# CENTRAL ADMINISTRATIVE TRIBUNAL
# MUMBAI BENCH, MUMBAI

**ORIGINAL APPLICATION No.421/2013**
**with**
**ORIGINAL APPLICATION No.426/2013**
**ORIGINAL APPLICATION No.427/2013**
**ORIGINAL APPLICATION No.428/2013**
**ORIGINAL APPLICATION No.429/2013**
**ORIGINAL APPLICATION No.430/2013**
**ORIGINAL APPLICATION No.431/2013**

**Date of decision: 18.12.2019**

**CORAM:- R. VIJAYKUMAR, MEMBER (A).**
**R.N. SINGH, MEMBER (J).**

**OA No.421/2013**

Ulka Vikram Doke,
Age 31 years,
Was working as Scientific
Assistant-A with SAMEER,
IIT Campus, Hill Side,
Powai, Mumbai-400 076.
Residing at Room No.03,
Mulla Chawl, Shanti Nagar,
Road No.27, Waghle Estate,
Thane-400 604.

...Applicant.

**(By Advocate Shri R. G. Walia)**

**OA No.426/2013**

Mayuresh Mangesh Bhatkar,
age 27 years,
Was working as Scientist 'B'
with SAMEER. IIT Campus, Hill
Side, Powai, Mumbai 400 076.
Residing at 52/Ghatkoparwala Bldg.,
3rd Floor, Room No.34,
Bandu Gokhale Path
Charni Road Station (East)

Mumbai-400 004.

...**Applicant.**

**(By Advocate Shri Ramesh Ramamurthy)**

**OA No.427/2013**

Yogesh Prakash Bhagat,
Age 33 years,
Was working as Scientist B with
SAMEER, IIT Campus, Hill Side,
Powai, Mumbai-400076.
Residing at B-107, Veena Santoor
Saibaba Nagar Extension Road,
Opposite Kamla Vihar Sporta Club
Borivali (West) Mumbai-400 092.

...**Applicant.**

**(By Advocate Shri Ramesh Ramamurthy)**

**OA No.428/2013**

Swapnil Sudhakar Patil,
Age 28 years,
Was working as Scientist B with
SAMEER, IIT Campus, Hills Side,
Powai, Mumbai 400 076.
Residing at B-103, Ashirwad Complex
CHS, Sec-1, Plot-83, Koper Khairane,
Navi Mumbai, Opposite Adarsh Hotel,
Navi Mumbai-400 709.

...**Applicant.**

**(By Advocate Shri Ramesh Ramamurthy)**

**OA No.429/2013**

Kavita Narendra Gadkar,
Age 33 years
was working as Scientific Assistant A
with SAMEER, IIT Campus, Hill Side,
Powai, Mumbai 400 076.
Residing at Room no.703, Shanti
Niketan CHS, Sane Guruji Marg,
Jecob Circle, Mumbai-400 011.

...**Applicant.**

**(By Advocate Shri R. G. Walia)**

**OA No.430/2013**

Madhavi Mandar Sawant,
Age 35 years,
Was working as Scientific
Assistant-A with
SAMEER, IIT Campus, Hill Side,
Powai, Mumbai-400 076.
Residing at C-22, Mahindra
& Mahindra Colony, Shree Krishna Nagar,
Near Nancy Colony,
Borivali (E), Mumbai-400 066.

**...Applicant.**

**(By Advocate Shri R. G. Walia)**

**OA No.431/2013**

Mrs. Sonal Kamal,
Aged 30 years
Was working as Scientist
B with SAMEER, IIT Campus,
Hill Side, Powai Mumbai-400 076.
Residing at B-107, Trikutta Towers,
Near Sun City, Powai,
Mumbai-400 076.

**...Applicant.**

**(By Advocate Shri Ramesh Ramamurthy)**

***VERSUS.***

***(Respondents in all the above OAs)***

1. Union of India,
   Through Secretary,
   Department of Information
   Technology Ministry of
   Communication &
   Information Technology,
   Electronic Niketan,
   CGO Complex,
   New Delhi-110 003.

2. Director
   SAMEER (Society for
   Applied Microwave Electronics

Engineering and Research
Autonomous R&D Institute)
Having registered office at IIT Campus,
Hill Side, Powai, Mumbai-400 076.

3. Registrar
SAMEER (Society for Applied
Microwave Electronics Engineering
and Research (Autonomous R&D Institute)
Having registered office at
IIT Campus, Hill Side, Powai,
Mumbai-400 076.

...**Respondents.**

**(By Advocate Shri N. G. Helekar)**

**O R D E R (O R A L)**
**Per: R.VIJAYKUMAR, MEMBER (A)**

**1.** When the case is called out, Shri R. G. Walia, learned counsel for the applicants in OA Nos.421/2013, 429/2013 and 430/2013.

**2.** Shri Ramesh Ramamurthy, learned counsel for the applicants in OA Nos.426/2013, 427/2013, 428/2013 and 431/2013.

**3.** Shri N. G. Helekar, learned counsel appeared for the respondents in all the above OAs.

**4.** Heard the learned counsels for the parties.

**5.** This Batch of OAs has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicants who were initially

appointed as Scientific Officers Grade 'A' in respect of OA No.421/2013and Scientific Officer Grade 'B' in respect of the other OAs. The reliefs claims are identical except in respect of the category of the applicants who are Scientific Assistant 'A' in respect of OA No.421/2013, 429/2013 and d430/2013 and Scientific Assistant Grade 'B' in respect of OA Nos.426/2013, 427/2013, 428/2013 and 431/2013 and are reproduced below taking OA No.421/2013 as a lead case.

> "(a) This Hon'ble Tribunal be pleased to call for the records and proceedings pertaining to Applicant's further extension on contract basis by order dated 29.11.2010 and 3011.2011 on the post of Scientific Assistant-A and the impugned order dated 30.05.2013, after examining the legality validity and propriety of the same be pleased to hold that the Applicant is entitled to regularization of service in the post of Scientific Assistant-A with effect from 27.11.2010 or any time thereafter along with all consequential benefits including actual difference in wages and seniority in the grande of Scientific Assistant-A as envisaged in bye law number 25 read with condition number 4 in the letter of appointment dated 23.11.2007 marked as **Annexure A-11**.

(b) Such further and other orders be passed as may be deemed fit, proper and necessary in the facts and circumstances of the case.

(c) The cost of this original application be provided."

**6.** Considering that the reliefs claimed are identical and the facts of the matter as submitted by the applicants are identical except in respect of the aspect of claim in regard to sanctioned post, by the common consent of the learned counsels, cases are heard together and a common order is being passed.

**7.** The applicants responded to the respondents' advertisement No.3/2007 inviting applications from qualified and experienced persons for appointment on contract basis initially for a period of three years and who are likely to be continued subsequently in respect of both these categories with a sub-categorization of posts totaling 16 of Scientific Assistant 'B' with different number of posts specified for qualifications in different aspects of Electronics, Telecommunications Engineering, Computer Science, Atmospheric Science, Space

Physics, Electronics Engineering, and Medical Engineering with desirable qualifications relevant to each sub-category. In respect of Scientific Assistant 'A', the total number of posts were ten with Diploma Specifications in Electronics, Telecommunications Engineering and Radio Engineering with different desirable qualifications in respect of each of these sub-categories.

**8.** The advertisement specified that the Reservation Rules will be applied for the selection process and further laid out general conditions inter-alia, that the above posts will carry basic pay plus other allowances in addition to other Government Rules. After appointment the respondents issued appointment, orders to each of the applicants, a sample of which has been placed at (Annexure A-11) of OA No.421/2013 and at (Annexure A-9) of the OA No.426/2013, both of which referred to this appointment as being based on the respondents', SAMEER Rules and regulations, bye-laws and service conditions. Further the following specification is made with

regard to their appointment;

> "4. Your appointment will be on contract basis for a period of three years from the date of your joining duly and you will be given continuing appointment thereafter, if your performance is found to be satisfactory. Though your appointment is for a period of three years, your services are liable to be terminated at 90 days' notice without assigning any reason. If you intend to resign your appointment during this period or thereafter, you will be required to give 90 days' notice of your intention to do so. In the event of failure to give such notice, you will not be entitled to receive your dues from SAMEER, which may have accrued, and due to you. If such dues fall short of your salary for 90 days, the amount by which they fall short shall be payable to you to SAMEER on demand."

**9.** On the plea of the applicants that the respondents had not passed orders on their representations, this Tribunal in OA No.182/2012 to 193/2012 passed orders dated 25.09.2012 (Annexure A-20) directing the respondents to pass a reasoned and speaking order which was passed on 30.05.2013 and has been impugned in the present OAs and the same has been dealt with by the respondents at the level of the Director, the

relevant portion of which reads as follows:

> "6. Pursuant to the permission granted by the Hon'ble CAT, Mumbai in its order dated 21.08.2012, the above contract employees have submitted their fresh/additional representation dated 19.10.2012. They have brought out in their above representation following points to substantiate their claim for regularization.
>
> (i) Their appointment was against sanctioned post.
> (ii) They have acquired substantive right to post.
> (iii) Bye-law no.24 and 25 applies to them.
> (iv) Appointment was made following due process of selection.
> (v) As per Clause No.4 of the appointment letter SAMEER is required to regularize their appointment.
>
> The above points are now dealt with as under:
>
> i) Whether the Appointment was against sanctioned post?
>
> (a) I have perused the advertisement, appointment letter and subsequent extension letter issued to them. The advertisement clearly states that the appointment would be on contract basis. The initial appointment was for three years which was likely to be continued depending on their performance. The letter of subsequent extensions issued only continued them on contract basis for the specified period. Therefore, it is established that they were all

appointed on contract basis and continued on contract basis til the expiry of terms on 31.03.2012.

b) The record maintained during the period of their aforesaid appointment also clearly shows that they were working on contract basis and they were paid from respective project fund.

c) There is nothing in the record to support that the applicants were appointed against sanctioned regular posts.

d) Even in their representation dated 06.03.2012 the applicants have admitted that they have continued as contract staff.

e) Hence for the reasons stated above, applicants claims that they were appointed against sanctioned post is devoid of merit.

(ii) Whether acquired substantive right to the post?

Since their appointment was on contract basis for sponsored project activities for fixed period, the question of acquiring substantive right to the post doesn't arise. Hence it cannot be accepted that they were appointed against sanctioned post or they acquired any substantive right to the post as claimed.

(iii) Whether Bye-law no.24 & 25 are applicable to them.

Bye-laws 24 & 25 apply in respect of regular appointees appointed on sanctioned posts. In the case of

applicants, they were not appointed on a sanctioned post and admittedly they were appointed on contract basis on the fixed tenure. Their last extended appointment ended on 31.03.2012. In such cases rule 25 of Bye-law neither confer any right to claim regularization nor such regularization is permissible in law. I, therefore, reject that bye-law no.24 & 25 are applicable to them or on the basis of said bye-laws they are entitled to be made regular.

(iv) Whether appointment was made following due process of selection?

Neither on the basis of the appointment letter nor on the basis of record were they appointed on a regular vacancy or post. SAMEER follows the procedure of appointment of selection committee for the purpose of selection of candidates for regular vacancies. The selection Committee DietY/ Administrative Ministry/ Government of India. The record shows that the applicants were not selected by any such select committee. They were appointed on contract basis from inception. The records also reveal that they were selected by an internal selection committee who can select candidates for appointment on contract basis and not on regular basis. Therefore the claims of the applicant that they were appointed against regular vacancy is contrary to terms of their appointment and records.

(v) Whether as per Clause no.4 of the appointment letter SAMEER is required to regularize their appointment?

For appointment against regular vacancy, SAMEER being a Society under the Government is required to follow the procedure as applicable to regular selection prescribed int eh Rules. Clause No.4 in the appointment letter of the applicants cannot be a basis for claiming regularization of the post after the expiry of the period of contract. Clause no.4 clearly stipulates that their appointment is on contract basis initially for a period three years but subject to continuation by extension on satisfactory performance. It also cannot be lost sight that the applicant were appointed on contract basis for fixed period. Therefore the contention of the applicant that under clause no.4 of the appointment letter they are entitled for regular appointment cannot be accepted as their status continued on contract basis.

It may be noted that the Hon'ble Supreme Court in Satya Prakash & Ors Versus State of Bihar 2010 2LLJ P665, has held that the persons not appointed against sanctioned post and not following due process of selection are not entitled to get the benefit of regularization.

Accordingly, on the basis of original representation dated 06.03.2012 and additional/fresh representation dated 19.10.2013, the applicants have not made out any case to establish that they were selected against regular vacancies. On the contrary they were appointed on contract basis and continued on contract basis. Hence they have no

> right to claim regularization. In this case, the applicants were neither appointed against sanctioned post nor they were appointed following due process of selection for filling up a regular post. Therefore, the claim made by the applicant for regularization in devoid of any merit.
>
> I am, therefore unable to consider their request for regularization ad accordingly their requests stands rejected."

**10.** From the above extract of the impugned orders, it is clear that the respondents have taken the stand that the applicants were not appointed against sanctioned vacancies and that the procedure to be followed in respect of appointment against the regular vacancies as for sanctioned posts is completely different from the appointments on contractual basis and the latter was adopted in the present case. On the aspect of the existence/sanction of the posts in respect of Scientific Assistant Group 'A', the respondents have filed an additional affidavit that the two posts of Scientific Assistant Group 'A' were filled up in 1986 and 1988 and the incumbents continued to hold the said post at the time of applicants' appointed and therefore, no

sanctioned posts were available. Further, in regard to the Scientific Assistant Group 'B', there were 108 posts out of which 62 incumbents were in position on 01.01.2007. Further, out of 46 vacant posts of Scientific Assistant Group 'B', 38 posts were deemed to be abolished as they were lying vacant for more than one year in accordance with instructions of Ministry of Finance, Department of Expenditure in O.M. No.7(7)-E/Coord/95 dated 03.05.1993. The remaining posts could also not be filled up in view of the ban on direct recruitment imposed by the Department of Personnel and Training.

**11.** Further, during 2007-2008, 07 posts of Scientist 'B' fell vacant due to retirement of existing employees. Therefore, even if the Competent Authority had permitted filling the available Scientist 'B' posts which were lying vacant, not more than 15 posts of Scientist 'B' could have been filled up by the respondents in the year 2007-2008 whereas as many as 62 Scientist 'B' were appointed on contract basis in the year 2007-2008. Again, the respondents have

urged that 32 Scientific Assistant Group 'A' posts were filled up on contractual basis during 2007-2008 and on the basis of these facts, the Respondents have asserted that the applicants were appointed only against projects and not against vacant sanctioned posts by the Competent Authority. The learned counsels for the applicants, Shri R. G. Walia and Shri Ramesh Ramamurthy have objected to the estimation of vacancy in respect of Scientific Assistant Group 'A' but in the face of the affidavit filed by the respondents, no data is available to controvert this position as stated. It is also quite apparent that in these cases, the requisite procedure described in the bye-laws and the Recruitment Rules should have been followed in the case of regular appointees whereas what was actually followed and has been demonstrated in the course of these proceedings is that the process adopted squarely reflected the process relevant to temporary appointments.

**12.** The arguments of Shri R. G. Walia and Shri Ramesh Ramamurthy on behalf of the

applicants and Shri N. G. Helekar on behalf of the respondents have been heard at length. It is brought to attention that a similar matter was considered by the coordinate bench of this Tribunal at Madras in OA No.1324 to 1329, 1331 to 1333, 1335 to 1337 which held against the applicants therein in its orders dated 30.07.2013. This matter was taken to the Hon'ble High Court of Madras with identical pleas.

**13.** The Hon'ble High Court in WP No.23355/2013 recorded in (2016) 3 LLJ 710 decided on 19.08.2016 and after examination of the facts of the matter and the law on the subject as set out by various Courts, held as below:

> "24. In this case, though the initial appointment is as per Rules of SAMEER, the petitioners were appointed only on contract basis for a specified period but with a clause to provide that their employment will be continuous depending on their performance, it is pertinent to note that their appointment were not on substantive permanent vacancies. They were appointed for the posts required for the project. Therefore, the Central Administrative Tribunal, while rejecting the plea of the petitioners made observation to

engage the petitioners continuously by the authorities.

25. For the aforesaid reasons, this Court is of the considered view that the Central Administrative Tribunal has rightly disposed of the Original Applications and there is no merit in the writ petition and accordingly, the same is liable to be dismissed."

**14.** The matter was again taken to the Hon'ble Apex Court in SLP No.8891/2016 which was disposed of by the Hon'ble Apex Court vide order/judgment dated 12.07.1967, which reads as under:

" We have heard learned counsel for the parties and perused the orders passed by the Central Administrative Tribunal and the High Court.

Our attention has been drawn to Bye-laws 24 and 25 of the Society for Applied Microwave Electronics Engineering & Research (for short 'SAMEER'). Without prejudice to the rights and contentions of the respondents, the appellants may be considered for regularization to the post of Scientific Assistant-A in terms of Bye-laws 24 and 25 of the SAMEER since they have worked as such for several years.

In case, the decision taken is against the appellants and they are not regularized then those o the appellants who are in

possession of accommodation with the respondents are granted time till 31st December, 2017 to vacate the premises.

The civil appeal is disposed of."

**15.** We also find from the impugned orders that the relevant by laws no. 24 and 25 have already been considered by the respondent authorities in respect of each of the applicants after hearing them, while passing the impugned order in compliance of the directions of this Tribunal in the previous round of litigation.

**16.** Considering that the rulings of the Hon'ble Apex Court and the Hon'ble High Court and also the coordinate bench of this Tribunal at Madras are binding on this Bench, these OAs are accordingly dismissed without any order as to costs.

**(R. N. Singh)**
**Member (J)**

**(R. Vijaykumar)**
**Member (A)**

V.