



2025:DHC:7033-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 13.08.2025

+ W.P.(C) 9857/2015 & CM APPL. 51471/2018, CM APPL. 19134/2024

UNION OF INDIA & ANR

.....Petitioners

Through: Mr. Vikramjit Banerjee, ASG
wit Mr. Amit Anand and Mr. S.
Mishra, Advocates.

versus

LALIT KUMAR

.....Respondent

Through: Mr. M. K. Bhardwaj and
Mr. Praveen Kumar Kaushik,
Advocates.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioners, challenging the Order dated 25.08.2015 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal'), in O.A. No. 1398/2015, titled as ***Lalit Kumar v. Union of India & Anr.***, whereby the learned Tribunal allowed the O.A. filed by the respondent herein with the following direction:

“21. In view of the above position, we allow this O.A and quash and set aside the impugned order dated 30.01.2015 arbitrarily and



whimsically adjudging the performance of the applicant as Below Average and Unfit thereby not renewing his contract beyond 31.05.2015. Consequently, MA No.1728/2015 is also dismissed. We, further direct that the applicant shall be treated to be in continuous appointment on contract basis with effect from 01.06.2015 onwards without any interruption. His contract shall also be renewed for further 5 years w.e.f. 01.06.2015 on the basis of his proven record of Outstanding/Very Good performance. He is also entitled to be continued on contractual basis again periodically for five years at a time subject to the performance appraisal as provided in the Bye-Laws. Further, he is entitled to be considered for migration from contractual position to regular position in terms of Para 18.1.5.1 and 18.1.5.2 of the Bye-Laws as and when vacancy arises. He shall also be paid full salary and allowances for the period from 19.05.2015 as ordered by this Tribunal vide order of the same date in this O.A. During the intervening period from 01.02.2015 to 18.09.2015, except for payment of salary and allowances, he shall be given all other consequential benefits including continuity in service. The aforesaid directions shall be complied with, within one month from the date of receipt of a copy of this order. The Applicant is not entitled for any cost as he has not sought any such relief in this OA.”

2. The facts, in brief, giving rise to the present petition are that the respondent was appointed as a Project Engineer in the Centre for Development of Advanced Computing (hereinafter referred to as ‘CDAC’) under a special recruitment drive for SC/ST candidates, *vide* appointment letter dated 17.05.2006.

3. For the purpose of answering the petitioner’s challenge to the Impugned Order, certain terms of the Appointment Letter are relevant,



and are reproduced hereinbelow:

“(a) Pay Scale and Allowances:

Scale of pay : Rs. 8000-275-13500

Basic pay : Rs. 8000/-

Dearness Allowances, Dearness Pay, City Compensatory Allowance and House Rent Allowance will be as per C-DAC / Central Government rules.

(b) Term

Your contract term will be for a period of 3 years renewable based on performance.

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(e) Place of Posting:

Centre for Development of Advanced Computing, (CDAC), Anusandhan Bhawan, C-56/1, Sector-62, Noida-201 307 or at project sites.

(f) You are liable to be transferred / posted at the discretion of the competent authority to serve at any of the office / project sites of the Centre and other Centres / office / units of the Ministry of Information Technology or any other Government Department, Statutory Body or Central / State Public Sector Undertakings, whether in India or abroad, and whether such offices / units etc. are at present existing or may be established in future.

(g) Your appointment is on contract and will be co-terminus with the HRD / sponsored program on which you are deployed. You will be on probation for a period of one year from the date of appointment which may be extended at the discretion of competent authority. Probation shall stand successfully completed on issue of orders to that effect in writing. You will be entitled to draw Annual Increments only after satisfactory completion of probation.

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(l) Your services are contracted for meeting temporary increase in workload and it does not confer you any right for continued services or regularization in C-DAC, Noida.”



4. The services of the respondent were thereafter extended from time to time, by passing various similar orders. The respondent had also been promoted to the next grade of Senior Project Engineer, which was subsequently re-designated as Senior Technical Officer, *vide* an Order dated 01.07.2010.

5. The services of the respondent were terminated by declaring him “below average and unfit” and by not renewing his contract beyond 31.01.2015.

6. Aggrieved thereby, the respondent approached the learned Tribunal by way of the above O.A.

7. The learned Tribunal, by its Impugned Order, held that the assessment of the respondent as ‘unfit’ was arbitrary in view of his performance as recorded in the ACRs for the relevant years. It was further observed that the appointment of the respondent was not merely a contractual appointment simpliciter but, under the Bye-Laws of the petitioner, entitled him to continue on a contractual basis until the age of superannuation. We quote from the order of the learned Tribunal as follows:

“14. Therefore, the appointments of staff on contractual basis by the respondent-CDAC are not merely contract appointments simplicitor. Consequently, unlike in the cases of contract appointment simplicitor, all the contractual appointments made by the Respondent-CDAC do not come to end by efflux of time. The Bye-Laws provide them opportunities to continue on contract basis upto the superannuation of 60 years or in the meanwhile, migration from contractual position to regular position. Therefore, the general principle of law governing contractual employees that the



Employer can decide not to extend a contract which has come to an end by efflux of time does not apply to all the contractual employees in the Respondent-CDAC. Consequently, the other settled laws that even in matter of contract, the respondent cannot act whimsically or capriciously or in an arbitrary manner and no unfettered right of hire and fire is available to the respondent as the same would violate Article 14 of the Constitution of India have to be applied in the case of the applicant and other similarly placed persons.

15. Now let us compare with the career graph of the applicant with the respondent-CDAC to see whether its adjudgments that he was "Below Average" and "Unit" are justified or they are whimsical, capricious and arbitrary. The applicant joined the CDAC as a Project Trainee on 01.01.2005 on a consolidated pay of Rs.5000/- per month. He successfully completed the training period. Thereafter, the respondent on 17.05.2006 appointed him as a Project Engineer on contract basis for a period of three years renewable based on performance, with the definite pay scale of Rs.8000-275-13500/-. The said appointment itself was arbitrary as, in terms of Para 18.1.2 of the Bye-Laws, the period of initial contract shall be 5 years which is renewable based on satisfactory performance for further periods of five years at a time, till attaining the age of superannuation i.e., 60 years. In any case, according to the performance appraisal made by his superior officers for the period from 01.01.2006 to 31.12.2006, "he is sincere, dedicated, obedient and committed towards his work. He is a hard working person. He is good with working with others. He listens to his seniors carefully and follow the instructions. He is a good work executor and a good team member. His performance is very good" and adjudged him as "Very Good". Consequently, the respondents declared that he has



successfully completed his probation period vide their order dated 21.09.2007. Again, for time period from 01.01.2007 to 31.12.2007, the performance appraisal about him says "up to the mark" and again adjudged him "Very Good". He was accordingly granted increment in pay vide order dated 04.06.2008. Again, his pay was revised to Rs. 15600-39100 with Grade Pay of Rs.2400 based on the recommendation of 6th Central Pay Commission retrospectively w.e.f. 01.01.1996, vide order dated 21.08.2008. Again, finding his service useful to the respondent, his contract period was again extended by three years w.e.f. 01.06.2009 and his pay was also revised from Rs.17550 to Rs.18240 with Grade Pay of Rs.5400/- vide order dated 03.07.2009. During the period from 01.01.2009 to 30.06.2009 again his performance appraisal was made and it says, "the quality of output is satisfactory and up to the mark. He is a sincere, hardworking and committed person. He obeys his seniors and keep them updated about the recent happenings. He is a good team member and good team leader." and assessed him as an "Outstanding Officer". Further, based on the performance scored in the interview held on 20.01.2010, he was appointed as Project Engineer on contract w.e.f. 01.02.2010. They also revised his pay to Rs.18240 vide their order dated 01.07.2010. Again based on his performance, the respondent, vide its order dated 03.08.2010, was pleased to give him promotion as Sr. Project Engineer (redesignated as Sr. Technical Officer) in the pay band of Rs.15600-39100 with Grade Pay of Rs.6600/-. His performance was again assessed for the period from 01.01.2010 to 31.12.2010 as "upto the mark and very satisfactory" and rated him as an "Outstanding Officer". He was also granted annual increment revising his pay from Rs. 18950/- to Rs.19720/- with Grade Pay of Rs.6600/-. While the Applicant was consistently excelling himself in his



performance in the Embedded Systems Division in which he was working, he was posted to Development Division vide order dated 28.12.2011. According to him, it was a deliberate attempt to show his performance below "excellent". However, during the period from 01.01.2011 to 31.12.2011 also, the assessment of him was, "The quality of output is manageable. There is lot of scope of improvement. The person needs to improve the team leader skill" and he was adjudged as "Very Good Office". He was also given increment in pay raising from Rs. 19720/- to Rs.20510/- with Grade Pay of Rs.6600/-. As explained by the respondents, his performance was improved in the New Division in the next year from 01.01.2012 to 31.12.2012 and the assessment of him was "I agree with the statement given by the official. He was instrumental in the implementation of RFID at RMSC" and he was adjudged as "Very. Good". However, he was transferred back to "Embedded System Group" with effect from 23.05.2013. According to the Applicant, the said transfer was also again to deny consistency in his high level performance. Still, he earned his increment in the pay raising from Rs.20510/- to Rs.21330/- with Grade Pay of Rs.6600/- w.e.f. 03.07.2013.

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19. In our considered view, the impugned decision of the respondents not to renew the Applicant's contract beyond 31.01.2015 is not only arbitrary, whimsical and capricious but it is also perverse to the extent that the Applicant's performance was adjudged "Below Average" and declared him "Unfit" as against the verifiable facts that his performance has already been assessed as "Outstanding/Very Good" and found to be fit to retain in the organisation as he was useful to it, by his supervisory officers themselves. We are also of the considered view that the Memorandum dated 06.08.2013 by which the Respondents have carried out the performance review of the



Applicant is contrary to the Bye-Laws of the Respondent inasmuch as it was used as a weapon to arbitrarily undermine the performance of the Applicant as "Below Average" when actually his performance was "Outstanding/Very Good". The so called presentation of job accomplishments, assignments, efforts etc. in the maximum time of 10 minutes is so subjective and farce as it does not stand the test of reasonableness. The said presentation could have at best be used for guiding the Applicant for better levels of performance as he has already become eligible for contractual appointments upto 60 years or regularization in service and continue till the same age. In any case, it could not have been used as a tool to terminate the service of the Applicant and other similarly placed employees who have already been declared as "Outstanding/Very Good" and adjudged as a "Good team leaders". Further, admittedly, considering the competence of the Applicant, the Respondents themselves have promoted him twice during the short span of his career, first as Project Engineer and other as Sr. Project Engineer with higher pay scale and accelerated increments.

20. Again, under the Bye-Laws of the Respondents, the Applicant has earned for himself the vested right to be continued on contract basis upto his date of superannuation or, in the meanwhile, for permanent absorption by way if migration from contractual position to regular position. As observed earlier, as provided under para 18.1.5.2 the Applicant has the vested right to be considered for regular appointment as it is quite evident from his ACRs that he was a meritorious contract employee with more than 6 years of service and the Applicant has actually completed 10 years of contractual service w.e.f. 1.6.2005 to 31.5.2015. Under para 18.5.1 of the Bye-laws, he was also entitled to be considered for regular



appointment as he had completed the training period from 1.6.2005 was completed successfully and without any break he was inducted into contract service w.e.f. 17.5.2006.”

8. The learned ASG, appearing for the petitioners, contends that the learned Tribunal has failed to appreciate that, apart from regular employees, CDAC also has three other categories of employees, that is, Temporary Employees, Project-Based Employees, and Employees Appointed under Specialised Category.

9. He contends that the appointment of the respondent herein was Project-Based and, therefore, he could not have been treated as a temporary employee entitled to a regularisation under the Bye-Laws of CDAC.

10. He further submits that, in terms of the OM dated 06.08.2013 issued by the CDAC, the assessment of an employee for retention is based on various factors, that is, ACR Rating, Presentation, Work Report, and Personal Interaction. Each member of the assessment committee is required to grade the officer on the above parameters. He submits that the respondent was also assessed on the same parameters and was found to be ‘unfit’ and below average. The learned Tribunal, however, has exceeded its jurisdiction by re-assessing the fitness of the respondent to be retained in service and has passed the above quoted directions, including regularising the respondent into service.

11. The learned counsel for the respondent refutes the above submissions and reiterates that the learned Tribunal, based on the entire service record and profile of the respondent, rightly found the



decision taken by the review committee to be completely arbitrary. He submits that the respondent was appointed on a temporary basis and, in terms of the Bye-Laws, was entitled to be continued in service till the age of superannuation, that is, 60 years, and in the interregnum, to be considered for regularisation. He submits that, therefore, no fault can be found with the direction passed by the learned Tribunal.

12. We have considered the submissions made by the learned counsels for the parties.

13. Before proceeding further, it is necessary to note a few clauses of the Bye-Laws of CDAC, which are relevant to the present dispute. Clause 14.1.5 of the Bye-Laws empowers the Director General of CDAC to create contract, project, and temporary post, other than regular posts, for making appointments thereto. Clause 18.1 of the Bye-Laws prescribe the terms of appointment. It is reproduced herein below:

“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 Rs.14300-400-18300 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.

18.1.5.3 Considering the special situation of merger of four different organizations with different service conditions, which have come together, the following one-time provisions will be extended in respect of employees who will move into the merged organization:

(a) Those who enjoy pension benefits will carry forward the same along with other benefits when they opt for these new service conditions and will be deemed regular employees. Such employees shall not avail GPF/CPF/EPF.

(b) All regular employees till the date of merger will upon accepting these service conditions will be deemed regular employees.

(c) All contractual employees (Employees recruited on pay scale and not on consolidated salary) who had joined the Society as on 31st



December 1998 (including on probation) upon opting for these service conditions will be deemed regular employees.

(d) Those who joined the Society on contractual terms of service (Employees recruited on pay scale and not on consolidated salary) from 1.1.1999 till these rules come into effect, upon opting these service conditions, will be considered for regular position on a one time basis.

18.1.6 Designations: Besides the category and Grade designations viz. TS, MAS, MSS, MMS functional designations could be assigned by DG to the employees of Scientific, Technical and Administrative cadre. No Employee shall use a designation which is not provided for in the INOA / Rules / Byelaws / Staff Rules or the modifications approved by DG in this regard.

18.1.7 Recruitment and Promotion: Recruitment and promotion of employees shall be in accordance with the Recruitment Rules of the Society as approved by the Council.

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 DIT 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.

18.1.9 Temporary Employees: Scientific,



Technical, Business, Academic and Administrative/ Support Persons may be employed in Society as purely Temporary Employees for short-term assignments of the Society. Such Temporary Employees may be paid suitable honoraria /remuneration as may be decided by the Competent Authority from time to time.

18.1.10 Certificate of Physical Fitness: Every employee shall, prior to taking up his appointment, be medically examined and be certified fit for service by the medical officer/hospital approved by the Society.

18.1.11 Agreement: Every officer of the Society shall accept in writing the terms and conditions of his appointment before joining the services of the Society.

18.1.12 Probation: Every employee of the Society on his initial appointment will be on probation for a period as specified in the Recruitment Rules.

18.1.13 Resignation: An employee may resign from the Services of the Society. Employees employed to work up to superannuation shall do so by giving three months notice; others shall do so by giving one month's notice. The Society may adjust balance EL in credit in lieu of short fall in notice period in case of resignations. In case of employees on probation, the notice period shall be one month. The Appointing authority concerned shall accept resignations. Acceptance of resignations shall be subject to obtaining clearances from various departments.

18.1.14 Superannuation: The age of superannuation for all categories of employees shall be as per instructions of Govt. of India on the subject; presently it is 60 years.

18.1.15 Working Hours: The Society shall work for 5 days a week with Saturdays and Sundays as weekly off days. Every employee



shall work for 8 hours a day. The Director General of the Society / Executive Directors/ Heads, of Centres of the Society shall be competent to declare any day as an off day and substitute any other day as a working day to meet any exigencies, disturbances during Bandh, strike etc. The working hours shall normally be 9.00 AM to 5.30 / 6.00 PM with 30/60 minutes lunch break. However, the respective centres shall decide actual timings generally within abovementioned time limits depending upon local conditions. The timing followed should not be a limiting factor to accomplish task assigned to an employee.”

14. Clause 18.1.2. states that employees, except those who are recruited against regular vacancies, shall be employed on contract for a duration of five years, which shall be renewable based upon the satisfactory performance review for further period of five years at a time, till attaining the age of superannuation, that is, 60 years.

15. Clause 18.1.5 further provides for the migration of contractual employees to regular position and states that contractual employees who have completed two or more contractual terms, covering a minimum of 10 consecutive years, shall be considered for a regular appointment. It states that such regularization shall be based on merit and carried out through a duly constituted committee for this purpose.

16. Clause 18.1.8, on the other hand, provides for a project-based contract. It states that the competent authority shall be competent to engage a person on contract for the duration of such projects.

17. In the present case, from a reading of the appointment letter of the respondent, it is very apparent that the respondent was not



appointed for a particular project or for the duration of any particular project. The appointment of the respondent was on a contractual/temporary basis and, therefore, was not governed by Clause 18.1.8 but by Clause 18.1.2 read with Clause 18.1.5 of the Bye-Laws.

18. The reliance placed by the learned ASG on the letter dated 01.02.2010, whereby the services of the respondent had been extended by a further period of five years commencing from 01.02.2010, to contend that the respondent was appointed on project basis and not on contract/temporary basis, cannot be accepted. One of the terms of this letter of extension, on which reliance has been made, reads as under:

“8. Your appointment is purely on contract on scale basis for a period of five years or co-terminus with the project on which you will be deployed or until further orders, whichever is earlier. As such your services are contracted for meeting temporary increase in workload and it does not confer you any right for continued services or regularization in C-DAC, Noida.”

19. A reading of the above would clearly show that while no specific project is mentioned in the letter, even that apart, the letter further states that the appointment of the respondent is for meeting temporary increase in workload, not specifying a particular project in question.

20. Clause 18.1.5.3 (d) further states that all the employees who have joined the CDAC on contractual terms of service prior to the coming into force of the Bye-Laws, that is, 01.10.2006, shall be considered for a regular position on a one time basis.



21. Coming to the issue of whether the committee has rightly declared the respondent as ‘unfit’ for regularization/continuation in service, we shall first note the relevant provisions of the OM dated 06.08.2013 in this regard.

22. Clauses 2 and 3 of the said OM prescribe the manner in which candidates are to be assessed by the Committee. Clause 2 provides that every staff member shall be given a maximum of 10 minutes for a presentation on his/her job accomplishments and assignments, and shall also submit a work report not exceeding two pages, duly signed by them, for consideration of the Committee. Clause 3 further provides that each member of the committee shall evaluate the employee on a scale of 1 to 10 (10 being the highest) on four aspects: (a) ACR Ratings; (b) Presentation; (c) Work Report; and (d) Personal Interaction.

23. In the present case, the petitioners had placed reliance on the rating sheet of the Review Committee meeting, which assessed the respondent as below average and as ‘unfit’ to be continued in service. The same reads as under:

“Centre For Development of Advanced Computing

RATING SHEET OF HTE REVIEW COMMITTEE MEETING at C-DAC NOIDA for GBC Employees

S N o .	Name	Designation	Date of Expiry of present contract	Average score given by the members of the review					Total Score (A+B+C+ D+E)(F)	Final Score (F/S)	Category (Extraordinary/Above Average/Below Average/Poor)	Fit/Unfit	Remarks
				Chairman (A)	Internal Member Technical (B)	External Member Academic (C)	External Member (Industry/Govt. Org.) (D)	Internal Member HR (E)					



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16	Lalit Kumar	Senior Technical Officer	31/01/2015	6.72	6.87	6.87	6.87	6.69	34.02	6.80	Below Average	UNFIT"	
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24. The learned Tribunal, however, found that there was no basis for the conclusion arrived at by the committee. It gave a detailed account of the performance appraisal of the respondent over a period of time, wherein his work had been appreciated and he had even been promoted. We have already quoted the relevant findings of the learned Tribunal hereinabove.

25. Though the learned ASG sought to contend that the respondent's performance was judged by the Committee on the prescribed parameters, we find the same to be completely arbitrary in view of the findings of the learned Tribunal regarding the respondent's track record.

26. While we agree with the learned ASG that it is not the function of the Court to re-assess the performance of an employee, in the given facts, where the Committee's report is found to be arbitrary and contrary to the performance record of the employee, the learned Tribunal has rightly interfered with it.

27. As far as, the plea of regularization is concerned, the learned Tribunal has merely placed reliance on Clause 18.1.5.2 read with 18.1.5.3 to direct that the respondent is entitled to be considered for migration from a contractual position. It has not directed that the respondent has to be regularised.

28. We, therefore, find no infirmity in the order passed by the learned Tribunal. The present petition is, accordingly, dismissed. The



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pending applications, if any, also stands disposed of as having been rendered infructuous.

NAVIN CHAWLA, J

MADHU JAIN, J

AUGUST 13, 2025
ssc/P/DG