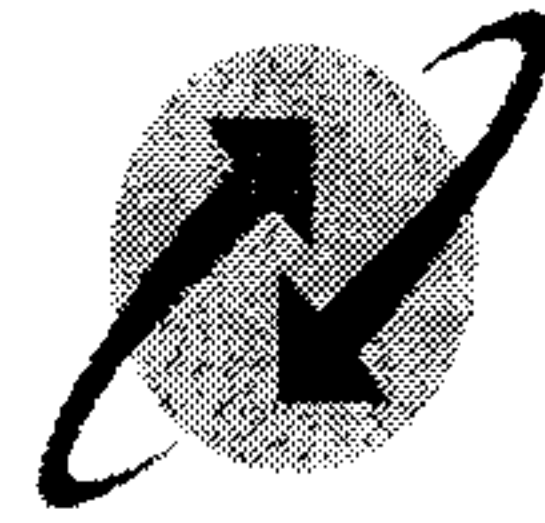


BW Unit : Corporate Office  
o/o PGM(BW)  
Telegraph Office Building  
Kashmere Gate Delhi -110006  
Tel: 011-23865254 FAX 23865284



भारत संचार निगम लिमिटेड  
(भारत सरकार का उपक्रम)  
BHARAT SANCHAR NIGAM LIMITED  
(A Govt. of India Enterprise)

PF/Gadura AC/ DyM(BW-II)/Court case/2011


dated 20-12-2011

Through INTRANET Portal

To,  
PCE(C),  
WB Civil Zone,  
Kolkata.

Sub: Judgement dated 14-10-2011 pronounced by Hon'ble CAT Bench at  
Ahemdabad – regarding withdrawal of 2<sup>nd</sup> ACP granted erroneously.

I am directed to forward a copy of judgment pronounced by Hon'ble CAT  
Bench at Ahemdabad in OA no 440/2010 with a request to bring it on record of  
Hon'ble court in the case(s) of similar nature being defended by your zone (if  
any) in consultation with legal authority.

  
(S C Garg)  
Addl GM(BW-I)  
20/12/11

Copy to :

1. All CGMT, BSNL.
2. PCE(C)/CE(C)



**BHARAT SANCHAR NIGAM LIMITED**

(A Government of India Enterprise)

Office of the Chief Engineer (C) BSNL Gujarat Zone

1st Floor, RTSD Bldg. Near Girdharnagar Rly. Crossing, Shahibaugh, Ahmedabad 380004.

Telephone No. 22862513 & 22862455 – FAX 22884902 & 290929729

No.8(20)CAT-SDE//2011/CE/BSNL/AHD/ H63-HA

Dated : 07/12/2011

Shri S.C.Garg,  
DGM (BW-I) o/o PGM(BW)  
BSNL CO, BW Unit  
Telegraphs Building  
NEW DELHI.

Sub: OA Nos. 440,445, 446, 447 & 448 of 2010 with MA Nos 74, 82, 79, 81 & 80 of 2011 respectively in the Hon'ble CAT Ahmedabad Bench – copy of judgment thereof.

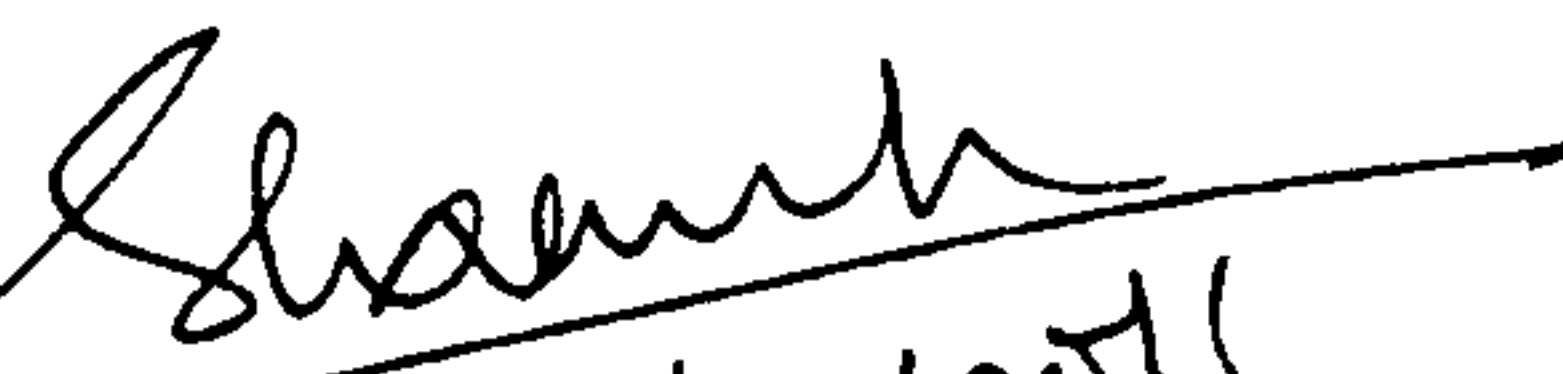
Ref: Your letter No.PF/Gadura AC/Dy.m(BW-II)Court-case/2011 dated 14.02.2011 & even No. dated . 11.01.2011.

Kindly find enclose herewith copy of judgment dated 14<sup>th</sup> October, 2011 issued by Hon'ble CAT Ahmedabad in all the above mentioned five OAs with MAs .

The Hon'ble CAT Ahmedabad Bench has dismissed all the above five OAs with MAs stating that "OAs are devoid of merits and arte accordingly dismissed".

This for your information please.

Encl: Copy of judgment.

  
(Surya Prakash) 7/12/2011  
Chief Engineer (C)  
BSNL Gujarat Zone  
Ahmedabad.

Copy to:-

1. The AGM(Legal) o/o CGMT, BSNL Gujarat Circle Ahmedabad alongwith copy of Judgment cited above for information please. ( Encl: One)

  
Executive Engineer (C) H/Q

Mr  
V.V. Bhatnagar

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH, AHMEDABAD**

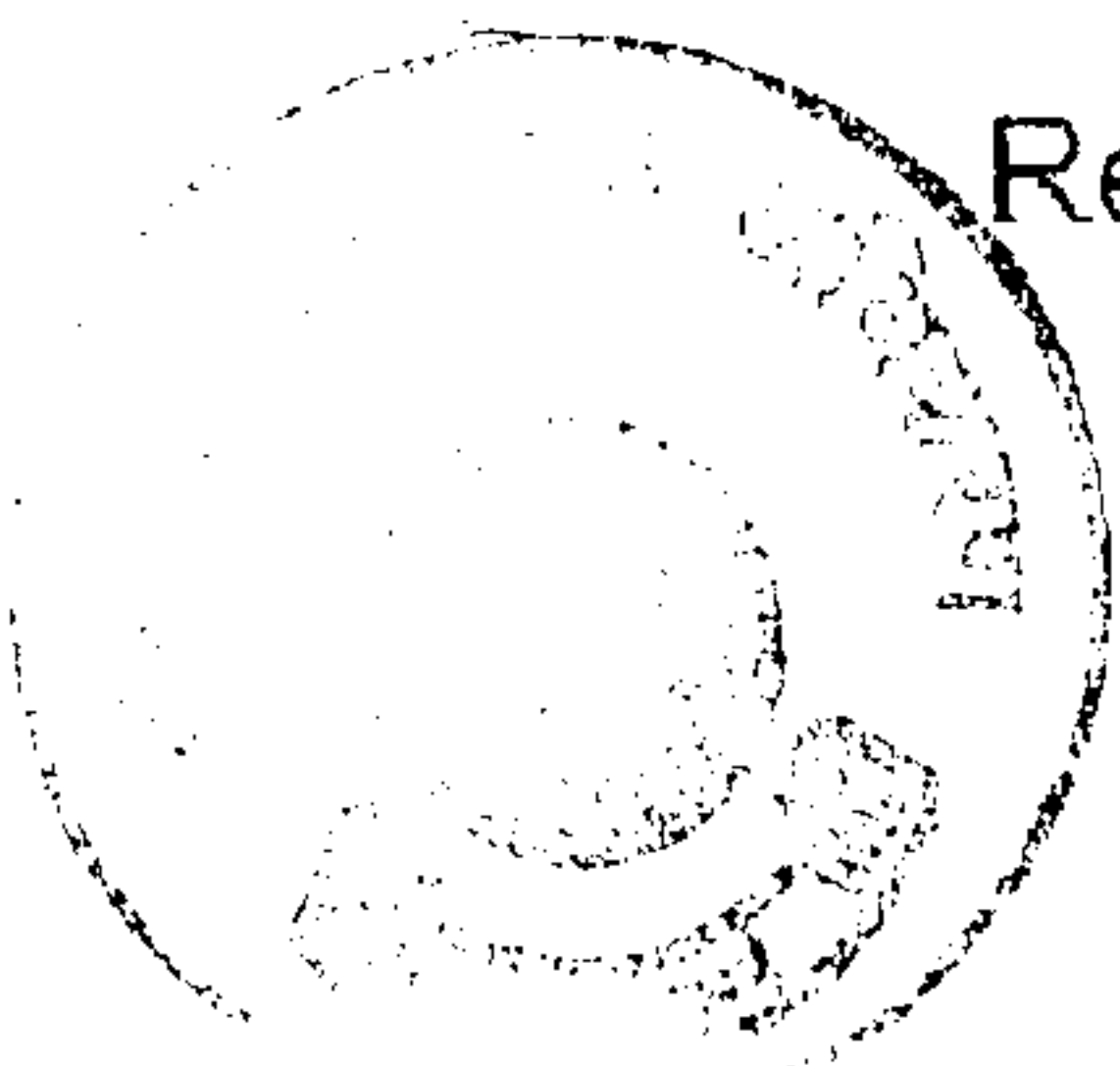
OA Nos.440, 445, 446, 447 & 448 of 2010 with  
MA Nos.74, 82, 79, 81, 80 of 2011 respectively

Ahmedabad, this the 14<sup>th</sup> day of October, 2011

**Coram : Hon'ble Shri Mukesh Kumar Gupta, Judicial Member  
Hon'ble Shri Ashok Kumar, Administrative Member**

1. Shri A.C.Gadara  
ICB – Island, Block B-201,  
Near Vandemataram Square, New S.G.Highway,  
B/h. Vishwakarma Mandir, Gota, Chandlodiya,  
Ahmedabad 380 016. .... Applicant in OA/440/2010
2. Shri Rajvir Singh  
A/3, Simandar Residency-II  
Near Kiriti Bunglow, Gota Road,  
Chandlodiya, Ahmedabad. .... Applicant in OA/445/2010
3. Shri Manni Navrang Yadav  
M/30, Shantinath Part-II  
Near Vejalpur Bus Stand  
Ahmedabad 380 063. .... Applicant in OA/446/2010
4. Shri A.D.Dalwadi  
14, Madhupuri Tenament,  
Opp. Times of India Press  
Seute Post, Ambawadi Vistar  
Ahmedabad 380 018 .... Applicant in OA/447/2010
5. Shri Digamber Singh  
7, Park View Apartment  
Nr. Asopalav Party Plot  
Jodhpur Gam, Satellite,  
Ahmedabad 380 015. .... Applicant in OA/448/2010

Represented by Advocate : Mr. M.S.Trivedi



VERSUS

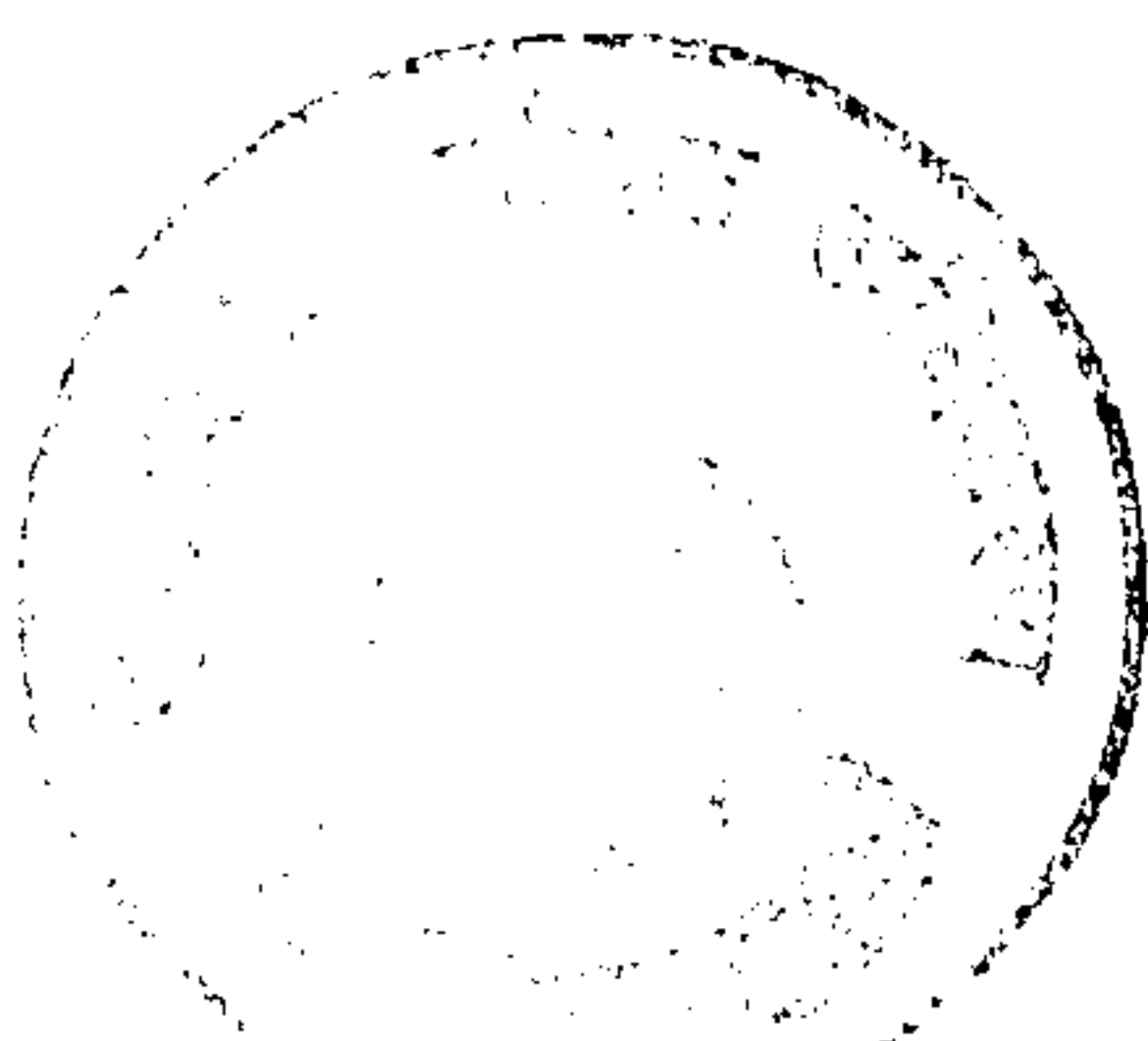
1. Union of India, through  
The Secretary  
Department of Telecommunication  
20, Ashoka Road, New Delhi 110 001.
2. The Chairman-cum-Managing Director  
Bharat Sanchar Nigam Limited  
O/o. BSNL, Corporate Office,  
Bharat Sanchar Bhavan, 4<sup>th</sup> Floor,  
Janpath, New Delhi – 110 001.
3. The chief General Manager  
O/o. CGM, BSNL,  
Gujarat Telecom Circle,  
Telephone Bhavan, 7<sup>th</sup> Floor,  
A-Wing, Navrangpura, Ahmedabad 380 006.
4. The Executive Engineer (C ) HQ  
O/o. Chief Engineer (C ), BSNL  
Gujarat Zone, 1<sup>st</sup> Floor, RTSD Building  
Nr. Girdharnagar Railway Crossing  
Ahmedabad 380 004. .... Common Respondents

Represented by Advocate : Mr. Joy Mathew (Not Present)  
Mr. J.V.Bhairavia

**ORDER**

**Per : Hon'ble Shri Mukesh Kumar Gupta, Judicial Member**

Issue raised in these applications being common and grounded on same fact, were taken up together and dealt with by present common order.

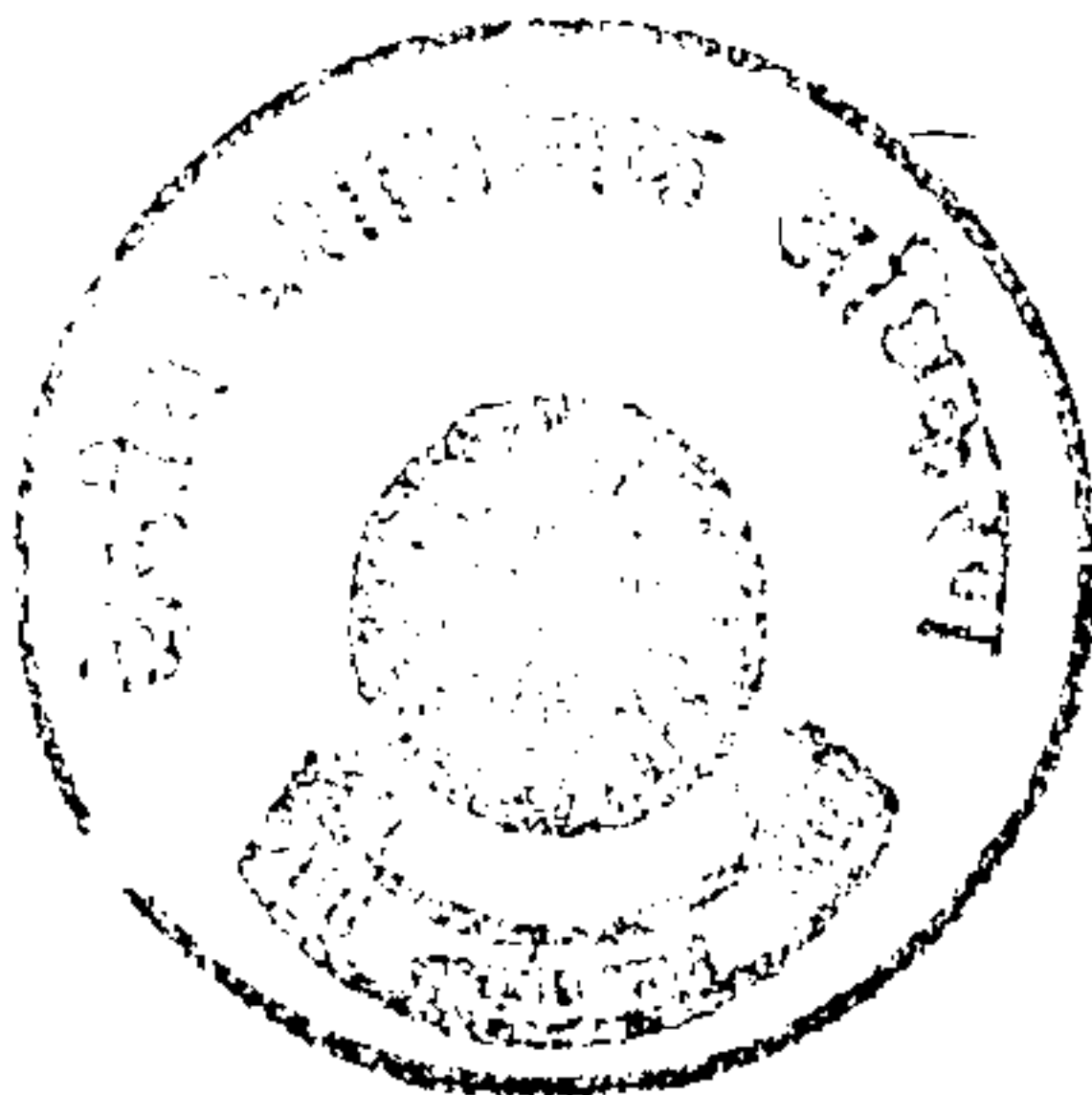


2. Admitted facts are :-

Vide Order dated 15-9-2008 (Annexure A-1) based on recommendation of Screening Committee and on approval of competent authority, six officials, including five applicants herein, were placed under pay scale from Rs. 11875-300-17275 to Rs.14500-350-18700 w.e.f from date shown against their name. Said order further recited that all the executives have opted for 2<sup>nd</sup> ACP Scheme as per Para 1(1)d(7) of BSNL H/Q, New Delhi Memorandum dated 18-1-2007 and became entitled to said 2<sup>nd</sup> ACP in IDA pay scale on completion of 24 years of qualified regular service.

3. Their grievance is vide Office Order dated 13-10-2008, said order dated 15-9-2008 was cancelled with immediate effect stating that: **“the officers are not fulfilling the mandatory qualification of Graduation in Civil Engineering and minimum of 8 years service”**. Validity of said memorandum dated 13-10-2008 and consequent order issued on 25-2-2009 are challenged in present proceedings. Office order dated 25-2-2009 recited as under :-

*“As per RR 1994 for promotion to the grade of EE(C) in*



*the IDA scale of Rs. 14500-350-18700, the incumbent should have "Degree in Civil Engineering and 8 (eight) years of regular service as SDE(C)" and the same criteria is applicable for grant of 2<sup>nd</sup> financial upgradation under ACP Scheme. All the executives mentioned in above referred order are not fulfilling the eligibility condition prescribed in RR 1994 and thus are not eligible for 2<sup>nd</sup> financial upgradation under ACP Scheme.*

*Hence, the above referred order is hereby cancelled to regularise the case and payments if any made as a result of the above referred order may be recovered immediately."*

*(emphasis supplied)*

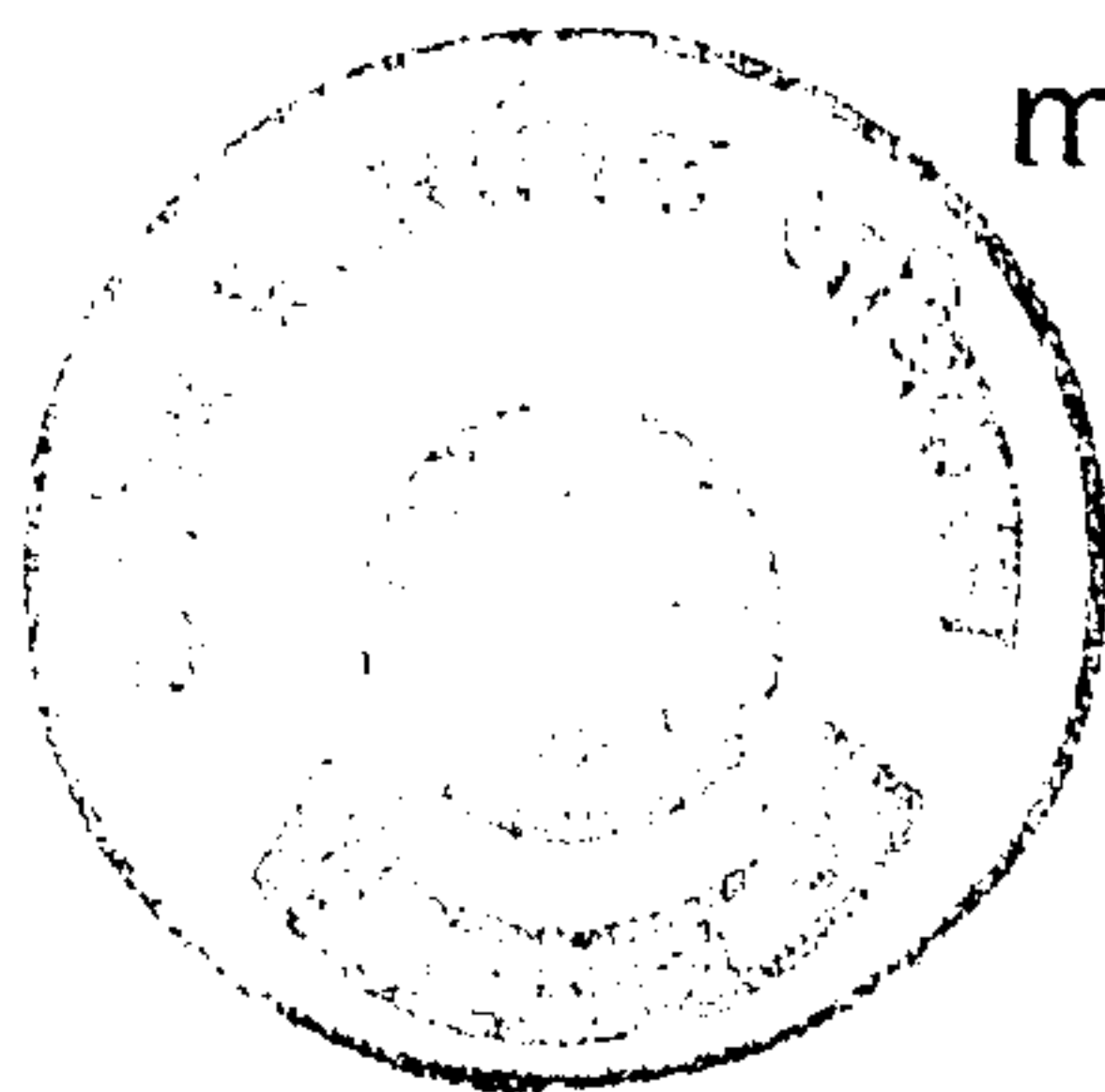
4. Shri M.S.Trivedi, learned counsel appearing for applicants vehemently contended the followings :-

(i). Order dated 15-9-2008 was issued as per promotion policy of the respondents with prior approval of competent authority as well as based on recommendations of Screening Committee.

(ii). Benefits of Second ACP, as granted to them vide order dated 15-9-2008 were recalled by the respondents without any reasons.

(iii). Upgradation is not a promotion. It neither changes the designation nor duties of an officer. Therefore, to apply the norms of Recruitment Rules for said post is neither relevant nor justified, reasonable or legal.

(iv). Educational qualification cannot stand in way of applicants to consider them for grant of higher pay grade. The same is relevant or material only for those who gets direct entry.



(v). Articles 14, 16 and 19 have been violated and applicants have been discriminated. Recalling of benefits of grant of Second ACP vide Order dated 15-9-2008, vide Order dated 13-10-2008 and 25-2-2009 carries civil consequences. Principles of natural justice were violated.

5. Reliance was placed on Co-Ordinate Bench (Guwahati) Order dated 25-8-2009 in OA No.164/2009, Shri Girish Chandra Das v. Union of India & Ors.. Reliance was also placed on Order dated 16-12-2010 issued by Chief General Manager, BSNL, Guwahati. Strong reliance was also placed on Dilip Kumar Garg & Anr. v. State of UP & Ors. (Civil Appeal No.5122/2007) decided on 03-3-2009. Lastly reliance was placed on this Bench Order in OA No.35/1993, followed in OA No.693/2000 (Kum. Jiviben Bhatt v. U.O.I & Ors.) to contend that educational qualification prescribed becomes relevant only when post is to be filled up only by direct recruitment. In the above premises, learned counsel strongly urged that reasons assigned for withdrawing benefits of 2<sup>nd</sup> ACP, namely not fulfilling eligibility condition prescribed under Recruitment Rules is misconceived and baseless. It was further contended that



representation made to appropriate authority did not evoke favourable response. MA Nos.74, 82, 79, 81 & 80 of 2011 respectively in present OAs were preferred by Union of India seeking deletion of respondent No.1 from array of parties stating that reliefs are sought against BSNL (Respondent No.2-4) & not against it.

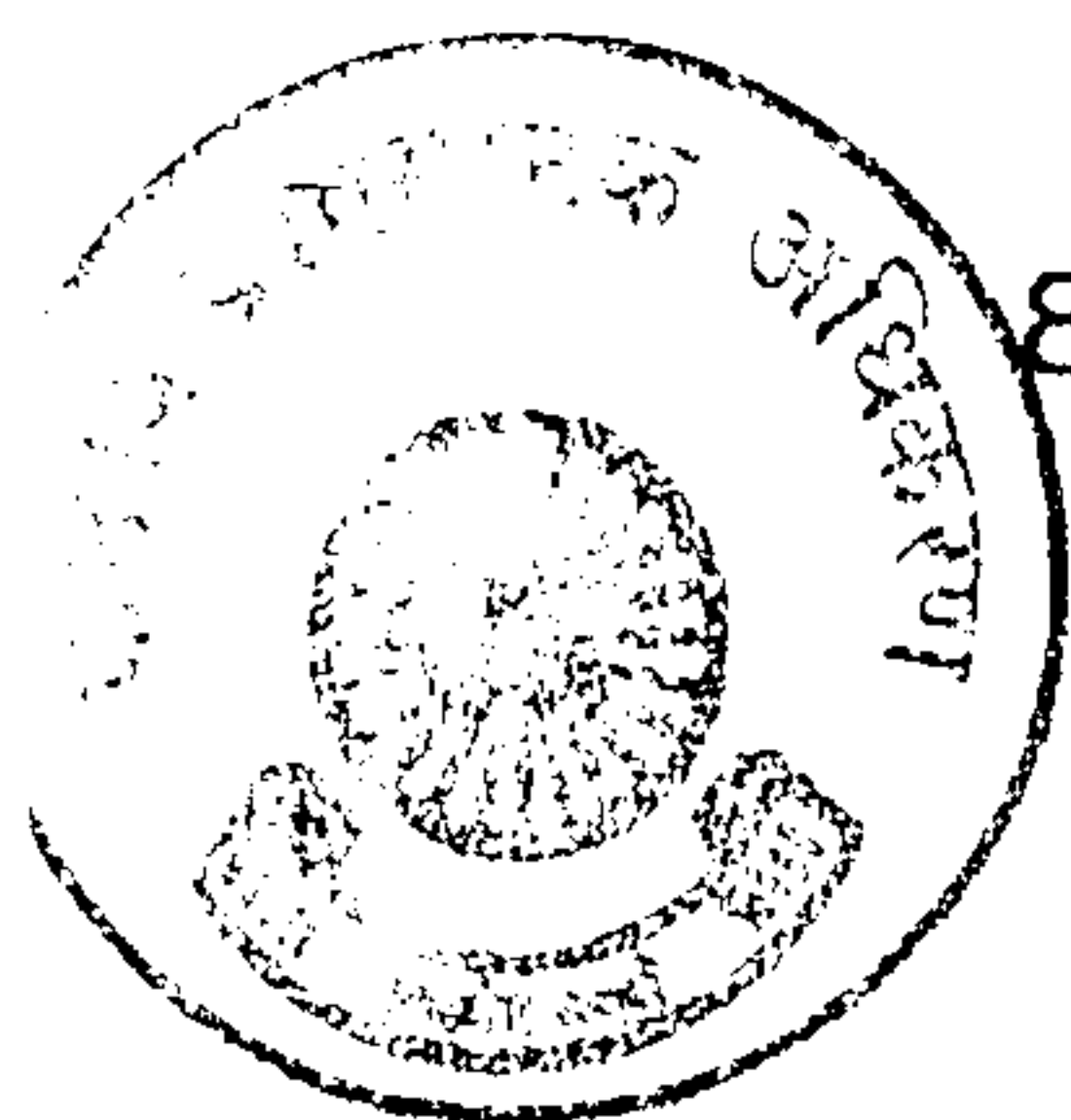
6. By filing their reply as well as sur-rejoinder, the respondents urged that applicants were granted benefits of 2nd ACP on completion of 24 years of regular service. On introduction of Time Bound Promotion policy, replacing existing ACP Policy by BSNL Corporate Office vide Order dated 18-1-2007, directions were issued to deal with all upgradation cases in Circle level only. As per Recruitment Rules 1994, known as the Posts & Telegraphs, Building Works (Group 'A') Services Rules, 1994, for promotion i.e. pay scale of Rs. 11875-300-17275 to Rs.14500-350-18700, as SDE(C) to EE (C), incumbents should have a Degree in Civil Engineering and 8 years regular service as SDE(C). Matter was clarified vide BSNL Headquarter New Delhi vide order dated 11-2-2009 to the effect that ACP cases for SDE(C) are to be processed in the same manner as promotion to EE(C) grade and therefore all eligibility criteria of





DGP&T Building Works Service, Group 'A' Recruitment Rules, 1994, are required to be followed.

7. Vide para 9 of reply, it was clarified that relaxation granted to the officers promoted by DOT vide Orders dated 16-9-2002, 24-4-2003, 01-9-2003 & 20-2-2004 to Civil Wing Officer was not a general relaxation and cannot be extended to them. Applicants herein were granted benefits of 2<sup>nd</sup> ACP by oversight without taking into consideration eligibility criteria for promotion prescribed in Recruitment Rules, 1994. Therefore, benefit granted erroneously was got cancelled vide 13-10-2008. Applicants have no legal right to claim upgradation due to lack of educational qualification as well as required experience. It is case of erroneous mistake, which got corrected, recalling the benefits granted erroneously. By filing surejoinder, it was clarified that applicants (except applicant in OA/447/2010) lack educational qualification, while applicant in OA/447/2010 was lacking in experience prescribed of 8 years in the grade concerned.

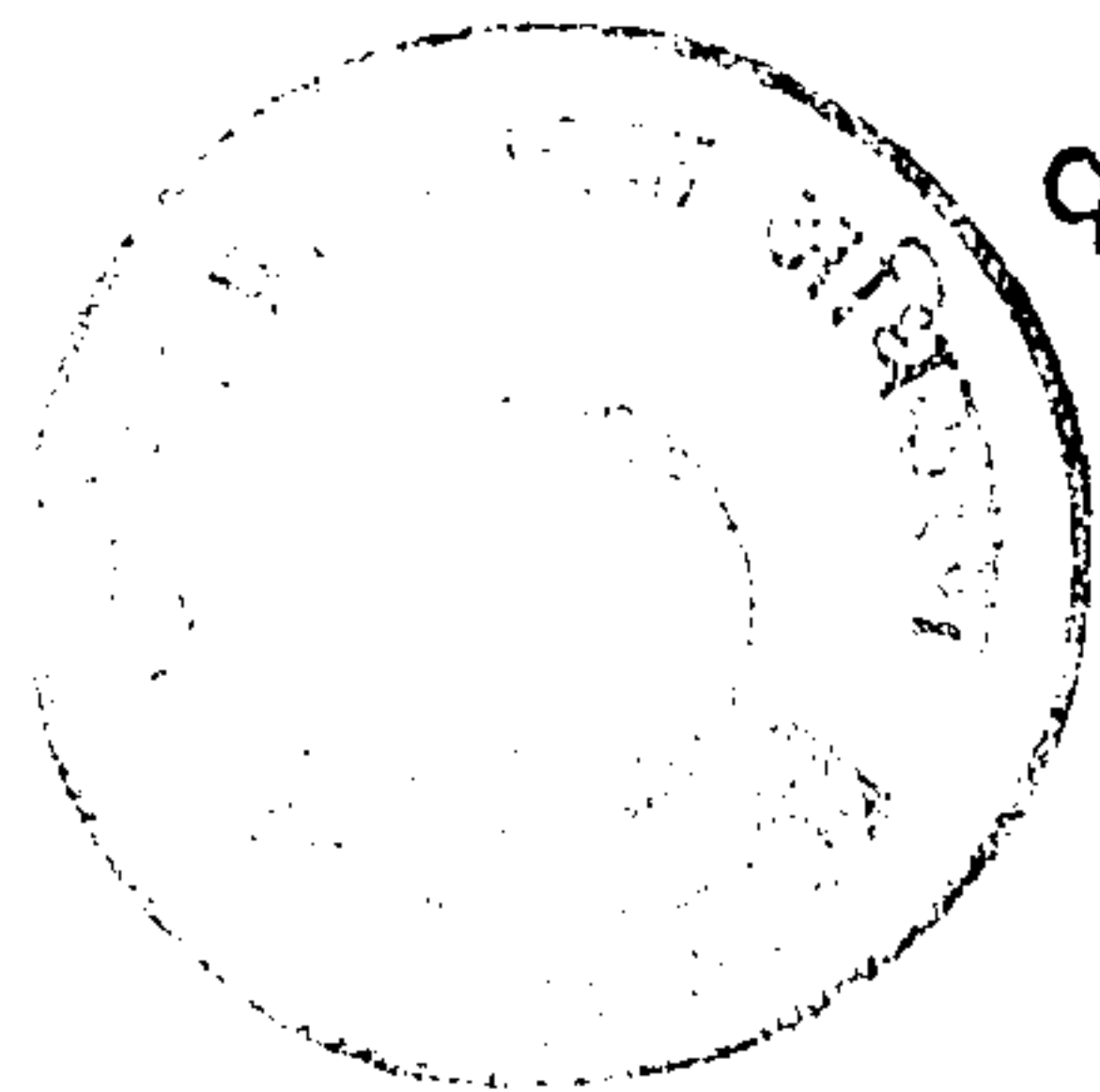


8. In the above backdrop, Shri J.V.Bhairavia, learned counsel

appearing for the respondent Nos.2-4 earnestly urged that as applicants did not satisfy prescribed condition under Recruitment Rules, 1994, they are not eligible for the benefits of second ACP. None appeared for the respondent No.1.

9. We have heard learned counsel for both parties, perused the pleadings and other material placed on record.

10. The basic thrust laid by applicants is discrimination and violation of Article 14 of Constitution of India. Emphasis was laid to the effect that prescribed educational qualification under Recruitment Rules, 1994 is inapplicable to them. We have given our thoughtful consideration to this aspect and on reliance placed on various judgments noticed hereinabove. At the outset, we may note that the rules of the Posts and Telegraphs Building work (Group-A) Service Rules, 1994 were framed in exercise of powers conferred by the proviso to Article 309 of the Constitution of India and were published in Gazette of India. It is not in dispute that Schedule-IV, appended thereto, provides method of recruitment for promotion and minimum qualifying service in the next lower grade for appointment of officers



on promotion to duty post. As per said Schedule, the post of STS (Executive Engineer (C)) is to be filled by way of promotion. 50% from Assistant Executive Engineers (Civil) who have completed probation and have rendered not less than 4 years regular service in the grade on the basis of seniority-cum-fitness as well as 50% from Assistant Engineers (Civil)/Assist. Surveyor of Works (Civil)/ Engg. Asstt. (Civil) who have completed probation and have rendered 8 years regular service in the grade and possess a degree in Engineering or equivalent. Note was also inserted therein which provided as under :-

*"However, the existing incumbents holding the post of Assistant Engineer (Civil) on a regular basis on the date of notification of these Recruitment Rules 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 8 years regular service in the grade."*

11. During the course of hearing a doubt was raised as to whether applicants were falling within the category, as provided under aforementioned **Note** or not. As such, the respondents were required to file an affidavit. In compliance to direction issued, the respondents have filed surrejoinder in each of cases and disclosed the precise date of their promotion on regular basis in the grade of SDE(C),



which is equivalent to Assistant Engineer (Civil). The precise educational qualification held by them were also disclosed. According to sur-rejoinder filed, it has been explained that none of applicants except applicant in OA No. 447/2010, was a regular 'SDE (Civil) on the date of notification of Recruitment Rules, 1994. Applicant in OA No. 447/2010 did not satisfy another condition namely, 8 years regular service in the grade. When Recruitment Rules are in operation and no specific relief of relaxation of rules is sought, the Tribunal cannot ignore mandate of statutory rules. Hon'ble Supreme Court in **A.K.Bhatnagar & Ors. v. Union of India & Ors., (1991) 1 SCC 544**, has observed that: **"once they frame rules, their action in respect of matters covered by rules should be regulated by the rules. The rules framed in exercise of powers conferred under the proviso to Article 309 of the Constitution are solemn rules having binding effect."**

12. The basic thrust laid by applicants on discrimination is totally misconceived. It is well settled law that judicial process cannot be abused to perpetuate the illegality. A wrong decision by the Government does not give a right to enforce the wrong order and



claim parity or equality. Two wrongs can never make a right. [See : **State of Haryana & Ors. v. Ram Kumar Mann, 1997 (3) SCC 321**]. Similarly, in **2000 (9) SCC 94, State of Bihar & Ors. v. Kameshwar Prasad & Anr.**, it was held that wrong order or judgment passed in favour of one person, would not entitle to others to claim similar benefits.

13. Bare perusal of relief clause in present OAs would reveal that applicants have not claimed grant of relaxation of Recruitment Rules. In Girish Chandra Das (Supra), Sub Divisional Engineer (Civil), was holding a degree of Diploma in Civil Engineering and claimed relaxation of conditions of Recruitment Rules. Without deciding matter on merit, Co-Ordinate Bench only remanded matter to the respondents (BSNL) for grant of relaxation of the Recruitment Rules, 1994. No order has been produced before us to substantiate that said applicants (six in number) were granted relaxation of rules. Order dated 16-12-2010 on which strong reliance was placed did not even referred to the decision of aforesaid Girish Chandra Das (Supra). However, by said order, officials were granted upgradation in scale of Rs. 14500-18500 on the term and condition enumerated



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**State of Haryana & Ors. v. Ram Kumar Mann, 1997 (3) SCC 321].**

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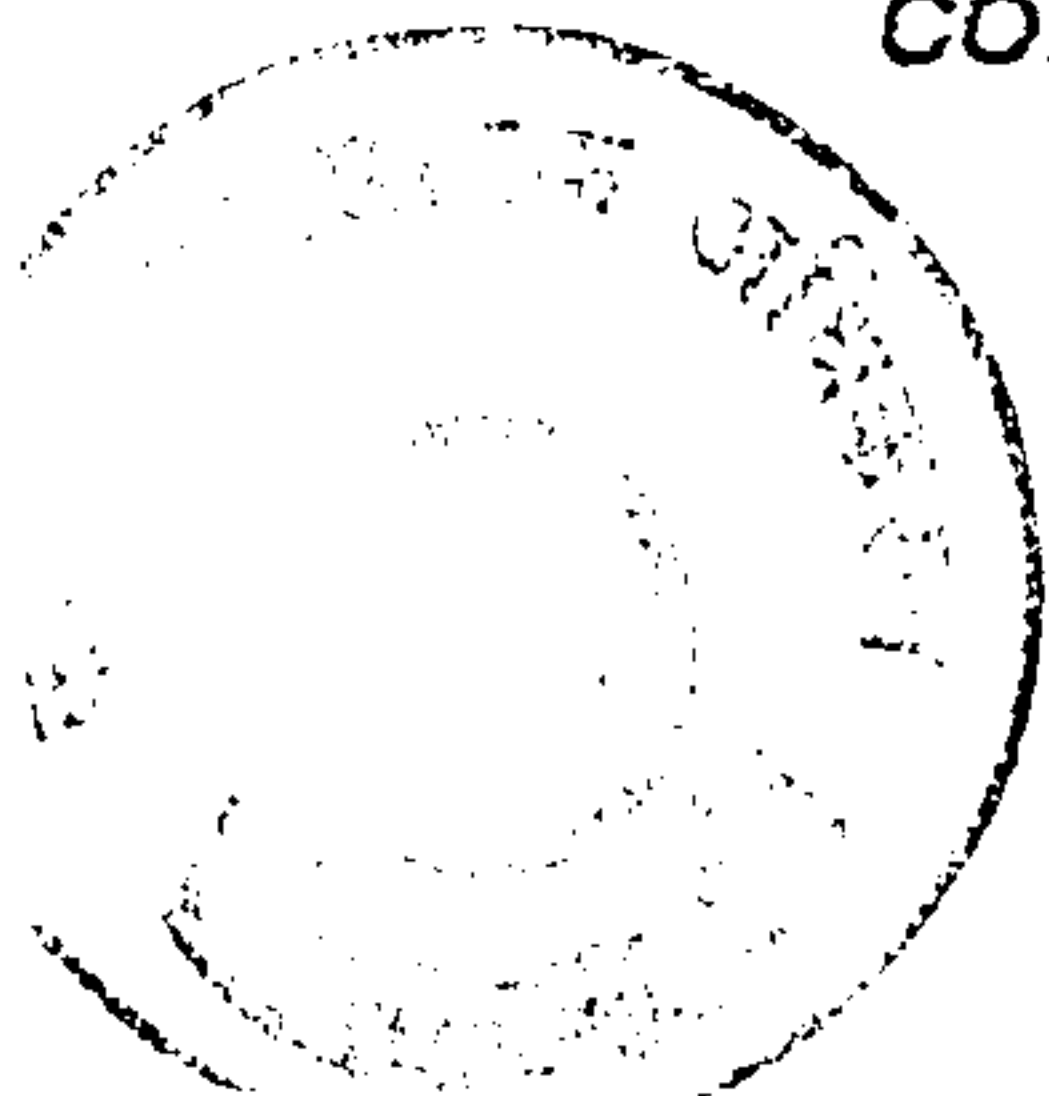
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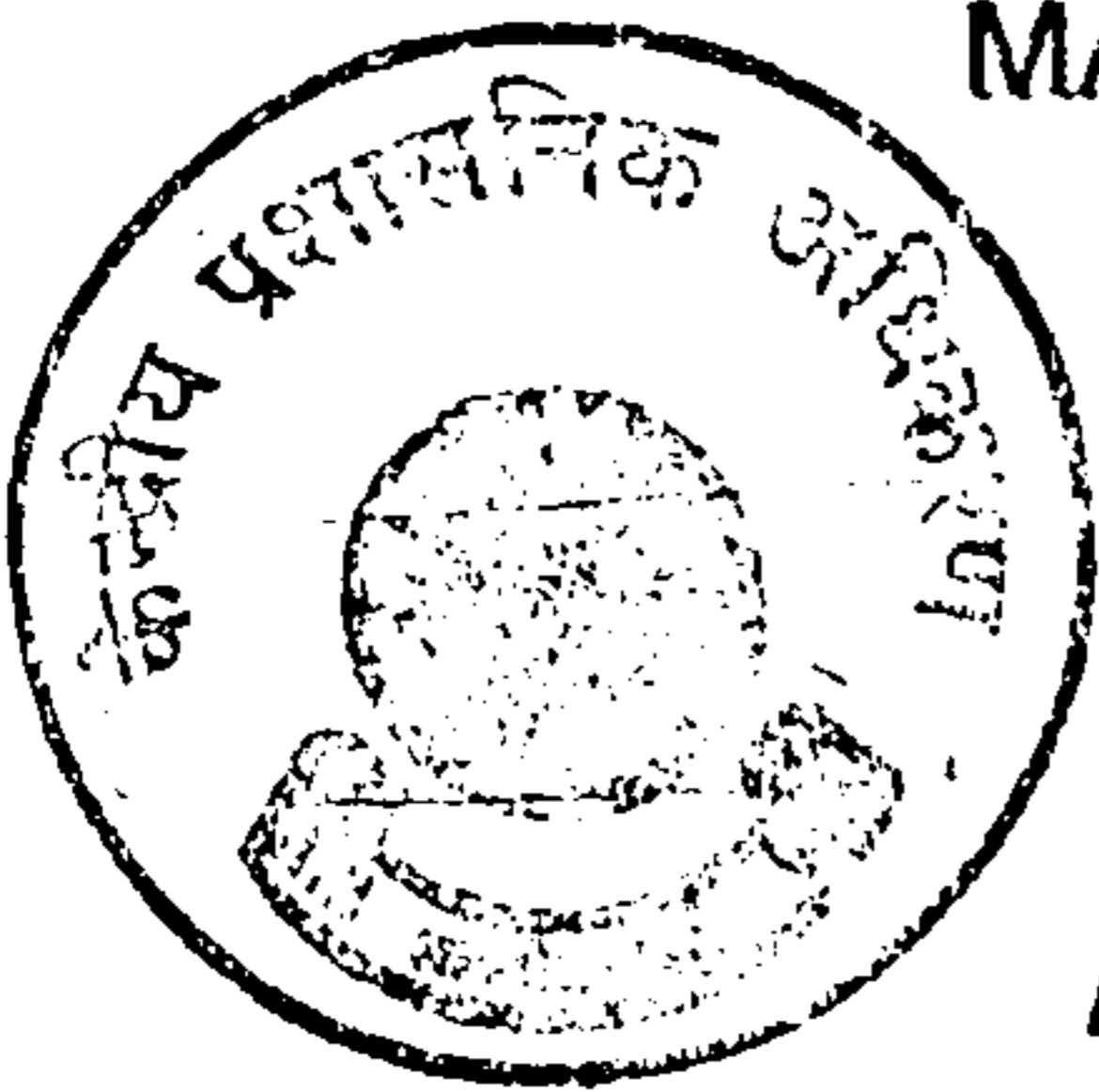
therein. Similarly, in Dilip Kumar Garg (Supra), Hon'ble Supreme Court dealt with the validity of Rule 5(ii) of the UP Public works Department, Group-B Civil Engineering Service Rules, 2004, which provided different source of recruitment and also prescribed eligibility conditions. Similarly in OA No.35/1993, this Tribunal was dealing with Recruitment Rules made for the post of Library Attendant and Sr. Library Attendant, which were only promotional post and no direct recruitment was provided. Such is not a factual aspect in the cases in hand and therefore, reliance placed thereon is misconceived.

14. Precise issue to which we are concerned is whether applicants satisfied the condition prescribed under Rule 7(4) of Recruitment Rules, 1994 read with Schedule IV appended to the Schedule. As clearly demonstrated by the respondents, none of the applicants except applicant in OA No.447/2010 were holding required educational qualification. Applicant in OA No.447/2010 did not satisfy 8 years regular services experience provided for becoming eligible. When applicants were not eligible as per Recruitment Rules, 1994, which are the basic conditions making them eligible for considering them for grant of 2<sup>nd</sup> ACP, and therefore we have no



hesitation to hold that the respondents granted said benefits to them erroneously and there was no illegality committed by them while recalling said benefits vide Order dated 13-10-2008. We may note that there was hardly any gap between the date they were granted said benefit, and it was recalled. Benefit was granted to them on 15-9-2008 and recalled on 13-10-2008. Applicants did not suffer any prejudice by such an administrative action. Statutory Recruitment Rules being solemn in nature were required to be followed by the respondents.

15. In the light of discussion made hereinabove, we are of the considered view that there is no illegality committed by the respondents. OAs are devoid of merits and are accordingly dismissed. With dismissal of the OAs, no further order is required in MAs. No costs.



*(Signature)*  
**(Ashok Kumar)**  
**Administrative Member**

*(Signature)*  
**(Mukesh Kumar Gupta)**  
**Judicial Member**

nk

तैयार करनेवाला  
 Prepared by */kk Bhoj*  
 मिलानेवाला  
 31/10/11

Compared by  
 सचिव, प्रशासन  
 TRUE COPY

*(Signature)*  
 31/10/11  
 अध्यक्ष, अपील बोर्ड (आ) (या)  
 Secretary, Tribunal (A)  
 केन्द्रीय प्रशासनिक अपील बोर्ड  
 Central Administrative Tribunal  
 अहमदाबाद नगरपालिका  
 Ahmedabad