

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00665/2016

Monday, this the 4th day of October 2021

C O R A M :

**HON'BLE Mr.P.MADHAVAN, JUDICIAL MEMBER
HON'BLE Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER**

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23. Manu Madanan,
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28. Deepak. R.U.,
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29. Dipuraj.D.S.,
Aged 33 years, S/o.Dasarajan.D.,
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Thiruvananthapuram – 695 033. ...Applicants

(By Advocate Mr.Sukumar Nainan Oommen)

v e r s u s

1. Centre for Development of Advanced Computing,
represented by its Secretary, Vellayambalam,
Thiruvananthapuram – 695 033.

2. The Executive Director,
Centre for Development of Advanced Computing,
Vellayambalam, Thiruvananthapuram - 695 033.

3. The Director General,
Centre for Development of Advanced Computing,
Agriculture College Campus, Near District Industries Centre,
Shivaji Nagar, Pune – 411 005.

4. Union of India represented by its Secretary,
Department of Electronics and Information Technology (DeitY),
Ministry of Communications & Information Technology (MCIT),
Electronics Niketan, 6, CGO Complex, Lodhi Road,
New Delhi – 110 003. ...Respondents

(By Advocate Mr.N.Anilkumar, SCGSC)

This application having been heard on 22nd September 2021, the Tribunal on 4th October 2021 delivered the following :

ORDER

Per : Mr.K.V.EAPEN, ADMINISTRATIVE MEMBER

This O.A was originally filed by the applicants, who are Senior Engineers in the Centre for Development of Advanced Computing (CDAC) at Thiruvananthapuram, (total of 28 applicants), on 01.08.2016 requesting the following reliefs :

1. *Call for the records leading to the issue of Annexure A-8 and set aside the same to the extent the same prescribes a review process of assessment in a scale of 1 to 10 based upon four aspects (ACR/APAR rating, work report, presentation, personal interaction) as opposed to the provisions in the Byelaw for a 'satisfactory performance review'.*
2. *Call for the records leading to the issue of Annexure A-8 and set aside Annexure A-8 to the extent the same prescribes the truncated period of maximum 3 years and 2 years for extension, which is against the provisions in Annexure A-1 Byelaw.*
3. *Declare that the applicants are governed by the provisions in Clause 18.1.2 and for subsequent migration to regular position by 18.1.5 and treat the applicants accordingly by extending the benefits of provisions in Clause 18.1.2 and 18.1.5.1 and 18.1.5.2.*
4. *Call for the records leading to the issue of Annexure A-10 and set aside Annexure A-10.*
5. *Call for the records leading to the issue of Annexure A-11 and similar communications issued to other applicants and set aside the same to the extent, the applicants are engaged for project requirements and extending period of contract for a maximum period of 3 years/2 years in each of the case instead of requirement of 5 years as provided for in the Byelaw.*

6. *Direct the respondents to serve copy of APAR/ACR gradings of the applicants in terms of the instructions of the Government of India for every year.*

7. *Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.*

8. *Award the cost of these proceedings.*

2. The issue agitated has had a complicated past with a large number of O.As filed in this Tribunal and elsewhere and with subsequent petitions filed in the Hon'ble High Court. In this case the matter has came up for hearing now after five years. Learned counsel for the applicants, Mr.Sukumar Nainan Oommen has submitted that many of the reliefs sought for in the array above have since become infructuous, as the applicants after completion of their first 5 years of Grade Based Contract Service have been since renewed for another 5 years with effect from 2016. The relief that is left is the one highlighted at No.3 in the array; which is to declare that the applicants are governed by the provisions in Clause 18.1.2 and for subsequent migration to regular positions by Clause 18.1.5 and to treat them accordingly by extending the benefits of provisions in Clause 18.1.2 and 18.1.5.1 and 18.1.5.2. As mentioned earlier the service conditions of the Senior Engineers of the CDAC has been the subject of a number of O.As filed before this Tribunal and a number of petitions filed before the Hon'ble High Court of Kerala, arising out of the directions in the O.As. The matter of their manner of renewal of contract, whether they were Grade Based Contract appointees as opposed to Project Based Contract appointees etc. having now been largely settled, it is not proposed herein to enter into these

issues or reopen them once again, except for referring to them wherever they may have a bearing on the relief now sought in this O.A. As mentioned, we will only focus on the right of the applicants herein for consideration for their regularization of service in the CDAC, now that they are about to complete or have completed a period of almost ten years of continuous Grade Based Contract service.

3. The main provisions/rules governing the service of the employees in the CDAC are its Byelaws and the Recruitment Rules. The relevant provisions in the Byelaws related to the terms and conditions of service for the staff of the Society are given under Bye-Laws 18. The relevant portion of the Byelaws (produced at Annexure A-1 in the O.A) are indicated below :

18. Terms and Conditions of Service for the Staff of the Society

The employees of the Society, other than the Director General and Executive Directors are divided into the four categories namely (a) Scientific and Technical Staff (b) Administrative Staff and (c) Support and (d) Miscellaneous Staff. Administrative, Support and Miscellaneous staff shall be kept minimum by hiring the services of agencies on contract basis to perform administrative and support services such as house keeping, security, transport and travel booking etc.

18.1 Terms of Appointment :

18.1.1 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.

18.1.2 All the employees except as covered in para 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 periods of five years at a time, till attaining the age of superannuation i.e. 60 years.

18.1.3 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 PB4 (37400-67000) GP 8700 and above.

18.1.4 Deleted.

18.1.5 Migration from Contractual position to Regular Position :

18.1.5.1 Such contractual employees (Employees recruited on pay scale and not on consolidated salary) who have completed two or more contractual terms, covering a minimum of ten consecutive years, shall be considered for a regular appointment, provided, however, no such appointment shall extend beyond the age of superannuation. Such regularisation shall be based on merit and carried out through a duly constituted committee for this purpose and the candidates meeting the provisions of Recruitment Rules of C-DAC.

18.1.5.2 Society may consider cases of meritorious contractual employees (employees recruited on pay scale and not on consolidated salary) who have completed six years of service with the Society for review for regular appointment, provided, however, no such appointment shall extend beyond the age of superannuation.

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18.1.8 Appointment on Project-Based Contract :

(a) The Competent Authority shall be competent to engage a person on contract in pay scale other than regular posts, upto the scale of posts, which do not require approval/clearance of ACC.

(b) The Competent Authority shall be competent to engage a person on contract for projects for the duration of such projects, which have been approved by Department of Electronics & Information Technology (DeitY) or any other sponsoring organisation. Persons appointed on such contract basis will be paid consolidated emoluments. The emoluments and terms of appointment shall be settled in advance between the Society and the incumbent.

All other things being equal, preference may be given to these employees at the time of filling up of regular posts subject to merit and meeting the provisions of Recruitment Rules of C-DAC.

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19. *Tenure of Appointment.*

19.1 *Period of Service:* All appointments to the society shall be made as per provisions contained in Clause 18.1.1 to 18.1.5 of the Bye-laws of the Society given above, which may include a probationary period, normally one year. Performance of the employee shall be reviewed by committees constituted for this purpose and based on the recommendations of such committees his services shall be continued as per Clause 18.1.2 and 18.1.4 as applicable. However, no such appointment shall extend beyond the age of superannuation i.e. 60 years. All regular appointments shall be subject to availability of vacancies.

4. In addition to the Bye-Laws, the CDAC has Recruitment Rules produced at Annexure A-1(a) wherein by Rule 3 it has classified posts as Group A, B and C in different Pay Bands/GP as well as by Rule 4, it has identified four modes of recruitment. Rule 4 states that recruitment to the various posts shall be made by any of the following methods :

4.1 *On deputation/permanent absorption from other Societies of the Administrative Ministry, Central/State Governments, PSUs etc.*

4.2 *By promotion.*

4.3 *Staff of the Society possessing specified requirements.*

4.4 *Direct recruitment from the open market through advertisement (including web based advertisement).*

4.5 *Direct recruitment of specialists on a tenure or short term contract/consultancy basis.*

4.6 *Campus recruitment from Institutions of repute including C-DAC's courses.*

4.7 *By search if suitable employee is not selected or selected employee does not join after 3 advertisements.*

4.8 *By inviting exceptionally meritorious candidate/ eminent personality.*

4.9 *Any other mode with prior approval of the Council.*

4.10 *One time absorption of contract employees on regular scale of pay. (please refer to Bye-laws of C-DAC Clause 18.1.5).*

5. It is submitted that these applicants were first recruited to the CDAC through a process conducted during the year 2011, initiated vide a Notification, which has been brought out at Annexure A-2, for recruiting Senior Staff Scientists in the Pay Band and Grade Pay of PB-3 Rs.15600-39100, Grade Pay Rs.6600/-. The age limit was fixed as 33 years as on 15.03.2011 (relaxable as per Government of India instructions). Certain qualifications and experience were also prescribed in the Notification. It was indicated among the general conditions at Para 5 of the Notification that the appointment is for a period of 5 years, which can be extended based on satisfactory performance and need of the institution. After this Notification spelling out the process of application, the selected candidates were given an offer of appointment on 21.11.2011, a specimen of which is

brought out at Annexure A-3. The offer refers to a interview that was held at the CDAC on 29/31.10.2011 and states that the selected candidate is offered an appointment as Senior Staff Scientist on a 5 year **grade based contract** at CDAC Thiruvananthapuram in the Pay Band PB-3, Rs.15600-39100 with a Grade Pay of Rs.6600/-, plus allowances as applicable to CDAC employees as per rules. The pay in the PB is fixed at Rs.18750/- + Grade Pay of Rs.6600/- along with Dearness Allowances, House Rent Allowances and Transport Allowance as per CDAC Rules. The selected candidate is also entitled to the benefits such as Contributory Provident Fund (CPF), Gratuity, Reimbursement of Medical Expenses, Leave Travel Concession, Children Educational Allowances and other benefits as applicable to CDAC employees in line with the Government of India norms.

The appointment is made subject to the Rules and Regulations, Bye-Laws and Staff Rules of the Centre as applicable to employees in Grade Based Contract. While the place of posting was at Thiruvananthapuram, the candidate could be assigned duties in any location where CDAC Thiruvananthapuram has work in progress. It is submitted that Clause 6 of this appointment order is important in the matter under consideration and it reads as follow :

“6. You will be on probation for a period of one year from the date of your accepting this offer and joining the duty. If it is necessary that more time be needed to assess your performance, then the probation period may be extended by CDAC, at its discretion. Your probation period is considered as part of your length of service with CDAC. You may be given continuing appointment on contract basis covering the rest of the period, thereafter, based on your satisfactory performance.”

It is submitted further that at Clause 14 the following was also indicated :

“14. If you accept this offer, we expect you to intimate the outstanding applications you have made to other places so far and also ignore the same. You will not be allowed to apply for any post or Scholarship/Fellowship elsewhere during the period of your service with the Centre without obtaining prior permission, in writing, from the Competent Authority.”

6. It is submitted that all the applicants in the O.A have joined after accepting the above conditions. Later an Office Order dated 20.03.2013 (Annexure A-4) was issued by which the applicants have been informed that the period of probation as indicated in Clause 6 of the offer of appointment given to them has been completed satisfactorily with effect from the dates shown against their names in Column No.7 and they are now to be continued under engagement as mentioned in the offer letter. It is seen from this said Office Order that the date of closure of probation ranged from September 2012 to December 2012 for the applicants.

7. It is submitted by the applicants that the phrase used in the offer of appointment *“Grade Based Contract”* does not appear either in the Recruitment Rules or Bye-Laws and that the phrase has been remained undefined. It is also submitted that the issues relating to the period of extention of contract etc. having been settled in the series of decisions by this Tribunal as well as Hon'ble High Court of Kerala in various O.As and W.P(C)s, all other Annexures in the O.A are not any more relevant. Learned counsel for the applicant submits that issues that were raised in the O.A can be summarised as : (a) whether the applicants have been recruited

under Clause 18.1.5 or 18.1.8 of the Bye-Laws of the CDAC? (b) whether CDAC can curtail the contract for a period below 5 years? and (c) whether CDAC has an obligation to regularize the applicants under Clause 18.1.5.2 of the Bye-Laws? All these issues have been finally settled in the judgment of the Hon'ble High Court of Kerala dated 01.08.2018 in O.P.(CAT) No.4438/2013 and connected cases which has been produced as Annexure A-13 in the rejoinder filed by the applicants. This decision has followed a series of orders by this Tribunal covering all these issues. While we are now focussed on the third issue, which is whether the CDAC has an obligation to regularize the applicants under Clause 18.1.5.1 and 18.1.5.2 of the Bye-Laws, actually, this too is a settled matter after the orders of the Hon'ble High Court of Kerala in O.P.(CAT) No.4438/2013 and connected cases.

8. In their original reply statement in the O.A dated 04.04.2017 the respondents had made the point that in CDAC Thiruvananthapuram, recruitments are made either as 'regular' employment or employment on Project Based Contracts. For employment on Project Based Contracts (Grade Based Contracts or contracts on consolidated pay), Clause 18.1.8(a) and 18.1.8(b) of the Bye-Laws are followed. Clause 18.1.8(a) states that the competent authority shall be competent to engage a person on contract in pay scale other than on a regular post, up to the scale of posts, which do not, require approval/clearance of Appointment Committee of Cabinet; while Clause 18.1.8(b) is about engaging persons on consolidated emoluments.

The respondents submit that the applicants in the O.A were recruited through a stream of appointment different from the recruitment to regular posts. CDAC undertakes project works relating to other Central/State Government Departments on national interest which are time bound. Since there were a large number of projects and the engineers' manpower was not adequate to meet the project schedules and delivery demands, the Governing Council, vide the Clause 18.1.8(a) & (b) of the Bye-Laws, had authorized the competent authority to create short term project based posts to realize the objectives and successfully complete the commitments. Under this the DG, CDAC, created 116 Project Based Contract Posts for CDAC, Thiruvananthapuram in pay scales, by exercising the powers vested upon him under the delegation of powers. The duration of engagement of persons so recruited was made coterminous with the duration of the projects for which they were appointed.

9. It was submitted in the reply statement that the said clause does not prescribe any period by which the contract can be extended, as it depends on the duration of the project undertaken. The CDAC engages Grade Based Contract employees for various durations, depending on the requirements of the projects in which their services are utilized. As and when new projects are being undertaken on contract basis, the respondents require additional manpower for a particular period to complete the projects. It is therefore submitted that the applicants in the O.A cannot put a claim for permanent appointment or extension of appointment until superannuation. After the

conduct of an all India level written test and interviews in accordance with the CDAC Recruitment Rules, a total of 40 persons, including the applicants in the O.A., were recruited on contract basis on pay scale by invoking the provisions under clause 18.1.8(a) of the Bye-Laws, read with the delegated powers vested under the Director General. Subsequently the offer letters were sent to each candidate under contract basis, which has been produced by the applicants at Annexure A-3. The respondents at Nos.1-3, in order to fill 50 posts which were vacant released the Annexure A-2 advertisement, in which it was categorically mentioned that the appointment was for a period of 5 years, which can be extended based on satisfactory performance and need of the institution. Further in Annexure A-3 offer of appointment it was made clear that they were being appointed as Senior Staff Scientist (later this was redesignated as Senior Engineer) on a 5 year Grade Based Contract at CDAC, Thiruvananthapuram. Thus it is their contention that the applicants were appointed purely on contract basis as per the project requirements to fill up vacant posts created by the DG as referred earlier.

10. The respondents also submit that after completing the first five year contract term of the applicants their contract engagement was extended based on their performance evaluation. Their period of extension would be determined based on the final orders of the Hon'ble High Court in the Appeals against orders in O.A.Nos.950/2012, 949/2012, 964/2012 & 990/2012 which is under challenge before the Hon'ble High Court as O.P. (CAT) Nos.4350/2013, 4438/2013, 4439/2013 and 4500/2013. Further the

order produced by the applicants at Annexure A-6 is similarly under challenge before the Hon'ble High Court of Delhi as W.P(C) No.9038/2014. The respondents thus submit that it had always been made clear to the applicants vide notification and offer of appointment that their appointment with the respondent is purely on contract basis for project based contract. It is incorrect that the applicants would come under clause 18.1.2 of the Bye-Laws. It is submitted that their appointments are governed by clause 18.1.8(a). It is submitted that the applicants were fully aware of the fact that their appointments were purely on project based contracts and not as that of regular employees which is evident from the advertisement and offer of appointment.

11. As mentioned earlier all the above averments were made in the reply statement dated 04.04.2017. Whatever be the averments of the respondents as brought out above in the reply, the fact remains that, at present, after various orders of this Tribunal, largely upheld/confirmed by the Hon'ble High Court, all the applicants were given extension in their periods of contract for a further period of 5 years on the expiry of their first period of "Grade Based Contract" in 2016. This extended period was not curtailed to two or three years as was attempted to be done. Further, the issue of performance appraisal and review of performance which was a major bone of contention between the applicants and the CDAC before the extension of the contract was also settled by these orders and thus we do not propose to enter into these issues now as mentioned earlier. Most importantly, after the

filings of the O.A and the reply, the Hon'ble High Court gave the most comprehensive and far reaching judgment in the matter in O.P.(CAT) No.4438/2013 and connected cases, decided on 01.08.2018, touching specifically on the issue whether they were project based contract employees or grade based contract employees and also relating to their status/priority for consideration for regularization. This judgment was brought out in the rejoinder filed by the applicants. The rejoinder also underlined the position taken in the O.A that the tenure of appointment was regulated by Clause 6 of the Offer of Appointment, which was a promise to renew the tenure, which is the foundation of their legitimate expectation to continue in public service. This legitimate expectation was further strengthened by the obligation imposed by Clause 14 of the Offer of Appointment by which the applicants were required to withdraw all other applications for public service in other organizations before acceptance of the offer. Thus, it is submitted that there was an inherent promise for renewal of tenure. Further, it was submitted in the rejoinder that their services are not regulated by Clause 18.1.8 relating to appointment on project based contract for the following reasons :

(1) The tenure of the contract under Clause 18.1.8 is indeterminate as it is supposed to be co-terminus with the duration of the project for which an employee is recruited. However, in the case of the applicants their tenure is as evident from Clause 6 of the offer of appointment was fixed for 5 years and unrelated to any project or its duration.

(2) The 2nd and 3rd respondents did not offer the applicants appointments on contract for any specific project or projects nor did the applicants accept the offers for appointment on contract for specific project or projects. If that were the case,

the respondents would have been obliged to terminate their contracts on the completion of a project and appoint them afresh for succeeding projects. On the other hand, the respondents have utilized the service of the applicants for more than one project.

(3) The respondents would have been obliged to give preference to the applicants for appointments to regular posts under Sub para of Clause 18.1.8(b), but no such preference has been given to the applicants.

(4) Employees appointed on Project Based Contract are given consolidated pay whereas the applicants have been appointed to posts which carry scales of pay identical to regular posts.

12. It was further submitted in the rejoinder that in O.A.No.949/2012 and connected cases this Tribunal has concluded that the applicants therein were recruited under Clause 18.1.2 and not under Clause 18.1.8 of the Bye-Laws. In addition, the Tribunal in its order dated 06.01.2016 in O.A.No.950/2013, O.A.No.1053/2013 and O.A.No.1054/2013 has held the regularization of employees who were appointed under Clause 18.1.3 of the Bye-Laws and who have been assigned similar duties as 'regular employees' as illegal and contrary to the provisions of the Bye-Laws. Further, in the judgement of the Hon'ble High Court of Kerala in O.P.(CAT) No.4438/2013 and connected cases it has been held that the applicants in the earlier O.As (who are similar to these applicants) were appointed in accordance with Clause 19.1 read with Clause 18.1.2 of the Bye-Laws and not as Project Based Contract employees under Clause 18.1.8 of the Bye-Laws. This judgment has also held that there is error in reducing the tenure of the renewed contract from 5 years to 2/3 years as it violates Clause 18.1.2 of the Bye-Laws and that the applicants in the O.As under appeal are entitled to extension of their

contract by five years. On the matter of regularization of service it was held that the appointment of employees who had not completed a minimum of six years of meritorious service to regular posts was illegal being in violation of Clauses 19.1, 18.1.2 and 18.1.3 of the Bye-Laws and that the applicants who have proved their merit for six years should be allowed to migrate from contract to regular status under Clause 18.1.5.2 of the Bye-Laws. Thus the rejoinder concludes that the issues raised regarding regularization have been settled in favour of the applicants by the Hon'ble High Court in the aforesaid judgment dated 01.08.2018, all the reliefs should be granted.

13. During the course of our hearing of the matter, learned counsel for the applicant has further expanded on the above points brought out in the aforesaid judgment of the Hon'ble High Court of Kerala, first, covering the issue of whether the applicants are project based appointees or grade based contract employees. He submitted that the Hon'ble High Court has held at Paras 9, 11 & 12 of the judgment dated 01.08.2018 as below :

“9.In the contextual situation, it is relevant to note that despite our careful scrutiny of the reply statement filed on behalf of the petitioners herein before the Tribunal in O.A.No.950 of 2012 we do not find specific contention that the applicants therein/the respondents in the first set of original petitions, were engaged in a scale of pay other than regular post on contract basis. In fact, the official respondents therein did not have a case that they were engaged on contract basis in a scale of pay not attached to any regular posts under C-DAC.Thus, it is evident that the respondents in the first set of original petitions viz., the applicants were offered and actually granted appointments to the post of Staff Scientist carrying the scale of pay of Rs.8000-275-13500 and

it is a scale of pay attached to three regular posts borne in the cadre of C-DAC. In such circumstances, condition No.(b) of Annexure-A2 in Ext.P1 which enjoins that the appointee would be required to undertake travel as part of the project requirement cannot be a reason to hold that the appointment pursuant to Annexure-A2 in Ext.P1 is an appointment on project-based contract. Moreover, condition No.(f) would indicate that their appointment was not a project-based contract. As per the same, renewal of the term of appointment would be based on the assessment of performance of the appointee concerned and also the requirement of the centre at the appropriate time. The aforementioned reasons and also the other conditions (f), (h) and (p) in Annexure-A2 of Ext.P1 would certainly indicate that the appointment made under Annexure-A2 in Ext.P1 and similar orders issued in favour of the other respondents in the first set of original petitions are not under Clause 18.1.8(a) of the bye-laws of C-DAC.

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11. Now, we will consider whether their appointments would attract the characteristics of recruitment under Clause 18.1.2 of Annexure-A8 bye-laws. Condition (f) contained in the offer of appointment viz., Annexure-A2 in Ext.P1 in the light of the provisions under clause 18.1.2 of Annexure-A8 bye laws would reveal that there is substance in the contention of the applicants/respondents in the first set of original petitions that they were offered the appointment and consequently appointed invoking the power under clause 18.1.2. As noticed hereinbefore, under clause 18.1.2, the duration of the contract should be for five years and the contract is renewable based on satisfactory performance review for further periods of five years at a time, till attaining the age of superannuation that is, 60 years. In condition (f) of Annexure-A2 in Ext.P1 and similar orders the contractual appointment was offered for a period of five years and going by the same, it is renewable based on the assessment of performance for five years. The conclusion of the Tribunal, though not one based on pointed consideration of such aspects, to the effect that appointment cannot be said to be made under clause 18.1.8(a) of the bye-laws, cannot be said to be without any basis in the aforesaid circumstances. But at the same time, in view of the fact that the contentions of the petitioners in the original petitions may go in conflict with the claim of regularisation made by the respondents in the first set of original petitions and similarly situated persons in the other original petitions, we will consider the tenability of the contentions and claim regarding entitlement to get regularisation in the light of the provisions

under clause 18.1.5.2 a little later. At the same time, we have already found that in the light of the provisions under clause 18.1.2 which permits renewal of appointment effected invoking the provisions thereunder after the expiry of five years for another period of five years at a time, till attainment of superannuation, the Tribunal cannot be said to have erred in holding that the said period ought not to have been curtailed to three years.

12. Going by Annexure-A2 in Ext.P1 offer of appointment the appointees on contract basis may be required to travel as part of the project requirement. Putting such a condition that they would be required to undertake travel as part of project requirement and effecting appointment as project based contract are different and distinct. Evidently, persons appointed based on the offers of appointment like Annexure-A2 in Ext.P1 could be assigned duty anywhere by C-DAC. But, that cannot be a reason to construe that their contractual appointment, Annexure-A2 in Ext.P1 and the similar offers of appointment issued to the respondents in the first set of original petitions, was project based one. It is also to be noted that nowhere in the offers of appointment what exactly is the project/projects have been mentioned though it was stated therein that they may be required to undertake travel as part of project requirement. There can be no doubt an appointee to CDAC can be required to travel as part of any project undertaken by it. In such circumstances, as noticed hereinbefore, we are of the view that the mere fact that such a condition is employed in the offer of appointment cannot take the offer of appointment and the consequential appointment outside the purview of clause 18.1.2. Shortly stated, all the applicants in O.A. Nos.990/2012, 964/2012, 949/2012 and 950/2012 were appointed in exercise of the powers under clause 18.1.2 of the bye laws..... ”

14. Further as regards regularization, in Para 14 of the judgment, *ibid*, it is mentioned that :

“14. True that a bare reading of clause 18.1.5.2 of the bye laws would suggest that the power conferred thereunder for considering the contractual employees for regularisation is only a mere discretionary power, as held by the Tribunal. True that in clause 18.1.5.2, the word 'may' is employed. But merely because the word 'may' is used in any particular provision, it cannot always be said that the exercise of the

power thereunder is discretionary. If a power is coupled with a duty, the mere usage of the word 'may' by itself would not and could not make the power thereunder discretionary. Therefore, the next question is whether the power thereunder is coupled with a duty. We have already found, in fact, the position is not disputed, that clause 18.1.3 of the bye laws is the only provision that enables recruitment of staff employees against regular vacancies. The situations and the nature of entrustment of power, as aforesaid, makes it a duty of the authority competent to exercise it. In view of the aforesaid provision, it is plain as a pikestaff that the power under clause 18.1.5.1 and 18.1.5.2 of the bye laws of C-DAC are not discretionary whereas they are to be construed as mandatory, as the powers thereunder are coupled with duty. The ultimate rule in construing auxiliary verbs like "may" and "shall" is to discover the legislative intent. If any statute authorise any specified person to do acts for the benefit of others and the authority conferred is coupled with an obligation to discharge a duty, in such cases, despite the usage of the word 'may', in view of the imposition of the authority coupled with an obligation to discharge a duty, the word 'may' in the context would take the meaning 'must' or 'shall'. We have already considered the intention of the clauses 18.1.5.1 and 18.1.5.2 of the bye-laws. Going by the purpose for which such powers are conferred they are to be construed, in a compulsory sense. The point is that if conditions under clauses 18.1.5.1 and 18.1.5.2 are satisfied in view of the mandatory nature of those clauses and also of the fact that the power thereunder are coupled with duty to take steps for effecting regular appointment into the service of C-DAC, we have no hesitation to hold that those contractual employees appointed under clause 18.1.2 of the bye laws must have the limit to be considered for regular appointment under those clauses subject to satisfaction of the conditions enjoined thereunder and also availability of regular vacancies or requirement of regular hands.....In the light of Clause 18.1.5.2, the cumulative satisfaction of all the conditions thereunder would definitely make an employee appointed on contractual basis eligible and entitled to be considered for regular employment in view of our finding on the impact of clause 18.1.5.2."

(Emphasis added)

15. Let us now proceed to consider the applicants in this O.A in light of the directions of the Hon'ble High Court. In this O.A all the employees already have either completed 10 years or are about to complete 10 years of

contractual employment on Grade Based Service. They are clearly not to be considered as Project Based employees as per the Hon'ble High Court's findings. In that context Clause 18.1.5.1 assumes relevance. It reads as follows :

“18.1.5.1 Such contractual employees (Employees recruited on pay scale and not on consolidated salary) who have completed two or more contractual terms, covering a minimum of ten consecutive years, shall be considered for a regular appointment, provided, however, no such appointment shall extend beyond the age of superannuation. Such regularisation shall be based on merit and carried out through a duly constituted committee for this purpose and the candidates meeting the provisions of Recruitment Rules of C-DAC.”

In Paras 19 & 20 of the judgment of 01.08.2018, *ibid*, it was directed as follows :

“19. When the relevant provisions contemplate the procedures for granting regularization or regular appointment in the case of persons appointed under clause 18.1.5.2 as long as the Annexure A7 bye-laws are not amended, more particularly no amendment was brought to the provisions under 18.1.5.1 and 18.1.5.2 only after subjecting such appointees to the procedure prescribed thereunder that their claim could have been considered for regularization or regular appointment. Having failed to consider the claim of the party respondents as also the petitioners immediately on completion of the prescribed period of service in accordance with the aforesaid provisions in the bye-laws, in the circumstances explained above, we are of the view that C-DAC is under an obligation coupled with a duty to subject the party respondents as also the individual petitioners to the procedures contemplated under clause 18.1.5.2 to consider whether they ought to have been given regular appointment on completion of six years of contractual service. Certainly this shall be done now, in accordance with the seniority of such contractual appointees taking into account their date of initial entry into the service of the C-DAC on contractual basis and subject to such other conditions stipulated

thereunder viz., continuous service etc. We may also hasten to add that as regards those contractual appointees who could not enter into the regular stream by getting regularized under 18.1.5.2 that shall not be the end of the road as regards entry into the regular service as they could or should be considered for that purpose, in the light of clause 18.1.5.1 as well subject to the satisfaction of the conditions thereunder, if they are not found ineligible for granting regular appointment. The C-DAC shall resort such procedures and based on the claims of all the party respondents as individual petitioners for regular appointment/regularization firstly, in accordance with the provisions under clause 18.1.5.2 and in the case of those who could not get through under the provisions contemplated under clause 18.1.5.1, of the bye-laws subject to the above observation. In that regard C-DAC shall prepare a list of persons whose claims are to be considered in the light of the provisions under clause 18.1.5.2 and also under clause 18.1.5.1. However, the claims of persons falling under the zone of consideration under clause 18.1.5.2 shall be considered first and thereafter the claims of all others shall be considered under clause 18.1.5.1. based on the date of commencement of initial contractual appointment and other conditions therefor. In otherwords, even in the case of contractual employees who acquired eligibility to be considered for regular appointment under clause 18.1.5.1 by now, his/her claim for regular appointment under clause 18.1.5.2. shall be considered first so that he/she may get an early date of regular service. We may hasten to add even in such circumstances such regularizations would make them eligible to claim arrears of salary unless otherwise decided by C-DAC. Such exercise shall be completed by the C-DAC within a period of four months from the date of receipt of a copy of this common judgment. With the above declaration and consequential directions, the second set of O.P.s and O.P. (CAT)No.48/2016 are disposed of. The impugned orders in the second set of original petitions and in O.P.(CAT) No.48/2016 stand modified to suit such compliance. In view of the discussions above, the first set of original petitions are dismissed.

20. Before parting with the case we think it only appropriate to take exception to one aspect, in the bye-laws. The practice of putting persons who completed at least 10 years continuously for quinquennial review for the purpose of deciding whether they could be permitted to continue for another 5 years and so on, till they attain the age of 60 years is deprecative. Being persons belonging to the sector of Scientists, instilling sense of job security is essential to extract

the optimum ability and contribution from them. When there is a provision for considering them regular appointment upon putting a particular period of service it is only desirable to follow the same in view of our findings on clause 18.1.5.1 and 18.1.5.2., of the bye-laws. We may hasten to add that this observation shall not be taken as one suggesting the termination of those who could not get into the regular service either under clause 18.1.5.2 or under clause 18.1.5.1, of the byelaws. In their case also it is desirable to continue with quinquennial review, to decide the question of continuance in contractual service.”

(Emphasis added)

16. In the light of the above, it is clear as daylight that the applicants herein have a vested legal right for their services to be considered for regularization under the Bye-Law 18.1.5.1 having completed or about to complete ten years of service and even can be considered as per the above directions on completion of six years of service under Clause 18.1.5.2. Learned counsel for the respondents, Shri.N.Anilkumar, SCGSC has however brought to our notice that the above judgment has been challenged through S.L.P.No.16354/2019 filed by Shri.Nevin Samuel & Ors. before the Hon'ble Supreme Court. The Hon'ble Supreme Court has been pleased to admit the S.L.P. Subsequently Union of India and CDAC has also filed a S.L.P.(C) No.464/2020 before the Hon'ble Supreme Court and prayed to grant ex-parte interim stay in the operation of the order of the Hon'ble High Court of Kerala dated 01.08.2018. The Hon'ble Supreme Court vide order dated 06.01.2020 tagged these two S.L.Ps together and directed that the contempt proceedings alleging violation of the impugned judgment shall not be proceeded with. Learned counsel for the respondents thus has submitted that the entire matter is, therefore, pending consideration before the Hon'ble

Supreme Court and since the matter is under the scrutiny of the Hon'ble Supreme Court by these S.L.Ps, the matter has not attained finality. Hence any order seeking to implement the judgment of the Hon'ble High Court would be a violation of the stay passed by the Hon'ble Supreme Court. They have, therefore, prayed in the interest of justice, that this Tribunal may take a decision to keep the matter in abeyance till the Hon'ble Supreme Court take a decision in the stay petition pending in S.L.Ps.

17. The above contention of the learned counsel for the respondents has been most vigorously contested by the learned counsel for the applicants. First he submits that the process of extending the contract period of the applicants rather than moving for their regularization has already been incorrectly initiated by the respondents. The Respondents at Nos.1 and 2 have already reviewed the applicants for extension of their contract on 09.09.2021 and 10.09.2021. The applicants participated in the review 'under protest', without prejudice to their rights canvassed in the O.A. Second, it is brought to our notice that the matter relating to whether a judgment of the Division Bench of the Hon'ble High Court is to be followed by a lower court/authority, inspite of the fact that there could be an appeal pending with a higher authority, has been already settled. Learned counsel for the respondents points to the directions of the Hon'ble High Court of Kerala in **W.P.(C) No.26073/2009** decided on 29.09.2009 in the case of **Abdul Rahiman vs. the District Collector, Malappuram & Ors.**, wherein it has been indicated at Para 4 "*The learned Single Judge should not have*

ignored the two Division Bench decisions on the ground that in the appeal filed against one of the said decisions before the Apex Court, there was a stay against it. Even when a decision of Division Bench of this Court is stayed by the Apex Court, the learned Single Judges of this Court are bound to follow the decision of the Division Bench, as it continues to be a binding precedent for them. The interim order of stay only relieves the concerned parties from obeying the judgment under appeal.”

18. In essence, it is submitted by learned counsel that the filing and admission of an S.L.P does not amount to the stay of the order of the Hon'ble High Court of Kerala. In another case of **W.A.No.1407/2019** decided on 17.02.2021 reported in **2021 (3) KLJ 800 (Travancore Devaswom Board & Ors. vs. D.Sreekumar)** it has been indicated in paragraphs 21 and 24 as follows :

*“21. It is by now well established by series of rulings including that rendered by the Division Bench of this Court in *Abdu Rahiman v. District Collector, Malappuram* [(2009) 4 KLT 485] that wherein it has been held in para No.5 & 8 thereof that the learned Single Judge of the High Court should not have ignored the two decisions rendered by the Division Bench of the High Court on the ground that appeal has been filed against one of the said decisions of the Division Bench before the Apex Court and there was a stay against him and that even when a decision of Division Bench of the High Court is stayed by the Apex Court, the learned Single Judge is bound to follow the decision of the Division Bench, as it continues to be a binding precedent for them. The interim order of stay only relieves the parties concerned from the liability to obey and comply the directions in the W.A.No.1407 OF 2019 20 judgment under appeal. It has also been further held therein that when the court declares a law, many people will be regulating their affairs according to it and unless there is a compelling ground, a precedent should*

not be upset so lightly and in hierarchical system of courts as held by the Apex Court, there should be someone who should say the last word and when the last word is said, the same should be followed by everyone in the lower tiers and that in view of the abovesaid position the learned Single Judge in that case should have followed the decisions of the Division Bench cited therein, etc.

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24. *Moreover, it has also been held by the Apex Court in decisions as in Sree Chamundi Mopeds Ltd v. Church of South India Trust Association [(1992) 3 SCC 1 para No.10] that inter alia, while WA.No.1407 OF 2019 22 considering the effect of the interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and interim stay of operation of an order and quashment of the order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed and the stay of the operation of an order does not, however, lead to such a result and it only means that the order which has been stayed would not be operative from the date of date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. It has also been further held therein that the effect of quashment of an order will not be available in the case of an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending, etc.”*

Learned counsel points out that in this matter no stay has been passed on the implementation of the judgment and only the action on the contempt proceedings have been stayed. Even if there was an interim stay given, the Hon'ble High Court has explained how it has to be interpreted. The Hon'ble High Court has also upheld the doctrine of judicial precedence in **W.A.No.1083/2020** reported in **2020 SCC Online KER. 4153**. Hence it is

prayed by the learned counsel for the applicants that this Tribunal should direct the respondents to consider the applicants for regular appointment under Clause 18.1.5.1 or 18.1.5.2 of the Bye-Laws within a stipulated period as directed by the judgment of the Division Bench of the Hon'ble High Court of Kerala dated 01.08.2018 in O.P.(CAT) No.4438/2013 and connected cases.

19. In this matter, we observe that the Hon'ble High Court has laid down the law, which is to direct the respondents to undertake the regularization of service of those who are appointed on grade based contracts, as a priority on completion of certain specific periods of time, as provided under Clauses 18.1.5.1 or 18.1.5.2 which covers the service of the applicants in this O.A. We, therefore, direct the respondents to take necessary steps for considering the applicants for regular appointment following the directions/reasoning of the Hon'ble High Court, which has been brought out at Paras 19 and 20 of the aforesaid O.P.(CAT) No.4438/2013 and connected cases. The decision taken can be made subject to the outcome of the S.L.P. Nos.16354/2019 and 464/2020 tagged together by the Hon'ble Supreme Court. The respondents should thus undertake the necessary steps for the regularization of services of the applicants in light of the Clauses at 18.1.5.1 and 18.1.5.2 of the Bye-Laws if they are not found otherwise ineligible for granting regular appointment. This should be done within a period of two months from the date of receipt of a copy of this order.

20. With these directions the O.A is disposed of granting the relief prayed for at Sl.No.3 of the O.A. There shall be no order as to costs.

(Dated this the 4th day of October 2021)

K.V.EAPEN
ADMINISTRATIVE MEMBER

P.MADHAVAN
JUDICIAL MEMBER

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List of Annexures in O.A.No.180/00665/2016

1. **Annexure A1** - Copy of the Byelaw of CDAC.
2. **Annexure A1(a)** - Copy of the Recruitment Rules of CDAC (relevant portion).
3. **Annexure A2** - Copy of the notification issued by the CDAC, Trivandrum.
4. **Annexure A3** - Copy of the offer of appointment issued to applicants.
5. **Annexure A4** - Copy of the Office Order No.HR&A/HR/106/2013 dated 20.03.2013 issued by the 1st respondent.
6. **Annexure A5** - Copy of the order dated 05.09.2013 in O.A.No.950/2012 and connected cases of this Hon'ble Tribunal.
7. **Annexure A6** - Copy of the order dated 28.05.2014 in O.A.No.3394/2013 and connected cases of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi.
8. **Annexure A7** - Copy of the order dated 25.08.2015 in O.A.No.1398/2015 of the Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi.
9. **Annexure A8** - Copy of the Office Memorandum No.07/16 dated 02.05.2016 issued by the 1st respondent.
10. **Annexure A9** - Copy of the representation submitted by 1st applicant to the 3rd respondent.
11. **Annexure A9(a)** - Copy of the representation submitted by 2nd applicant to the 3rd respondent.
12. **Annexure A10** - Copy of the order dated 28.06.2016 issued by the 1st respondent.
13. **Annexure A11** - Copy of the communication No.HR/115/135865/2016 dated 12.07.2016 issued by the 1st applicant.
14. **Annexure A12** - Copy of the Statement of Annual Performance Reports of the applicants.
15. **Annexure A13** - Copy of the judgment dated 01.08.2018 of the Hon'ble High Court of Kerala in O.P.(CAT) No.4438/2013 and connected cases.
