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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 2161/89

Date of decision: 11.5.1990

Shri Nand Kishore Sharma

....Applicant

Vs.

Lt. Governor, Delhi & Others

....Respondents

For the Applicant

....Shri R.R. Rai,
Counsel

For the Respondents

....Shri M.M. Sudan,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? *yes*
2. To be referred to the Reporters or not? *No*

(The judgment of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice Chairman(J))

2 *Irregular*
~~Education~~ The applicant, who has worked as Beldar in the Department of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed to reinstate him with full back wages and continuity of service along with other consequential benefits.

2. The pleadings in the case are complete. The application has not been admitted. After going through the records of the case carefully and hearing the learned counsel of both parties, we are of the opinion that the application could be disposed of at the admission stage itself. *an*

3. The facts of the case in brief are as follows. The applicant was employed as Beldar on muster roll basis on 1.1.1987 in the ^{or Irrigation or} ~~Education~~ Department of the Delhi Administration. He worked, as such, continuously upto 9.2.1988. There was a labour strike in the department from 1st February, 1988 at the call of the workers union. According to the version of the applicant, he did not participate in the said strike. Instead, due to his non-participation in the strike, he was beaten up and manhandled by the strikers. The version of the respondents is that he participated in the strike. They have, however, not commented on the statement made by him that he was beaten up and manhandled by the strikers. The respondents did not allow him to work after 9.2.1988.

4. The respondents have contended that the applicant did not turn up for duty with effect from 2.2.1988 without any prior information to the respondents. They have relied upon an agreement executed by the applicant at the time of his engagement on muster roll basis, ^{or} according to which, the appointment is purely temporary on day to day basis terminable at any time without notice. A standard form of such agreement has been annexed to the counter-affidavit as Annexure R-1 at page 21 of the paper book.

5. Admittedly, the applicant has worked as Beldar for over one year. While the other employees who had gone on strike have been taken back to duty, the applicant was not allowed

to join. Having worked for over one year, the applicant would be entitled to the protection of Section 25 F of the Industrial Disputes Act. Termination by the employer of the service of a workman for any reason whatsoever would constitute retrenchment. Retrenchment of the applicant in the present case was not in compliance with the provisions of Section 25 F. In view thereof, in accordance with a catena of decisions of the Supreme Court, the termination of the applicant would be illegal.

6. We are also not impressed by the contention of the respondents that the applicant has abandoned service. In the case of abandonment of service, the employer is bound to give notice to the employee calling upon him to resume duty. In case the employer intends to terminate his services on the ground of abandonment of service, he should hold an inquiry before doing so (vide G. Krishna Murthy Vs. U.O.I. & Others, 1989(9) ATC 158).

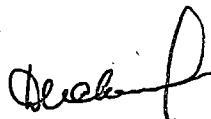
7. The learned counsel of the applicant relied upon the decision of the Chandigarh Bench of this Tribunal in Harmesh Lal & Others Vs. U.O.I. & Others, 1990(1) ATJ 133. and of the Ernakulam Bench of this Tribunal in K. Mary Kunju Vs. Union of India & Other, 1990(1) ATJ 133, in support of his contention that the termination of services of the applicant is not legally sustainable. We see force in this contention.

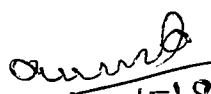
8. In the facts and circumstances of the case we hold that the disengagement of the applicant as muster roll

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Beldar is not legally sustainable. We, therefore, direct the respondents to reinstate him as Beldar within a period of one month from the date of communication of this order. In the facts and circumstances of the case we do not, however, direct payment of back wages to him.

9. The application is disposed of at the admission stage itself with the aforesaid directions. The parties will bear their own costs.


(D.K. CHAKRAVORTY)
MEMBER (A)
11/5/90


11/5/90
(P.K. KARTHA)
VICE CHAIRMAN (J)