

No. 19-23/2012-CWG  
Government of India  
Ministry of Communications & IT  
Dept. of Telecommunications

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New Delhi, dated the 11<sup>th</sup> February, 2015

OFFICE MEMORANDUM

Sub: Implementation of Hon'ble High Court, Delhi orders dt. 05.08.2014 issued in WP (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.

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The undersigned is directed to refer to the Hon'ble CAT, PB, New Delhi directions issued on 26.04.2013 in OA No. 2651/2012 filed by Shri T.R.Sharma & Ors against UoI and Ors., which is reproduced below:

"We quash the impugned order dated 20.07.2012 by which the benefit of second ACP scheme has been withdrawn from the applicants.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experience has been recognized as equivalent to degree in Engineering, keeping in mind that this benefit has not been withdrawn from those similarly placed 102 officers who have got absorbed in BSNL/MTNL.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."

2. 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 with the following directions/observations.

" 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 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.

Contd....2

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.

3. In this context, attention is also invited to Recruitment Rules 1994 wherein, 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.

4. 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) 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.

5. 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 who has expressed their inability to confirm the validity of the said OM as the file in which the subject matter dealt is not traceable.

6. In view of the para 5 above, DoP&T, as per the advice of LA (DOT) was consulted once again, however, they reiterated their stand as follows:

*"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 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".*

7. In view of the above, it has been decided with the approval of the competent authority to implement the order dt. 05.08.2014 of Hon'ble High Court, Delhi issued in WP (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, accordingly, the order No. 3-2/2010-CWG dt. 20.07.2012 issued by DoT *stands cancelled* and applicants may be considered for grant of this benefit in terms of Government of India instructions dt. 26.05.1977 by which diploma in Engineering with ten years technical experience has been recognised as equivalent to degree in Engineering.

8. This issues with the approval of the competent authority.

11/2/15

(D.S.S. Srinivasa Rao)

Under Secretary to the Govt. of India

Tel: 23372350

Copy for information to:

1. Sr.PPS to Secretary (T), DoT, Sanchar Bhawan, New Delhi
2. Sr.PPS to Secretary (P), DoP, Dak Bhawan, New Delhi
3. PPS to Member (T), DoT Sanchar Bhawan, New Delhi.
4. PPS to Member (Pers), DoP, Dak Bhawan, New Delhi
5. The Chief Engineer (Civil), DoP, Dak Bhawan, New Delhi with a request to take immediate necessary action to implement the Hon'ble CAT(PB) dated 26.4.2013 in OA No. 2651/2012. It is also requested to take similar action in the 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) and other cases which are linked to this issue . Further, the respective courts/CAT may be apprised of the action taken immediately to facilitate the disposal of Contempt Cases pending before the Hon'ble CAT at PB, New Delhi and Jaipur.
6. Copy to file No.19-28/2012-CWG of Shri M.P Srivas at CAT (PB), New Delhi (CP No. 311 of 2014) and File No. F.No.19-24/2012 of Shri Satpal Antil at CAT, Jaipur (CP No.291/00036/2014).
7. Director (IT), DoT, Sanchar Bhawan, New Delhi with a request to upload the order on the DoT website at BW/Circulars