

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2152/89
T.A. No.

199

DATE OF DECISION 10.8.1990.

Shri Yogendra Kumar

PetitionerApplicant

Shri J.K. Bali

Advocate for the Petitioner(s) Applicant

Versus

Union of India through Chief Respondent

Engineer, Delhi Zone, MES, Delhi Cantt.

Smt. Raj Kumari Chopra

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

(Judgement of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Member)

The grievance of the applicant, who has filed this application under Section 19 of the Administrative Tribunals Act, 1985, relates to the termination of his services by the respondents w.e.f. 8.4.1986.

2. The applicant joined the service in the M.E.S. Office, (E&M) at Kashmir House, Rajouri Marg, New Delhi, on 6.6.85 and worked upto 8.4.1986. The total period of service rendered by him is 233 days with artificial breaks. He was not given work after 8.4.1986. He has alleged that while terminating his services, the respondents had retained the services of other Workmen though they were junior to him. His juniors have also been regularised, ignoring his claim.

2. The respondents have stated in their counter-affidavit that those who have been regularised as Wiremen, fulfilled the requisite qualifications, including the prescribed age-limit. According to them, the applicant did not meet the requisite qualifications for appointment on regular basis as he was overaged. They have not, however, averred that the services of the applicant were not up to the mark.

3. We have gone through the records of the case carefully and have considered the rival contentions. The learned counsel for the applicant relied upon the decision of the Chandigarh Bench of this Tribunal in Bhawani Singh & Others Vs. Union of India & Ors., 1989 (1) ATLT, C.A.T. 375 in support of his contention that M.E.S. in which the applicant is also working, is an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, that the employees of the M.E.S. are Workmen within the meaning of Section 2(s) of the said Act, and that termination of their services without complying with the provisions of Section 25F amounts to retrenchment within the meaning of Section 2(cc) of the said Act.

4. Following the ratio in the aforesaid decision, we hold that the applicant in the instant case, who is also working in the M.E.S., is entitled to the protection of the Industrial Disputes Act.

5. Admittedly, the applicant has worked for 233 days between 6.6.1985 and 8.4.1986. If the Sundays and holidays are also added, the number of days will work

out to 285 days. In the case of H.D. Singh Vs. Reserve Bank of India & Others, 1985 (2) SLJ 457 S.C., the Supreme Court has held that Sundays and holidays have also to be included while computing the period of work of Workmen. Accordingly, we hold that the applicant must be deemed to have worked for more than 240 days for the purpose of protection under the provisions of the Industrial Disputes Act.

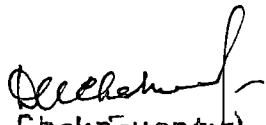
6. We also do not accept the plea of the respondents that the applicant cannot be regularised on the ground that he is over-aged now. In this context, it may be stated that neither at the time of his initial appointment through the Employment Exchange on 6.6.1985, nor at any subsequent date, did the respondents inform the applicant that he would be ineligible for regular appointment due to over age. The applicant did not suppress any information, including his age, at any point of time during his service. In the judgement of this Tribunal dated 13.4.1989 in OA-2393/88 (Shri Balwant Singh Vs. Union of India & Others) to which one of us (P.K. Kartha) was a party, it has been observed that in such a case, the respondents should consider the regularisation of the services by relaxing the requirement regarding the age-limit. The applicant has also referred to some instances in which the respondents had relaxed the upper age-limit in respect of some employees vide their letter dated 8.2.1988, which has been annexed to the rejoinder affidavit filed by the applicant (vide pages 29 and 30 of the paper-book). In our opinion, the applicant

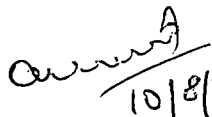
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deserves to be given the same treatment and the respondents should consider giving him also relaxation of upper age-limit for the purpose of regularisation.

7. In the light of the above, we admit the application. The termination of the services of the applicant w.e.f. 8.4.1986, is not legally sustainable and is in contravention of the provisions of Section 25F of the Industrial Disputes Act. As such, we set aside and quash the same. The respondents are directed to reinstate the applicant as Wireman w.e.f. 8.4.1986 within a period of three months from the date of communication of this order. He will also be entitled to arrears of pay and allowances and other consequential benefits. The respondents shall consider regularisation of the services of the applicant by relaxing the upper age-limit for this purpose.

The parties will bear their own costs.


(D.K. Chakravorty)
Administrative Member
10/8/90


10/8/90
(P.K. Kartha)
Vice-Chairman(Judl.)