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W.P.No.29550 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.10.2024

PRONOUNCED ON: 20.12.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

W.P.No.29550 of 2019
and
W.M.P.Nos. 29429 of 2019 & 28632 of 2023

1.Union of India

Rep. By its Secretary
Ministry of Electronics and Information Technology,
Formerly Ministry of Communication & Information Technology,
Electronics Niketan
3, Lodhi Road,
New Delhi – 110 003.

2.Centre for Development of Advance Computing(CDAC)

Rep. By its Director General,
Pune University Campus,
Ganeskhind, Pune – 411 007

Presently at
C-DAV Innovation Park,
34, B/1, Panchawati Road,
Panchawati, Pashan, Pune – 411 008.

3.Director (HRD)

CDAC Corporate (HRD Head),
University of Pune Campus,



W.P.No.29550 of 2019

Ganeskhind, Pune – 411 007.

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Presently at
C-DAC Innovation Park
34, B/1, Panchawati Road,
Panchawati, Pashan,
Pune – 411 008.

4. Joint Director (HRD),
Now Director,
Centre for Development of Advanced Computing (CDAC),
University of Pune Campus,
Ganeshkhind, Pune – 411 007

Presently at:
C-DAC Innovation Park,
34, B/1, Panchawati Road,
Panchawati, Pashan, Pune – 411 007.

5. Director
Presently Senior Director,
Centre for Development of Advance Computing (CDAC),
Tidel Park, 8th Floor, D Block,
(North & South), No.4, Rajiv Gandhi Salai,
Taramani, Chennai – 600 113.

6. Executive Director,
Presently Senior Director,
(CDAC Bangalore & Chennai),
Centre for Development of Advance Computing (CDAC),
CDAC Knowledge Park,
No.1 Old Madras Road, Byappanahalli,
Bangalore – 560 038.

.. Petitioners

VS

1. Anjali Himanshu



W.P.No.29550 of 2019

2. The Registrar

Central Administrative Tribunal,
Chennai Bench, Chennai – 600 104.

.. Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the 2nd respondent Tribunal made in O.A.No.1605/2013 dated 29.07.2019, quash the same.

For Petitioners : Mr.Karthik Rajan
For M/s. Menon Karthik Mukundan

For Respondents : Mr.P.V.S.Giridhar
Senior Counsel
For Ms.Y.Kavitha (for R1)

R2 - Tribunal

ORDER

(Order of the Court was made by Dr. ANITA SUMANTH..J)

The challenge in this matter is to an order of the Central Administrative Tribunal ('CAT'/'Tribunal') dated 29.07.2019. The appeal is filed by the Ministry of Electronics and Information Technology/P1, Centre for Development of Advanced Computing (C-DAC)/P2 and authorities within the C-DAC, being Director (HRD), Joint Director (HRD), the Director and Executive Director, respectively arrayed as P3 to P6. R1 was the applicant before the CAT.



W.P.No.29550 of 2019

WEB COPY

2. The facts in brief are as follows:

i. The C-DAC is a premier institution under P1 engaged in the furtherance of research and development in the areas of Information and Communication Technology (ICT), Electronics and related fields.

ii. It is headquartered in Pune and has several units spread across the Country.

iii. P2 is an entity that has been formed by the merger of four scientific institutions a) C-DAC as it stood prior to the merger, b) National Centre for Software Technology (NCST), c) Electronics Research & Development Centre of India (ER & DCI) and d) Centre for Electronics Design and Technology of India (CEDTI).

iv. Upon merger, a new Memorandum of Association, Bye-laws and staff Rules were formulated.

v. Prior to the merger, three of the entities that had merged into forming P2 had sanctioned regular/permanent posts, while C-DAC, prior to merger, employed persons only on contract basis.

vi. P1 and P2 had created certain paths as one time measure for the contract personnel, to transit to regular posts.



W.P.No.29550 of 2019

vii. R1 was employed as staff Scientist on 21.09.2004 in the pay scale of Rs.8,000 - 13,500 on contract basis. She was assigned to the Development Gateway Project (DGF) in Electronic City, Bangalore.

viii. Her contract was for three years, which was extended on 09.10.2007 for a period of one year and the original terms and conditions were to continue.

ix. During the one year extension, R1 sought a transfer to P5 Centre citing personal reasons.

x. She joined P5 on 16.04.2008 and was assigned to the Development Gateway Foundation (DGF) Project.

xi. She availed maternity leave of 135 days from 20.08.2008 to 01.01.2009 followed by 119 days HPL and EL from 02.01.2009 to 29.03.2009 and 30.03.2009 to 30.04.2009 respectively, in all accounting for 254 days (135 + 119).

xii. Notwithstanding that the one year extension expired on 18.10.2008, her contract was extended on the same terms and conditions by letter dated 10.10.2008 for a period of 3 years, till 31.12.2012.

xiii. She availed second maternity leave of 180 days from 15.02.2010 to 13.08.2010 followed by 74 days EL and HPL from



W.P.No.29550 of 2019

14.08.2010 to 24.09.2010 and 25.09.2010 to 24.10.2010 respectively and leave on loss of pay of 2 days from 25.10.2010 to 26.10.2010, in all a total of 254 days (180+42 +30 +2).

xiv. Vide Office Memorandum 19/12 dated 09.10.2012, guidelines were issued in regard to filling up 'Grade-Based Contract positions' in P2. This included modalities for assessment of the employees in order to consider extension of contracts as and when they arose.

xv. While assessing R1, it was found that her rating was 'below average'.

xvi. According to the petitioners, the Review Committee had assessed the performance of contractual employees using various parameters like skill updation in projects, nature of projects handled and technical skills deployed, and others. They were also asked to make a presentation to the Committee.

xvii. The rating was communicated to R2 on 20.02.2013 and she was informed that her performance fell below the required standards. She was also informed that there would be a review on a quarterly basis and was asked to ensure improvement in the quality of her performance.



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xviii. R1 had made representations on 18.03.2013 and 28.03.2013 alleging unfair treatment in the hands of P4.

xix. The representations had been considered by the head of the Human Relations Department/P3 and rejected on 19.04.2013. It was brought to her notice that the assessment was not internal but included experts from other Centres as well, persons from academia and the Government.

xx. In her second assessment as well, she only secured the rating of 'below average' by the Review Committee and hence, upon expiry of her contractual period, she was relieved with effect from 01.07.2013.

xxi. Her representations to P3 was rejected by P2 vide order dated 06.09.2013 on the ground that her contract had come to an end.

xxii. Assailing the said order, R1 had approached the CAT by filing an application for the following relief:

i. To call for the records relating (1) Order No.CDAC/CHN/01(GBC)13-137 dated 20.02.2013, passed by the 5th Respondent, (2) Order No.C-DAC/Corp-HRD:2013, dated 19.04.2013, passed by the 4th Respondent, (3) Order No.C-DAC/CHN/01 (Relieving/13-180 dated 01.07.2013, passed by the 5th Respondent, (4) Order No. Corp:DG:1269 dated 06.09.2013 passed by the 1st Respondent, (5) Order No.C-DAC-Corp-HRD:2012 dated 28.09.2012 passed by the 2nd respondent (insofar as reducing the renewal period below five years is concerned) by declaring that the Applicant's



W.P.No.29550 of 2019

services ought to be renewed for a period of 5 years; and (6) Order No.CDAC/CHN/01(CE)/12-119, dated 29.11.2012, passed by the 6th Respondent and quash the same;

ii. To direct the Respondents to reinstate the Applicant as MTS-E-II Grade (now re-designated as Sr. Engineer) on service w.e.f. 01.07.2013), with all consequential benefits, including arrears of pay and allowances in the said post;

iii. To award costs, and pass such further and other orders as may be deemed and proper and thus render justice.

xxiii. A Miscellaneous Application was filed by R1 seeking to amend the relief as sought for above, seeking to extend the scope of the application to bring it on par with other employees of C-DAC, who were also before the CAT.

xxiv. The defence of the petitioners was that R1 had been engaged on a specific project. Her extensions were also mapped to that project. Her case was thus distinguished from the case of other employees of C-DAC who had also approached the CAT. In the case of other employees, their engagement was for a specific duration (5 years) with a provision for extension on review.

xxv. The Miscellaneous Application as well as the main application were allowed by the CAT and a direction was issued to the petitioners to renew the contract of R1 in terms of bye law 18.1.3 within a period of one year from date of receipt of that order.



W.P.No.29550 of 2019

xxvi. The renewal is stated to be subject to the outcome of W.P.No.9857 of 2015 pending before the Delhi High Court, where similarly placed persons have challenged the orders passed by the CAT in favour of other employees.

3. The submissions of Mr.Karthik Rajan, learned counsel for the petitioners are as follows:

i. R1 is a contractual employee and bound by the tenure as well as the terms of her contract. She was last mapped to NRCFOSS II Project which had concluded on 30.09.2019 and hence there is no question of her re-engagement.

ii. She cannot also be absorbed in other projects as those projects have sanctioned manpower mapped/allotted to them.

iii. Thus, the only relief that can be granted to her was for recruitment afresh or if there is a new project sanctioned in the NRCFOSS project itself, her skill sets would be of use there and continued in that project.

iv. Since the NRCFOSS project has been concluded, there are no more funds sanctioned to that project and hence the question of any extension of her contract in that project does not arise.



W.P.No.29550 of 2019

v. R1 had, in fact, sought regularization of her service. As per the mapping guidelines cleared by the Government of India (GoI), a panel had been constituted to determine suitability of regularization.

vi. Being eligible for Phase III mapping, she had appeared for the review process but had not been successful. Hence, the request for regularization had been rejected.

vii. The Tribunal had proceeded on the basis that the appointment of R1 was in 2004, prior to coming into force of the Rules. However, her service would be covered by the Bye-laws formulated in October, 2006.

viii. Her appointment would be governed by clause 18.1, specifically clauses (1) and (2) thereof. Those clauses require initial appointments to be for a period of 5 years each till the employee reaches the age of superannuation, subject to the satisfaction of the authority.

ix. The Tribunal was of the view that the Bye-laws did not contemplate any other procedure and the procedure under Memo dated 29.11.2012 would not govern her appointment which was prior to the same.



x. The Tribunal also referred to her Annual Confidential Reports (ACRs) which, over the period of her engagement, have contained positive remarks about her performance.

xi. Hence the Tribunal concludes that R1 is entitled to the relief claimed as in view of the 2006 Bye-laws – as per her ACR for the prior period.

xii. Learned Counsel would submit that this approach of the Tribunal is entirely incorrect as even the Bye-laws require extension only if the employee has performed subsequently.

xiii. It would be contrary to all canons of propriety to suggest that the term of the contractual employee should be extended ad infinitum even if the performances are below par.

xiv. The ratings in the present case indicate that the performance of the employee was sub-par and hence the order of the Tribunal directing continuance of her employment is contrary to law as well as the express terms of the employment.

xv. Reliance is placed on the judgement of the Supreme Court in *Ashok Kumar & Anr v State of Bihar & Ors* [2016 SCC OnLine SC 1237].



W.P.No.29550 of 2019

4. The submissions of Mr.P.V.S.Giridhar, learned Senior Counsel for Ms.Y.Kavitha, learned counsel on record for R1 are as follows:

i. Our attention is firstly drawn to the arbitrariness in the order passed by the petitioners in relieving R1 from service. The performance of R1 was never found to be wanting in any way and hence, the abrupt termination of an employee, who has put in nearly 10 years of service is contrary to all norms of law and fairness.

ii. Her employment has been periodically extended and even while she was on maternity leave, three years extension was granted pointing to the quality of the work.

iii. As regards the submission relating to specific mapping, he would accede to the position that the original letter of employment dated 21.09.2004 was to the Development Gateway Foundation (DGF) project at Bangalore.

iv. However, in 2009, a communication has been issued by C-DAC offering her appointment as Member Technical Staff. That letter of appointment does not refer to mapping qua specific project or location. In fact, it proceeded on the basis that her assignments may change from time



W.P.No.29550 of 2019

to time. All subsequent communications, including communication dated 26.08.2009 from C-DAC, Chennai, were on similar lines.

v. Thus, the argument of mapping is clearly concocted merely to deny R1 of the legitimate position as Member Technical staff of C-DAC.

vi. Reliance on OM 13/2012 dated 28.09.2012 is entirely misconceived, since the terms of her employment are to be governed only by the terms in the letters of appointment and cannot be changed at a later date.

vii. Notwithstanding the above submission, R1 would also express her grievance as against the procedure for review.

viii. R1 would complain that out of a total of 20 candidates, she is the only one who was found below average in the session held on 12.10.2012.

ix. According to the learned Senior Counsel, it is the ACRs that must form the basis of their assessment. Admittedly, R1 had had certain challenges in putting forth her oral presentation but the limitations in making the oral presentation should not have overridden the positive comments in the ACRs.



W.P.No.29550 of 2019

x. Thus the process of review was entirely unfair and did not give any weightage to her past performance.

xi. Bias and malafides has been attributed to the members of the Review Committee.

xii. The order of the CAT thus suffers from no infirmity whatsoever and must be confirmed.

xiii. Reliance is placed on the judgment of the Supreme Court in *Central Council for Research in Ayurvedic Sciences and another v Bikartan Das and others* [2023 SCC OnLine SC 996], *M.Dakshina Murthy v Union of India & Ors* [W.P.No.1557 of 2011 dated 01.10.2012] and *Union of India and others V. Sri.M.Dakshinamurthy* (W.A.No.130 of 2015 dated 16.12.2016).

5. We have heard the rival contentions of both parties and perused the materials placed on record.

6. At the time of admission of this Writ Petition on 16.10.2019, an ad interim stay had been granted, which was extended till 19.12.2019. There is nothing in the docket sheet to indicate any extension after 19.12.2019. However, the parties have proceeded on the basis that there is



W.P.No.29550 of 2019

a stay in force and hence R1 has been out of employment till date. R1, however, pursues the litigation diligently and defends the Writ Petition.

7. The facts, dates and sequence of events to the extent to which they deal with are substantially admitted. On a careful consideration of the matter, we find that finding the answer to the following three issues is key to deciding this Writ Petition.

8. The first issue relates to the nature of the engagement of the writ petitioner. The terms of appointment over the tenure of the Writ Petitioner's service have varied and are referred to in seriatim below to understand the trajectory of the services performed by the Writ Petitioner:

- i) The terms under her original appointment dated 21.09.2024 was admittedly contractual, for a period of 3 years. The relevant clauses read as follows:

'With reference to the interview you had at this Centre on August 28, 2004, the Centre has decided to offer you a contract appointment for a three-year period against a project vacancy currently available in the Development Gateway Foundation (DGF) Project at our Bangalore Centre.

1.

2. Your appointment is subject to the Rules, Bye-laws and Service Conditions of this Centre, as modified from time to time. You will be eligible for contributory provident fund as per CPF rules of the Centre.

3. You may be assigned duties in any location where



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W.P.No.29550 of 2019

C-DAC has work in progress.

.....

6. During your contract period with C-DAC, it serves the right to terminate your service at any time without assigning any reason whatsoever.

7. Your performance will be monitored regularly reviewed periodically, and at least once a year, C-DAC reserves the right to terminate your appointment by giving 30 days' notice (or 30 days' salary in lieu of notice) if the review finds your work unsatisfactory. If you resign, you will be required to give 30 days' notice of your intention to do so.'

- ii) On 09.10.2007, the appointment of the Writ Petitioner on contract basis was continued for a period of one year with effect from 18.10.2007.
- iii) Communication dated 19.10.2007 states that the other terms and conditions mentioned in the order of appointment dated 21.09.2004 would continue to apply.
- iv) On 03.04.2008, the Writ Petitioner was relieved from C-DAC, Bangalore to C-DAC, Chennai on voluntary grounds.
- v) On 10.08.2008, her contract was extended on the same terms as aforesaid.
- vi) This extension was during the period when the Writ Petitioner was on Maternity Leave.
- vii) There was a performance appraisal review of the Writ



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W.P.No.29550 of 2019

Petitioner's work and performance conducted by the Review Committee on 13.08.2009.

- viii) Finding her performance acceptable, she was offered a new contract dated 17.08.2009 for appointment as Member-Technical Staff.
- ix) This is the first contract which contains a grade being MTS-E1. The period of contract was from 18.10.2008 to 31.12.2012 (more than 4 years). The annexure contains several terms and conditions, the relevant ones extracted below:

10. General Terms and Conditions:

10.1 Your appointment will be on a contract for the period in Sr. no.4 above and will be governed by the Rules and Regulations, Bye-laws, Service Rules and such other Administrative Orders and Service and Policy Guidelines as may be in force and made applicable to you from time to time and will expire on the date mentioned in Sr. 5 above. Your services shall be terminable by either party giving the other not less than three months' notice in writing, otherwise, unless renewed further in writing.

10.2

10.3 You are liable to be posted, at the discretion of the Competent Authority, to serve for any of C-DAC projects/C-DAC offices/ Units/ or any other Govt. Department, Statutory Body or Public Sector Undertaking, anywhere in India or abroad.'



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W.P.No.29550 of 2019

- x) Her appointment as Member-Technical Staff was reiterated on 26.08.2009. It is clear that there has been an upward transition of the status of R1 as in communication dated 26.08.2009, the petitioner states '*I am pleased to inform you that C-DAC has decided to offer a new contract of appointment in the next higher grade*'.
- xi) The terms and conditions set out in Annexure A to that communication as relevant are extracted below:

7. Allowances : DA, House Rent Allowance & Travel Allowance are as per the Central Government (CCS) Rules. Leased Accommodation Facility as per rules of the Centre may be availed of.

8. Other Allowances and Benefits : You will be entitled to benefits such as Reimbursement of Medical expenses, Leave Travel Concession, Conveyance Advance, Gratuity, Long Term Advance, Conveyance Reimbursement, Contributory Provident Fund, etc. as per the Rules of the Centre.

9. Place of Posting : Centre for Development of Advance Computing – Chennai

10. General Terms and Conditions:

10.1. Your appointment will be on a contract for the period in Sr.No.4 above and will be governed by the Rules and Regulations, Bye-laws, Service Rules and such other Administrative Orders and Service and Policy Guidelines as may be in force and made applicable to you from time to time and will expire on the date mentioned in Sr.5 above. Your services shall be terminable by either party giving the other not less than three months' notice in writing, otherwise,



WEB COPY



W.P.No.29550 of 2019

unless removed further in writing.

...

10.3 You are liable to be posted, at the discretion of the Competent Authority, to serve for any of C-DAC projects/C-DAC offices/Units/or any other Govt. Department, Statutory Body or Public Sector Undertaking, anywhere in India or abroad.

- xii) On 28.09.2012, Office Memorandum (OM) 13/2012 was issued bearing reference C-DAC:CORP-HRD:2012 on the subject '*Review of employees on Grade Based Contract at C-DAC*'. Essentially that OM provided for performance review of all employees who were presently serving on the basis of Grade Based Contract at C-DAC.
- xiii) Clause 1 of that OM stipulated constitution of the Review Committee.
- xiv) Clause 2 stipulated as follows:

Ref : C-DAC : Corp – HRD:2021

September 28,2012

Sub : Review of employees on Grade Based Contract at C-DAC

1..

2. It has been decided that new positions in Grade Based Contract shall not be created hereafter unless such a creation is warranted in unavoidable circumstances and in the interest of the institution. The Grade Based Contract employees whose term is ending on or before the date of review may be given six months extension (with a copy to the Corporate



W.P.No.29550 of 2019

Office), as an interim measure mentioning about the performance review being carried out in the month of October / November, 2012 and that they along with all others on Grade Based Contract shall be covered by the performance review.

- xv) Clause 4 cautioned that reviews would be rigorous. Each staff member was to be given 10 minutes for a presentation. Each Grade Based Contract employee was required to submit a work report not exceeding two pages duly signed by the employee for the Committee's consideration. The report was to be counter signed by the Reporting Officer and forwarded by the Reviewing Officer with his comments.
- xvi) The Committee was to categorise in clause 5, Grade Based Contractual employees, in 4 categories, based on their performance and capabilities, as i) Poor, ii) Below Average, iii) Above Average and iv) Extraordinary.
- xvii) The aforesaid 4 terms were understood in the following manner:

' a. Those employees whose performance is found to be 'poor' their contract shall not be renewed. If more than 6 months contract is remaining, another review shall be scheduled after 3 months and if still the performance is poor, the contract to be terminated. Employee must be communicated about



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W.P.No.29550 of 2019

the poor performance in reviews after each review.

*b. Those employees whose performance is found to be '**below average**', quarterly reviews for performance shall be conducted till the end of the contract. The contract shall be renewed only if there is a noticeable improvement in performance and that too for a maximum of 1 (one) year. They shall be intimated in writing that their performance has been found to be below average and they need to demonstrate quality improvement in their performance during the one year period being granted, failing which they shall not be considered for extension or renewal beyond the term of the existing contract.*

*c. Those employees whose performance is adjudged as '**above average**', they shall be informed about their performance ratings. If their contract is finishing within six months, their contract shall be renewed after the end of the contract for a maximum of 2 (two) years. Such employees shall undergo a review six months prior to the end of the term, followed by a review 3 months prior to the end of contract, as needed. Further extension or renewal of contract shall be based on the above review/s and policies outlined in this section 5.*

*d. Those adjudged by the Committee as '**extraordinary**', they shall be informed about their performance ratings. If their contract is finishing within six months, their contract shall be renewed after the end of the contract for a maximum of 3 (three) years. Such employees shall undergo a review six months prior to the contract. Further extension or renewal of contract shall be based on the review/s and policies outlined in this section 5.'*

xviii) The composition of the Committee was revised under OM

14/2012. Vide a further addendum, certain typographical



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errors were corrected.

- xix) The C-DAC held a contract review meeting on 12.10.2012 and R1 was adjudged *below average* attracting stipulations in clause (b), extracted at clause (xvii) supra.
- xx) In line with the stipulations under various OMs, her tenure was extended on 29.11.2012 for a period of 6 months. The explanation contains the stipulation as follows:

5. This extension does not imply renewal of Contract automatically unless explicitly renewed or extended by a formal written communication. This will depend on the requirement of job, availability of project and your satisfactory performance during the tenure of this contract.

6. This extension is for a fixed tenure against project requirement. Your tenure on this offer will not give any right on the vacancy arising out of core activities and sanctioned posts. However, if C-DAC notifies vacancy against sanctioned posts, you may apply subject to fulfilment of required experience, age, qualification, etc.”

- xxi) We note some animosity had commenced even at that time as R1 has received the extension letter with the endorsement ‘*I have received this letter on 31st December, 2012. I have not verified the contents of this letter*’.
- xxii) An employee who has an amicable working relationship with



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W.P.No.29550 of 2019

the employer would not normally resort to such legalese or cautious statements while acknowledging receipt of communications. Hence, R1 clearly had some impression even at that time that all was not well with her continuing in service with the petitioners.

xxiii) She received a letter on 20.02.2013, where the petitioners had referred to her performance review and her score as '*below average*'. She was told that she would be reviewed for performance every quarter till the conclusion of the existing Grade Based Contract and that she would need to demonstrate quality improvement in her performance. In addition, if she did not improve, she would not be considered for renewal of the contract beyond the existing term. That communication was received with the endorsement '*Received only on 20th February, 2013. I have not accepted it*'.

xxiv) The animosity continued. R1 filed an application under RTI seeking the following:

- *Certified copies of the feedback/result given by the Review Committee Members for the "Performance Review of the Grade Based Contract Members for*



renewal of the contract”, held at C-dac, Chennai on 12.10.2012 for all the members reviewed.

- *Certified copies of my file/(s) and all other related document(s) which was provided by CDAC Chennai Center, to the Review Committee Members for the Performance Review held at C-dac, Chennai on 12.10.2012.*
- *Certified copies of Review Committee Member details, which was formed for Performance Review held at C-dac, Chennai on 12.10.2012 including the internal C-dac Chennai members and the external members appointed by C-dac Chennai as Committee Members for the Performance Review:*

** Name of the review committee member*

** Work place with Address*

** Designation*

** Contact Number*

xxv) She wrote to the Director General of C-DAC on 18.03.2012 expressing her displeasure and disagreement with the valuation results of her assessment.

xxvi) She draws attention to her promotion from EI to EII designation on 11.05.2009 and her annual performance appraisal ratings which were above 8.5.

xxvii) She states that she has been victimized and alleges bias on the



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W.P.No.29550 of 2019

part of the review committee stating that the review was non-transparent and negatively impacted constructive work.

xxviii) In her subsequent communication dated 28.03.2013 to the Director General of C-DAC, she alleges bias on the part of various officials in C-DAC who she names. In conclusion, she requested that her review should not take place at C-DAC, Chennai as the authorities there were systematically trying to terminate her employment. She makes a request that her next review be held at C-DAC headquarters and that the Director General chose the committee members who would assess her.

xxix) To her request under RTI, C-DAC furnishes the documents under communication dated 31.03.2013.

xxx) Her request for conduct of review at C-DAC headquarters was rejected. The authority points out that her concern regarding unfair treatment at the hands of the Chennai C-DAC employees is irrelevant as the Committee includes persons from other centers and also external experts.

xxxi) They point out that the Chairman of the Review Committee



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W.P.No.29550 of 2019

was the Executive Director of C-DAC, Kolkata and the Joint Director (HRD), Pune was a member of the Committee nominated by the corporate office. This constitution did not allay the concerns of R1 in regard to bias/negative treatment.

xxxii) As R1 had expected, her second review conducted on 08.05.2013 was also sub-par classifying her with a rating of 6.88 and the remark '*below average*'.

xxxiii) On 01.07.2013, R1 received a letter intimating her that her tenure of contract had ended on 30.06.2013 and that she stood relieved from her duties and responsibilities in C-DAC.

xxxiv) On the same day, she makes a request for regularization of her service. Her representation to the Director General of C-DAC refers to '*Phase II Manpower mapping for regularization*' that took place in 2010. She thus sought regularization on the basis of her ACRs for performance during the years 2006, 2007 and 2008, where she had obtained a rating of overall 8.01, which satisfies the condition under the Phase II Manpower mapping regularization.

xxxv) She does not make any reference to the letter of termination



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W.P.No.29550 of 2019

on 12.07.2013. She seeks continuation of her services, again reiterating that she did not agree with the evaluation results.

xxxvi)The request was rejected on 06.09.2013 with the simple communication that her contract had come to an end and continuance would thus not be possible.

xxxvii)Immediately, R1 approached the Tribunal in November. The prayer and the subsequent Miscellaneous Petitions filed by R1 have been referred to earlier in this order (see paragraph 2(xxii)).

9. After hearing the parties and considering the pleadings, the Tribunal passed an order on 29.07.2019 allowing her application. The basis of the Tribunal's order is its interpretation of the Bye-laws framed by C-DAC in October, 2006.

10. We have also carefully perused both the application filed by R1 before the Tribunal and the Reply filed by the appellants in June, 2015. There is no reference in either to the 2006 Bye-laws. While so, the Tribunal has allowed the case of R1 based on its interpretation of clause 18.1.2 of the Bye-laws, and we extract the same below:

18.1 Terms of Appointment



- *The Rules and Regulations and Bye-laws of the Society shall govern the terms of appointment of employees of the Society who join the services of the Society on its pay roll. All the employees who have already joined the Society will have an option of either continuing with service conditions as applicable prior to bringing these rules in force or accepting these rules;*
- *All the employees except as covered in 18.1.3 below, hereafter shall be recruited in the Society for the probation period as specified in the Recruitment Rules and on clearing this shall be employed on contract for the duration of 5 years. The contract shall be renewable based on satisfactory performance review for further period of five years at a time, till attaining the age of superannuation i.e., 60 years.*
- *The Society may, in the interest of organization and on specific merits of the candidates, also recruit staff employees against regular vacancies. Such appointments shall, however, be made only in the pay scale of Rs.14300-400-18300 and above.”*

11. The reasoning of the Tribunal in allowing the application was that once an employee was appointed on contract basis, the mode of determining continuance would be covered by Clauses 18.1.1 and 18.1.2 of the 2006 Bye-laws. These clauses stipulate that initially appointment was to be for 5 years and on completion of probation, the contract would be renewed for terms of 5 years thereafter till the employee reaches the age of superannuation.



W.P.No.29550 of 2019

12. The extension was however subject to the satisfaction of the authority. Since the appointment of R1 was in 2004, the 2006 Bye-laws would apply to her. The Tribunal holds that she would be covered by that alone. The procedure contemplated under OM dated 29.11.2012 being quarterly reviews and performance appraisals, the Tribunal holds, was inapplicable to R1.

13. The Tribunal makes reference to an order passed by the Principal Bench in O.A.No.1398 of 2015 dated 25.08.2015 in the case of *Lalit Kumar V. Union of India* holding that the contract of a similarly placed employee of C-DAC would be renewed. Order dated 25.08.2015 in that O.A. was the subject matter of W.P.No.9857 of 2015, wherein stay has been granted. The Tribunal notes that the Delhi High Court has stayed a portion of the order in the OA, but not that part pertaining to the renewal of the contract.

14. The above recording of the contents of the order of the Delhi High Court is not accurate. Order dated 11.01.2016 passed by the Delhi High Court in Lalit Kumar's (supra) case reads thus:

*An affidavit dated 17.11.2015 has been placed on record. Mr. Tandon submits that the offer made in this affidavit is not acceptable to the respondent.
Notice. Mr. Tandon accepts notice.*



W.P.No.29550 of 2019

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Mr. Jain, on instructions, submits that the services of the respondent would not be terminated for a period of one year from the date of order or till the time the writ petition is disposed of, whichever is earlier.

In the meanwhile, in view of the statement made, the operation of the impugned order is stayed in terms of the statement.

List on 21.04.2016.

The respondent shall be permitted to join the duty from tomorrow.

Dasti to the parties under the signature of Court Master.

15. Thus, the operation of the impugned order has been stayed on the basis of the concession by Mr.Jain, learned counsel appearing for the Union of India that the services of the respondent would not be terminated for a period of one year from date of order or till disposal of the Writ Petition, whichever is earlier. It was only in view of that statement that the operation of the impugned order was stayed and the respondent, Lalit Kumar was permitted to join duty from the next date.

16. At this juncture it would be in place to point out certain distinctions made by the parties between R1's case and that of Lalit Kumar. The order of appointment of Lalit Kumar is dated 17.05.2006 and has been placed before us, where clause (b) dealing with 'term' states that '*your contract will be for a period of 3 years renewable based on performance*'. Clause (g) reads as follows:

Your appointment is on contract and will be co-terminus



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with the HRD/sponsored program on which you are deployed. You will be on probation for a period of one year from the date of appointment which may be extended at the discretion of competent authority. Probation shall stand successfully completed on issue of orders to that effect in writing. You will be entitled to draw Annual Increments only after satisfactory completion of probation. Further, your performance will be regularly reviewed, based on which you will be granted next and subsequent increments in the grade.

17. The distinction made is between the language used in the contract of Lalit Kumar qua that used in R1's case (extracted at paragraph 8(i) supra). They also draw attention to the contract in the case of one Navin Shaw, where clause 3.2 of his appointment order dated 01.05.2007 reads as follows:

*3.2 Tenure of Contract and Probation Period : You will be on probation for a period of one year which may be extended or curtailed at the discretion of the appointing authority. On your being intimated in writing about the satisfactory completion of the period of probation, you will be treated as on contract for a period of **Five Years** including the probationary period.*

18. Both parties would seek to take advantage of some differences in the phraseology to support their respective arguments. We have considered carefully the contentions of the learned counsel, and do not find that the distinctions drawn are material to decide this case. In any



W.P.No.29550 of 2019

event, we clarify that our observations in this order and the conclusions are only in the context of deciding R1's case.

19. All the appointments made in that time period, i.e., 2004 to 2007 were on Grade Based Contract. The appointment letters contain the terms and conditions inter alia, and are self-contained documents. There is a general clause to the effect that the Rules, Regulations and Bye-laws of the employer would bind the contractee.

20. None of the communications exchanged qua the parties make any reference worth the name, to the 2006 Bye-laws. The relevance of the 2006 Bye-laws hence appear to have been significantly watered down by virtue of the conduct of the parties. However, as clause 18.1 of the Bye-laws is the basis on which the Tribunal has decided the matter, we deal with this aspect as well.

21. Clause 18.1 of the Bye-laws provides for renewal of 5 years till the attainment of superannuation. The operation of the renewal is not automatic but subject to satisfactory performance review. It cannot be that the employment of any candidate should be extended till the time of superannuation, automatically and without demur, with no checks, balances or quality control measures. As far as the condition regarding



W.P.No.29550 of 2019

performance, the Tribunal has referred to the good performance of R1 as recorded in the previous ACR's.

22. We do not agree with the above approach. Even assuming that it is the 2006 Bye-laws that would be applicable, it is the current performance of R1 that must be the primary basis to enable renewals. The mode of performance review has not been stipulated under the 2006 Bye-laws and it merely says '*based on satisfactory performance review*'.

23. We are of the considered view that the performance review conducted under 2012 OM, the applicability of which R1 disputes, would suffice as an appropriate method, even in the case of an appointment governed by the application of the 2006 Bye-laws.

24. Learned counsel has stated that R1 had encountered some difficulty in the oral presentation as that was not one of her forte's. Such a submission would be of limited utility as assessment and evaluation would be solely within the ken of the experts in that field. The manner and mode of such evaluation is also a matter that falls within the domain of the employer unless rank perversity is shown in the methodology adopted. In the present case, the main submission is that the ACRs of R1 for prior



W.P.No.29550 of 2019

periods have not been taken into consideration as there is no mention of them in the appraisal report.

25. While this is true, this cannot be a reason to set aside the entire selection process. At the highest we may issue a direction that performance appraisals for the prior years should also be placed before the appraisal committee in order that the Committee has a full picture of the performance of the candidate before them, and to assist in her assessment.

26. Under OM dated 29.11.2012 and subsequent OMs, what the authorities have done is to merely systematize the process for quarterly performance reviews. Surely, no fault can be found with the employer for putting in place a set of guidelines for performance review. Such a transparent process would, in our opinion, be in the interests of the institution as well as the employee.

27. Though R1 has alleged lack of transparency and bias in procedure, we note that the composition of the Committee comprises of persons drawn from different locations of C-DAC as well as external experts. This satisfies us in regard to the integrity of the process qua Committee composition.

28. We however agree with R1 that ACRs form an important part of



W.P.No.29550 of 2019

the evaluation process, even if indirectly. Our reasoning in this regard is at paragraphs 45 to 48 below. Having said so, we reiterate that, as employee assessment is a matter involving subjective satisfaction and various factual aspects, we do not intervene in this regard.

29. A direction is issued to the petitioners to ensure that past performance appraisal reports/ACRs of candidates under assessment, are available as part of their record before the Review Committee for their better and fuller understanding of the candidates and to assess them in the selection process, going forward.

30. We also have had the benefit of the order of the Tribunal in the case of a similarly placed employee N.S.Gowri Ganesh that was decided in O.A.No.310/01884/2014 by the CAT on 12.03.2015. Her application has been disposed, with the CAT declining to intervene or to issue a direction for regularization of that applicant's contract appointment. They left it open to the authorities to continue to engage the applicant on contract basis/renew the contract, subject to their opinion on his suitability.

31. That applicant had approached the High Court in W.P.No.713 of 2017 and the first Bench of this Court by order dated 03.09.2018



W.P.No.29550 of 2019

dismissed the Writ Petition reiterating that the appointment of that petitioner was on contract basis. It was also stipulated there, as in the present case, that the renewal was not automatic but would depend on the petitioner's performance during the tenure of the contract and his performance fell short of the mark.

32. In that case as well, reference was made to the ACRs for the previous periods not having been taken into account. The Bench rejected that contention, holding that the regularization was not an automatic feature that could be based on prior assessments of the candidate. An argument had also been taken in regard to mapping scheme in that case. In the present case, R1 has taken the argument in regard to the mapping scheme of the year 2010 only after her termination in 2013 and this request has come to be rejected.

33. We also find that a similar case had arisen before the Ernakulam Bench of the CAT in O.A.No.950 of 2012 in *Anup Krishnan A V. Union of India and others* where the prayer was for restriction of the period of renewal of contract to 3 years as against 5 years as provided in the contract, and regularization of the services of the applicants in accordance with the Bye-laws of the society. Those applicants also sought to rely on



the case of co-workers in other stations.

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34. The Ernakulam Bench of the Tribunal, interpreting clause 18.1.2 of the Bye-laws, confirmed that the renewal for a period of 5 years would only be subject to satisfactory performance. They however did not agree with the authorities that the period of 5 years was fluid, and could be restricted to 3 years as they had done in that case. To that extent, the orders impugned in those applications were quashed. As far as regularization was concerned, the Tribunal held that there was no vested right in the employees to seek regularization, which, could at best, be at the discretion of the employer.

35. The order of the first Bench dated 03.09.2018 in the case of *Gowri Ganesh* (supra) is apposite as regards all factual aspects of the matter and the conclusion arrived at in that case would be applicable in the present matter as well.

36. That apart, in the present case, we feel that the order of the Tribunal could have taken note of the contentions more wholistically. The Tribunal has not noted the fact that the 2006 Bye-laws was never the subject of discussion or even of reference between the parties. What was of equal relevance were the terms and conditions that accompanied the



W.P.No.29550 of 2019

appointment orders themselves and these have not been adverted to at all by the Tribunal.

37. On the basis of the detailed discussion as above, this Writ Petition is allowed and the order of the Tribunal dated 29.07.2019 is set aside.

38. This is a harsh case. The petitioner has been granted promotion from EI to EII and her ACRs for the periods 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011 and 2012 have applauded her efforts and considered her fit as per norms. She has, admittedly, put in service between 2004 and 2013 for a period of 9 years and surely, this must count for something.

39. In regard to a query from the Court as to whether she could be accommodated in some other location/project in C-DAC based on the aforesaid factors, learned counsel for the petitioner would submit that she had been assigned to the DGF Development Gateway Project, Bangalore and transferred to the project at Chennai at her request. Since the project has been completed, and there is no further sanction of funds, her absorption in that project is not possible.

40. Thus we must address the specific issue as to whether R1 had



W.P.No.29550 of 2019

been mapped to a particular/specific project or whether her engagement had been a general one. In this regard, it is relevant to refer to the letters of engagement. Her order of appointment is dated 21.09.2004 and offers her a contract post against a project vacancy in the Development Gateway Foundation (DGF) project at Bangalore subject to the Rules, Bye-laws and service conditions of the C-DAC.

41. We note that though she was absorbed in the Chennai DGF project in 2008 on her voluntary transfer, her continuance thereafter in Chennai from 18.10.2008 has been as a Member-Technical Staff. The order of appointment dated 17.08.2009 reads as follows:

Mrs.Anjali Himanshu

Emp No:2257

Subject: Offer of appointment as Member Technical Staff

Dear Mrs.Anjali Himanshu,

This refers to the Performance Appraisal Review of your work and performance in C-DAC as conducted by the Review Committee at C-DAC, Chennai on August 13,2009.

Keeping in view the recommendations of the Review Committee, your previous scholastic background experience and potential and in recognition of your contribution to C-DAC, I am pleased to inform you that C-DAC has decided to offer you a new contract of appointment in the same grade.

We are looking forward to your sustained efforts with renewed vigor and total commitment to the institution, so as to make our forthcoming activities successful.

On behalf of C-DAC, I, along with my senior colleagues, assure you of continued support and encouragement in the years ahead.



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W.P.No.29550 of 2019

The terms of your new contract of appointment are given below:

- 1. Grade : MTSEI*
- 2. Scale of pay : Rs.15600-39100-5400*
- 3. Basic Pay : Rs.17550/-+Rs.5400(GradePay)*
w.e.f.1.5.2009
- 4. Commencement of contract: October 18, 2008*
- 5. Period of contract: December 31, 2012.*

Other Terms and Conditions of contract are enclosed herewith in Annexure "A". We would appreciate receiving your formal acceptance of this offer by signing the photocopy of this offer and return the same to HRD within a period of 10 days from the date of receipt. Upon your acceptance of this offer your ongoing contract in the current grade shall stand concluded automatically with effect from the above mentioned date of commencement of this contract.

We are looking forward to your continued participation and make substantial contribution with deep involvement.

This is being issued with the approval of the competent authority.

With best wishes,

Sincerely yours,

Sd.-

Director.

42. There is no reference therein, or thereafter, to DGF project at all. The terms of appointment issued thereafter also make it clear, particularly clause 10.3 (Annexure A to communication dated 17.08.2009), extracted at paragraph 9(ix) that makes it clear that R1 is liable to be posted at the discretion of the competent authority to serve for any of C-DAC projects/C-DAC offices/ Units/ or any other Government Department, Statutory Body or Public Sector Undertaking, anywhere in



India or abroad.

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43. Therefore, the contention that she was mapped to a particular project is correct only as regards her initial posting. The scope of her engagement thereafter has been expanded as is evident from the record. The attempt to restrict her value to one project alone is thus misconceived and runs counter to the facts on record, and is rejected. This is the first point.

44. An ACR reflects the performance of a candidate over the trajectory of her career with an employer. The consistency displayed by an employee, the willingness to learn from suggestions made in the past, improvements or the lack thereof, are all parameters that are reflected in the ACR.

45. It is possible that in a particular year, the employee would have had some challenges/limitations to face, either in career or personally, and these may reflect in the performance. It is expected that the superior officer would have taken note of these unique factors in that year in grading the candidate or at the least made a note of the same in the ACR.

46. In short, the ACRs tell a story. They capture the relationship between an employer and employee over the years. It is thus of vital



W.P.No.29550 of 2019

importance in determining the shape and contours that such relationship would take, going forward, to take note of the ACR as well. (See the decisions of this Court in *M.Dakshina Murthy v Union of India & Ors* [W.P.No.1557 of 2011 dated 01.10.2012] and *Union of India and Ors v M.Dakshinamurthy* [W.A.No.130 of 2015 dated 16.12.2016].

47. We have perused the ACRs placed before us and note that the observations and comments made by the superiors are positive and indicate a good level of performance of R1. This is the second point.

48. On account of the two points indicated above, R1 is given liberty to make a representation before the authority if she so desires, seeking a position in the Appellant organisation. Such representation, if made, shall be decided by the authority within a period of four (4) weeks from receipt thereof, having regard to the observations made in this order, though no positive direction is issued by the Court in that regard. In doing so, the authority shall also take note of her service of nearly a decade and the performance appraisals that she has received during her tenure.

49. No costs. Connected Miscellaneous Petitions are closed.

[A.S.M., J] [G.A.M., J]



W.P.No.29550 of 2019

20.12.2024

Index:Yes
Speaking Order
Neutral Citation:Yes
sl

To

The Registrar
Central Administrative Tribunal,
Chennai Bench,
Chennai – 600 104.



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W.P.No.29550 of 2019

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

sl

W.P.No.29550 of 2019
and
W.M.P.Nos. 29429 of 2019 & 28632 of 2023

20.12.2024