for the purpose of employment to posts and services under the Central Government provided they have been approved by the UGC. The said notification has been implemented by the Ministry of Railways vide letter dated 17.05.2016 making it effective from the date of notification i.e. 10.06.2015 also stating that cases finalized prior to issue of the letter need not be reopened. The AICTE has issued letter dated 04.11.2015 circulating the said notification dated 10.06.2015 and stating that technical qualifications acquired though ODL/ Distance mode is recognized for the purpose of employment to posts under the Central Government. A similar OA involving

diploma from JNRV has been allowed by Madras Bench of this Hon'ble Tribunal vide judgment and order dated 07.01.2016.

9. We have gone through the **OA No. 665/2014** alongwith Annexures A-1 to A-22 and Rejoinder alongwith Annexures A-23 to A-30 and MP No. 556/2016 alongwith Annexures MP-1 to MP-4 filed on behalf of the applicants.

9.1. We have gone through the **OA No. 692/2014** alongwith Annexures A-1 to A-14 filed on behalf of the applicants.

9.2. We have gone through the **OA No. 724/2014** alongwith Annexures A-1 to A-19 filed on behalf of the applicants.

9.3. We have also perused the documents and judgments/ orders filed during oral hearing and arguments by learned counsel for applicants.

10. We have gone through the **Reply to OA No. 665/2014** along with Annexures R-1 to R-3 filed on behalf of the respondents.

10.1. We have gone through the **Reply to OA No. 692/2014** along with Annexures R-1 to R-5 filed on behalf of the respondents.

10.2. We have gone through the **Reply to OA No. 724/2014** along with Annexures R-1 to R-14 filed on behalf of the respondents.

10.3. We have also perused the judgments relied upon by respondents filed during oral hearing and argument.

11. We have heard the learned counsels for the parties and carefully considered the facts, circumstances, law points and rival contentions in all the three OAs.

12. To appreciate the issues involved in the three OA we bring to the fore front the relevant provisions in RRs of 1989, 1991 and 2003 as below:-

12.1. Relevant provisions of SRO 13E for Chargeman Grade-II are as follows:-

Name of post	No. of Posts	Classifications	Scale of pay	Whether selection OR non-selection posts	Whether benefit of added years of service admissible under Rule 30 of CCS Pension Rules 1972	Age limit for Direct recruitment
1	2	3	4	5	6	7
Chargeman Grade-II (Tech)	5500*	Civilian in Defence Service, Group 'C' Non-Gazetted.	1400-40-1800-EB-50-2300	Selection	Not applicable	Between 18 to 25 years
Chargeman	800*	-do-	-do-	-do-	-do-	-do-

n Grade-II (Non-Tech/ store)						
Supervisor (Non-Tech and Store)	1333*	Civilian in Defence Service (Non-Industrial Group 'C' Supervisor)	1200-30-1500-EB-40-2040	-do-	-do-	-do-

Name of post	Educational and other qualifications required for direct recruitment	Whether age, educational qualifications and trade test prescribed for Direct recruits will apply in the case of promotion.	In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made.
1	8	9	12
Chargeman Grade-II (Tech)	<u>Recognized 3 years Diploma or equivalent in Engg. / Technology/ (emphasis supplied)</u> D'manship with 2 years experience in relevant technical field or B.Sc with Physics Chemistry and Math, where diploma for any category cannot be identified by OFB and with 2 years experience in the relevant field. In design category if recognized certificate in D'manship Diploma course is less than 3 years duration experience in D'manship to cover the balance period will be necessary.	No	By Promotion Promotion from Draughtsman or equivalent in scale of Rs.1200-2040 with 3 years service and promotion. HS Gd. I with 3 years of regular service failing which from HS Gd.II with 6 years regular service in respectively category. By Transfer. On passing trade test.
Chargeman Grade-II (Non-Tech/ store)	A degree from a recognized University with 2 years experience in relevant fields.	No	By transfer. Inter of Draughtsman in scale of Rs.1400-2300 and Supervisor (Tech) or equivalent in scale of Rs. 1400-2300 in respective category.
Supervisor (Non-Tech and Store)	A Degree from a recognized university. Experience in the relevant field desirable	No	By Promotion: Promotion from the grade of supervisor (Non-

		<p>Tech) /Store/UDC or equivalent and Telephone Operator Gd. I with 3 years of regular service in the grade. By Transfer: Op passing trade test.</p> <p>By Transfer of supervisor 'A' (Non- Tech/Store) including Security Assistant "A" Promotion from grades of security Asstt. 'B' / Store Keeper/LDC or equivalent with 3 years of regular service in the grade and leading Hand Fire /Driver Fire Brigade with 3 years of regular service in grade having passed the:-</p> <p>(a) Senior Fire supervisor Course from Defence Instt. Of Fire Research. Min. of Defense, New Delhi or</p> <p>(b) Sub Officer's National Fire Service College, Nagpur; or</p> <p>(c) Station Officer's course/Asstt. Divisional Officer's /Divisional Officer's Course from National Fire Service College Nagpur or</p> <p>(d) BE Fire Engg. From Nagpur University or</p> <p>(e) Graduateship from Institute of Fire Engineers UK or Graduateship from Institute of Fire Engineers India.</p> <p>By passing; on passing trade test.</p>
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"Note:- 10 In relation to prescribed qualification under Column 8 of this Schedule the question whether a qualification is equivalent to the prescribed qualification for

any post shall be decided by the Ordnance Factories Board."

13. Relevant amended provisions of SRO 191 notified on 28.11.1994 is as follows:

"2. In the Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment and conditions of Service) Rules, 1989-

(i) After Rule 7 for the heading "DRAFT SRO FOR SUPERVISORY AND NON-GAZETTED CADRE IN ORDNANCE FACTORIES, MINISTRY OF DEFENCE PRODUCTION", the heading "SCHEDULE" shall be substituted:

(ii) In the schedule, **against the post of Chargeman Grade II (Technical)** -

(a) **in column 9**, for the existing entry, the following shall be substituted, namely:-

Age-No.

Educational qualification- Yes.

For Departmental Competitive Examination only)

(All emphasis supplied)

13.1. As per the above amendment it is clear that Column 9 SRO 13E for chargeman Grade II got amended in SRO 191 requiring that educational qualification prescribed for DR shall apply in the case of departmental candidates also, which was not so in SRO 13E. The effective provision applicable to promotion candidates in Column 9, therefore became the same as in Col. 8

for DR i.e. "Recognized three years Diploma or equivalent in Engineering/ Technology

14. In the relevant, further amended provisions of SRO 2003 notified on 27.05.2003, the educational qualification is as follows:-

"SRO 66:- In exercise of the powers conferred by the proviso to article 309 of the Constitution, the President is hereby makes the following rules to amend the Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment and conditions of service) Rules, 1989, namely:-

1. (1) These rules may be called the Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment and conditions of service) Amendment Rules, 2003.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Indian Ordnance Factories Group 'C' Supervisory and Non-Gazetted Cadre (Recruitment and conditions of service) Rules, 1989 in the schedule:-

(I) **Against the post of Chargeman Gr.II(Technical) under column 8 for the existing entry, the following shall be substituted namely:-**

The following will be the Educational Qualification for Direct Recruitment in different trades/ disciplines:

a) **Mechanical Must possess three years diploma or equivalent qualification certificate in the respective field duly affiliated by AICTE."**

14.1. Since, other clauses were not amended, it is evident that SRO 2003 has to be read with amended column 9 SRO 191 & amended Col. 8 of SRO 13(E) with qualification prescribed at 2(1)(a) (in SRO 2003) in respect of Chargeman Grade II (Technical). Hence, prescribed qualification became on par for DR and for promotion through LDCE also, promotion (without AICTE affiliation) to LDCE will be (with AICTE affiliation) from 1994 to 2003 and thereafter. This means that neither DR nor promotion through LDCE could be recruited/promoted with the diploma course without AICTE affiliation i.e. of DEM course conducted by a non affiliated university.

15. As per the above RRs, the OFBs issued direction to respondents OFs in all three OAs for inviting participation to fill up the post of Chargeman (did not specify Grade-I or Grade -II) from eligible departmental candidates containing the same wording regarding qualification as in SRO 2003 as extracted at para 14. However, the

respondents also referred at the very outset in the notification to all three SROs, when inviting applications to participate in LDCE selection process. SRO of 2003 could not be read alone as applicants have done, as all three were mutually/ jointly reinforcing.

16. It was in this background that the applicants participated in the LDCE, passed the exams and were promoted although they had only a diploma DEM course and also the diploma was awarded by JRN RVU. But, according to respondents, any DEM courses in the relevant field and DEM course of JRN RVU were not within the purview of AICTE, as per the communication received from AICTE. Hence, affiliation of JRN RVU/ DEM courses are denied by AICTE and hence the impugned order.

17. It is settled law that the Recruitment Rules framed under Article 309 of the Constitution of India stand supreme unless challenged on grounds of violation of other fundamental rights granted by the Constitution of India. In all the present

cases, a conjunctive reading of SRO 13E with SRO 191 and SRO 66 shows that the prescribed qualification in the SROs applied equally to DR as also to promotion through LDCE, since 1994 and after 2003 with affiliation to AICTE. Hence, amended column of 9 of SRO 191 prevailed then and later when SRO 66 got notified in 2003 but with the additional requirement of AICTE affiliation. But the provisions of parity in qualification for DR and promotion pre-existed SRO 2003. The said provision applies mutatis-mutandis to column 9 of amended SRO 191. There was no legal requirement to further amend as per column 9 of SRO 191 in SRO 66 to reiterate the parity in qualification prescribed for DR and for promotion through LDCE, although it could have been made more clear even through an executive instruction, while interpreting the SROs jointly.

18. Further there was no deviation from the above provision in the three SROs while inviting applications to notification for holding the LDCE examination. The

respondents mentioned all the 3 SROs and hence reiterated that no disparity existed between qualifications required for direct recruitment and promotion. The applicants should have known that it is legal presumption that the provisions in the Notification had to be in harmony with the SROs unless established to the contrary. The said notification was not challenged (nor the SRO stood challenged) if applicants considered the notification contrary to SRO 66. The applicants failed to read the three SROs jointly.

19. However, by giving promotion without realizing that the qualification of diploma held by the applicants was based on diploma from DEM, which is not under purview of the AICTE, and without going into the fact that the said diploma was conferred by the JRN RVU, which was not affiliated to AICTE, the respondents made an error. Their actions were contrary to the SROs/ RRs. If rules require affiliation to AICTE, then it is incumbent upon the applicants as well as

respondents to ensure the same is implemented in letter and spirit. It is beyond scope of this Tribunal to explore the issues of competency of authority of UGC/DEC/MHRD etc to approve/ affiliate etc., since the rules declared that AICTE affiliation is a must and only prescribes the authority of AICTE and none else.

20. The respondents contention is that UGC/DEC etc. or any other body is competent and not AICTE cannot hold legal ground, so long as the rules require AICTE affiliation and so long as applicants have not challenged the SRO itself as being against any policy, MOU, AICTE Act, UGC Act etc. This Tribunal is not bound to examine the applicants' contention for confirming/ denying the authority of the UGC/ DEC/ or even that of AICTE. The applicants have not filed any documentary evidence, even for arguments sake, in this OA to show that the JRN RVU has been given approval with the joint signature of AICTE, UGC, DEC at the relevant point in time, when MOU was

operative. The joint signature is a legal requirement under the MOU binding on all three.

21. On the very specific issue involved in these cases, the applicants have relied upon the decision of CAT, Hyderabad Bench in O.A.1363/2014 dated 08.06.2016, which held that the said OA is squarely covered by the decision of the CAT, Madras Bench in **O.A.No.1347/2012 dated 07.01.2016 in R.B. Shanmuganandan Vs. Union of India and another** allowing the OA. The said order is not filed in this OA to see if the SROs have been challenged. If not challenged the order was liable to be held as judgment per curiam. The Hyderabad Bench merely directed the respondents to consider the order of the CAT Madras Bench and pass appropriate order. Outcomes are not made available.

22. On the other hand the respondents have relied upon the decision of the CAT, Allahabad Bench in a group of 24 OAs in exactly similarly situated cases dismissing all the OAs. We recall the said decision in

the group of OAs in OA No. 138/2012; OA No. 330/00439/2014; OA No. 1159/2013; OA No. 1211/2013; OA No. 1212/2013; OA No. 1213/2013; OA No. 1214/2013; OA No. 1215/2013; OA No. 1129/2013; OA No. 1130/2013; OA No. 1133/2013; OA No. 1134/2013; OA No. 1135/2013; OA No. 1136/2013; OA No. 1137/2013; OA No. 1142/2013; OA No. 1153/2013; OA No. 1472/2013; OA No. 732/2012; OA No. 738/2012; OA No. 1593/2011; OA No. 1739/2012; OA No. 1226/2013; OA No. 1231/2013 and OA No. 1232/2013 which reads as follows:-

"2. In the present original application filed under Section 19 of the Administrative Tribunals Act 1985, the applicants has prayed for quashing of the impugned order dated 04.11.2011 (Annexure A-5) passed by the respondent no. 3 by means of which the candidature of the applicants to appear in Limited Departmental Competitive Examination (hereinafter referred to as L.D.C.E) for the post of Charge Man /Technical / Non-technical (Store & OTS) has been rejected on the ground that the Diploma in Mechanical Engineering awarded by the Janardan Rai Nagar Rajasthan Vidyapeet (Deemed) University, Udaipur, Rajasthan (hereinafter referred to as J.R.N.R.V) have not been issued by the authorized / authentic Institution as per the provisions of the relevant

SROs..

3. In a nutshell, the facts of the case are that the applicants, who had been initially appointed as Semi Skilled workers in different units of Ordnance Factories, sought permission for appearing in two years Diploma course in Mechanical Engineering (Distance Education Mode) to which they were allowed. The applicants were declared pass in the aforesaid diploma by the J.R.N.R.V.

4. As per the O.A, The Ordnance Factory Institute of Learning, Kanpur held L.D.C.E for the of Charge Man-II (Technical / Non-technical) in the year 2010. For appearing in the said examination, Diploma in Mechanical Engineering was essential and persons having Diploma through distance education mode from J.R.N.R.V applied for the aforesaid examination. Admit cards were issued to the persons, who were made such applications. One example given in the O.A in this regard is that of Shri D.K. Malviya, who had obtained his diploma from J.R.N.R.V, who was allowed not only to appear in the examination but also subsequently promoted to the post of Charge man by order dated 15.11.2010.

5. In the year 2011 the respondents again initiated the selection proceeding for filling up the vacancies of Charge Man/ Technical / Non-technical through L.D.C.E 2011/12. The applicants applied for the aforesaid post. It is contended in the O.A that the applicants were eligible for the post of Charge Man/Technical/Non-technical but the respondent no. 3 passed the impugned order dated 04.11.2012 rejecting the candidature of the applicants on the ground that the certificate in Mechanical Engineering possessed by them, was not issued by the authorized institution i.e. having AICTE affiliation. Alongwith the application of the applicants, the applications of

other persons were also rejected on the same ground. Feeling aggrieved by the impugned order dated 04.11.2011, Shri Mahesh Kumar and Shri Sushil Kumar filed O.A No. 1472/11 before this Tribunal and obtained interim order dated 14.12.2011 allowing them to appear in the L.D.C.E 2011-12 on provisional basis. It is averred that while passing the impugned order, the applicants were overlooked but the case of Shri D.K. Malviya was considered by the respondents and they allowed him to appear in the aforesaid examination in the previous year. In passing the impugned order, the respondents also ignored the view taken in letter dated 13.11.2007 issued by the Joint Secretary, University Grant Commission, New Delhi wherein it has been clearly stated that the Distance Education Council (in short D.E.C), a statutory council to regulate distance education, had conveyed approval (ex-post facto) on provisional basis for the year 2007-08 to certain courses run by the above mentioned university i.e. J.R.N.R.V in distance mode. In the light of the contents of the letter dated 13.11.2007, the certificates issued by the J.R.N.R.V for academic session 2007-08 was deemed to be approved by the D.E.C. Furthermore, Indira Gandhi National Open University, New Delhi (in short IGNOU) also issued a letter dated 08.10.2008 to Vice Chancellor, J.R.N.R.V indicating therein that the University was accorded provisional permission for the academic year 2007-08 by its letter dated 03.09.2007 to program offered through distance mode. It was also stated that the courses run by J.R.N.R.V have provisional recognition till visiting of the Commission of IGNOU and submission of its report. It has been stated in the O.A that on account of these two communications, issue of the impugned orders by the respondents is not sustainable in the eyes of law and, therefore, liable to be set aside.

6. Reference has also been made to the letter dated 04.10.2007 issued by the All India Council for Technical Education (hereinafter referred to as AICTE) wherein it has been stated that the degree/diploma obtained through the distance education mode and approved by the D.E.C does not require approval of AICTE. Having regard to this communication, diploma obtained by the applicants from J.R.N.R.V, which has been approved by the D.E.C, is a valid one and should be recognized for the purpose of allowing the applicants to appear in the L.D.C.E 2011-12. Attention has also been drawn to the instances in past where the department had allowed people with diploma from same university i.e. J.R.N.R.V to appear in the examination and gave them promotion. In view of these facts, the respondents have acted in discriminatory manner so far as the applicants are concerned, which is violative of Article 14 and 16 of the Constitution. In this regard it has also been stated in the O.A that the candidates possessing diploma through distance education mode have been allowed to appear in the examination by the Ordnance Factory at Bhandara (Maharashtra). Relying upon the communication received from U.G.C and IGNOU as well as the fact that in the past, certain candidates possessing the diploma through distance education mode, have been allowed to appear in the L.D.C.E, it has been contended that there is no valid reason on the ground based upon which they have not been allowed to appear in the L.D.C.E 2011-12.

7. In the counter affidavit filed by the respondents in O.A No. 1472/11, they have stated that as per the statutory recruitment rules applicable to L.D.C.E for the post of Charge Man (Technical / Mechanical), it has been specifically laid down that the eligible candidates must possess three years diploma in Mechanical Engineering

or equivalent qualification in respective field duly affiliated by the U.G.C / AICTE. The applicants, who applied for this examination, informed that they possessed diploma from J.R.N.R.V. When it was enquired from the aforesaid institution whether it is recognized by the AICTE, it responded by sending copies of two letters, which were issued by AICTE and UGC. At the same time, letter of AICTE 2007 was sent to one Sohan Lal under R.T.I Act mentioning that the degree obtained through distance education mode did not require AICTE approval. In another letter, UGC in November 2007 addressed to J.R.N.R.V noted that DEC being a statutory council to regulate distance education, as already conveyed approval (ex post facto) on a provisional basis for the courses run by the aforesaid institution for the year 2007-08 based on the approval of UGC, AICTE and DEC Joint Committee. Thereupon the respondents asked for some clarification regarding further approval of the courses run by this institution subsequent to the year 2007-08. It also requested the institution to sent list of courses which had been approved by the UGC. In response to this letter of the respondents, the J.R.N.R.V merely stated that the list, which has been sent earlier, is approved by the Joint Committee. However, they enclosed the Notification dated 17.02.2004 and 01.03.1995 issued by the M/o Human Resource Development (in short MHRD), which is self explanatory. In the aforesaid letter of MHRD, it was stated that the qualification through the distance mode by the university established by an Act of Parliament or State Legislature , institution deemed to be University u/s 3 of UGC Act 1956 and institution of national importance declared under Act of Parliament stand automatically recognized for the purpose of employment under the central government.

8. The respondents sought the comments of UGC, IGNOU and AICTE on the subject. The UGC informed in clear terms ***that the diploma courses do not come within its purview and that information relating to the courses run under distance education mode may be obtained from IGNOU, IGNOU in its turn informed that it has given initially recognition for offering program through distance education mode through J.R.N.R.V. It has also been clarified that the D.E.C has not accorded any separate approval to any specific program / degree/diploma offered by the above University. It is also clarified that for technical / professional courses offered by the universities, approval from AICTE is required to be obtained, the responsibility of which lies with the concerned university (emphasis supplied).*** In its response the AICTE informed that it is their policy not to recognize qualification acquired through distance education mode diploma at bachelor and master level in technical disciplines. It only recognizes M.B.A and M.C.A program run through distance education mode. ***Subsequent to the response received from the above agencies further query was made from J.R.N.R.V but it could not produce any document in support of the said institution and courses run by the authorized agencies. In view of these facts, the respondents have stated that it is plain that the diploma granted by the J.R.N.R.V does not have proper authorization of AICTE and therefore,*** as per the requirement of qualification laid down in the prescribed SRO for the post of Charge Man, the applicants are not eligible to appear in L.D.C.E having regard to the fact that they do not have requisite diploma.

9. Shri Shyamal Narain and Shri N.P. Singh, counsel for the applicants while reiterating respective O.As advanced oral submissions, which may be summarized below:

i. Learned counsel for the applicants questioned the conclusion arrived at in the case of **Kartar Singh Vs. U.O.I & Ors** rendered by Honble High Court, Punjab & Haryana wherein it was held that the approval granted by the D.E.C to the institutes in question which included the J.R.N.R.V, is illegal and unwarranted. Learned counsel argued that the D.E.C is a broad based body comprising representatives of U.G.C, IGNOU and AICTE. *Once the courses run by an institute is inspected and approved by the D.E.C it may be deemed that the said courses have been approved by all the three agencies including AICTE in their capacity as the Members of DEC (emphasis supplied)*. Accordingly, there is no reason to dispute the fact that the courses run by the concerned institution do not have the approval of AICTE. Under the circumstances the denial to the applicants to appear in L.D.C.E is unfounded as the applicants possess the diploma which should be taken to be AICTE approved.

ii. The counsel referred to Annexure A-8 of the O.A, which is a letter issued by the U.G.C to the V.C, J.R.N.R.V informing him that the Commission had noted that the Distance Education Committee had already conveyed the approval (ex post facto) as well as provisional approval for the academic year 2007-08 to certain courses run by that institute based on the report of UGC, AICTE and DEC Joint Committee. Hence no separate approval of the UGC is required for the same. The learned counsel categorically stated that having regard to the contents of this letter it becomes evident that the courses run by the J.R.N.R.V are approved by the UGC, which is the controlling body and the AICTE has no option but to go alongwith the direction given by the UGC.

iii. In the third place learned counsel for the applicants pointed out that

against the order passed by Honble High Court, **Punjab & Haryana in the case of Kartar Singh (Supra)**, S.L.P has been filed in the Apex Court, which on 07.12.2012 has passed an order to the effect that no adverse action will be taken against the students whose degrees have been declared to be illegal by the order of High Court. He contended that in the face of the order of Apex Court, the respondents are bound to declare the result of the applicants, who have been allowed to appear in LDCE 2011-12 on provisional basis. However, the result of these candidates shall remain contingent upon the out come of S.L.P pending before Honble Supreme Court.

iv. The learned counsels stated that given the position, as explained above, it is to be seen whether in the light of the communication issued by the UGC and MHRD any recruitment rules can be framed de-hors of the policy of the Central Government. He questioned the very right of the AICTE to affiliate colleges and institutions. Authorization is a word used in the context of university to whom collage is affiliated. Therefore; the provision in the SRO to the effect that the eligible candidates must possess a diploma issued by an institute affiliated to an Institution does not have any meaning. The counsel argued that the applicants had been given leave to pursue the diploma course run by J.R.N.R.V for the purpose of skill up-gradation and use in future progression of their career. The very fact that the permission had been granted by the respondents by inference connotes that the diploma courses in the concerned discipline run by J.R.N.R.V implied that is recognizable by the respondents.

v. The learned counsels for the applicants referred to Annexure A-8 in O.A No. 1226/13, which is a draft of proposed revision of SRO for the post

of Charge Man / Technical and Non-technical / Store & OTS. He pointed out that taking into account the decision taken by the UGC and MHRD, a proposal had been made for revising the educational qualification wherein, in addition to acquiring of diploma in the field recognized by AICTE, equivalent qualification approved by either of AICTE/DEC/UGE/MHRD has also been incorporated ***in both direct recruitment as well as promotional posts through L.D.C.E (emphasis supplied)***. The proposal for revision of the SRO particularly with reference to the qualification itself is an indicative of the fact that the respondents wish to incorporate the diplomas granted by the institutes, as stated above, to be recognized in terms of eligibility for appearing in LDCE for the post of Charge Man -II.

vi. Finally, learned counsel for applicants advanced the argument that in the past one year, the diploma course, as possessed by the applicants, have been accepted by the respondents and the concerned candidates have not only been allowed to appear in the examination but have also been granted the benefit of promotion. If the applicants are denied the same opportunity it will be a gross violation of Article 14 and 16 of the Constitution. In this regard, learned counsel particularly referred to the case of D.K. Malviya (at page 33 of O.A 138/12). Learned counsels before concluding their arguments submitted that the impugned order itself is non-speaking and for this reason as well as for the facts and circumstances, as brought out above, the applicants are entitled to the relief claimed by them.

10. Shri A.K. Singh, learned counsel for the applicants in his respective O.As argued that as the applicants were in possession of three years diploma in Mechanical trade from IGNOU and had skilled experience of worker of 5 years

in ordnance factory, they fulfilled the educational as well as experience qualification, as stated in the notification. The rejection of application of the applicants by the respondent No. 3 on the ground that the diploma in mechanical discipline obtained by them from IGNOU was not recognized by the AICTE, is not tenable in terms of the notification, which was issued by the MHRD dated 01.03.1995. In support of his contention, learned counsel cited the case of **Bharthidasan University and another Vs. All India Council for Technical Education and others AIR 2001 Supreme Court 2861** wherein the Apex Court has clearly held that AICTE created under the Act is not intended to be an authority either superior to or supervise and control the universities and thereby superimpose itself upon such universities merely for the reason that it is imparting teaching of technical education or programme. He stated that the court goes on to say that definition of technical institute under A.I.C.T.E Act does not include universities and therefore, running / conducting courses and programmes in technology courses by university, there is no necessity to obtain prior approval of AICTE. The AICTE Act merely provides an advisory and recommendatory role to the AICTE for the purposes of maintaining appropriate standard and qualitative norms. He also cited the judgment of **Honble High Court, Madras dated 21.01.2014** passed in the case of **Rajesh P. Sankaramatam Vs. C.A.T., Madras Bench & Ors in Writ Petition No. 21459/2013** and pointed out that in the aforesaid judgment the ratio laid down by the Apex Court in the case of Bharthidasan University (Supra) has been reiterated.

11. The arguments advanced by the other counsels was to the effect that the notification of MHRD unequivocally states that any qualification awarded through distance education mode by the

universities established under the Act of Parliament or State Legislature, institute deemed to be university under section 3 of UGC Act 1956 stand automatically recognized for the purpose of employment to a post and service under Central Government. In the facts and circumstances, in accordance with the provision of circular, the diploma in mechanical discipline awarded by IGNOU is valid one and in the light of observation of the Apex Court in **S.L.P No. 35793-96/12**, those candidates who have been allowed to appear in LDCE on provisional basis, their result should be declared followed by subsequent necessary action.

12. Shri S.N. Chatterji, counsel for respondents commenced his arguments by referring to R.B.E 165/11 dated 08.12.2011 issued by the Railway Board wherein it has been clearly indicated that the Railway Board have decided not to accept diploma / degree in engineering obtained through distance education mode for the purposes of employment in Railways. Objective behind issue of this circular is to maintain a minimum standard as required for technical diploma / degree. He drew attention to Chapter 3 of AICTE Act and stated that in rule 10 (1) and (k), the AICTE has been specifically assigned the role of granting approval for starting new technical institutions and for introduction of new courses or programmes in consultation with the concerned agencies. In sub rule (u), the AICTE is required to set up a national body of accreditation to periodically conduct evaluation of technical institutions or programmes on the basis of guidelines, norms and standards specified by it and to make recommendation to it or to the Council or to the Commission or to other bodies regarding recognition or de-recognition of the institution or the programme. Learned counsel argued that these provisions of AICTE Act define the role of institution clearly bringing out

that the objective behind setup of AICTE was to vested it with power for granting approval for technical institutions and technical courses with a view to lay down norms and standards to the courses as well as institutional facilities. As the AICTE does not recognize technical course run under the distance education mode, any diploma / degree acquired from a university or institution not approved by AICTE, is not recognizable. This has been made clear by the AICTE in its Notification No. UB/04/01-2011.

13. The learned counsel referring to the instances where persons have been inducted possessing diploma through non-AICTE affiliated institution or distance mode, cannot be taken as precedent particularly in the context that advent of private players in the field of higher education and mushroom growth of technical institutes, some aberrations could have taken place. It is in this context that the regulatory body like AICTE for technical institutions has been constituted with the required statutory backing. He argued that the SRO itself is a creation of this evolving process and if on certain occasions aberrations have been made from the statutory requirement, they cannot be allowed to continue in perpetuity. On this point, the learned counsel relied upon the judgment of **Apex Court dated 15.01.2010 passed in Civil Appeal No. 2090/2007 - Union of India & Anr. Vs. Kartick Chandra Mandal & Anr.** In para 16 of this judgment, the Apex Court has held if an appointment is made illegally or irregularly, the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. This has been the consistent approach of this court.. On this issue the Apex Court also relied upon the case of **State of Bihar Vs. Upendra Narayan**

Singh & Ors 2009 (5) SCC 65, wherein the court has held that .guarantee of equality before law enshrined in Article 14 is a positive concept and it cannot be enforced by a citizen or court in a negative manner (emphasis supplied). If an illegality or irregularity has been committed in favour of any individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing wrong order.. Having regard to this position, it was submitted that though in the case of Shri D.K. Malviya, who was appointed as Charge Man on the basis of his possessing diploma in mechanical engineering from J.R.N.R.V, by order dated 15.11.2010, his appointment was done with the condition that it is subject to any amendment as warranted due to change in circumstances, if any, under any judgment or order passed by the Court / Tribunal or the O.C.F. In the circumstances to use the instance of Shri D.K. Malviya as a precedent for recognizing diploma granted to the applicants on the basis of distance education mode, cannot be sustained.

14. Learned counsel for respondents further submitted that genesis of the controversy involved in this case emanates from the judgment dated **13.01.2010 passed by the S.B of High Court, Punjab and Haryana in W.P. No. 1405/09** as well as the order of this Tribunal (Principal Bench) dated 21.10.2011 passed in **O.A No. 2914/2010**. In both the cases, the diploma obtained by the applicants from J.R.N.R.V have been treated as valid diploma. However, the judgment of S.B passed by Honble High Court, Punjab & Haryana was challenged in **C.W.P no. 1640/08 Kartar Singh Vs. U.O.I & Ors.** In the judgment passed in the aforesaid writ petition on 06.11.2012, the controversy was discussed in detail and the Honble High

Court set aside the order of S.B holding that the approval granted by the D.E.C to institutes in question in that case was illegal, unwarranted and beyond the scope of authority vested in it. As a necessary consequence, the degrees granted by such deemed to be Universities are illegal and the candidates cannot be deemed to be qualified in the purported subject. The learned counsel further stated that the stay order passed by the **Apex Court in S.L.P No. 37028/2012 in the case of Vijay Kumar Vs. Kartar Singh & Ors** would be not binding upon this Tribunal as it is only the ratio of decidendi of a judgment (the principles or reasons on which a decision is based), which forms a precedent. Regarding the general principle involved in the present controversy, the Apex Court has not laid down any principle or law. On this point, the learned counsel also placed reliance in the case of State of U.P. Vs. Synthetics and Chemicals Ltd - 1991(4) SCC 139, which lays down that a decision which is not express and is not found on reasons nor proceeds on a consideration of the issue, can be deemed to be a law declared to have a binding effect as contemplated under Article 141. Only a ratio decidendi is binding. In further support of his argument relating to the powers of AICTE, counsel for respondents relied upon judgment of Honble Supreme Court dated 13.12.2012 in **Civil Appeal No. 9048-9047 of 2012 Parshavanath Charitable Trust & Ors Vs. All India Council for Tech. Edu & Ors.** *Concluding his arguments learned counsel stated that the case of the applicants does not have any foundation merely on the ground that in none of the O.As the SRO has been challenged and so long as it stands in the present form, there is no option on the part of the respondents but to strictly follow its provisions (emphasis supplied).* Given the facts, as stated above, the O.As are not sustainable.

15. Shri Saurabh Srivastava, another counsel for respondents in his arguments emphasized that statutory regulatory orders are binding in nature on both the applicants as well as respondents. *The applicants not having challenged the S.R.O, the issue emerging out of the judgment of S.B of Honble High Court (Supra) as well as the judgment in the case of Kartar Singh (Supra) have no relevance in the present O.A. The observation, which has been made by the Apex Court in S.L.P is regarding the validity of technical diplomas / degrees granted by the institutions not affiliated by AICTE (emphasis supplied).* He pointed out that the respondents were constrained to bring the case of Kartar Singh (Supra) on record for the reason that the applicants in their Rejoinder had relied upon the Single Bench judgment which had held that the degree / diploma given by institution not having AICTE approval / affiliation were also recognisable for the purpose of public employment. He also stated that while the Honble High Court had taken cognizance of this controversy under Article 226 of the Constitution under which it has omnibus powers, the present original applications have been filed under section 19 of Administrative Tribunals Act and the Tribunal has to take up a view within frame work of applicable statute. He also reiterated that the S.R.Os in the present original application have not been challenged.

16. In rebuttal, Shri S. Narain and other counsels on behalf of applicants submitted that the Tribunal is vested with the powers of deciding virus of a rule and wherever it is found to be against any law it can be struck down. In the case of L. Chandra Kumar Vs. U.O.I & Ors 1997 (2) SCR 1186, this issue has been amply clarified. The second point emphasized by the counsel for applicants was that the institutes had the approval of D.E.C on which A.I.C.T.E is one of the members and therefore, the approval of A.I.C.T.E.

could be deemed to have been (**emphasis supplied**) obtained by the aforesaid institution. He also stated that the order passed by the Apex Court in **S.L.P No. 37028/2012** is clearly a stay order and the order of Punjab & Haryana High Court accordingly comes under cloud. The respondents by not recognizing the diploma granted by J.R.N.R.V have flouted the interim order of the Apex Court. The exclusion of the applicants from consideration regarding the eligibility for L.D.C.E for the post of Chargeman-II is contrary to the orders of Honble Supreme Court. Finally, counsel for the applicants emphasized that there is a clear overlap between the question of these O.As and the order of the Apex Court issued in S.L.P. It is for this reason that Hyderabad Bench of this Tribunal has passed specific order that in the light of the observation made in S.L.P, that the result of the applicants, who have been allowed to appear in the examination, should be declared depending upon the outcome of their result, they should be given promotion subject to outcome of the decision in the pending SLP before the Apex Court.

17. Heard both the counsel for parties and perused the pleadings.

18. Very extensive arguments had been advanced by the learned counsels representing both the applicants and respondents. The main thrust of the argument of the counsel for applicants is that the diploma in engineering granted by J.R.N.R.V cannot be discounted by the respondents for the purposes of eligibility of the applicants to appear in L.D.C.E 2012. In support of arguments, they have relied upon several communications made by the U.G.C, I.G.N.O.U and MHRD. Learned counsel highlighted that in the previous years, persons possessing diploma from the aforesaid university had been granted permission to appear

in the examination and denial of same opportunity to the applicants is a violation of Article 14 of Constitution.

19. The respondents on the other hand have contested the claim of the applicants on the ground that as per the Statutory Recruitment Orders (S.R.Os), it is a mandatory requirement that only those persons shall be eligible for appearing in L.D.C.E, who have obtained diploma in Mechanical Engineering from A.I.C.T.E affiliated institution. In absence of mentioning of any diploma obtained from an institution not having affiliation of AICTE, a candidate cannot be said to be eligible. Hence the controversy involved in the present O.As is distinct from one under consideration of the Apex Court.

20. It is seen that these O.As have been filed challenging the impugned orders by which the applicants have been denied the chance to appear in L.D.C.E 2012 on the ground that the diploma in Mechanical Engineering possessed by the applicants are not from the authorized institution and hence their applications could not be entertained. ***The aforesaid order has been passed in terms of SRO -13E dated 04.05.1989 / SRO-191 dated 28.11.1994 /SRO 66 dated 27.05.2003. The advertisement by which holding of examination of LDCE 2011-12 was notified, contained the eligibility criteria as mentioned in the relevant SROs. Therefore, the scope of these O.As has to be necessarily seen within this context. As correctly pointed out by the counsel for respondents that the issue relating to recognition or otherwise of the diploma in mechanical engineering obtained from non-AICTE affiliated institution or through distance education mode got raised in the present O.As on account of reliance placed by the applicants in their Rejoinder (emphasis supplied).*** Referring to the judgment passed by the

Single Bench of **Punjab & Haryana High Court (Supra)** wherein such degrees were considered to be valid and recognisable for the purpose of public employment. The subsequent setting aside of the judgment of Single Bench by a Division Bench of Punjab & Haryana High Court in **C.W.P no. 1640/08 Kartar Singh Vs. U.O.I & Ors** and the S.L.P filed in Supreme Court against this order, is an issue which has a different dimensions as the decision involved therein relates to the larger issues of validity of diploma in engineering acquired through distance education mode. Hence it is independent of the issue for consideration in the present O.As.

21. It is to be noted that for recruitment on promotion to the post of Charge Man-II in various units of O.F.B, the O.F.B needs to formulate the ground taking into account the job requirements, based upon which such promotions are to be made. In this regard, they have promulgate Statutory Recruitment Orders (SRO) Nos. -13E dated 04.05.1989 / SRO-191 dated 28.11.1994 /SRO 66 dated 27.05.2003, which lays down requisite qualification for becoming eligible for recruitment to the post. Under these circumstances, any exercise for recruitment by promotion to the post of Charge Man-II would have to be in accordance with rules so formulated by the Board (emphasis supplied).

22. Whether the Board is competent in this regard is question that needs to be answered. In this connection, a reference may be made to Full Bench judgment of **Apex Court in the case of Banarasi Das Vs. State of U.P. AIR 1956 (SC) 520, in which it has been clearly held that the government has full power to prescribe rules for selection of candidates. **The court has observed that it is open to the appointing authority to lay down the requisite qualifications for recruitment to Government service****

and it is open to that authority to lay down such pre-requisite conditions of appointment as would be conducive .. to its requirement. Further in the case of **R. Prabha Devi & Ors. Vs. Govt. of India & Ors** AIR 1988 (SC) 902, the Apex Court has clarified that *the rule making authority is competent to make rules laying down conditions for promotion to a higher post. It has gone to observe in any event, the appropriate Rule making Authority is the best judge in this regard. The Tribunal cannot sit in judgment over the opinion of the Rule making Authority. No Court or Tribunal can substitute its own view in a matter such as this. Such a Rule framed by a competent Authority cannot be struck down unless it is shown to be violative of any Fundamental Right guaranteed to a citizen under the Constitution (all emphasis supplied).*

23. In relation to the education qualification is concerned, it has been specifically stated in SRO Nos. -13E dated 04.05.1989 / SRO-191 dated 28.11.1994 /SRO 66 dated 27.05.2003 that for being eligible to the post of Charge Man on promotion or by direct recruitment, a person to be eligible must possess three years or equivalent qualification certificate in respective field duly affiliated by AICTE. This educational qualification would have been incorporated in the recruitment rules by the competent authority keeping in view the requirement of job to be performed by the Charge Man. Keeping the above position in view the second question emerges that when specific technical qualification is fixed by the competent authority whether the court can ordinarily interfere with such matters. This issue has already been settled by the Apex Court in the case of **University of Mysore Vs. Govinda Rao - AIR 1965 (SC) 491**. In this case, Honble Apex Court has clearly observed that *normally it is wise and safe for the courts to leave the decision of such matters to the expert who are more*

familiar with the problems they face than the courts generally can be. Given this position by the Apex Court, the latitude available to the courts / Tribunals in such matter is restricted (emphasis supplied).

24. Following from the above, the issue needs to be examined that once the statutory rules have been framed for recruitment whether any deviation or relaxation from such laid down rules is permissible. This issue was examined in the case of **Bedanga Talukdar Vs. Saifudaullah Khan** 2011 (12) SCC 85, wherein it has been observed that it is a settled law that *there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and / or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement (emphasis supplied)*. In the instant case, it is observed that neither in the SROs nor in the advertisement issued by the competent authority for LDCE-2012, no mention has been made with regard to relaxation in the eligibility conditions stated therein. Similarly, in the judgment dated 05.10.2004 passed in **Appeal (Civil) No. 6506 of 2004 - Dolly Chhanda Vs. Chairman, Jee & Ors**, Honble Supreme Court had stated that the general rule is that while applying for any course or study for a post, a person must possess the eligibility qualification on the last date fixed for such purpose. There can be no relaxation in the matter of holding the requisite eligibility qualification by the date fixed. In the instant case, in absence of any provision of relaxation in the statutory rules as well as in the advertisement, the respondents had no option but to reject the application of the applicants for appearing in the LDCE-2012 being ineligible on the ground of not possessing educational qualification as mentioned therein.

25. In view of the clear ratio enunciated by the Apex Court, it becomes amply clear that in the instant O.As, ***the Ministry of Defence has the requisite competence for formulating the recruitment rules for the post of Charge Man -II and providing the necessary qualification as required for the job. Unless there is any amendment or modification in these rules, they have to be strictly adhered to and no relaxation in this regard is permissible (emphasis supplied).***

26. ***Learned counsels for the applicants have relied on numerous communications issued by the U.G.C, IGNOU and MHRD based upon which attempt has been made by them to get the applicants declared as eligible to appear in the above mentioned examination because in some of the communications referred to by them, it has been stated that the degrees / diplomas obtains from J.R.N.R.V or by distance education mode are recognisable for public employment. Be that as it may, in view of the position as brought out above, the hands of the respondents are tied by the provisions of SRO formulated by them in the matter. Given the position stated by the Apex Court, it is not possible on their part to consider any educational qualification other than the one mentioned in the advertisement as rendering a person eligible for appearing in the examination (emphasis supplied).***

27. Counsel for the applicants also cited the example of ***Shri D.K. Malviya, who had been allowed to appear in the above mentioned examination despite the fact that he had obtained the diploma in engineering through distance education mode, therefore, denial of opportunity to the applicants possessing same educational qualification, is plainly discriminatory and violative of Article 14 of the Constitution.*** On this point, learned counsel placed reliance on the order dated 07.01.2014 passed by

Hyderabad Bench of this Tribunal in O.A No. 1457/2013 Palle Raju & Ors. Vs. Govt. of India & Ors, wherein it was directed that since the applicants were persons similarly situated as those, who had been allowed to appear in the examination and subsequently granted promotion in the past, their result should be declared and if they qualify, they should also be promoted. On this argument, it may be relevant to refer to the judgment of Honble Supreme Court dated 15.01.2010 passed in Civil Appeal No. 2090/2007 Union of India & Anr. Vs. Kartick Chandra Mondal & Anr, which has been cited by the counsel for respondents. In the above cited judgment, Apex Court has clearly held that ..If an appointment is made illegally or irregularly , the same cannot be the basis of further appointment. An erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. In this regard, the court also referred to the case of State of Bihar Vs. Upendra Narayan Singh & Ors. 2009 (5) SCC 65 and Mediwell Hospital and Health Care (P) Ltd. Vs. U.O.I & Ors 1997 (1) SCC 759. In the later judgment, the Apex Court made following observation: -

Article 14 cannot be invoked in cases where wrong orders are issued in favour of others. Wrong orders cannot be perpetuated with the held 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 (emphasis supplied). 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

28. From the view as emerging from the above mentioned judgement of the

Apex Court, it is clear that the concept of **equality, as contained in Article 14 of the Constitution, is a positive concept and cannot be enforced in a negative manner (emphasis supplied)**. If an authority is shorn or realizes that it has committed any illegality or irregularity in favour of any individual or group of individuals, others cannot claim same illegality or irregularity on the ground of denial thereof to them. **Having regard to this position, the argument of counsel for the applicants on this part based upon example of Shri D.K. Malviya cannot be sustained.**

29. Learned counsel for the applicants also referred to the judgment of Honble High Court, Delhi passed in **Writ Petition (C) No. 1149/12 S.C. Jain & Ors. Vs. U.O.I & Ors**, wherein referring to the order passed by **Honble Supreme Court in SLP (C) No. 35793 -96/12**, stated that till the Supreme Court decided the SLP finally, the petitioners would be treated having valid degree subject to final view which may be taken by the Apex Court.

30. Regarding this argument, it may be pertinent to refer to the arguments advanced by Shri Saurabh Srivastava, counsel for respondents, who had argued that the question whether the diploma awarded by the institution not having AICTE affiliation and awarded through distance education mode, is an independent issue unrelated to controversy involved in this O.A. Taking into account the facts and circumstances of the case, we agree with the view advanced by the learned counsel. We feel that the SLP pending in Supreme Court deals with the larger issue whether a technical diploma obtained through distance education mode would render a person eligible for employment in different organizations of the government. In distinction, in the present O.A. the limited issue to be adjudicated is whether there are

any infirmities in S.R.O of the department based upon which the educational qualifications have been incorporated in the notification dated 30.05.2013 for determining the eligibility of the candidates appearing in the concerned L.D.C.E - 2013.

31. Having regard to the facts and circumstances of these O.As, it is clear that the impugned order has been passed declaring the applicants as educationally ineligible to appear in LDCE -2011-12, in strict accordance with the provisions of statutory recruitment orders framed by the department. Therefore, there is no infirmity in the impugned orders. *It is worth noting that SROs based upon which the advertisement of examination has been issued, have not been challenged in these O.As and so long they continue to exist in the present form, the respondents will have to follow its provisions. As the action of the respondents is in conformity with the provisions of relevant SROs and in terms of the relevant advertisement while passing the impugned orders, we do not find any good ground to interfere with it. Accordingly, the O.As are dismissed (emphasis supplied).* No costs."

23. Most of the issues raised by the applicants in the above group of OAs and in the present set of OAs, being common, have been quite extensively dealt with and stand adjudicated as above. Prime among the grounds for dismissing the OAs was that the SROs have not been challenged. The same applies to the present OAs. The applicants

have not disputed the findings in the above set of OAs or distinguished the said OAs from the present set of OAs. Further, the order of CAT, Allahabad Bench has been upheld by the Hon'ble High Court in W.P.84/2015 filed by the appellants (applicants in the above group of OAs before CAT, Allahabad Bench) which has been dismissed on 27.03.2015.

"2. Since common questions arise in this batch of writ petitions, we are disposing of the same by a common judgment.

3. Petitioners were appointed by the Ordinance Factory Board in various posts, which can be described broadly as semi-skilled. The post of Charge-man is to be filled up through three sources of recruitment, namely, by promotion based on seniority from amongst persons serving in the feeding cadre, i.e. Master Craftsman and Highly skilled. Secondly, it can also be filled up by direct recruitment to the extent of 25 per cent and balance 25 per cent by Limited Department Comparative Examination (hereinafter referred to as LDCE). Any person, who has served as semi-skilled for two years, can participate in LDCE provided he possesses the qualification of Diploma in Engineering. According to the petitioners, they sought permission of the competent Authority to pursue Diploma course through Distant Mode from IASE Deemed University. They took admission in Diploma course and they completed the course and obtained the Diploma. However, by proceedings of the employer, they were not permitted to take the examination on the score that

the Diploma, which they have obtained through Distant learning, falls short of the requirement under the Rules and the advertisement. It is feeling aggrieved that they approached the Tribunal. The Tribunal, however, rejected their contentions and dismissed the petitions. Hence, it is that they are before us. 3. We have heard Mr. Manoj Tiwari & Mr. V.B.S. Negi, learned Senior counsel for the petitioners as also Mr. Rakesh Thapliyal, Assistant Solicitor General for Union of India.

4. The Applications of the petitioners stand rejected for the reason that the Certificate in Mechanical Engineering possessed by the petitioners was not issued by an authorized Institution, which means an Institution, which was having affiliation from the AICTE. The Tribunal has noted that the order, which was impugned before it declaring the petitioners as ineligible to appear in LDCE for the year 2011-12 was in accordance with the provisions in the Statutory Recruitment Orders framed by the Department and, therefore, there is no infirmity with the impugned orders. The Tribunal further 4 notes that the SROs, based upon which the advertisement for the examination has been issued, was not challenged in the original applications and, as long as they continue to exist in the present form, the respondents will have to follow its provisions. The action of the respondent was found to be in conformity with the provisions of the SR Rules and in term of the relevant advertisement, and there was no ground found to interfere with the impugned order.

5. Mr. Manoj Tiwari, learned Senior counsel for the petitioners in most of these cases would contend that the Tribunal has not considered the effect of the Hon'ble Apex Court in its judgment in Bharathidasan University & another v. AICTE reported in AIR 2001 SC 2861.

6. According to him, the decision of

the Hon'ble Apex Court in Bharathidasan University establishes the principle that AICTE is not intended to be an authority, which can control the Universities and, therefore, it is his contention that insofar as the degrees, which have been obtained by the petitioners are concerned, same being issued by the Universities in terms of the judgment of the Hon'ble Apex Court in Bharathidasan University case, they do not require affiliation with the AICTE and consequently, the Tribunal ought to have found that the qualification obtained by the petitioners through the Distant Mode Education was sufficient to render them eligible.

7. The Tribunal took note of the judgment of the **Hon'ble Apex Court in Bedanga Talukdar Vs. Saifudaullah Khan reported in 2011 (12) SCC 85**, wherein the Court, inter alia, held as follows:

“...It is a settled law that there can be no relaxation in the terms and conditions contained in the advertisement unless the power of relaxation is duly reserved in the relevant rules and / or in the advertisement. Even if there is a power of relaxation in the rules, the same would still have to be specifically indicated in the advertisement...”

8. The Tribunal also notes that there is no mention made of any power of relaxation. The Tribunal also makes reference to the judgment of the Single Bench of the High Court of Punjab and Haryana, wherein similar Diploma was held to be valid. The Division Bench, however, interfered with the judgment of the Single Judge. The matter is, however, pending before the Hon'ble Apex Court in a Special Leave Petition. The Tribunal refers to the stay order passed by the Hon'ble Apex Court in the SLP. The Tribunal also has rejected the plea for equal treatment with one Sri D.K. Malvia, who had also obtained Diploma in

Engineering through Distant Education Mode on the basis that an erroneous decision cannot be permitted to be perpetuated further and it has in our view rightly relied on the judgments of the Hon'ble Apex Court in State of Bihar Vs. Upendra Narayan Singh & Ors. reported in 2009 (5) SCC 65 and in Hospital and Health Care (P) Ltd. Vs. U.O.I. & Ors reported in 1997 (1) SCC 759. It is also relevant to note that the Tribunal has noted that the SLP pending in the Hon'ble Supreme Court deals with the larger issue that is whether the technical diploma obtained through Distant Education Mode would render persons eligible for employment in different organizations of the Government.

9. Learned Senior counsel would point out that orders have been issued by the Central Government rendering the qualifications possessed by the petitioners, namely, Diploma in Mechanical Engineering through Distant Mode as sufficient for the purpose of employment in the Government Institutions and therefore, the petitioners should succeed. We **are not impressed by this argument. We are of the view that this is a case, where the petitioners are governed by statutory rules prescribing qualifications for the purpose of rendering them eligible to participate in the examination for promotion to 25 per cent quota for the post of Charge-man. According to the qualifications fixed, they should have diploma in the concerned Branch from an Institution, which stands affiliated through AICTE. In this case, in the teeth of the qualification, which has been expressed by the employer through statutory rules and which has been repeated and reiterated in the advertisement as 6 found by the Tribunal, the author of the impugned order has acted in strict compliance with the dictate of the Rules and the advertisement. What is of significance in disposing of these matters is that**

the petitioners have not chosen it fit to impugn the statutory rules and the advertisement as noted by the Tribunal. Having failed to challenge the Rules, any action, which has been taken in terms of the Rules, cannot be allowed to be challenged by only impugning the action taken under the Rules, which action, in turn, is in strict conformity with the Rules (emphasis supplied).

10. Learned Senior counsel for the petitioners would submit that the statutory rules predicates for affiliation by AICTE and, under the AICTE Act, there is no provision for affiliation and it only provides for approval. ***We are not called up to decide this issue. We think that we need not consider this issue in the absence of any challenge to the Rules (emphasis supplied).***

11. Learned Senior counsel would then make an attempt to persuade us to set aside the order and to remit the matter back for the purpose of amending the Original Applications. We are not persuaded to accept the request in this proceeding under Article 226 of the Constitution of India to remit the matter back for the purpose of amending the Original Applications. ***Resultant position is, we find that no illegality has been committed by the Tribunal and all the writ petitions will stand dismissed (emphasis supplied).*** There will be no order as to costs."

24. On the same set of issues and in another similarly situated case, the learned Advocate for the respondents, has relied on the order delivered on 22.03.2016 in O.A.7/2015 by CAT Allahabad Bench, which in

turn relied on the earlier referred decision of CAT, Allahabd Bench in the group of OAs decided on 12.12.2014 and the judgment of the Hon'ble High court dismissing the Writ Petitions, dismissed the OA on the same ground. The Tribunal dismissed O.A.7/2015. The operative part of the order reads as under:-

"14. It is seen that this O.A. has been filed challenging the impugned order by which the applicant has been reverted to his parent post on the ground that the diploma in Mechanical Engineering possessed by the applicant is not from the authorized institution. The aforesaid order has been passed in terms of SRO -13E dated 04.05.1989 / SRO-191 dated 28.11.1994 /SRO 66 dated /27.05.2003. The notification by which holding of examination for promotion to the post of Chargeman (Tech/Mech) was notified, contained the eligibility criteria as mentioned in the relevant SROs. Therefore, the scope of this O.A. has to be necessarily seen within this context. As correctly pointed out by the counsel for respondents that the issue relating to recognition or otherwise of the diploma in mechanical engineering obtained from non-AICTE affiliated institution or through distance education mode got raised in the present O.A.

15. It is to be noted that for recruitment on promotion to the post of Charge-Man-II in various units of O.F.B., the O.F.B. Needs to formulate the ground taking into account the job requirements, based upon which such promotions are to be made. In this

regard, they have promulgated Statutory Recruitment Orders (SRO) Nos.-13E dated 04.05.1989 / SRO-191 dated 28.11.1994 /SRO 66 dated 27.05.2003, which lay down requisite qualification for becoming eligible for recruitment to the post. Under these circumstances, any exercise for recruitment by promotion to the post of Charge-Man-II would have to be in accordance with rules so formulated by the Board.

16. Having regard to the above position, we have also gone through the order dated 12.12.2014 passed by this Tribunal in O.A. No. 138/2012, upon which the respondents have placed reliance, and find that issue of non-acceptance of qualification in technical / engineering discipline obtained through Distance Education Mode for appearing in LDCE for promotion to the post of Chargeman (Tech.) has been dealt with and the O.A. was dismissed. The above order was challenged by the applicants of that O.A. before Hon'ble High Court, Uttarakhand, which was dismissed by judgment dated 17.03.2015.

17. Learned counsel for the applicant has relied on numerous communications issued by the U.G.C, IGNOU and MHRD based upon which attempt has been made by him to get the applicant declared as eligible for promotion to the post of Chargeman (Tec/Mech) because in some of the communications referred to by him, it has been stated that the degrees / diplomas obtains from J.R.N.R.V. Or by distance education mode are recognisable for public employment. Be that as it may, in view of the position as brought out above, the hands of the respondents are tied by the provisions of SRO formulated by them in the matter. Given the position stated by the Apex Court, it is not possible on their part to consider any educational

qualification other than the one mentioned in the advertisement as rendering a person eligible for appearing in the examination.

18. In view of the facts and circumstances of the case, we are of the considered opinion that the impugned order has been passed declaring the applicant as educationally ineligible for promotion, is in strict accordance with the provisions of statutory recruitment orders framed by the department. Therefore, there is no infirmity in the impugned order. It is worth noting that SROs based upon which the advertisement of examination has been issued, have not been challenged in this O.A. and so long these continue to exist in the present form, the respondents will have to follow its provisions. As the action of the respondents is in conformity with the provisions of relevant SROs and in terms of the relevant advertisement while passing the impugned order, we do not find any good ground to interfere with it. The O.A. deserves to be dismissed."

25. The only other development relied upon by applicants not referred in the CAT Allahabad Bench decisions pertains to issuance of Gazette Notification by the Ministry of HRD on 25.07.2015. This Gazette Notification reads as under:-

"And whereas the Ministry of Human Resource Development. Department of Higher Education vide its order dated 29th December, 2012 and 25th February, 2014 has entrusted the regulatory work of Open and Distance Learning (ODL) mode

of education in the Higher Education System to the University Grants Commission (UGC).

And whereas, Indira Gandhi National Open University vide its notification dated 1st May, 2013 has dissolved the Distance Education Council of the University.

Now, therefore, the Central Government hereby notifies that all the degrees/ diplomas/ certificates including technical education degrees/ diplomas awarded through Open and Distance Learning mode of education by the Universities established by an Act of Parliament or State Legislature, Institutes Deemed to be Universities under section 3 of the University Grants Commission Act, 1956 and Institutes of National Importance declared under an Act of Parliament stand automatically recognized for the purpose of employment to posts and services under the Central Government provided they have been approved by the University Grants Commission."

This is a general notification of the Ministry of HRD and cannot be held, by this Tribunal, to override the specific rules/SROs framed by the Ministry of defence (MOD) according to their own unique and specific needs is also settled law, that the specific law will stand in such circumstances. It appears that nothing has been done as on date by respondents/ MOD for amending or not amending the SROs and hence affiliation of the diploma course to AICTE

as per the three SROs, continues to be binding on the respondents and the applicants as also this Tribunal.

26. The applicants have relied upon several other judgments holding that the matter in this controversy is no longer res-integra. The judgments/ decisions of courts/ Tribunals according to applicant in **Bharathidasan University Vs. AICTE, Vikas Kumar Vs. Haryana State Pollution Control Board, Vinod Kumar Vs. Haryana State Agriculture Marketing Board**, decision of **Principal Bench in O.A.2914 and 2917/2010 decided by CAT, Principal Bench, on 15.09.2011 and 21.10.2011 respectively, S.K. Bharathi Vs. State of Chattisgarh (all supra)** hold that AICTE has no controlling power over Universities; that no prior approval is required to start a course in technical education; that the diploma certificate of JRNARU as deemed University is valid etc. Similar arguments based on the similar judgments/orders have been advanced before the CAT, Allahabad Bench in

the group of OAs dismissed on 12.12.2014 and later on 22.03.2016 after the judgment dated 12.12.2014 was upheld by the Hon'ble High court. These issues have been elaborately dealt with by the Court and said Bench and held not applicable. We are of the further view that we are also not bound to go into the applicability of above judgments/ orders so long as the AICTE affiliation being legally indispensable as per SRO, is not challenged.

27. The applicants have raised the issue of discrimination in the case of Imtiaz Khan (a DR candidates) Shri Malavy and also regarding certain other Universities like Sikkim University, AMIE etc. giving diplomas for running Distance Education Courses and entertained/ accepted by respondents for DR/ promotion etc. However, the principle of negative equality has no role in service jurisprudence. The issue of discrimination was also extensively dealt with and adjudicated in the order of CAT, Allahabad Bench delivered in group of

OAs delivered on 12.12.2014 and held not sustainable.

28. The respondents have relied upon para 23 of the judgment of the **Hon'ble High Court of Jharkhand delivered on 28.11.2013 in W.P.No.6033/2010 in OM Prakash Vs. 7 others.** We are not liable to factor in this judgment regarding the competency / authority of JRN RVU either in support of respondents or in favour of applicants. The Tribunal is liable to factor in these contentions only if SROs are challenged by applicants and respondents defend the provisions of SROs, therefrom, in support of the authority of AICTE to affiliate diploma courses by duly affiliated institutions.

29. We are also not bound by the judgment of the **Orissa High Court, Cuttack in Misc. Case No.15613/2013 in W.P. (C) No.16718/2013** relied upon by respondents rejecting interim relief sought for by petitioners. Further, the case pertains to the prayer of petitioners to permit them to participate in the vacancy based round of

counselling for admission in M. Tech on the basis of JRN RVU awarded certificate to the petitioners. The prayer for interim relief was rejected. However, since this matter pertains to admission into M.Tech and not for the purposes of employment in Central Government and since only the prayer for interim relief was adjudicated the said judgment is also considered distinguishable.

30. We are also not bound to take any view contrary to that held in this order on the ground that the Railways (or for that matter by any other Central Government Department or organization) have accepted DEM courses. None of these contentions can be considered to have the effect of overriding the provisions of SROs of the Ministry of MOD which in any case has not been challenged.

31. Accordingly, in the light of the above discussions we hold that there is no valid or legal ground for this Tribunal to interfere with the impugned orders for considering them liable to be quashed and

set aside. The Tribunal is bound by the SROs and is not vested with any authority for interfering with the Recruitment Rules formulated under Article 309 of the Constitution of India and interpreting them in favour of the applicants, without the SRO's being challenged. We are also bound by the decision of Coordinate Bench of CAT upheld by the Hon'ble High Court. Accordingly, the order of reversion shall stand, subject to principles of natural justice being adhered to by way of issue of show cause notice etc., allowing applicants to be heard and their grievances disposed in accordance with law and procedures laid down under law.

32. Accordingly, the OAs are dismissed.

No costs.

(Ms. B. Bhamathi)

Member (A)

srp/H

(Shri. A.J. Rohee)

Member (J)