

CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH

ORIGINAL APPLICATION NO. 310/01605/2013

Dated Monday, the 29th day of July, 2019

PRESENT

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
&
Hon'ble Mr. T. Jacob, Member(A)

Anjali Himanshu W/o. Himanshu Vikram,
Aged about 33 years, Residing at 3/325,
First Floor, Second Street, Sethulakshmi Avenue,
Govind Garden, Manapakkam,
Chennai-600 116.

....Applicant

By Advocate M/s Giridhar & Sai

Vs

1. Union of India Rep. by
Secretary to Government
Government of India,
Ministry of Communication & Information Technology,
New Delhi;
2. Centre for Development of Advanced Computing
(CDAC),
Rep. by its Director General,
University of Pune Campus,
Ganeshkhind, Pune- 411 007;
3. Director (HRD),
CDAC Corporate (HRD Head),
University of Pune Campus,
Ganeshkhind, Pune - 411 007;
4. Joint Director (HRD),
Centre for Development of Advanced Computing
(CDAC),
University of Pune Campus,
Ganeshkhind, Pune- 411 007;

5. The Director,
Centre for Development of Advanced Computing
(CDAC),
Tidel Park, 8th Floor, D Block,
(North & South) No.4,
Rajiv Gandhi Salai,
Taramani, Chennai- 600 113;
6. Executive Director (CDAC Bangalore & Chennai)
CDAC Knowledge Park,
No-1, Old Madras Road, Byappanahalli,
Bangalore- 560 038.Respondents

By Advocate: Mr. K. Rajendran,. Karthik Mukundan
Neelakantan

ORAL ORDER

Hon'ble Mr.Justice. L. Narasimha Reddy, Chairman

The applicant studied M.Sc. She responded to a notification issued by the Centre for Development of Advanced Computing (CDAC), a Super Computing Agency, the 2nd respondent, in the year 2004. After conducting an interview, and on being satisfied about her ability, the respondents offered appointment to the applicant on contract, through a letter dated 21.9.2004, for a period of three years, in the pay scale of Rs.8000-275-13500. Certain conditions were also incorporated in the offer of appointment order and she was posted at Bangalore. The contract was renewed from time to time and she was transferred from Bangalore to Chennai in the year

2008. Thereafter, she was put in a higher grade of pay, through order dated 26.08.2009.

2. On 20.02.2013, she was addressed a letter stating that her performance was reviewed in terms of the policy, contained in proceedings dated 29.11.2012 and it was found that her performance was found to be 'Below Average' and she was also informed that in case there was no phenomenal improvement in her performance in the subsequent quarters of the year, it may not be possible to renew her contract. Through an order dated 1.7.2013, the respondents informed the applicant that her contract ended on 30.06.2013, and she was relieved from duties and responsibilities from the CDAC. This OA is filed challenging the order of termination dated 1.7.2013, the policy contained in the letter dated 29.11.2012 and subsequent steps taken by the respondents.

3. The applicant contends that her initial appointment was renewed from time to time for a period of seven years, and her performance was graded as excellent by the Recording and Reviewing officers. She states that the CDAC framed its own bye laws in October 2006, and according to clause 18.1.2 thereof, the contract is liable to be extended for a period of five years each, till an employee reaches the age of superannuation

and, in the instant case, totally different procedure was adopted and her contract was terminated in an arbitrary, illegal and unconstitutional manner.

4. The respondents filed counter affidavit opposing the averments made in the OA. It is stated that appointment of the applicant is purely contractual in nature and is liable to be renewed only on being satisfied about her performance. An objection is raised to the challenge to Memo dated 29.11.2012 on the ground that the applicant is estopped from doing so, once she has subjected herself to the procedure contained therein. It is also stated that performance of the applicant was evaluated strictly in accordance with law and it is found that she is 'Below Average' and, accordingly, her contract was not renewed.

5. Heard Ms. Y. Kavitha, Learned Counsel representing M/s. Giridhar & Sai, Ld. Counsel for the applicant, Mr. K. Rajendran, Ld. Counsel for Respondent No.1 and M/s. Kartik Rajan, Learned counsel appearing for Respondents 2 to 6 in detail.

6. Some uncertainty as to whether the Agency that appointed the applicant in the year 2004, and the one who denied renewal of her contract, are the same, needs to be addressed first. Analysis of the record discloses the

nomenclature of the organisation as the same but some changes as to the composition of the organization were made over the years. Earlier, the Agency was limited to its functioning in Mumbai and later on, the activity became pan India. Except that there was some organizational change, there is no change as to the continuity of the activity undertaken by the organization.

7. The order of appointment dated 21.09.2004 issued to the applicant reads as under:-

"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. You are offered appointment as Staff Scientist on a starting salary of Rs. 8000/- (Rupees eight thousand only) per month in the grade Rs. 8000-275-13500 plus allowances as per the rates in force.

•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.

•You may be assigned duties in any location where C-DAC has work in progress.

•You will be covered by the Centre's Medical Reimbursement Scheme. However, this will be restricted to cover only yourself, and your spouse and children, if any.

5. Your place of first posting is Bangalore. You are being assigned to work in Development Gateway Foundation (DGF) Project at our Bangalore Centre. You are required to report at the following address:

Centre for Development of
Advanced Computing
(formerly National Centre
for Software Technology)
68, A/B Electronics City
Hosur Road, Bangalore -
560 100.

Tel No. 080-2852
3300/2590

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

This was renewed from time to time. Normally, the appointments which are contractual in nature, are in respect of a particular organization, and there does not exist scope for transfer of such employees, or to put them on higher grade or scale of pay. In the case of the applicant, she was transferred from Bangalore to Chennai in the year 2008 and her pay scale

was upgraded through order dated 26.08.2009. The applicant has summed up the evaluation of her ACRS, as under:-

	Date	Period	Rating	Remarks
1	28.12.2005 (Annexure A-12)	18.10.2004 to 30.09.2005	6.5	Consistent in work and performed duties satisfactorily
2	08.10.2007 (Annexure A-13)	01.10.2005 to 30.09.2006	8	Done pretty well in development work; very good in teaching
3	16.10.2007 (Annexure A-14)	01.10.2006 to 30.09.2007	7.5	Contributory has increased each year; took additional responsibilities in module coordination; R & D work also consistent; recommended for regular position at CDAC
4	2008 (Annexure A-15)	16.04.2008 to 31.12.2008	8.52	Has put in good effort; recommended for promotion
5	22.10.2012 (Annexure A-16)	01.01.2009 to 31.12.2009	8.668	Excellent
6	22.10.2012 (Annexure A-17)	01.01.2010 to 31.12.2010	8.564	Excellent
7	22.10.2012 (Annexure A-18)	01.01.2011 to 31.12.2011	8.624	Excellent
8	22.10.2012 (Annexure A-19)	11.01.2012 to 31.12.2012	8.67	Excellent

This is not disputed by the respondents and it is a matter of record.

8. The respondents framed bye laws in October, 2006. Clauses pertaining to the terms of the appointment are contained in clause 18.1. It reads as under:-

"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."

From a perusal of this, it is clear that once an employee is appointed on contract basis, the method of further continuance is covered by the terms explained above. Clauses 18.1.1 & 18.1.2 deal with the contractual appointment whereas the 18.1.3 deals with the Regular appointment. As regards the former, the initial appointment is required to be for a period of five years, and on completion of probation, renewal of the contract is to be done for a term of five years each, till employee reaches the age of superannuation; subject, however, to satisfaction of the authority.

9. The applicant was appointed before the rules came to be framed. She is to be treated as the one governed by the same. Viewed from that angle, the initial term of 5 years contract expired in the year 2009 and, thereafter, the renewal was required for a period of five years, each. The bye laws do not contemplate any other procedure. However, the respondents brought into existence, a separate procedure through memo dated 29.11.2012, which contemplates a quarterly review of the performance of the employees whose term is nearing completion.

10. The applicant was issued an order dated 20.2.2013 wherein it is mentioned as under:-

"As you are aware, the performance review of GBC employees whose grade based contract were ending on or before December 31, 2013 were carried out recently vide Office Memorandum 13/12 dated 28.09.2012, 16/12 dated 30.09.2012 and 18/12 dated 09.10.2012 from Corporate Office.

In this context, your performance review was carried out on 12.10.2012 at C-DAC, Chennai. The performance review committee has looked at all aspects of your performance and adjudged your performance as 'Below Average'.

You will be reviewed for performance every quarter till the end of the existing Grade Based Contract. You need to demonstrate quality improvement in your performance during the remaining period of the grade based contract, failing which you will not be considered for renewal of the grade based contract beyond the existing grade based contract period.

Further extension of renewal of the grade based contract shall be based on the review and polices outlined in the Officer Memorandum 13/12 dated 28.09.2012 and subject to your desire to continue on the Grade Based Contract and the project requirement at the centre."

11. The applicant objected to the same and brought to the notice of the respondents, her performance as assessed earlier. Though the office memorandum dated 28.09.2011 contemplates procedure of evaluation, it does not refer to any Bye-law whatever. Be that as it may, in case, the refusal to review the contract of the applicant was on the ground that her performance was not found to be satisfactory, things would have been different altogether. However, in the order dated 1.7.2013, there was no mention about it. The order is extracted hereunder:-

"This has reference to the letter No. P:HRD:2009 dt. August 17, 2009 and subsequent communication No. CDAC/CHN/01(CE)/12-119 dated 29.11.2012 extending your term of contract upto 30.06.2013. As the term of your contract has ended on 30.06.2013, you stand relieved from your duties and responsibilities on the last day of your contract in C-DAC i.e. 30.06.2013 (AN)

You are requested to settle all your dues and surrender the identity card & Access Cards of Tidel Park and C-DAC.

We thank you for the services rendered in C-DAC Chennai and wish you all the best for your future endeavours.

This issues with the approval of the competent authority."

There is no reference to the evaluation of ACRS, much less any averment that her conduct being not up to the mark. Added to that, the Bye-Laws as well as the other relevant orders provide for issuance of three months notice for termination of the contract. Even that was not done. By the time the respondents terminated/refused to extend the contract term to her, the applicant has put in almost a decade of service in the organization. When the Bye Laws are framed in such a way that the employees appointed even on contract basis are treated with honour and not subjected to arbitrary exercise, we find it difficult to sustain the impugned order.

12. An identical situation arose before the Principal Bench of this Tribunal in respect of the same organisation in O.A. No. 1398/2015. That was disposed of through a detailed order dated 25.08.2015. The Bench allowed the OA and directed that the contract of the applicant therein shall be renewed. The same situation exists in this OA also. It is brought to our notice that in W.P. No. 9857/2015, the Hon'ble Delhi High Court

stayed only some portion of the order in the OA, but not the one pertaining to renewal of the contract.

13. We, therefore, allow the O.A and direct that the respondents shall renew the contract of the applicant in terms of Bye Law 18.1.3 within a period of one month from the date of receipt of copy of this order. However, the applicant shall not be entitled to any back wages, and such renewal shall be subject to the outcome of Writ Petition No.9857/2015 pending before the Hon'ble Delhi High Court.

14. With the above observation, the OA is allowed. There shall be no order as to costs.

CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH

ORDER SHEET

COURT NO.: 1
29.07.2019
O.A./310/1605/2013
M.A./310/330/2016

ANJALI HIMANSHU
-V/S-
M/O COMMUNICATION & IT

ITEM NO.:3

FOR APPLICANT(S) ADV.: M/s Giridhar & Sai

FOR RESPONDENT(S) ADV.: Mr. K. Rajendran
M/s Karthik, Mukandan &
Neelakantan

M.A. 330/2061 is filed by the applicant with a prayer to permit her to amend the relief in Part VIII(i)(5) by deleting the words: "Order No. C-DAC: Corp-HRD:2012 Dated 28.09.2012 passed by the 3rd Respondent (in so far as reducing the renewal period below five years is concerned)" and substituting as follows:

"Order No. C-DAC: Corp-HRD:2012, Dated 28.09.2012, passed by the 3rd Respondent, by declaring that the applicant's service ought to be renewed for a period of 5 years"

Respondents 2 to 6 filed reply to the MA and stating that the additional relief sought now is barred by limitation and the amendment sought for is a clear afterthought. The respondents pray for dismissal of the M.A.

Having regard to the facts and circumstances of the case, we allow the M.A.