

No.18-18/2014-CWG  
Government of India  
Ministry of Communications & IT  
Department of Telecommunications

Sanchar Bhawan, New Delhi – 1  
Dated: 11.3.2015.

To

**Shri M P Shrivastava**  
**Assistant Engineer (Admn)**  
**o/o Chief Engineer (Civil)**  
**Department of Posts**  
**4<sup>th</sup> Floor, Dak Bhawan**  
**New Delhi 110 001.**

Sub: Supply of information under RTI Act, 2005.

Sir,

In continuation to this Department's letter of even number dated 3.3.2015 and on remittance of the prescribed fee of Rs. 76/- vide RTI No.56/RTI/2015 dated 09.03.2015, the information is furnished as under:

38 pages from File No. 19-23/2012-CWG (Pg.1/N to 38/N).

Appeal, if any, may be made to Shri A K Mittal, Sr. DDG(BW) and Appellate Authority, Department of Telecommunications, Room No.1105, Sanchar Bhawan, New Delhi-110001 within 30 days.

Encl: As above.

Yours faithfully,



(S P Mohapatra)  
Director (Civil) & CPIO  
Tel. No. 23372045, 23036116

Govt. of India  
Ministry of Communications & IT  
Department of Telecom  
CWG Section

F.No. 19-23/2012-CWG

Subj: OA No. 2651/2012 and M. A No. 2194/2012  
dated 17.08.2012 filed by Sh. T. R.  
Sharma and others before Hon'ble CAT,  
Principal Bench, New Delhi.

PUC is a letter No. S-3/2012-CEND/841  
dated 22.08.2012 received from CE(C) DOP  
regarding on the above mentioned subject.

The Hon'ble CAT while issuing notice  
to the respondents have also directed that  
respondents are retained from making any  
recovery from the applicant pursuant to  
the order dated 25.07.2012. The Hon'ble  
CAT has fixed a date on 30.08.2012.

Based on the reference received from  
DOP the case was reviewed for 4 officers.  
We may request DOP to defend the case.

DFA is put up please.

ISSUED UNDER RTI-2005

*CD*  
11.2.15  
Director (Civil) & CPIO  
BPT, Sanchar Bhawan, New Delhi

*lie*  
28/8/12

US (CWG) Vasant

Dir. (Civil)

May be put up with  
OA under ref.

*mulbwe*  
28/8/12

CWG  
11.2.1

Govt. of India  
Ministry of Communications & IT  
Department of Telecom.  
CWG Section

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Based on the reference received from  
DOP the case was reviewed for 4 officers.  
We may request DOP to defend the case.

DFA is put up please.

lie  
28/8/12

US (CWG) Vacant

Dir. (Civil).

ISSUED UNDER RTI-2005

11.2.15  
Director (Civil) & CAO  
DPT, Sanjay Shamra, New Delhi

mulbrie  
28/8/12

May be put up with  
OA under ref.

CWG  
1.1.1

11/2/15



Reference-Sr.DDG(BW),s direction on FR- On the basis of reference made by DoP the case has been examined. DOP is fully aware. Hence may defend the case. Ask CE(Civil)DoP to defend the case.

This is relating to OA No.2651/2012 and MA No.2194/2012 dated 17.8.2012 filed by Shri T.R. Sharma & Ors before CAT, PB, New Delhi regarding withdrawal of 2<sup>nd</sup> ACP.

In this connection it is stated that this Department has requested to O/o CCA, Delhi to engage Govt.counsel for defending the case on behalf of UOI and seek two months time from Hon'ble CAT for filing reply vide letter dated 29.8.2012.

It is also submitted that another OA NO. 640/2012 filed by Shri Satpal Antil before CAT, Jaipur on the same subject has been received. This Department has requested to O/o CCA, Jaipur to engage Govt.Counsel and seek two months time for filing reply vide letter dated 24<sup>th</sup> September,2012.

On the basis of directions of Sr.DDG(BW), we may request Department of Posts to defend both the cases on behalf of DOT also. LFA M.

Submitted please.

6/8/2012

So & us (vacant)

Dir (Civil)

ISSUED UNDER RTI-2005

SP 11.3.15

Director (Civil) & CPIO  
DOT, Sanchar Bhawan, New Delhi

May kindly see before issue

Sr. DD/G (BW)

An corrected pl

Dir (C)

8/8

8/8/2012

8/8

so/ps - vacant

2 x Civil

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8/8

15

In this connection it is stated that this Department has requested to DoP to defend the case on behalf of DOT as well as action initiated to withdraw the 2<sup>nd</sup> ACP on the basis of the reference made by DoP and DoP is fully aware of the case.

$\frac{XN}{23/X/2012}$

~~Der Geist~~

May kindly assume  
JFAN 28A

~~30/7/12~~

S. DDG/CBWJ

2012

~~Dir(c)~~

PP. Use  
30/8/12

$$CWG(LN)$$

1) P. 140  
At H. 1, New Delhi

Reference FR

D/o Posts has requested to send comments on Para No. 5(c) to 5(g) of the OA No.2651/2012 filed by Shri T.R. Sharma & Ors before CAT, PB, New Delhi.

In this connection it is stated that para-wise comments on para No. 4.1 to 4.14 have been furnished to DoP vide letter dated 23.10.2012.

Draft comments on Para 5(c) to 5(g) is placed below for approval please.

30/11/2012

US (CWS)

Pl. put up as draft.

31/1/2012

As drafted by us (CWS) para-wise comments is put up and placed below for approval pl.

31/12/2012

US (CWS)

ISSUED UNDER RTI-2005  
CPI 11.2.15  
Director (Civil) & CPIO  
BPT, Shri T.R. Sharma, New Delhi

31/12/2012

Director (Civil)

US (CWS)

May kindly put up as discussed.

Department of Telecommunications  
CWG Section

Subject:- OA No.2651/2012 filed by Shri T.R. Sharma before CAT, PB,  
New Delhi regarding withdrawal of ACP.

Department of Posts has forwarded a copy of the CAT order dated 26.4.2013 passed by CAT, PB, New Delhi. DOP has also informed that the applicants are diploma in Engineering having more than 10 years of experience and are similarly placed to those who have been granted one time relaxation and allowed ACP, the DOP of opinion to implement the order of CAT.

2. The brief history of the case is that S/Shri T.R. Sharma, S.K.Bose, Das Nilratan and A.K. Srivastava, Assistant Engineers were granted 2<sup>nd</sup> ACP under the old scheme as circulated by the DOP&T vide OM dated 9.8.1999. These officers had joined Govt. Service as Junior Engineers(Civil) on direct recruitment basis and regularized in the post of AE(C) w.e.f. 10.7.2000, 7.9.1994, 14.1.1997 and 20.7.2000 respectively.

3. Under the ACP Scheme, grant of financial upgradations was subject to fulfillment of normal promotional norms, as applicable in terms of relevant recruitment/service rules. Further, 2<sup>nd</sup> ACP for the Assistant Engineers(Civil) was to be granted in the pay scale of Rs.10000-15200(pre-revised) applicable to the post of Executive Engineer(Civil).

4. According to the provisions contained in the Posts & Telegraph Building Works(Group-A) Service Rules, 1994, one of the norms prescribed for promotion of Assistant Engineer(Civil) to the post of Executive engineer(Civil) is that the officers holding the post AE(C) on regular basis should possess a degree in engineering. However, as a one time measure/relaxation, the officers with diploma qualification and holding the post of AE(C) on regular basis as on the date of publication of Service Rules i.e. 6.8.1994, are also eligible for promotion to the grade of Executive Engineer(Civil).

5. It was observed from the available records that the above mentioned norms were not verified at the time of granting 2<sup>nd</sup> ACP to the AEs(C). It has been decided to review all cases of officers granted 2<sup>nd</sup> ACP and initiated necessary action to withdraw the ACP granted inadvertently vide this Department's OM No.3-1/2000-CWG dated 8.11.2006.

6. Finally this Department has issued cancellation order of the above mentioned 2<sup>nd</sup> ACP granted inadvertently in consultation with Staff/ Finance/Establishment Branch vide this Department's order No.3-



“ we quash the impugned order dated 20.7.2012 by which the benefit of second ACP scheme has been withdrawn from the applicants. We also quash the order dated 25.7.2012 by which recovery of excess payment from the applicants has been ordered. We direct that the applicants may be considered for grant of this benefit in terms of Government of India instructions dated 26.5.1977 by which diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering, keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL. We further direct that, in any case, recovery of any excess payment will not be made from the applicant. The OLA is accordingly allowed. There shall be no order as to costs.”

In view of the above, before implementation of the above mentioned CAT Order dated 26.4.2013, we may seek advice of DOP&T as the implementation of the Order is against the provisions in the present RR of P&T Building Works Group-A Services.

XV  
28/5/2013

ms (100)

31/5/2008  
11/2/15  
PHO  
New Delhi

→ Ref. notes above.

- The court has given directions -

- (1) To stop recovery of excess payments
  - (2) To consider for grant of benefits in terms of Govt of India instructions dated 26/5/1977 by which diploma in Engineering with 10 years of service/technical experience has been recognized as equivalent to degree in engineering, keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL.
- in re concerned.



from pre page - 9 -

(X) As for as second point is concerned, this has lot of complication. If we agree to the ~~adjudgment~~<sup>other</sup> ~~officers~~ will ~~also~~ claim for promotion from the grade of AE to EE which will be in violation of R.R.s. Further more other employee ~~at~~ will also claim for same benefit.

In view of above, it is proposed that  
(1) 1 @ ~~the~~ loss order to stop recovery.  
(2) for policy matter the file may be referred to DPT for their views.

ISSUED UNDER RTI-2005  
SP 11/2/13  
Director (Civil) & CPIO  
P.O. Swatara Station, New Delhi

Wk 3  
28/5/2013

Director (Civ)

In view of statement at (X) above, we may refer the case for seeking the advice/ views from DPT.

Sr. DDG (Civ)

2/6/2013

DDG

Ref. Notes on prepore

The matter has been discussed  
with ~~SSG~~(CWE). Pl. prepore draft  
as per discussion.

MMZ  
11/6/2013

CWS

Ref. note above.

D T-A please.

MMZ  
10/6/2013

~~WSCCWS~~

AS amended.

MMZ  
10/6/2013

Revised draft is placed below  
for appl. / sign. pl.

MMZ  
10/6/2013

~~WSCCWS~~

Sign. Pl. issue.

MMZ  
10/6/2013

-11/N-

Sub: <sup>Sr.</sup> DDE(BW) Notes on Page 9/N.

Sr. DDE(BW) vide his note on Page 9/N has directed to seek advice or Telecom finance regarding implementation or otherwise of Hon'ble CAT(PB) Order dated 26.4.2013. The case has been taken up separately with Telecom finance in file No. 3-2/2010-CWE.

Regarding 2nd query, i.e. total no. of JEs with diploma at present in DOP Centre, a letter was ~~sent~~ sent to DOP on 10.6.2013. However, no reply has yet been received from DOP. We may send a reminder to DOP.

Accordingly DFA Please

~~20/6/2013~~

US (CWE)

MH 3  
21/6/2013

~~Dirce~~

~~US (CWE)~~

~~MH~~  
21/6/2013

Sd/- P. K. K.

MH 3  
24/6/2013



Ref : Notes on pre-pages.

FR is letter no. 5-3/2012/CEND/314 dated 10.03.2014 received from SE(P&A), DOP requesting for furnishing of following documents for preparation of writ petition.

- (i) Certified copy of impugned order dated 26.04.2013.
- (ii) Copy of clarification issued by DOP&T O.M. dated 18.07.2001.
- (iii) Copy of the relevant recruitment rules of Executive Engineer (Civil) as applicable to the applicants-proposed respondents.

In this regard, it may be stated that DOP was defending O.A. No. 2651/2012 filed by Sh. T.R. Sharma and others, hence they may be requested to arrange a certified copy of the impugned order dated 26.04.2013 from the concerned Government Counsel.

Copy of clarification issued by DOP&T O.M. dated 18.07.2001 on ACP Scheme has been downloaded from the website.

We may send a copy of DOP&T O.M. dated 18.07.2001 and RR in respect of EE(C) as applicable to the applicants – proposed respondents. Accordingly DFA please.

Submitted Please.

*12/3/2014*  
**US(CWG)**

*Suppl. Pl. Issued.*

*12/3/2014*

ISSUED UNDER RTI-2005

*Spl*  
*11.2.15*  
Director (Civil) & CPIO  
ECM, General Bhawan, New Delhi

Ref :- Notes on pre-page.

In the discussions held between Director(Civil) & US(CWG) with Sr.DDG(BW) on 05.05.2014 it has been decided to file a writ petition before Hon'ble Delhi High Court against order of Hon'ble CAT(PB) dated 26.04.2013 in O.A. No. 2651/2012 filed by Sh. T.R. Sharma & Ors on the basis of advise given by DOP&T & LA(DOT) vide their notes on page 58/D & 59/N respectively. *in Revised file No 3-2/2010-CWG respectively.*

**Brief Facts of the case:**

2. (a) The brief history of the case is that S/Shri T.R. Sharma, S.K.Bose, Das Nilratan and A.K. Srivastava, Assistant Engineers along with 291 others were granted 2<sup>nd</sup> ACP under the old scheme as circulated by the DOP&T vide OM dated 9.8.1999. These officers were joined Govt. Service as Junior Engineers (Civil) on direct recruitment basis and regularized in the post of AE (Civil) w.e.f. 10.07.2000, 7.9.1994, 14.01.1997 and 20.07.2000 respectively.

(b). It is submitted that there were 295 AE (Civil) granted benefit of the ACP Scheme who had completed 24 years of regular service as Junior Engineer (Civil) in the scale of Rs. 10000 to 15200. But while granting the 2<sup>nd</sup> ACP to 295 AE (Civil) who were not having the Degree qualification, granted the scale. After creation of BSNL/MTNL out of 295, 291 AE(Civil) have been absorbed and remaining four are still in the Govt. Those officers who were absorbed in BSNL/MTNL, are getting the benefit of the second ACP granted to him, while in respect of four AE(Civil) who were opted to remain in Govt., the department has withdrawn the benefit of the ACP Scheme granted to them.

**Recruitment Rules**

(c) For grant of benefit of ACP Scheme, the norms prescribed in Recruitment Rules for promotion is applicable. As per provision of Recruitment Rules P&T (BW) (Group A) Service Rules 1994, Assistant Engineer (Civil) on completion of 8 years of regular service with Degree in Civil Engineering are eligible for promotion to the grade of Executive Engineer (Civil) in the pay scale of Rupees 10000-15200. A relaxation clause was incorporated in Recruitment Rule that Assistant Engineer (Civil) promoted on regular basis prior to formation of Recruitment Rules in 1994 were exempted. On a reference received, the case was examined and those officers who were absorbed in BSNL/MTNL and PSUs employees (no one in Government cadre) were allowed to continue as giving them one time relaxation.

(d) The decision of withdrawal of the benefit of the second ACP granted to these four officers was taken after a representation came from the Department of Posts. In the representation it was stated that since the ACP was granted on the pattern of promotional criteria, officers who do not fulfil the eligibility criteria should not be given. It was noticed that the

(e) It was observed from the available records that the above mentioned norms were not verified at the time of granting 2<sup>nd</sup> ACP to the AEs (C). Therefore, it was decided to review all cases of officers granted 2<sup>nd</sup> ACP and initiated necessary action to withdraw the ACP granted inadvertently vide this Department's OM No. 3-1/2000-CWG dated 8.11.2006.

(f) Finally this Department has issued cancellation order of the above mentioned 2<sup>nd</sup> ACP granted inadvertently in consultation with Staff/Finance/Establishment Branch vide this Department's order No. 3/1/2000-CWG dated 20.07.2012. On the basis of this cancellation order, Department of Posts where these officers are working, has issued orders for recovery vide their letter No. 4-43/2011-CWG/752 dated 25.07.2012.

2. Aggrieved by this, the applicants filed O.A. No. 2651/2012 before Hon'ble CAT(PB), New Delhi.

3. Hon'ble CAT(PB) vide its order dated 26.04.2013 has directed as under :-

**"We quash the impugned order dated 20.07.2012 by which the benefit of second ACP scheme has been withdrawn from the applicants. We also quash the order dated 25.07.2012 by which recovery of excess payment from the applicants has been ordered. We direct that the applicants may be considered for grant of this benefit in terms of Government of India instruction dated 26.05.1977 by which diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering, keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL. We further direct that, in any case, recovery of any excess payment will not be made from the applicant. The OLA is accordingly allowed. There shall be no order as to costs."**

(4) The Senior Central Government Counsel has opined that **this is a fit case to file Writ Petition before the Hon'ble High Court as the Tribunal has held that the decision on the same issue decided by the High Court is not applicable in this case. Further, the Applicant have not claimed any such relief directions to consider their case in terms of Govt. of India instructions that diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering.**

(5) On the basis of opinion given by Sr. Central Government Counsel the matter was taken up with the nodal ministry i.e, DOP & T and DOP &T has advised as under (at page no. 58/D of Linked file No. 3-2/2010-CWG) :-



- (ii) In view of preceding paras, the Hon'ble CAT Orders is not in consonance with the policy of the Government on the subject. DOP&T further advised this department to contest the same in the higher Courts of Law in consultation with Department of Legal Affairs.

(6) The matter was referred to Department of Legal Affairs, and LA(DOT), Department of Legal Affairs has opined to file Writ Petition before Hon'ble Delhi High Court against the order of the Hon'ble CAT(PB) dated 26.4.2013 in OA No. 2651/2012 along with an application for condonation of delay in consultation with the Central Government Standing Counsel (at page no. 59/N of Linked file No. 3-2/2010-CWG).

(7) As the applicants have not fulfil the promotional norm of Degree in Engineering prescribed in the statutory RRs applicable to the promotional post, he is not eligible for grant of 2<sup>nd</sup> ACP and the Hon'ble CAT Orders is not in consonance with the policy of the Government on the subject. We may request Pr. CCA, Delhi to engage a Government Counsel to file Writ Petition before Hon'ble Delhi High Court against orders of the Hon'ble CAT(PB) dated 26.4.2013 in OA No. 2651/2012 on this ground.

Accordingly DFA Please.

Submitted Please.

*De*  
*7/5/2014*  
**US(CWG)**

*Dr. CCA* *SPM*  
*8/5*

*Sr. DDA (BN)*

*Dir (Crime) -*  
*US (CWG)*

*Nm3*  
*8/5/2014*

ISSUED UNDER RTI-2005  
*SPM*  
*11.3.15*  
Director (CII) & CPIO  
P.O. Secy. Bhawan, New Delhi

*W*  
*8/5*

*Discussed with Sr. DDA (BN). In order to avoid loss of time and constant copies of the relevant document should be sent to DOP in order to file appeal.*

— 16/M —

Deb :- Notes on Pre-page.

Discussed with US(CWR) & it was decided to request CCA, Delhi to file a writ Petition in the Hon'ble Delhi High Court on behalf of DOT. We may request CCA, Delhi along with relevant enclosures to file writ Petition. Accordingly DFA Please.

Submitted Please.

6/5/2014

US(CWR)

Pl. Send immediately

11/3  
8/5/2014

Department of Telecom  
(CWR Section)

Deb :- Notes on Pre-page.

Applicants in O.A. No. 2651/2012 filed Caveat Petition before Hon'ble Delhi High Court requesting Hon'ble High Court not to pass any order against the order dated 26.4.2013 in O.A. No. 2651/2012 without intimating the applicants. This is for information please.

Submitted Please.

Ref :- Notes on pre-page.

FR is letter no. 5-3/2012/CEND/1303 dated 10.09.2014 received from SE(P&A), Department of Posts enclosing Hon'ble High Court of Delhi order dated 5.8.2014 in W.P. (C) No. 9743-9745/2014 in the matter of UOI & Ors versus Sh. T.R. Sharma & Ors.

**Brief Facts of the case:**

2. (a) The brief history of the case is that S/Shri T.R. Sharma, S.K. Bose, Das Nilratan and A.K. Srivastava, Assistant Engineers along with 291 others were granted 2<sup>nd</sup> ACP under the old scheme as circulated by the DOP&T vide OM dated 9.8.1999. These officers were joined Govt. Service as Junior Engineers (Civil) on direct recruitment basis and regularized in the post of AE (Civil) w.e.f. 10.07.2000, 7.9.1994, 14.01.1997 and 20.07.2000 respectively.

(b). It is submitted that there were 295 AE (Civil) granted benefit of the ACP Scheme who had completed 24 years of regular service as Junior Engineer (Civil) in the scale of Rs. 10000 to 15200. But while granting the 2<sup>nd</sup> ACP to 295 AE (Civil) who were not having the Degree qualification, granted the scale. After creation of BSNL/MTNL out of 295, 291 AE(Civil) have been absorbed and remaining four are still in the Govt. Those officers who were absorbed in BSNL/MTNL, are getting the benefit of the second ACP granted to him, while in respect of four AE(Civil) who were opted to remain in Govt., the department has withdrawn the benefit of the ACP Scheme granted to them.

**Recruitment Rules**

(c) For grant of benefit of ACP Scheme, the norms prescribed in Recruitment Rules for promotion is applicable. As per provision of Recruitment Rules P&T (BW) (Group A) Service Rules 1994, Assistant Engineer (Civil) on completion of 8 years of regular service with Degree in Civil Engineering or equivalent are eligible for promotion to the grade of Executive Engineer (Civil) in the pay scale of Rupees 10000-15200. A relaxation clause was incorporated in Recruitment Rule that Assistant Engineer (Civil) promoted on regular basis prior to formation of Recruitment Rules in 1994 were exempted. On a reference received, the case was examined and those officers who were absorbed in BSNL/MTNL and PSUs employees (no one in Government cadre) were allowed to continue as giving them one time relaxation.

(d) The decision of withdrawal of the benefit of the second ACP granted to these four officers was taken after a representation came from the Department of Posts. In the representation it was stated that since the ACP was granted on the pattern of promotional criteria, officers who do not fulfil the eligibility criteria should not be given. It was noticed that these four officers including other officers who have been absorbed in BSNL/MTNL do not meet the eligibility criteria as stipulated in the Recruitment Rules. As per Recruitment Rules 1994 one of the conditions prescribed for promotion from the grade of Assistant Engineer (Civil) to the grade of Executive Engineer (Civil) is that the candidate should have completed 8 years of regular service with Degree in Civil Engineering or equivalent. Since these four officers do not meet the eligibility criteria, the benefit of the second ACP granted to them is withdrawn.



the AEs (C). Therefore, it was decided to review all cases of officers granted 2<sup>nd</sup> ACP and initiated necessary action to withdraw the ACP granted inadvertently vide this Department's OM No. 3-1/2000-CWG dated 8.11.2006.

(f) Finally this Department has issued cancellation order of the above mentioned 2<sup>nd</sup> ACP granted inadvertently in consultation with Staff/Finance/Establishment Branch vide this Department's order No. 3/1/2000-CWG dated 20.07.2012. On the basis of this cancellation order, Department of Posts where these officers are working, has issued orders for recovery vide their letter No. 4-43/2011-CWG/752 dated 25.07.2012.

3. Aggrieved by this, the applicants filed O.A. No. 2651/2012 before Hon'ble CAT(PB), New Delhi.

4. Hon'ble CAT(PB) vide its order dated 26.04.2013 has directed as under :-

**"We quash the impugned order dated 20.07.2012 by which the benefit of second ACP scheme has been withdrawn from the applicants. We also quash the order dated 25.07.2012 by which recovery of excess payment from the applicants has been ordered. We direct that the applicants may be considered for grant of this benefit in terms of Government of India instruction dated 26.05.1977 by which diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering, keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL. We further direct that, in any case, recovery of any excess payment will not be made from the applicant. The OLA is accordingly allowed. There shall be no order as to costs." (172/C- 183/C)**

(4) The Senior Central Government Counsel had opined that **this is a fit case to file Writ Petition before the Hon'ble High Court as the Tribunal has held that the decision on the same issue decided by the High Court is not applicable in this case. Further, the Applicant have not claimed any such relief directions to consider their case in terms of Govt. of India instructions that diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering.** (172/C)

(5) On the basis of opinion given by Sr. Central Government Counsel the matter was taken up with the nodal ministry i.e, DOP & T and DOP &T has advised as under (at page no. 185/C) :-

(iii) In terms of the provisions under ACP Scheme, all promotional norms including Educational qualifications have to be fulfilled for getting financial upgradation under the ACP Scheme.

F/A

- (iv) In view of preceding paras, the Hon'ble CAT Orders is not in consonance with the policy of the Government on the subject. DOP&T further advised this department to contest the same in the higher Courts of Law in consultation with Department of Legal Affairs.

F/B (6) The matter was referred to Department of Legal Affairs, and LA(DOT), Department of Legal Affairs had opined to file Writ Petition before Hon'ble Delhi High Court against the order of the Hon'ble CAT(PB) dated 26.4.2013 in OA No. 2651/2012 (at page no. 186/C).

(7) Accordingly W.P. (C) No. 4879/2014 was filed by UOI before Hon'ble Delhi High Court.

(8) Hon'ble Delhi High Court vide its order dated 5.8.2014 has dismissed the W.P.(C) No. 4879/2014 filed by UOI against the order of the Hon'ble CAT(PB) dated 26.4.2013 in OA No. 2651/2012. The operative para of the order is as under :-

**“ This Court is of the opinion that in the absence of any material contradicting the CAT's inference that the equivalence was applicable and held good, even as on date, the UOI's contentions cannot be accepted. If indeed the UOI is right in contradicting that equivalence is a matter which has to be considered from service to service and having regard to the time, there has to be some material apart from the bare assumption that the 26.05.1977 declaration of equivalence - which is wide is and applicable to “all posts and services under the Central Government” - is not correct. In the absence of any such material, the UOI's contention, in our opinion, was rightly rejected. As far as the decision in Surliya (supra) was concerned, the CAT itself noticed that while the 1994 Recruitment Rules, which are in issue in the present case, were undoubtedly considered, the question of equivalence had not been discussed at all. Apparently, the 26.05.1977 circular was not brought to the notice of the Court at this stage. Therefore, Surliya (supra) decision is not an authority on the ineligibility of those, like applicants/respondents, who were deemed to possess qualifications equivalent to a degree in engineering and, therefore entitled to second ACP benefits.**

The last contention with regard to the applicability of the 2001 Office Memorandum, in our opinion, is rendered irrelevant in the light of the previous discussion with regard to the applicant's equivalence of degree qualifications. This Court is of the opinion that having regard to the object of the ACP Scheme, i.e. to alleviate stagnation for long periods and given that the equivalence criteria have been met, the insistence upon eligibility conditions spell-out in the recruitment rules would render the benefits under the scheme illusory. At any rate, having regard to the declaration of equivalence made by the 26.05.1977

9. The Hon'ble High has upheld the decision of the Hon'ble CAT order dated 26.04.2013 vide which it was directed that Government of India OM dated 26.5.1977 should be followed and Diploma with 10 years of regular service should be treated as equivalent to Degree. In view of Delhi High Court judgment dated 05.08.2014 it may please be considered whether the judgment should be challenged or implemented. We may therefore refer the case to LA(DOT) for his considered view.

Submitted Please.

~~12/9/14.~~  
US(CWG)

10/11/2014

Dr. C. N. V.

Spm  
17/9/14

511-2605  
12/2/15  
4/10  
New Delhi



Note from page 17 describe the fact arose and led to decision of Hon'ble CAT(PB), New Delhi and dismissal of WP by Hon'ble High Court, New Delhi.

- (i) Department issued cancellation order No. 3/1/2000-CWG dated 20.07.2012 vide which 2<sup>nd</sup> ACP was granted to the applicant on the ground that applicants do not fulfil the promotional norm of Degree in Engineering or equivalent prescribed in the statutory RRs applicable to the promotional post.
- (ii) On the basis of this cancellation order, Department of Posts issued orders for recovery vide their letter No. 4-43/2011-CWP/752 dated 25.07.2012.
- (iii) Aggrieved by the order of recovery, the applicants filed O.A. No. 2651/2012 before Hon'ble CAT(PB), New Delhi.
- (iv) Hon'ble CAT(PB) vide its order dated 26.04.2013 quashed the impugned order dated 20.07.2012 and the order dated 25.07.2012, considering the Government of India instruction dated 26.05.1977 by which diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering.
- (v) After seeking ✓ opinion of ✓ Senior Central Government Counsel, DOP & T and LA(DOT), W.P. (C) No. 4879/2014 was filed by UOI before Hon'ble Delhi High Court.
- (vi) The Hon'ble High court, New Delhi has upheld the decision of the Hon'ble CAT order dated 26.04.2013 vide which it was directed that Government of India OM dated 26.5.1977 should be followed and Diploma with 10 years of regular service should be treated as **equivalent to Degree** and dismissed the Writ Petition which **lacks in merit**.
- (vii) In view of the above Delhi High Court judgment dated 05.08.2014 and the prevailing promotional norm of **Degree in Engineering or equivalent** prescribed in the statutory RR 94, it may please be considered to implement the judgment of Hon'ble High court, New Delhi in as much as Diploma with 10 years degree has been treated equivalent to degree by Hon'ble High Court and thus provision of RR,s gets fulfilled for the purpose of grant of ACP. Accordingly Department order No. 3/1/2000-CWG dated 20.07.2012 may please be considered for quash in line of the Hon'ble High court, New Delhi judgement.
- (viii) However as W.P. was filled on the advice ✓ LA(DOT), we may therefore refer the case to LA(DOT) for his considered view.

SPM  
17.9.14  
Director (civil)

Sr. DDG(BW)

CAT

The judgement is specific to the applicant's keeping in mind the benefits not withdrawn from 100 hrs. 1. 1. 1.

LA/14  
✓

✓ F/A (185/C)  
✓ F/B (186/C)

SPM  
17.9.14  
Director (civil)  
New Delhi

F/B

- 22/11 -

Dir(C) may discuss with  
LA DOT or Dy LA DOT and explain  
the position and then offer name ref  
to DOPAT.

LA DOT  
18.9.14  
2.00 PM

Dir(Civil)

Discussed with LA DOT & how he  
intended to obtain the view from DOPAT.

USCAG

Spr  
18.9.14

371-2005  
11-2-15  
P40  
New Delhi

Reference Joint Secretary & Legal Advisor, DOT remarks on pre-page.

Brief History of the case may please be seen from page 17/N to 20/N.

The basic issue of the case is whether to implement judgment of the Hon'ble CAT, PB, New Delhi upheld by Hon'ble High Court of Delhi regarding recognition of 10 years regular service equivalent to the Degree.

I. The Hon'ble CAT, PB vide its order dated 26.4.2013 has directed as under:-

**"We direct that the applicants may be considered for grant of this benefit in terms of Government of India instruction dated 26.5.1977 by which diploma in Engineering with ten years of technical experience has been recognized as equivalent to degree Engineering, keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL.**

II. DOPT vide its Dy. No. 87600/13/CR dated 27.12.2013 had opined as under :-

**In terms of provisions under ACP scheme, all promotional norms including Educational Qualifications have to be fulfilled for getting financial upgradation under the ACP scheme. Since the petitioner could not fulfill the promotion norms of Degree in Engineering prescribed in the statutory RRs applicable to the promotional post he is not eligible for grant of 2<sup>nd</sup> ACP.**

**In view of preceding paras, the Hon'ble CAT orders is not in consonance with the policy of the Government on the subject. We may advise the referring department to contest the same in the appropriate higher courts of law in consultation of DOLA.**

III. The High Court vide its order dated 5.8.2014 has dismissed the WP(C)No. 4879/2014 file by UOI. The operating para is as under:-

**"The Court is of the opinion that in the absence of any material contradicting the CAT's inference that the equivalence was applicable and held good, even as on date, the UOI's contention cannot be accepted. If indeed the UOI is right in contracting that equivalence is a matter which has to be considered from service to service and having regard to the time, there has to be some material apart from the bare assumption that the 26.5.1977 declaration of equivalence – which is wide is and applicable to "all posts and services under the Central Government" – is not correct. In the absence of any such material the UOI's contention, in our opinion, was rightly rejected. As far as the decision in Surliay (supra) was concerned, the CAT itself noticed that while the 1994 Recruitment Rules, which are in issue in the present case, were undoubtedly considered, the question of equivalence has not be**

..... At any rate, having regard to the declaration of equivalence made by 26.5.1977 circular, which was applicable in the present case, it cannot be said that the respondents / applicants were ineligible for the second ACP.

For the foregoing reasons, the writ petition lacks in merit, it is accordingly dismissed.

IV. Recruitment Rules, 1994 says:

(ii) 50% from Asstt. Engineer (Civil)/ Asstt. Surveyor of Works (Civil) /Engineering Asstt. (Civil) who have completed probation and have rendered not less than 8 years regular service in the grade and possess a degree in engineering or equivalent.

V. Govt of India Order No. F16-19/75/T-2 dated 26<sup>th</sup> May, 1997 says :

On the recommendation of the Board of Assessment for Educational Qualification and recommendation of Defence Director (Tech) the Government of India have decided to recognize diploma in Engineer appropriate discipline plus total ten years of technical experience in the appropriate Field is recognized as equivalent to Degree in Engineering. It is considered valid for the purposes of selection to the Gazetted posts and services under the Central Government or State Government. “

Opinion of the DOPT is sought :

Keeping in view the above facts mentioned above, views/comments of the DOP&T is solicited on the following issue:-

- (i) Whether to implement Hon'ble High Court's order dated 5.8.2014 delivered in the WP (C) No. 4879/2014 filed by UOI by recognizing the ten years regulars equivalent to Degree and to give promotion, MACP/ACP and other service benefits to Diploma holders. <sup>OR</sup>

- (ii) To challenge the judgement before the Apex Court.

19/9/2014.

US (CWR)

May like to see before  
sending to DOP&T.

15/8/2014

103253/14/CR  
ESTD



Department of Personnel & Training  
Establishment D

-----  
D/o Telecommunications F.No.19-23/2012-CWG  
DOPT Dy.No.1032531/14/CR

Reference notes at pages 23-24/ante.

2. The matter has been examined in this Department. As per the Recruitment Rules, 1994 (p. 151/c), the Assistant Engineer (Civil)/Asstt. Surveyor of Works (Civil)/ Engineering Assistant (Civil) who have completed probation and have rendered not less than 8 years regular service in the grade and possess a degree in Engineering or equivalent is eligible for promotion to STS [Executive Engineer (C)/ Surveyor of Works (Civil)].

3. As per Government of India, the then M/o Education & Social Welfare, (Deptt. of Education Technical) instructions vide No. F18-19/75/T-2 dated 26.5.1977 (p. 214/c), the GOI have decided to recognize a Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate field is recognized as equivalent to Degree in Engineering. It is considered valid for the purposes of selection to Gazetted posts and services under the Central Govt.

4. In view of the above, conclusion of the Hon'ble High Court (vide Order dated 05.08.2014 at p. 223-224/c) that the Assistant Engineer holding a Diploma in Engineering (Civil) with 10 years of technical experience is equivalent to Degree in Engineering, seems to be correct. The eligibility of such Diploma holder AE(C) ASW (C) for promotion to EE(C) / SW (C) may need to be decided accordingly. Before the above said instructions dated 26.5.1977 is applied in such cases, M/o HRD, D/o Higher Education may be consulted whether the same is still valid or not. Further, if the order of Hon'ble High Court is complied, it has application on normal promotion cases also.

5. The eligibility for ACP depends on the promotional norms, as explained above and the administrative Deptt. have to decide accordingly.

6. In view of the above position, the further course of action in the case may be decided by D/o Telecommunications in consultation with the Department of Legal Affairs.

7. This issues with the approval of Joint Secretary(Establishment).

*Rakesh Moza*  
(Rakesh Moza)

Under Secretary(Estt.D-II)

Director (Civil), D/o Telecommunications, Sanchar Bhawan, New Delhi.

RTI-2005  
SPR 11.3.15  
104/2014  
Dir (Civil)  
New Delhi

26/N -

Sub: Notes on Pre-page.

DoP & T vide H's notes on Pre-page  
has addressed to Secret. the comments  
of Ministry of HAD, Department of Higher  
Education regarding the validity  
of O.M. dated 26.5.1977 as on date  
Accordingly a DFA is put up to  
Director (M.T), Dept. of Higher Educa-  
tion & placed below for approval  
Please.

Submitted Please.

US (C/Sr)

20/11/74

DIC (Civil) <sup>Sam</sup> 17.11.74

DDG (C)

Para 4 of DoPT advice has  
two parts i.e. the validity of  
'A' (OM dated 26.5.77) and also  
B'll its effect on other "Normal promotions".

For part 'A' ref be made to Dept of  
Higher Edu., and for other part 'B'  
reput up with effect of this in DoT  
and to PSUs ~~of~~ <sup>any</sup>. R2

18/11/74

Dir (Civ)

<sup>Sam</sup> 19.11.74

US (C/Sr)

20/11/74

511-2505  
11.2.15  
P.O.  
New Delhi

In order.



This is regarding implementation of the Hon'ble High Court, Delhi order dt. order dated 5.8.2014 issued in W.P.(C) No. 4879/2014 filed by UOI against the order of the Hon'ble CAT(PB) dated 26.4.2013 in OA No. 2651/2012.

2. To briefly recapitulate, S/Shri T.R. Sharma, S.K.Bose, Das Nilratan and A.K. Srivastava, Assistant Engineers along with 291 others were granted 2<sup>nd</sup> ACP vide order dt. 16.09.2002, 24.04.2003, 01.09.2003 & 20.02.2004 respectively under the old scheme in terms of DOP&T OM dated 9.8.1999. These officers were joined Govt. Service as Junior Engineers (Civil) on direct recruitment basis and regularized in the post of AE (Civil) w.e.f. 10.07.2000, 7.9.1994, 14.01.1997 and 20.07.2000 respectively.

3. It is submitted that there were 295 AE (Civil) granted benefit of the ACP Scheme who had completed 24 years of regular service as Junior Engineer (Civil) in the scale of Rs. 10000 to 15200. But while granting the 2<sup>nd</sup> ACP to 295 AE (Civil) who were not having the Degree qualification were also granted the scale. After creation of BSNL/MTNL out of 295, 291 AE(Civil) have been absorbed and remaining four are still in the Govt. **Those officers who were absorbed in BSNL/MTNL, are getting the benefit of the second ACP granted to him, while in respect of four AE(Civil) who were opted to remain in Govt., the department has withdrawn the benefit of the ACP Scheme granted to them.**

4. The method of recruitment of STS (Executive Engineer (E)/Surveyor of Works (Civil) (RS. 3000-100-3500-125-4500\_ pre-revised scales) under the Recruitment Rules P&T (BW) (Group A) Service Rules 1994 is by promotion which is as follows:

- i. 50% from Asst. Executive Engineers (Civil) who have completed probation and have rendered not less than 04 years of regular service in the grade on the basis of seniority-cum-fitness
- ii. 50% from Assistant Engineer (Civil)/Asst. Surveyor of Works (Civil)/Engg. Asst. (Civil) who have completed probation and have rendered not less than 08 years regular service in the grade and posses a degree in engineering **or equivalent.**

**NOTE:** However, the existing incumbent is holding the post of Asst. Engineer (Civil) on a regular basis on the date of notification of these RRs shall continue to be eligible for promotion to the post of Executive Engineer, if they possess a Diploma in Civil Engg., from a recognised University/Institution or equivalent and 08 years regular service in the grade

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Spt 11.2.15  
PIO  
New Delhi

5. The decision of withdrawal of the benefit of the second ACP granted to these four officers was taken after a representation came from the Department of Posts. In the representation it was stated that



**From prepage:**

6 It was observed from the available records that the above mentioned norms were not verified at the time of granting 2<sup>nd</sup> ACP to the AEs (C). Therefore, it was decided to review all cases of officers granted 2<sup>nd</sup> ACP and initiated necessary action to withdraw the ACP granted inadvertently vide this Department's OM No. 3-1/2000-CWG dated 8.11.2006.

7. Finally an order No. 3/1/2000-CWG dated 20.07.2012 after having consultations with Staff/Finance/Establishment Branch was issued for cancellation of the above mentioned 2<sup>nd</sup> ACP granted inadvertently. Accordingly, based on the cancellation order, Department of Posts where these officers are working, had issued orders for recovery vide their letter No. 4-43/2011-CWG/752 dated 25.07.2012.

8. Aggrieved with the decision, the applicants filed O.A. No. 2651/2012 before Hon'ble CAT(PB), New Delhi.

9.. Hon'ble CAT(PB) vide its order dated 26.04.2013 has directed as under :-

**"We quash the impugned order dated 20.07.2012 by which the benefit of second ACP scheme has been withdrawn from the applicants. We also quash the order dated 25.07.2012 by which recovery of excess payment from the applicants has been ordered. We direct that the applicants may be considered for grant of this benefit in terms of Government of India instruction dated 26.05.1977 by which diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering, keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL. We further direct that, in any case, recovery of any excess payment will not be made from the applicant. The OLA is accordingly allowed. There shall be no order as to costs." (172/C- 183/C)**

10. The Senior Central Government Counsel had opined that **this is a fit case to file Writ Petition before the Hon'ble High Court as the Tribunal has held that the decision on the same issue decided by the High Court is not applicable in this case. Further, the Applicant have not claimed any such relief directions to consider their case in terms of Govt. of India instructions that diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering.** (172/C)

11. On the basis of opinion given by Sr. Central Government Counsel the matter was taken up with the nodal ministry i.e, DOP & T and DOP &T has advised as under (at page no. 185/C) :-

- (i) In terms of the provisions under ACP Scheme, all promotional
- educational qualifications have to be fulfilled

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New Delhi



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13. Accordingly, the matter was referred to Department of Legal Affairs, and LA(DOT), Department of Legal Affairs had opined to file Writ Petition before Hon'ble Delhi High Court against the order of the Hon'ble CAT(PB) dated 26.4.2013 in OA No. 2651/2012 (at page no. 186/C).

(14) Accordingly W.P. (C) No. 4879/2014 was filed by UOI before Hon'ble Delhi High Court.

(15) Hon'ble Delhi High Court vide its order dated 5.8.2014 has dismissed the W.P.(C) No. 4879/2014 filed by UOI against the order of the Hon'ble CAT(PB) dated 26.4.2013 in OA No. 2651/2012. The operative para of the order is as under :-

**“ This Court is of the opinion that in the absence of any material contradicting the CAT's inference that the equivalence was applicable and held good, even as on date, the UOI's contentions cannot be accepted. If indeed the UOI is right in contradicting that equivalence is a matter which has to be considered from service to service and having regard to the time, there has to be some material apart from the bare assumption that the 26.05.1977 declaration of equivalence – which is wide is and applicable to “all posts and services under the Central Government” – is not correct. In the absence of any such material, the UOI's contention, in our opinion, was rightly rejected. As far as the decision in Surliya (supra) was concerned, the CAT itself noticed that while the 1994 Recruitment Rules, which are in issue in the present case, were undoubtedly considered, the question of equivalence had not been discussed at all. Apparently, the 26.05.1977 circular was not brought to the notice of the Court at this stage. Therefore, Surliya (supra) decision is not an authority on the ineligibility of those, like applicants/respondents, who were deemed to possess qualifications equivalent to a degree in engineering and, therefore entitled to second ACP benefits.**

The last contention with regard to the applicability of the 2001 Office Memorandum, in our opinion, is rendered irrelevant in the light of the previous discussion with regard to the applicant's equivalence of degree qualifications. This Court is of the opinion that having regard to the object of the ACP Scheme, i.e. to alleviate stagnation for long periods and given that the equivalence criteria have been met, the insistence upon eligibility conditions spell-out in the recruitment rules would render the benefits under the scheme illusory. At any rate, having regard to the declaration of equivalence made by the 26.05.1977 circular which was applicable to all

**From prepage:**

- .....conclusion of the Hon'ble High Court (vide Order dt. 05.08.2014 at Pg. 223-234/c) that the Asst. Engineer **holding a Diploma in Engineering (Civil) with 10 years of technical experience is equivalent to Degree in Engineering, seems to be correct.** The eligibility of such Diploma holder AE (C) ASW (C) for promotion to EE (C)/SW (C) may need to be decided accordingly. Before the above said instructions dated 26.05.1977 is applied in such cases, **M/o. HRD, D/o. Higher Education may be consulted as to whether the same is still valid or not.** Further, **if the order of Hon'ble High Court is compiled, it has application on normal promotion cases also.**
- The eligibility for ACP depends on the promotional norms, as explained above and the administrative Deptt., have to decide accordingly.
- In view of the above position, the further course of action in the case may be decided by D/o. Telecommunications in consultation with the Deptt. Of Lega Affairs.

17. Accordingly, MHRD, Dept. of Higher Education has been requested to confirm the validity of the said OM, who in turn, informed vide letter dt. 03.12.2014 that **".....and to say that neither the file No. 18-19/75-T2 nor the notification dated 26.05.1977 wherein it was issued by MHRD in the past is not traceable in this Section. Therefore, it is not possible to give any clarification regarding the validity of said notification".**

18. Further, it is pertinent to mentioned that, there are two more contempt cases filed by Shri M.P Srivas and Shri Satpal Antil at CAT (PB), New Delhi and CAT, Jaipur (CP No.291/00036/2014) respectively are linked to this order are pending for the decision of this OA & WP.

19. In the light of the comments of DoP&T & MHRD, we may, if approved, seek the advice of LA (DOT) before taking any action for compliance of the Hon'ble CAT & High Court, Delhi orders.

Submitted please.

TTI-2605  
11.12.14  
PIO  
New Delhi

*Dis*  
22/12/14  
(D.S.S. Srinivasa Rao)  
Under Secretary (CWG)

**Director (Civil)**

*Spom*  
23/12/14

*DDG (ESIT)*

*D. J. S. K. L. A*

*R. B. 23/12/14*

*Recd in the*  
*O/S Secy on*  
*24/12/14 : 11 AM*  
*977-1526/14*  
*24/12/14.*



From prepage:

- .....conclusion of the Hon'ble High Court (vide Order dt. 05.08.2014 at Pg. 223-234/c) that the Asst. Engineer **holding a Diploma in Engineering (Civil) with 10 years of technical experience is equivalent to Degree in Engineering, seems to be correct.** The eligibility of such Diploma holder AE (C) ASW (C) for promotion to EE (C)/SW (C) may need to be decided accordingly. Before the above said instructions dated 26.05.1977 is applied in such cases, **M/o. HRD, D/o. Higher Education may be consulted as to whether the same is still valid or not. Further, if the order of Hon'ble High Court is compiled, it has application on normal promotion cases also.**
- The eligibility for ACP depends on the promotional norms, as explained above and the administrative Deptt., have to decide accordingly.
- In view of the above position, the further course of action in the case may be decided by D/o. Telecommunications in consultation with the Deptt. Of Lega Affairs.

17. Accordingly, MHRD, Dept. of Higher Education has been requested to confirm the validity of the said OM, who in turn, informed vide letter dt. 03.12.2014 that ".....**and to say that neither the file No. 18-19/75-T2 nor the notification dated 26.05.1977 wherein it was issued by MHRD in the past is not traceable in this Section. Therefore, it is not possible to give any clarification regarding the validity of said notification**".

18. Further, it is pertinent to mentioned that, there are two more contempt cases filed by Shri M.P Srivas and Shri Satpal Antil at CAT (PB), New Delhi and CAT, Jaipur (CP No.291/00036/2014) respectively are linked to this order are pending for the decision of this OA & WP.

19. In the light of the comments of DoP&T & MHRD, we may, if approved, seek the advice of LA (DOT) before taking any action for compliance of the Hon'ble CAT & High Court, Delhi orders.

Submitted please.

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New Delhi

Director (Civil)

SPM  
23/12/14

DDA (ESTT)

D. J. S. K. L. A

(D.S.S. Srinivasa Rao)  
Under Secretary (CWG)

22/12/14

Recd in the  
9/12/14 on  
24/12/14 11 AM  
977-1884/14  
24/12/14.

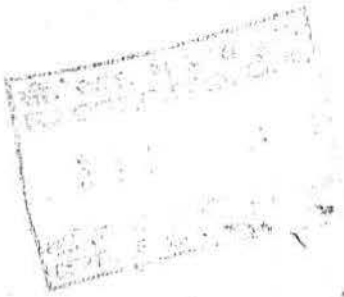
R. B. 23/12/14

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F.N. 19-23/2012-CWG

DoP&T is requested to give advice on implementation of  
High Court order dt. 5.8.14 in the light of DoPT Note dt 25/11  
& MHRD Comments reproduced at para-17 on 30/11.

The Under Secretary (Estt. 'D'), DoP&T, North Block, New Delhi <sup>26.12.14</sup> <sub>Dir (Civil)</sub>  
Dept. of Telecommunications, ID NO. 19-23/2012-CWG dt. 26.12.2014.



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New Delhi



Department of Personnel & Training  
Establishment D

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D/o Telecommunications F.No.19-23/2012-CWG

DOPT Dy.No. 1057365/14/CR

Reference notes at pre-pages.

2. This is regarding implementation of the order dated 5.8.2014 of Hon'ble Delhi High Court issued in W.P ( C) No. 4879/2014 filed by UOI against the order of the Hon'ble CAT (PB) dated 26.4.2013 in OA No.2651/2012.
3. The matter was earlier examined in this Department vide Notes at pages 25/N. As per the Recruitment Rules, 1994 (p. 151/c), the Assistant Engineer (Civil)/Asstt. Surveyor of Works (Civil)/ Engineering Assistant (Civil) who have completed probation and have rendered not less than 8 years regular service in the grade and possess a degree in Engineering or equivalent is eligible for promotion to STS [Executive Engineer (C)/ Surveyor of Works (Civil)].
3. As per Government of India, the then M/o Education & Social Welfare, (Deptt. of Education Technical) instructions vide No. F18-19/75/T-2 dated 26.5.1977 (p. 214/c), the GOI have decided to recognize a Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate field is recognized as equivalent to Degree in Engineering. It is considered valid for the purposes of selection to Gazetted posts and services under the Central Govt.
4. In view of the above, conclusion of the Hon'ble High Court (vide Order dated 05.08.2014 at p. 223-224/c) that the Assistant Engineer holding a Diploma in Engineering (Civil) with 10 years of technical experience is equivalent to Degree in Engineering, seems to be correct. Accordingly, the Administrative Department was advised that the eligibility of such Diploma holders AE(C) ASW (C) for promotion to EE(C) / SW (C) may need to be decided. However, before the above said instructions dated 26.5.1977 were applied in such cases, M/o HRD, D/o Higher Education may be consulted whether the same is still valid or not and further course of action in the case may be decided by D/o Telecommunications in consultation with the Department of Legal Affairs.
5. The Administrative Department has now informed that the Ministry of HRD, Department of Higher Education were requested to confirm the validity of the said OM dated 26.5.1977, who in turn have informed the Administrative Department that neither the File No. 18-19/75-T2 nor the notification dated 26.5.1977 wherein it was issued by M/o HRD in the past is not traceable and, therefore, it is not possible to give any clarification regarding the validity of the said Notification. The Administrative Department has also informed that some contempt petitions have been filed in the case. The Legal Adviser of the Department of Telecom has opined that it may not be possible to tender legal advice in the absence of the views of the Ministry of HRD, Department of Higher Education on the issue. Therefore, he has

(from pre-page)

suggested that the Department may consider taking administrative action in consultation with DOPT.

6. This Department had earlier advised the Administrative Department vide Notes at page 185/C to contest the order dated 26.04.2013 of the CAT, PB, New Delhi in the High Court as the said Order was not in consonance with the policy of the Government since the petitioner could not fulfil the promotional norm of Degree in Engineering prescribed in the statutory RRs applicable to the promotional post for grant of ACP. Subsequently, the Hon'ble Delhi High Court vide its order dated 5.8.2014 dismissed the Writ Petition ( C) No.4879/2014 filed by UOI against the order dated 26.4.2013 of the Tribunal. As mentioned in Paragraph 4 above, the conclusion of the Hon'ble High Court that the Assistant Engineer holding a Diploma in Engineering (Civil) with 10 years of technical experience is equivalent to Degree in Engineering seems to be correct. As such, we may advise the Administrative Department to take a conscious administrative decision in the matter, which has also been suggested by the Legal Adviser of the referring Department.

*Rakesh Moza*

(Rakesh Moza )

Under Secretary(Estt.D-II)

16.01.2015

Director(E-I)

*JS(E)*

*(Mun)*  
16.1.15  
DIRECTOR (E-I)

*Dr E-I*

*(Mun)*  
19/1

*US(D)*

*D/o Telecommunication*

*CWG*

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PIO  
New Delhi

*21/1*  
*US(CWG)*

Ref: DoP&T Notes on prepage:

This is regarding implementation of the Hon'ble High Court, Delhi order dt. 5.8.2014 issued in W.P.(C) No. 4879/2014 filed by UOI against the order of the Hon'ble CAT(PB) dated 26.4.2013 in OA No. 2651/2012.

2. To briefly recapitulate, S/Shri T.R. Sharma, S.K.Bose, Das Nilratan and A.K. Srivastava, Assistant Engineers along with 291 others were granted 2<sup>nd</sup> ACP vide order dt. 16.09.2002, 24.04.2003, 01.09.2003 & 20.02.2004 respectively under the old scheme in terms of DOP&T OM dated 9.8.1999.

3. The decision of withdrawal of the benefit of the second ACP granted to these four officers was reconsidered, after a representation came from the Department of Posts and an order No. 3/1/2010-CWG dated 20.07.2012 after having consultations with Staff/Finance/Establishment Branch was issued for cancellation of the above mentioned 2<sup>nd</sup> ACP granted inadvertently. Accordingly, based on the cancellation order, Department of Posts where these officers are working, had issued orders for recovery vide their letter No. 4-43/2011-CWG/752 dated 25.07.2012

4. Aggrieved with the decision, the applicants filed O.A. No. 2651/2012 before Hon'ble CAT(PB), New Delhi, who vide order dated 26.04.2013 had directed as under :-

"We quash the impugned order dated 20.07.2012 by which the benefit of second ACP scheme has been withdrawn from the applicants. We also quash the order dated 25.07.2012 by which recovery of excess payment from the applicants has been ordered. We direct that the applicants may be considered for grant of this benefit in terms of Government of India instruction dated 26.05.1977 by which diploma in Engineering with ten years technical experience has been recognized as equivalent to degree in Engineering, keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL. We further direct that, in any case, recovery of any excess payment will not be made from the applicant. The OLA is accordingly allowed. There shall be no order as to costs." (172/C- 183/C)

5. The Order of CAT, in accordance with the opinion of CGSC, DoP&T and Dept. of Legal Affairs, was challenged in the Hon'ble High Court of Delhi in W.P. (C) No. 4879/2014, which was dismissed vide order dated 5.8.2014. The operative para of the order is as under :-

absence of any such material, the UOI's contention, in our opinion, was rightly rejected.

As far as the decision in Surliya (supra) was concerned, the CAT itself noticed that while the 1994 Recruitment Rules, which are in issue in the present case, were undoubtedly considered, the question of equivalence had not been discussed at all. Apparently, the 26.05.1977 circular was not brought to the notice of the Court at this stage. Therefore, Surliya (supra) decision is not an authority on the ineligibility of those, like applicants/respondents, who were deemed to possess qualifications equivalent to a degree in engineering and, therefore entitled to second ACP benefits.

The last contention with regard to the applicability of the 2001 Office Memorandum, in our opinion, is rendered irrelevant in the light of the previous discussion with regard to the applicant's equivalence of degree qualifications. This Court is of the opinion that having regard to the object of the ACP Scheme, i.e. to alleviate stagnation for long periods and given that the equivalence criteria have been met, the insistence upon eligibility conditions spell-out in the recruitment rules would render the benefits under the scheme illusory. At any rate, having regard to the declaration of equivalence made by the 26.05.1977 circular, which was applicable in the present case, it cannot be said that the respondents/applicants were ineligible for the second ACP.

For the foregoing reasons, the writ petition lacks in merit, it is accordingly dismissed.

6. As per Recruitment Rules 1994 one of the conditions prescribed for promotion from the grade of Assistant Engineer (Civil) to the grade of Executive Engineer (Civil) is that the officers holding the post of AE (Civil) on regular basis and should possess a Degree in Engineering or equivalent.

7. In the light of the Hon'ble High Court, Delhi judgment dated 05.08.2014 and expert advice of LA (DOT), the case was referred to DoP&T for their views/comments, who in turn, stated as follows:

- .....conclusion of the Hon'ble High Court (vide Order dt. 05.08.2014 at Pg. 223-234/c) that the Asst. Engineer *holding a Diploma in Engineering (Civil) with 10 years of technical experience is equivalent to Degree in Engineering, seems to be correct.* The eligibility of such Diploma holder AE (C) ASW (C)



For review

- The eligibility for ACP depends on the promotional norms, as explained above and the administrative Deptt., have to decide accordingly.
- In view of the above position, the further course of action in the case may be decided by D/o. Telecommunications in consultation with the Deptt. Of Legal Affairs.

8. Accordingly, MHRD, Dept. of Higher Education has been requested to confirm the validity of the said OM, who in turn, informed vide letter dt. 03.12.2014 that ".....and to say that neither the file No. 18-19/75-T2 nor the notification dated 26.05.1977 wherein it was issued by MHRD in the past is not traceable in this Section. Therefore, it is not possible to give any clarification regarding the validity of said notification".

9. Since, M/o. HRD has expressed their inability to conform the validity of the OM dt. 26.05.1977, expert advice of LA (DOT) was sought, who, in turn, advised to take administrative action in consultation with DoP&T. Accordingly, DoP&T has been requested for advice in implementation of Hon'ble High Court Order dt. 05.08.2014 in the light of the views expressed by MHRD and LA (DoT).

10. Now DoP&T vide note at para 6 on pg. 33/N, has reiterated that, *"the conclusion of the Hon'ble High Court that the Asst. Engineer holding a Diploma in Engineering (Civil) with 10 years of technical experience is equivalent to Degree in Engineering, seems to be correct. As such, we may advice the Administrative Department to take a conscious administrative decision in the matter, which has also been suggested by the Legal adviser of the referring Department"*.

11. It is worthwhile to mention that, there are two more contempt cases filed by Shri M.P Srivas at CAT (PB), New Delhi (CP No. 311 of 2014) and Shri Satpal Antil at CAT, Jaipur (CP No.291/00036/2014) are linked to this order, are pending for the decision of this OA & WP.

12. The Hon'ble High Court, Delhi had dismissed the WP filed by UoI against the CAT Order dt. 26.04.2013 under lacks of merit. The said CAT order contains the following operative parts:

- (i) Quashing the order dt. 20.07.2012 issued by DoT
- (ii) Quashing the order dt. 25.07.2012 issued by DoP.
- (iii) Applicants may be considered for grant of this benefit in terms

from prepare

14. In view of the position as explained at para -11, 12 & 13 above a decision is to be taken for compliance of order of Hon'ble High Court, Delhi and Hon'ble CAT, PB, Delhi.

Submitted for consideration and further directions please.

*DDP*  
24.1.15

(D.S.S. Srinivasa Rao)  
Under Secretary (C VG)

Director (Civil)

Notes from page - 34 to 37 may please  
be seen.

2. In view of DOPST's opinion at page-25  
and page - 32-33 and LA/DOP's opinion at  
page - 30, it may be considered  
to implement the judgement of  
Hon'ble High Court, Delhi & Hon'ble CAT/PB,  
New Delhi as mentioned at para - 11,  
12 & 13 at page.

Submitted please.

152-F/M1  
23/01/15

DDA (CRSTH).

Members (5)

*DDP*  
23/1/15

*DDP*  
22.1.15  
23/1/15

Secretary

no C/T

30/1/15

Pl. put in  
immediately  
1/2/15

38/N -

Ref: Notes on Pre-page.

Hon'ble MOC & IT has approved the Proposal for implementation of Hon'ble CAT(PD) New Delhi order dated 1.5.2013.

We may request DOP to implement Hon'ble CAT(PD) order dated 1.5.2013 in the matter of Sh. T.R. Sharma & others.

We may also request DOP to take similar decisions in other related matters. In some cases Contempt Petitions are filed for non-implementation of Hon'ble CAT benches orders. We may request DOP to approach Hon'ble CAT benches regarding implementation of Tribunal's order & drop Contempt Petitions filed by the applicants.

Accordingly DFA Please.

(3)  
11/2/2015

~~US (C/2)~~

20020  
11/2/15

Discuss with Dir (C). A review draft is sent also to panel.

~~DIR (C/4)~~

SPM  
11/2/15

~~US (C/2)~~

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11/2/15