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CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION Nos.340, 363 and 364 of 2014

Dated this Monday, the 25th day of November, 2019

CORAM : DR. BHAGWAN SAHAI, MEMBER (A)
RAVINDER KAUR, MEMBER (J)

Dr. (Mrs) Kajal Pandey working as Senior Technical Officer,
Office of Centre for Development of Advanced Computing for Development, Pune, Aged about 36 years,
C/o Mr. Ambarnath Chandrakant Kamble, 55/2/1, Somjai Kripa,
1st Floor, Gali No.3, Suyog Colony, Vinayak Nagar, Pimple Gurav,
Pune 411 061. **- Applicant in OA No.340/2014**

Dr. Sudhir Kumar Mishra, Aged about 35 years,
C/o Mr. R.M.Ruptakke, Survey No.54/1/126, House No.46/1/188/14,
Vinayak Nagar, Pimple Gurav, Pune 411 061.
Serving at Centre for Development of Advanced Computing Pune University Campus, Pune. **-Applicant in OA No.363/2014**

Dr. Rudranarayan Mohapatra, Aged about 35 years,
C/o Mr. R.M.Ruptakke, Survey No.54/1/126, House No.46/1/188/14,
Vinayak Nagar, Pimple Gurav, Pune 411 061.
Serving at Centre for Development of Advanced Computing Pune University Campus, Pune. **-Applicant in OA No.364/2014**
(By Advocate Shri P.J.Prasadrao)

VERSUS

1. Union of India, through the Secretary,
Ministry of Communications & Information Technology,
Government of India & Ex-Officio Chairman,
C-DAC Governing Council, Electronic Niketan,
6 CGO Complex, Lodhi Road, New Delhi 110 003.

2. Director General, Centre for Development of Advanced Computing Pune University Campus, Ganeshkhind Road,
Pune 411 007.

3. Executive Director, Centre for Development of Advanced Computing Pune University Campus, Ganeshkhind Road,
Pune 411 007. **- Respondents in all OAs**

(By Advocate Ms. Sujatha Krishnan)

Order reserved on 01.08.2019
Order pronounced on 25.11.2019

ORDER

Per : Dr. Bhagwan Sahai, Member (A)

These OAs have been filed on 11/12.03.2014 by Dr. (Mrs.) Kajal Pandey, Dr. Sudhir Kumar Mishra and Dr. Rudra Narayan Mohapatra, working as Senior Technical Officers with C-DAC, Pune. They have sought common reliefs as quashing and setting aside of impugned orders dated 04.02.2009 and 15.10.2013, and direction to the respondents to fix their pay under CCS (Revised Pay) Rules, 2008 from 01.10.2007, regulate their increments from 01.07.2008 onwards and to pay them arrears based on refixation of their pay with 12% interest per annum along with cost of their respective applications.

Since the reliefs sought and facts as well as applicable rules/stipulations in these three OAs are common, they have been heard together on 25.02.2019 and 01.08.2019, and are being decided by this common order.

2. Summarized facts:-

2(a). The applicants have stated that they are law binding citizens of India working with

respondent No.3 i.e. Executive Director, Centre for Development of Advanced Computing (C-DAC), Pune University Campus, Pune from October, 2007 as Computational Linguists, subsequently re-designated as Senior Technical Officers. Vide order dated 14.09.2007, they were offered appointment as Computational Linguists (Grade based contract engineers) with pay scale of Rs.10,000-15,200/- (Annex A-3).

2(b). As per CCS (Revised Pay) Rules, 2008 issued by Department of Expenditure, Ministry of Finance, Government of India dated 29.08.2008, revised pay scales were implemented from 01.01.2006. The applicants further state that since they were recruited in October, 2007, their pay was to be refixed as per the above rules and not as per the Pay Rules existing prior to 01.01.2006.

2(c). The Department of Expenditure vide OM dated 30.09.2008 issued guidelines for pay revision of employees of Quasi-government Organizations, Autonomous Organization and statutory bodies set up by and funded or

controlled by the Central Government. Accordingly, the respondents adopted those pay scales for their employees and therefore, the applicants were entitled for revised pay scales as per the VI Central Pay Commission recommendations from the respective dates of their appointment in October 2007, which were after 01.01.2006.

2(d). Respondent No.3 issued a letter on 04.02.2009 revising their pay scales from 01.09.2008 and vide letter dated 11.02.2009 directed them to accept the proposed revision of pay scales from 01.09.2008. This was contradictory to the implementation of VI Central Pay Commission from 01.01.2006. The applicants exercised their option on 09/11.02.2009 (Annex A-6), by accepting revision of their pay scales from 01.09.2008 (Annex A-6) along with an undertaking that any excess payment which may be found to have been made as a result of incorrect pay revision or any excess payment detected in light of discrepancies noticed subsequently will be refunded by them to C-DAC either by adjustment

of future payments due or otherwise. Accordingly, their pay was fixed as Rs.25,350/- in Pay Band of 15,600-39,100/- with Grade Pay of Rs.6,600/-.

2(e). However, the applicants now in the OA claim that the option exercised by them was ab-initio void and cannot be a valid document for revision of pay scales, they are entitled for their pay fixation from the dates of their joining with C-DAC in October 2007 instead of 01.09.2008. They submitted their representations to the respondent No.3 in June/July, 2013 explaining that they were recruited in October, 2007 and since the VI Central Pay Commission pay scales were implemented from 01.01.2006, they should be allowed the entry pay of Rs.18,750/- from 01.10.2007 with next increment from 01.07.2008 (Annex A-7). In their subsequent representations dated 18.09.2013/03.10.2013, they requested respondent No.3 that although they joined in October 2007, they have been granted increment after 21 months i.e. from July, 2009 instead of 01.07.2008 (Annex A-8).

2(f). Respondent No.3 in reply dated 15.10.2013 informed the applicants that as per C-DAC Corporate headquarters letter dated 04.02.2009, they were entitled for revised pay structure only from 01.09.2008, their next increment was due only from 01.07.2009 and they were not entitled for fixation of pay in the revised pay scales from their joining dates in October, 2007. It is claimed that this decision of respondent No.3 is in violation of Article 14 of the Constitution because they have been discriminated vis-a-vis other Central Government employees to whom the VI Central Pay Commission pay scales were granted from 01.01.2006.

2(g). They submitted further representations to the respondent No.2 i.e. DG, C-DAC, Pune but did not receive any reply. Then they submitted notices through their Advocate in December, 2013 explaining how their pay should have been fixed from October, 2007 with increment from 01.01.2008 but did not get a reply to their representations and subsequent reminders. Then vide letter dated

22.02.2014, respondent No.2 sought their explanation as to whether the notice through Advocate Shri P.J.Prasadrao had been sent under their instructions (Annex A-13). Since the respondents have not redressed their grievance, they have filed these OAs.

3. Contentions of the parties-

In the OAs, rejoinders and during the arguments, the applicants have contended that-

3(a). since implementation of the VI Central Pay Commission pay scales was approved by the Government of India as per CCS (Revised Pay) Rules, 2008, the respondents Nos.2 and 3 are bound to implement those pay scales for the applicants and pay them arrears from 01.01.2006 or from the dates of their joining in October, 2007;

3(b). the respondents have implemented the VI CPC pay scales for some of their some staff from 01.01.2006 and for others like the applicants from 01.01.2008 thereby treating differently the similarly situated employees

in violation of Article 16 and 21 of the Constitution;

3(c). as per Apex Court decision in **P.Parameswaram and others Vs. Secretary to Government of India, 1987 SCC (L&S) 270**, it is not open to the Government to deny the benefits of grade and pay scales as in case of other persons merely because of some administrative difficulties, and it would be discriminatory. Therefore, implementation of the revised pay scales for the applicants vide order dated 04.02.2009 need to be set aside;

3(d). the applicants are governed by bye-laws of C-DAC and the terms and conditions of their appointment as contained in the letters dated 14.09.2007 (Annex A-14). The respondents adopted the VI Central Pay Commission and paid arrears thereon to similarly situated grade based contract engineers who were recruited prior to 01.10.2006 and were in the service till 31.12.2008. The applicants appointment order dated 14.09.2007 provided that the allowances to them are regulated as per Central

Government Rules. Therefore, the CCS (Revised Pay) Rules, 2008 are applicable to the applicants, C-DAC is bound by those Rules for its employees and it cannot alter the date of implementation of the VI Central Pay Commission pay scales suo motu. C-DAC is not at liberty to alter or amend the Pay Commission award at the time of its adoption of Section 1 and Section 2 of First Schedule of CCS (Revised Pay) Rules, 2008. So all the employees are entitled for the revised pay scales from 01.01.2006 or from the dates of their joining the service and the issue of exercising option for implementing the new pay scales for those recruited after 01.01.2006 does not arise; and

3(e). as per C-DAC OM dated 02.01.2009 (Annex A-15), the respondents granted pay scales and arrears to employees from December, 2008. Hence, the applicants are entitled for revision of their pay scales on par with Central Government employees as they were recruited after 01.01.2006. Therefore, the OA should be allowed.

In their reply and during the arguments, the respondents have contended that-

3(f). C-DAC is an autonomous scientific society registered under the Society Act, it has its own legal identity, it is not a department of Central Government. It has its own bye-laws, rules and regulations which are substantially not on par with rules applicable to the Central Government employees. Therefore, the employees working with C-DAC are employees of the Autonomous Scientific Society and they are governed by rules, regulations and bye-laws of C-DAC;

3(g). C-DAC has its own governing council and its corporate office headed by Director General with different units in other cities and states. C-DAC Society has four different categories of employees (i) regular employees, (ii) employees on continuing contract basis, (iii) grade based contract employees and (iv) contract employees on consolidated salary. As per the letter of appointment and at the time of implementation of VI CPC Pay scales in C-DAC, the applicants were grade

based contract employees and their services were purely contractual, initially for a period of five years, which could be extended by another five years, if the service rendered is found satisfactory and subject to availability of projects with C-DAC. However, the status of the employees has remained only as grade based contract employees;

3(h). the CCS (Revised Pay) Rules, 2008 issued by the Department of Expenditure on 29.08.2008 are applicable only to Central Government employees and are not automatically applicable to the employees of autonomous bodies like C-DAC in terms of para 2(1) of those rules. The applicants are neither appointed to Civil Services nor to any posts of Central Government nor their pay is debited to Civil Estimates of Central Government. They were appointed as Computational Linguists as grade based contract engineers for five years from October, 2007 and subsequently their contract has been extended for another five years. Therefore, their claim for pay fixation as per CCS (Revised Pay) Rules, 2008

with effect from 01.10.2007 is not maintainable;

3(i). since C-DAC is an autonomous Scientific Society registered under the Society Act, unless it governing council passes a resolution for adopting revised pay scales, such pay scales cannot be given to grade based contract employees. It is also up to the governing council to adopt the revised pay scales of Central Government employees or to lay down its own pay scales for C-DAC employees subject to its own resources and availability of projects;

3(j). as per the Department of Expenditure OM dated 30.09.2008, guidelines were issued regarding pay revision of employees of quasi-government organizations, autonomous organizations and statutory bodies set up by and funded/ controlled by the Central Government. In that OM, the term "Society" has not been mentioned. Since C-DAC has its own separate rules, regulations and bye-laws duly approved by the governing council, therefore, the governing council has approved

and adopted only Section I and II of First Schedule of CCS (Revised Pay) Rules, 2008 and accordingly issued its policy decision vide OM dated 04.02.2009 for revision of pay scales of its staff working on grade based contracts at all C-DAC centres from 01.09.2008 or from the date of joining of the employees, whichever is later;

3(k). the applicants were accordingly informed vide letter dated 11.02.2009 about fixation of their pay in the revised pay scales from 01.09.2008 asking them to give option and convey acceptance of the revised pay scales from 01.09.2008. The applicants opted for the revised pay scales from 01.09.2008 without any protest and accordingly, their pay was revised vide letter dated 11.02.2009; and

3(l). since the governing council of C-DAC is the competent body to decide on policy matters such as revision of pay scales of its employees, it has decided the date from which the revised pay scales would come into force for the grade based contract employees i.e.

from 01.09.2008. Therefore, it is proper and sustainable in law. Since the applicants opted for revision of the pay scales from 01.09.2008, after completing one year of service thereafter, increment was granted from 01.09.2009 and it cannot be granted from any earlier date as claimed by the applicants. Therefore, the OA should be dismissed.

4. Analysis and conclusion:

4(a). We have perused the OA memo and its annexes and rejoinder filed by the applicant, reply filed by the respondents and the argument advanced before us on 01.08.2019.

4(b). The main issue for decision in these three OAs is whether CCS (Revision of Pay) Rules, 2008 issued by Department of Expenditure, Ministry of Finance, Government of India are directly applicable to the applicants appointed and working as grade based contract employees of C-DAC, an autonomous scientific society registered under the Societies Act and whether the revised pay

scales given to them by C-DAC from 01.09.2008 could have been given from 01.10.2007.

4(c). From the case record and submission of the parties, the undisputed facts emerges as follows-

(i) the applicants were appointed on grade based contract from October, 2007, and they were appointed by C-DAC as not regular employees.

(ii) C-DAC is an autonomous scientific society registered under the Societies Act, it is not a department of Central Government, and it has its own organizational structure with its governing body as the final policy making authority. Thus, C-DAC employees are not employees of any Central Civil Service and their service conditions are governed by rules, regulations, bye-laws and policies of C-DAC. The C-DAC Society has two main categories of its employees - regular employees, and contract employees of three types i.e. employees on continuing contract basis, grade based contract employees and

contract employees on consolidated salary. The applicants are the grade based contract employees of C-DAC.

(iii). In view of the above, the revised pay scales approved by the Government of India based on Central Pay Commission recommendations do not get directly implemented for C-DAC employees as soon as Department of Expenditure OM is issued, unless the governing body of C-DAC takes a policy decision to adopt the CCS Pay Scales either as such or in a modified form. As explained by respondents, adoption of revised pay scales is decided as a policy by the governing body of C-DAC based on its resource position.

(iv). The Department of Expenditure, Ministry of Finance vide OM dated 30.09.2008, on the basis of orders issued for implementing 6th CPC recommendations for Central Government employees issued guidelines for pay revision of employees of Quasi-government Organizations, Autonomous Organization and statutory bodies set up by and funded or controlled by the Central Government stating

that these orders may be extended to the employees of Autonomous Organizations, etc whose pattern of emolument structure i.e. pay scales and allowances (in particular the Dearness Allowance, the House Rent Allowance and City Compensatory Allowance) are identical to those of the Central Government employees, further subject to the stipulation that conditions of service of employees of those organizations, especially those relating to hours of work, payment of OTA, etc, would also be exactly similar to those in Government departments.

(v). There is no objection to the Autonomous Organizations etc adopting the Central Civil Services (Revised Pay) Rules, 2008. It is, however, clarified that the revised pay structure as incorporated in Section I and II of part A of the First Schedule to the Rules ibid alone may be adopted. It is further added that the revised pay structure would be admissible to those employees who opt for the same in accordance with the extant Rules. Likewise, deductions

on account of Provident Fund or Contributory Provident Fund, as the case may be, will have to be made on the basis of the revised pay w.e.f the date the employee opts to elect the revised pay structure.

(vi). In case of those categories of employees whose pattern of emoluments structure ie. Pay scales and allowances and conditions of service are not similar to those of the Central Government employees, a separate 'Group of Officers' in respect of each of the Autonomous Bodies may be constituted in the respective Ministry/Department. The Financial Adviser of the respective Ministry/Department will represent the Ministry of Finance on this Group. The Group would examine the proposals for revision of pay scales, etc taking into account the views, if any, expressed by the staff representatives of the concerned organizations. It would be necessary to ensure that the final package of benefits proposed to be extended to the employees of these Autonomous Organizations etc is not more

beneficial than admissible to the corresponding categories of the Central Government employees. The final package recommended by the 'Group of Officers' will require the concurrence of the Ministry of Finance or the Department of Personnel & Training, as the case may be. The mode of payment of arrears of pay shall be as laid down in Rule 14 of the Central Civil Services (Revised Pay) Rules, 2008 for the Central Government employees.

(vii). The adoption of revised pay structure based on these orders by Autonomous Organizations, etc, both where the pattern of emoluments structure is identical to the Central Government and where emoluments structure is not similar, will be subject to the following conditions as far as budgetary support for additional expenditure is concerned:

(a). 80% of the additionality will be met by the Central Government.

(b). 10% of the additionality will be met by the Autonomous Organizations, etc through additional generation of revenue; and

(c). Balance 10% of the additionality will be managed by the Autonomous Organizations etc through savings.

4(d). After the VI Central Pay Commission pay scales were implemented for Central Government employees, by that OM the Central Government decision was conveyed as no objection to autonomous organization for adopting CCS (Revised Pay) Rules, 2008. It further clarified that the revised pay structure as incorporated in Section I and II of Part A Of First Schedule to the rules only was to be adopted.

4(e). Since the applicants were not regular employees of C-DAC, they were only grade based contract employees from when the revised pay scales were to be given was a policy decision to be taken by the governing body of C-DAC.

Based on receipt of the communication from Department of Information Technology dated

24.10.2008, corporate headquarters of C-DAC issued OM dated 02.01.2009 for implementing recommendations of VI Central Pay Commission dated 02.01.2009 for implementation of the revised pay structure effective from 01.01.2006 and actually implemented from December 2008. This policy decision was for regular employees of C-DAC.

4(f). The OM was issued on 04.02.2009 for revision of pay scales of staff appointed on grade based contracts who had joined C-DAC after 01.10.2006 and who were currently at that time on the pay roll of C-DAC by applying the principles of protection of existing pay and pay scales and mapping the newly added pay scales uniformly (Annex A-1, copy at page No.17).

As per paragraph No.2 of that OM, the salary revision in respect of all such employees would be from 01.09.2008 or from the date of joining which is later and the revised pay scales would entitled the grade based contract employees for pay in pay band, grade pay, DA, HRA and Transport Allowance as

applicable. As per paragraph No.5 of that OM, the above revised salary and the benefits were to be applicable to the grade based contract employees for remaining portion of their existing contract appointment period and they were not to be deemed as applicable beyond this period.

4(g). As per the terms and conditions of appointment of the applicants enclosed with the letter of 14.09.2007, they were appointed by the respondent No.2 on five yearly contract basis. As per paragraph No.3.1 of those terms and conditions, their appointment was to be governed by rules and regulations, bye-laws, service rules of C-DAC and such administrative orders and service and policy guidelines of C-DAC as may be in force and made applicable from time to time. They were to be on probation for one year and after its satisfactory completion, there were to be treated as on contract for five years including the probationary period. This contract of five years could also be extended by another five years subject to continued

satisfactory performance of the applicants and availability of projects at C-DAC (page 21 to 27).

4(h). As per Annex B to that letter of 14.09.2007, the applicants were asked to submit an undertaking to the effect that staff rules of C-DAC were acceptable to them and they undertook to abide by those staff rules. These terms and conditions of appointment were willingly accepted by applicants and they submit their undertaking at the time of joining in October, 2007. Those terms of their appointment clearly bring out that they were not appointed to any Civil Service of the Central Government, they were not appointed even regular employees of C-DAC, their appointment was only on contract basis, and as per the rules, regulations, bye-laws and service rules and policy guidelines of C-DAC. The terms and conditions of their appointment never mentioned that their appointment would be governed by Central Civil Services Rules.

4(i). In view of the above factual position, the applicants themselves on their

own readily accepted those terms of their appointment with C-DAC and submitted their undertaking in 01.10.2007. Therefore, they are bound by those terms and conditions of their appointment on contract basis and the undertaking submitted by them.

4(j). The guidelines issued by Department of Expenditure vide their OM dated 30.09.2008 also specified the conditional budgetary support to the autonomous organization etc clarifying that 100% of the additional expenditure to be incurred by granting revised pay scales was not to be borne by the Central Government.

4(k). The bye-laws of C-DAC (Annex A-41, page 67 to 89) in paragraph No.12 also bring out details of property and funds of the society which consist of:

> "**12.1. Properties and funds of the Society:** The properties and funds of the Society vested in the Council shall consist of:
>
> 12.1.1. Grants-in-aid released by the Government of India.
>
> 12.1.2. Other grants, donations and gifts (periodical or otherwise).

12.1.3. The income from properties and funds vested in the Council and fees, subscriptions and other annual receipts.

12.1.4. All movable and immovable assets such as machinery, plant, equipment, computer hardware and software and instruments (whether laboratory, workshop or otherwise), books and journals, furniture, fixtures, land and buildings belonging to the Society.

12.1.5. Remuneration received through consultancy, design, development, technology transfer, contracts etc.

12.2. Acceptance of Donations etc.: The Society may accept donations, gifts and subscriptions for specific purposes provided no onerous conditions are attached to them."

4(1). In view of the above facts, since the applicants were appointed only on contract basis by the respondents (C-DAC) and their appointments are governed by the rules, regulations, bye-laws and policy decision of C-DAC, their contention that CCS (Revised Pay) Rules, 2008 dated 29.08.2008 issued by the Department of Expenditure should be applied to them from the dates of their appointments is not correct. Those rules were not directly applicable to them. They were to be implemented only after their adoption by Governing Body of C-DAC and as per its policy decision i.e. as per C-DAC Corporate

Headquarters OM dated 04.02.2009, which were willingly accepted by the applicants on 11.02.2009 (Annex-A-6). Therefore, having once willingly accepted the revised pay scales of C-DAC, the applicants now cannot claim that their acceptance was void.

4(m). In view of this, we find no merit in the contentions of the applicants in the OA. The submission of the respondents and the decisions taken by them are proper and justified. We do not find any flaw in their decisions/action of the respondents. Resultantly, these OAs fail.

5. Decision:

OA Nos.340, 363 and 364 of 2014 stand dismissed. No order as to costs.

(Ravinder Kaur) ***(Dr. Bhagwan Sahai)***
Member (Judicial) ***Member (Administrative)***

*kmg**