

**Central Administrative Tribunal
Principal Bench**

**CP No.708/2017
OA No.1164/2017**

New Delhi, this the 1st day of March, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

1. Syed Abdul Awwal
AEE (C), Group 'A'
S/o Sh. S. M. Rahman
R/o H/4, Flat No.58, Sec-16, Rohini,
Delhi 110 085.
2. Tariq Shafi
AEE (C), Group 'A'
S/o Late Mohd. Shafi,
R/o 536/6, Zakir Nagar, Okhla,
New Delhi.
3. Sunil Dutt Sharma
AEE (C), Group 'A'
S/o Sh. H. S. Sharma
R/o GD-121, Pitam Puram,
Delhi.
4. Suresh Kumar
AEE (C), Group 'A'
S/o Late Mam Chand
R/o H. No.416, Chirag Delhi,
New Delhi 110 017.

.... Applicants.

(By Advocate : Shri M. K. Bhardwaj)

Vs.

Sh. Mohanjeet Singh
Managing Director
Delhi State Industrial Infrastructure
Development Corporation Ltd.
N-36, Bombay Life Building,
Connaught Circus,
New Delhi 110 001.

... Respondent.

(By Advocate : Shri Gaurang Kanth, Ms. Biji Rajesh, Ms.
Eshita Barua and Shri Nagan Dubey)

: O R D E R (ORAL) :**Justice L. Narasimha Reddy, Chairman :**

The applicants filed OA No.1164/2017 claiming the relief of promotion to the post of Executive Engineer. One of the qualifications stipulated for that post is, holding of a Bachelors Degree in Engineering. The applicants are, however, holders of Diploma. According to them, holder of a Diploma, with ten years of experience would be deemed to have acquired the Degree qualification; as provided for under Notification dated 26.05.1977 issued by the then Department of Higher Education, Government of India. That aspect was dealt with, in OA No.1138/2015 and it was directed that the Assistant Engineers, who possess Diploma and have ten years of experience shall be treated as qualified for promotion to the post of Executive Engineer. Following the same, OA No.1164/2017 was allowed. This contempt is filed alleging that the directions issued in this OA were not complied with.

2. This case has undergone several adjournments. Affidavits and additional affidavits were also filed. The gist of the plea of the respondent is that the so called notification dated 26.05.1997 never existed at all and this fact was recognized by the Chandigarh Bench of this Tribunal in its order dated 01.12.2015 in OA No.343/2013.

It is also stated that the Punjab & Haryana High Court has taken the same view.

3. We heard Shri M. K. Bhardwaj, learned counsel for the applicant and Shri Gaurang Kanth, Shri Nagan Dubey, Ms. Biji Rajesh and Ms. Ekta Barua, learned for the respondents.

4. It is rather unfortunate that an important aspect, viz., whether a Diploma in Engineering can transform into a Degree with the passage of time, was the subject matter of a notification, the existence of which, itself is in serious doubt. Earlier OAs were decided on the assumption that such a notification existed. However, on further scrutiny it emerged that the notification did not exist at all.

5. The first concrete step in this direction was in the form of an affidavit, filed by the Secretary, Ministry of Human Resources filed in OA No.343/2013 before the Chandigarh Bench. It reads as under:-

“4. Ministry of answering respondent took all possible efforts to procure the original notification, if any, and requested the Central Record Unit (CRU) Section of the Ministry to trace the same. However, it was reported by the CRU Section that the purported file/notification has not been received by them. Further, the Ministry of answering respondent also requested the Department of Publication, Ministry of Urban Development, Government of India, which is the repository of the Gazette Notification published in Government of Indian Press which also stated that

they are receiving several thousands of notifications every year since the year 1962 and had received several enquiries regarding this notification (A-1) and in spite of all possible efforts the said notification is not traceable in their Department. They, also intimated that the required notification is not traceable as the file No.18-19/75/T-2 dated 26.5.1977 neither quoted part, section, sub section in which it was supposed to be published nor allocated name of the Press to which it was sent for printing. It is pertinent to mention that the purported notification should have been published in part-I, Section-1 of Gazette of India in Government of India Press at Faridabad as per the Manual of Office Procedure (MOP) being followed by the Ministry in respect of publication of notification.

5. That the copy of the purported notification as mentioned by the applicants bearing No.18-10/75 T-2 dated 26.5.1977 may have been a fictitious notification that is why it does not appear to have been published in the Gazette of India. Thus, views on further promotion cannot be formed on the basis of purported draft notification No.18-19/75/T-2 dated 26.5.1977 procured by the applicants which appears to be fictitious and thus the O.A. filed by the applicant deserves to be dismissed.”

Taking this into account, the OA was dismissed by the Chandigarh Bench of this Tribunal. Hon’ble Punjab & Haryana High Court has also taken the same view.

6. Recently, the Ministry of Human Resources issued a Notification dated 23.03.2016, which reads as under:-

**“MINISTRY OF HUMAN RESOURCE DEVELOPMENT
(Department of Higher Education)
NOTIFICATION**

New Delhi, the 23rd March, 2016

F.No. 11-11/2015 TS II/TC.- The Ministry of Human Resource Development (Department of Higher Education) hereby clarify that matter containing in

File No.18-19/75 T-2, dated the 26th May 1977, under the subject "Recognition of Technical and Professional Qualifications", purportedly issued by the erstwhile Ministry of Education and Social Welfare (Department of Education) has been declared fictitious by the Hon'ble Central Administrative Tribunal Chandigarh Bench at Chandigarh vide its judgment in OA No.343-PB-2013 which was pronounced on 15th December, 2015.

7. In the context of equation of Degree in a professional course, there must be a definite rule or the provision of law, made by the competent authority and the matter cannot be left in the realm of speculation.

8. On the previous date of hearing, extensive arguments were advanced in this behalf and when learned counsel for the applicant was confident about the existence of such notification, we granted him an opportunity to file an authenticated copy of the gazette notification dated 26.05.1977. However, he is not able to submit such notification. We, therefore, close the contempt case.

9. It is brought to our notice that against the order in OA No.1348/2015 which constituted the basis for allowing OA No.1164/2017, a writ petition filed by the respondents, is pending adjudication in the Hon'ble Delhi High Court. We make it clear that if any view, contrary to the one that we have taken in this contempt is expressed by the High Court, it shall be open to the applicant to file an application

to reopen this contempt case. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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