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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH.

O.A. 2544 of 1993.

New Delhi this the 21st day of September, 1994.

Mr. Justice S.K. Dhaon, Acting Chairman.

Mr. B.N. Dhoundiyal, Administrative Member.

Shri Baljinder Singh  
R/o N.25 B 425 Lal Bagh,  
Azad Pur,  
New Delhi-110033.

... Applicant

By Advocate Mrs. Rani Chhabra.

Versus

1. Union of India through  
its Secretary,  
Ministry of Communication,  
Department of Telecommunication,  
Sanchar Bhawan,  
New Delhi.

2. Assistant Engineer Phones (PRX),  
Office of the General Manager Telephones,  
Ludhiana (Pb)-141401.

3. General Manager Telephones,  
Ludhiana (Pb).

... Respondents

By Advocate M.M. Sudan

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Acting Chairman.

The material averments in the O.A. are these.

The applicant was recruited as a casual labourer in the Department of Telecom. and was assigned the work of a driver in August, 1992 and he continued to perform the duties of a driver regularly from August, 1992 till July, 1993. Having completed more than one year of regular work out of which 240 days of continuous work, the services of the applicant were terminated by an oral order arbitrarily, illegally and without complying with the provisions of Section 25 F of the Industrial Disputes Act.

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2. A counter-affidavit has been filed on behalf of the respondents. Therein, the material averments are these. The applicant was engaged on a purely regular need basis. From August, 1992 to December, 1992 he rendered services for 113 days and from January, 1993 to July, 1993, he rendered services for 187 days. He has not completed 240 days in a calendar year.

3. The argument in the fore-front is that in view of the facts, as admitted in the counter-affidavit, the services of the applicant had been illegally terminated in so far as compliance of Section 25 F of the Industrial Disputes Act, 1947 had not been done.

4. The first question to be examined by us is whether the Department of Telecom. is an "industry" within the meaning of the Industrial Disputes Act. Mrs. Rani Chhabra, the learned counsel for the applicant, has drawn our attention to the scheme prepared by the Telecom. Department itself. This Scheme is known as Casual Labourers (Grant of Temporary Status and Regularisation) Scheme (the Scheme). This Scheme came into force with effect from 01.10.1989 onwards. Paragraph 8 of the Scheme states that despite conferment of temporary status, the service of a casual labourer may be dispensed with in accordance with the relevant provisions of the Industrial Disputes Act, 1947 on the ground of non-availability of work. A casual labourer with temporary status can quit service by giving one month's notice.

5. The only defence taken in the written statement is

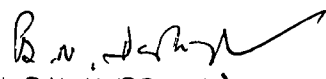
that the applicant having not rendered service for one year in a calendar year, Section 25F of the aforesaid Act would not be applicable. ~~Section 25F of the aforesaid Act would not be applicable.~~ Section 25F of the said Act does not contain even a whisper of "calendar year". It provides that no workman employed in any industry who had rendered <sup>not</sup> continuous service of less than one year under the employer shall be retrenched by that employer until the contents laid thereunder are fulfilled. Section 25B of the said Act states that continuous service for the purpose of Chapter V-A, under which Section 25F falls, a workman shall be said to be <sup>in</sup> continuous service, for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. This provision if read by itself will certainly defeat the case of the applicant. However, sub-section (2) of Section 25B relaxes the rigour of <sup>(Sub-</sup> Section (1). It states that where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year, if the workman, during a period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. According to the respondents themselves, the applicant rendered service for 240 days. The conclusion, therefore,


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is inevitable that the services of the applicant were terminated without complying with the provisions of Section 25F. The order of termination, therefore, stands vitiated.

6. This application succeeds and is allowed. The order of termination is quashed. The applicant shall be reinstated in service within a period of one month from the date of receipt of a copy of this order by the relevant authority. So far as the question of back wages is concerned, the relevant authority shall examine this question in the light of the fact ~~that~~ whether the applicant was gainfully employed elsewhere during the intervening period.

7. There will be no order as to costs.

  
(B.N. DHOUNDIYAL)  
MEMBER (A)

  
(S.K. CHAON)  
ACTING CHAIRMAN

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