



2024:DHC:9151-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 2671/2017**

UNION OF INDIA & ANRPetitioners
Through: Ms. Shivalakshmi, CGSC with
Mr. T. Hari Harasudhan, Advocates.

versus

CENTRAL PWD ENGINEERS ASSOCIATION & ORSRespondents
Through: Mr. M. K. Bhardwaj and Mr.
Maria Mugesh Kannan. H, Advs.
Mr. Adesh Jain, Intervenor in person.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

JUDGMENT (ORAL)

% **25.11.2024**

C. HARI SHANKAR, J.

1. This writ petition assails order dated 27 October 2016 passed by the Central Administrative Tribunal, Principal Bench¹ in OA 1348/2015.

2. The respondents were the applicants before the Tribunal in the OA. They were working as Assistant Engineer (Civil and Electrical) in the Central Public Works Department². They claimed to be eligible for promotion as Executive Engineer (Civil and Electrical) as per

¹ "the Tribunal" hereinafter

² "CPWD"



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applicable recruitment rules.

3. One of the requirements for eligibility, as specified in the RRs, was the requirement of a degree in the Civil Engineering.
4. The fulcrum of dispute before the Tribunal was whether the respondents were, or were not, eligible for consideration for promotion as Executive Engineer (Civil).
5. The respondents, before the Tribunal, relied on a Notification dated 26 May 1977 which read thus:

“No.F16-19/75/T-2

Ministry of Education & Social Welfare
(Deptt. of Education Technical)
New Delhi-110001 Dated 26 May, 1977

Sub: Recognition of Technical & Professional Qualification”

On the recommendation of the Board of Assessment for Educational Qualifications and recommendation of Defence Director (tech;), *the Government of India have decided to recognize a Diploma in Engineering in appropriate discipline plus total ten years of technical experience in the appropriate fields in recognized as equivalent to Degree in Engineering.* It is considered valid for the purpose of selection to Gazetted posts and services under the Central Government or State Government.

(V.R. Reddy)
Director (Tech.)

To be published in Gazette of India and NCO Code Book.

Copy to:- All Ministries, Departments of the Government of India/State Government/Regional Offices/State Public Service Commissions etc”

6. Further, reliance was also placed by the respondent on the



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judgment of a Division Bench of this Court in *UOI v M P Shrivastava*³ and *T R Sharma v UOI*⁴, which also relied on the said Notification.

7. Predicated on the aforesaid judgments and the Notification dated 26 May 1977, the Tribunal proceeded to allow the respondents' original application.

8. Aggrieved thereby, the petitioners have approached this Court by means of the present writ petition.

9. Before this Court, a specific stand was taken by the petitioners, on 19 February 2018, that the Notification dated 26 May 1977 was a fictitious notification which had never been published in the Official Gazette. It is worthwhile to reproduce the order passed by the Division Bench of this Court on 19 February 2018, apropos the said contention:

"1. The petitioner/UOI is aggrieved by the order dated 27.10.2016 passed by the Central Administrative Tribunal in O.A. 1348/2015 filed by the respondents wherein, the Tribunal had followed two judgments of two High Courts, including the High Court of Delhi in W.P.(C) No. 6922/2014 entitled *UOI & Ors. vs. M.P. Srinivas & Ors.* decision dated 13.10.2014 and that of the Tribunal in O.A. No. 2651/2012 entitled *T.R. Sharma & Ors. vs. Union of India & Ors.* decided on 26.4.2013 and had declared that "the respondents be considered for promotion to the post of EE (Civil and Electrical) by considering their diploma in Engineering with ten years experience in the field (Civil and Engineering) as equivalent to degree in Engineering".

2. The sole ground taken by the petitioner/UOI to assail the impugned judgment is that the Notification dated 26.5.1977 referred to in the decisions of two High Courts (High Court of

³ Order dated 13 October 2014 in **WP C 6922/2014**

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Delhi and High Court of Punjab & Haryana) may have been fictitious and does not appear to be published in the Gazette of India. To fortify the said submissions, learned counsel refers to the Notification dated 23.3.2016, issued by the Ministry of Human Resource Development, Department of Higher Education, which states as under: -

"F. No. 11-11/2015 TSII/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 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 O.A. No. 343-PB-2013 which was pronounced on 15th December, 2015."

3. In our view, the aforesaid Notification is of no avail unless and until the Gazette Branch of the UOI certifies that after perusing its record, no such O.M. dated 26.5.1977 on the subject of "Recognition of Technical and Professional Qualifications" was ever published by the Department. The petitioner is directed to approach the Gazette Branch of the UOI and obtain a certificate in that regard. In the absence of any such document, we will have no option but to dismiss the present petition. Needful shall be done within six weeks, with a copy to the counsel for the respondents.

4. List on 08.8.2018.

5. Interim orders to continue."

10. Though the petitioner has, regrettably, not placed on record any efforts made by it, in terms of directions contained in para 3 of the order dated 19 February 2018, to verify from the Gazette Branch as to whether the OM dated 26 May 1977 was or was not fictitious, Mr. T. Hari Harasudhan, learned Counsel for the petitioner, has handed over, across the Bar, a clarification dated 22 May 2015, by the Directorate of Publications, to the effect that the Notification dated 26 May 1977 was not traceable.



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11. This also stands reflected in subsequent communications dated 7 September 2018, issued by the Department of Higher Education, Ministry of Human Resource Development and 9 October 2023, issued by the CPWD itself.

12. Once the Directorate of Publications, which is the nodal office for gazetting of notifications, has specifically certified and confirmed that the Notification dated 26 May 1977 is not traceable, it is not possible for us to uphold the reliance, by the Tribunal, on the said Notification.

13. Mr. Adesh Jain, who appears in person and was permitted to intervene in the present proceedings, has placed certain additional documents on record. Among the said documents is a judgment dated 17 January 2023 of the Division Bench of the High Court of Punjab and Haryana in LPA 26/2018 (O & M)⁵, in which the following specific finding has been returned:

“Having regard to the stand taken by the Secretary of the Ministry of the Human Resource Development in the counter-affidavit dated 11.12.2017 referred to above, *it is not possible to hold that the notification dated 26.05.1977 was in fact issued by the Union of India and grant relief to the appellants as if the said notification is valid and subsisting.*”

(Emphasis supplied)

14. Thus, there is also a finding by the High Court of Punjab and Haryana that it was not possible to hold that the Notification dated 26 May 1977 was in fact issued by the Union of India.

⁵ Ram Kumar v HVPNL



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15. As the impugned judgment of the Tribunal has proceeded on the basis of the said Notification, it cannot sustain.

16. For the aforesaid reasons, the impugned judgment is quashed and set aside.

17. OA 1348/2015 stands remitted to the Tribunal for consideration afresh *de hors* the Notification dated 26 May 1977 or any judgments which were based on the said Notification.

18. We do not express any opinion on whether the respondents would be entitled to the reliefs sought from the Tribunal *de hors* the aforesaid Notification dated 26 May 1977.

19. In order to expedite matters, let the parties appear before the Tribunal on 10 December 2024. We request the Tribunal to decide the matter as expeditiously as possible, as this writ petition itself has remained pending before this Court for quite some time.

20. The writ petition stands allowed to the aforesaid extent.

C. HARI SHANKAR, J.

ANOOP KUMAR MENDIRATTA, J.

NOVEMBER 25, 2024/dsn

Click here to check corrigendum, if any