

**THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT**  
**DELHI No.1 NEW DELHI.**  
**ID. No. 127/2018**

Shri Suresh Chander S/o Sh. Hukum Singh and 13 Ors. Through The president, Ashok Hotel Mazdoor Janta Union, Ashok Hotel Staff Quarters, C-47, Chankyapuri, New Delhi.

Claimants .....

Versus

The General Manager, Ashoka Hotel, 50-B Chankyapuri, New Delhi-110021.

Management...

*Shri S.S. Upadhyay, A/R for the claimants.*

*Shri J. Jagadish, A/R for the management.*

**Justice Vikas Kunvar Srivastava (Retd.)**

(Presiding Officer)

**Reference of the industrial dispute**

1. The Present Industrial Dispute case is referred by the Central Government (Ministry of Labour) through its letter dated 01.01.2018 at the behest of Sh. Suresh Chander and 13 Ors. through the president, "Ashok Hotel Mazdoor Janta Union". New Delhi, for adjudication and award. The term of reference is as follows.

*"Whether Sh. Suresh Chander S/o Sh. Hukum Singh and Thirteen (13) others (whose names are mentioned in Annexure A) are entitled for regularization of their services with the management of Ashok Hotel, Chankyapuri, New Delhi and wages at par with their regular*

counterpart working in their respective category as CPA, Drivers and Mechanic and if so what directions are necessary in this respect?"

2. The 14 claimants/workmen are enumerated here under namely :

S. No.	NAME	DESIGNATION	WORKING SINCE
1	Suresh Chander	CPA	25-07-2007
2	BabuLal	Driver	2009
3	Mahesh Kumar	Driver	20.09.2012
4	Hari Singh	Driver	13.09.2014
5	Dinesh Kumar	Driver	06/2014
6	Vijay Singh	Driver	19.06.2010
7	Sanjay Kumar	Driver	20.04.2010
8	Suresh Kumar	Driver	01.10.2014
9	Jalsingh	Guard DVR	1993 1996
10	Suresh Kumar	M/c/Driver	29.03.2005
11	Deepak Kumar	Driver	2008
12	Deepak Kumar	Driver	11.08.2012
13	Mukesh Kumar	Driver	01.10.2012
14	Pushpender	Driver	12.04.2012

3. This Central Government Industrial Tribunal on receiving the reference from the Central Government registered the same as ID. No. 127/2018 on 26 March, 2018. Since then the Industrial Dispute is pending before the tribunal. Sh. S.S Upadhyaya president of the 'Ashok Hotel Mazdoor Janta Union' represents the claimants/workmen concerned with the Dispute as AR. Sh. Amit Wadhera, for the management appeared before the tribunal representing the General Manager 'Ashok Hotel' as reflects from the order dated 7<sup>th</sup> May, 2018.

### **Factual Matrix**

4. Facts of the case, emerging out from the claim statement filed on behalf of the claimants/workmen and other materials placed before the tribunal by the Ld. A/R S.S Upadhyaya, reveals that the workmen concerned were working under the management of 'Ashok Hotel' as driver are paid salary by the management through different contractors. Members of the 'Ashok Hotel Mazdoor Janta Union' submitted their grievance regarding non regularisation

of their services on permanent basis in the regular pay scale of their respective category. With an unanimous resolution of the union the cause of the concerned workmen was taken up and raised before the competent authority including court of law. Demand notice dated 20.12.2016 was served to the management but the same remained un-replied. Consequently the claim was filed by the union before the Labour Department who made the reference for adjudication through its later No.L-42011/169/2017-IR(DU) on 31.01.2018 pursuant thereto the present Industrial Dispute is registered by the tribunal. The management is a public sector unit being government organisation functioning under ITDC, Ministry of Tourism and therefore they have to follow rules and regulations including the provision of the 'Industrial Dispute Act', 1947. (Which shall here in after be addressed as 'the Act' only). The management who pays the equally circumstanced appointed on the permanent post of driver is paying them minimum wages, declared by the Delhi Government, from time to time but the present claimants/workmen are not being paid the same, which amounts to unfair labour practice. The workmen concerned are working continuously from the date of their initial joining in the management but for the purpose of payment of their wages the management has adopted the practice to engage contractors through whom the payment of wages to the concerned workmen is made. The contractors are paid commission/service charges for making the payment to the employees. They also used to pay employers share of PF and ESI of the management as such none of the contractors have to pay from their pocket because the same is reimbursed to them by the management.

The job carried over by the workmen concerned is of perennial nature as such cannot be carried over through a contract worker. The contractors through whom the work is got done by the management have no licence from the competent authority of the Labour Department of Central Government. And even the management is also not registered with Labour Department. It is alleged that the contract between management of 'Ashok Hotel' and their contractor are bogus, sham, artificial and camouflage, as such not genuine. The intention of the management behind entering such contracts is to deprive the workmen from the regular pay scale as consequential benefits at par with the regular employees of the management working with them.

### **Unfair Labour Practice**

5. The certified standing order of the management has no provision to use the services of any employee through contractor. The certified standing orders provides that if an employee has worked in 'Ashok Hotel' continuously for 12 months he or she is entitled for regularisation of services with the management of Ashok Hotel. The workmen concerned are continuously working with the management for much more than 240 days in each calendar year, therefore, are entitled for regular job and regular pay scale with all the consequential benefits.

The workmen are engaged orally without appointment letter, only to avoid the responsibility which is also unfair labour practice. The concerned workmen discharge their duties for 8 hours through out the month except the weekly off.

### **Permanent vacancies are available**

There is sanctioned strength for each category in the management approved by the Board of Directors and as such workers are working against the permanent vacancies in their category because the management has stopped recruitment from 2001 onwards. Workers are qualified and eligible as well as experienced for the post they hold since their initial date of joining. The management does not maintain attendance sheet and payment register.

6. On the basis of the facts pleaded herein above the claimants/workmen pray the tribunal for direction to be issued to the management to regularise their services in regular pay scale of drivers along with all other consequential benefit from the day of their initial joining and also treat them employees of Ashok Hotel for all purposes.

### **No defence is submitted**

7. No written statement is filed on behalf of the management in defense against the statement of claim submitted by the concerned workmen/claimants. The order dated May 7, 2018 shows the appearance of Sh. Amit Wadhera, the manager of the management, in present industrial

dispute. On 7 May, 2018 in his presence the tribunal granted time to the management for filing written statement fixing 17.07.2018 for the same. The order sheet further shows that the management stopped appearing in the case. After several adjournments by the tribunal on 17.07.2018, 06.09.2018, and 12.11.2018 recorded the absence of management's representative vide order dated Jan 4, 2019 and proceeded ex-parte. The order dated Jan 4, 2019 is reproduced here under :

*"ID No. 127/2018  
January 4, 2019*

*Present : Sh. S.S. Upadhyay, A/R for the claimant  
None for the management.*

*No written statement has been filed by the management. Neither any authorized representative nor any official of the management is present even today. Hence, management is hereby proceeded ex-parte. Be listed for ex-parte evidence of the claimant for 11.03.2023.*

*(Presiding Officer)  
January 4, 2019 "*

8. Subsequent thereto, on March 11, 2019 one Ms. Swati Sharma, Assistant Manager, the HR for the management appeared and her presence is recorded by the tribunal. However, the case is adjourned for ex-parte evidence of the claimant for 23.05.2019. On the next date fixed (23.05.2019) Sh. S.S Upadhyay A/R for the claimant filed affidavit in evidence of the workmen/claimants Sh. Deepak, Sh. Pushpender Kumar, Sh. Babu Lal Meena, and Sh. Sanjay Kumar as witness evidence. This is noteworthy that though no application for recall of order proceeding ex parte dated 04.01.2019 is moved then also Sh. Amit wadhwa, the manager on behalf of the management was present when the affidavit of the workmen/claimants were taken on record by the tribunal. On 23.05.2019 his presence recorded in the order. Despite the knowledge of the next date fixed by the tribunal 03.09.2019 none appeared for the management therefore, tribunal adjourned the proceedings for 01.11.2019. On 01.11.2019 again none appeared for the management and the claimants/workmen submitted their another set of ex-parte evidence. Tribunal recorded the ex parte evidence of Sh. S.S upadhyay, Sh. Suresh chander, and Sh. Babu Lal Meena. Since the A/R for the workmen sought time for examination of some other claimants also the tribunal granted time. On 31.05.2022. Seven

workmen submitted their affidavit and the Ld. A/R closed evidence of the claimants.

9. Tribunal fixed the date, 11.07.2022 for arguments. On 11.07.2022 Ld. Presiding officer heard ex-parte argument as none appeared for the management. The presiding officer felt some clarification therefore fixed 21.11.2022 for hearing. After a prolonged gap of time on April 13, 2023 one Sh. J. Jagadish Kumar A/R for the management put his appearance on behalf of the management in the case running ex-parte. Even thereafter the management abstained itself from appearing in the case before the tribunal. In the presence of AR for the management Sh. J. Jagadish Kumar the case was again adjourned for argument fixing 15 May, 2022. Ultimately the tribunal on 11<sup>th</sup> of October 2023 passed the following order.

*"ID No. 127/2018  
Oct 11, 2023*

*Present: Sh. S.S Upadhay, A/R for the claimant.  
Sh. J. Jagadish, A/R for the management.*

*Called on. Ld. Authorized Representative for the claimants Sh. S.S. Upadhyay is present before the Court. He drew attention of the Court that since long ago vide order dated 04.01.2019, the present industrial dispute was set ex-parte against the management of 'Hotel Ashok'. However, this has been severely noted that despite proceeding is running ex-parte against the management, Shri. J. Jagdish Kumar Authorized Representative of management is regularly putting his appearance, but no application to recall the order to proceed ex-parte against the management is moved by him.*

*The A/R of the workmen has also contended that written note of argument, after completion of the evidences on behalf of the workmen along with relevant permission to the case has already been filed and available on record. He had information in terms of the written arguments. The Court even had heard the argument of the A/R for the workmen on 11.07.2022 and reserved the matter for passing of award however, with the appearance of Sh. J. Jagdish Kumar A/R for the management, with a view to secure the interest of justice, he asked whether willing for his argument on behalf of the management. The A/R for the management Sh. J. Jagadish Kumar is still asking adjournment which he has no justification and propriety in terms of the order dated 04.01.2019 and 11.07.2022, which still stand good and effective. No further time shall be given in terms of the said orders. The matter shall remain kept reserved for passing of the award.*

*(Presiding Officer)  
C.G.I.T-I  
Oct 11, 2023"*

## Ex- parte decision in adjudication on merits

10. This would not be out of relevance to mention that till Oct 11, 2023 and also on any further date thereafter, no application to recall the order of the tribunal dated 04.01.2019 whereby the management was proceeded ex-parte, is moved by the management the tribunal has no option than to decide and adjudicate the matter on merit on the basis of facts, materials and evidences available on record of the case ex-parte.

11. In the Presence and hearing of the Authorised Representatives of the parties to the present Industrial dispute Sh. S.S. Upadhaya for the claimants/workmen concerned and Sh. J. Jagadish for the management, I perused the record of the case and gone through the written argument filed by Sh. Upadhaya. The AR for the management stood throughout the submission of ex-parte oral argument by Sh. S.S. Upadhaya. The management though being represented through the AR since before the adjourned date of the hearing in term of order, on April 12, 2023, May 15, 2023, and July 19, 2023 neither applied for the recall of order to proceed ex-parte nor submitted the written argument despite affording opportunity. He seemed quite confident that if any award is passed against the management he would have right to get the same set aside. The attendance of AR of the management before the tribunal reflects from the orders, are being quoted here for easy reference.

*"ID No. 127/2018  
April 13, 2023*

*Present: Sh. S.S Upadhay, A/R for the claimant.  
Sh. J. Jagadish, A/R for the management.*

*Case is again listed for argument on 15.05.2023.*

*(Presiding Officer)  
April 13, 2023"*

*"ID No. 127/2018  
May 15, 2023*

*Present: Sh. S.S Upadhay, A/R for the claimant.  
Sh. J. Jagadish, A/R for the management.*

*Case is again listed for argument on 19.07.2023.*

*(Presiding Officer)  
May 15, 2023"*

*"ID No. 127/2018  
July 19, 2023*

*Present: Sh. S.S Upadhay, A/R for the claimant.  
Sh. J. Jagadish, A/R for the management.*

*As the P.O. is on leave case is adjourned for 11.10.2023.*

*(Presiding Officer)  
July 19, 2023"*

*"ID No. 127/2018  
Oct 11, 2023*

*Present: Sh. S.S Upadhay, A/R for the claimant.  
Sh. J. Jagadish, A/R for the management.*

*Called on. Ld. Authorized Representative for the claimants Sh. S.S. Upadhay is present before the Court. He drew attention of the Court that since long ago vide order dated 04.01.2019, the present industrial dispute was set ex-parte against the management of 'Hotel Ashok'. However, this has been severely noted that despite proceeding is running ex-parte against the management, Shri. J. Jagadish Kumar Authorized Representative of management is regularly putting his appearance, but no application to recall the order to proceed ex-parte against the management is moved by him.*

*The A/R of the workmen has also contended that written note of argument, after completion of the evidences on behalf of the workmen along with relevant permission to the case has already been filed and available on record. He had information in terms of the written arguments. The Court even had heard the argument of the A/R for the workmen on 11.07.2022 and reserved the matter for passing of award however, with the appearance of Sh. J. Jagdish Kumar A/R for the management, with a view to secure the interest of justice, he asked whether willing for his argument on behalf of the management. The A/R for the management Sh. J. Jagadish Kumar is still asking adjournment which he has no justification and propriety in terms of the order dated 04.01.2019 and 11.07.2022, which still stand good and effective. No further time shall be given in terms of the said orders. The matter shall remain kept reserved for passing of the award.*

*(Presiding Officer)  
C.G.I.T-I  
Oct 11, 2023"*



## **Points for determination**

12. Since the management knowingly and cautiously has not submitted written statement in defense, made intermittent appearance as and when he liked before the tribunal, watched the proceeding knowing very well that proceedings moves ahead ex-parte, cannot be said to have not been afforded opportunity of hearing, but deserves to be held, intentionally not availed the opportunity to contest the case. The tribunal has to adjudicate the present Industrial Dispute in terms of the reference made by the Central Government on 31.01.2018, the claim statement filed by the claimants/workmen and the evidences oral and documentary adduced by them before the tribunal. The tribunal further thinks it proper to settle points for determination of the Dispute as follows: -

- i) Whether the claimants Sh. Suresh Chander and 13 Ors. Name here in above are entitled for regularisation of their services with the management of Ashok Hotel? And*
- ii) If yes, whether the claimants are entitled to wages at par with their regular counterpart working in their respective category as CPA, drivers and mechanics? And*
- iii) What directions are necessary in this respect?*

13. The points of determination settled here in above are interrelated with each other. If in answer to the point of determination no. (i), the claimants are found entitled for regularisation then the point of determination no. (ii) shall consequentially stand answered positively and the tribunal in its 'Award' under the facts and circumstances of the case, shall issue necessary directions to all concerned.

### **Point for determination no.(i)**

**Whether the claimants are entitled for regularization of their services with the management of Ashok Hotel?**

The workmen have led evidences to the effect that they are working at their respective posts by producing before the tribunal the photo copies of all relevant documents made annexures with their affidavit. The claimant evidence along with their annexure (documentary evidence) stood un rebutted.

The claimants/workmen have filed affidavit in their evidence along with the relevant documents with regard to their appointment and their joining. The affidavit stands uncontroverted. The workmen have stated the specific dates of joining their employment in the management. In their claim statement and also in the document annexed there with. They have also stated their specific dates of joining individually in their affidavit and the designation for which they are working. They have deposed in evidence producing themselves as witness that they are continuing in their work uninterruptedly for every calendar year they have worked for more than 240 days. Neither any appointment letter was issued to them nor any other document acknowledging their services were provided despite repeated demands. However, they were working under the direct control and supervision of the management. Though they have been shown as employees of the different contractors during the period of their employment with the management but this was only to deprive them of their legitimate rights. The claimants as witnesses have also annexed in evidence proof on affidavit filed by them, their driving license, identity cards, issued by the 'Hotel Ashok', their security pass issued from 2010 upto year 2018 when they deposed their statement as witness before the tribunal. They have also submitted extract from the attendance sheet and duty roaster recurrently and regularly from the year of their engagement till date.

14. This would be important and relevant to note that the copies of the document annexed with the affidavit in evidence are issued by the competent authorities of the management of 'Hotel Ashok' and extract from the registers maintained and preserved by the management in the course of their ordinary business. The management though represented through ARs and was in know and knowledge of these documents has not denied them from being genuine at any stage of the proceeding therefore, shall be treated as relevant and acceptable for consideration. The claimants/workmen have successfully proved their initial joining and continuation in their employment till the date of their claim and also at the date of their statement in evidence.

15. The Ld. AR for the claimants argued that the attendance register and duty roaster filed by them proves very well that they have worked for more than 240 days continuously in each and every calendar year of their employment which makes them entitled to the claim of regularisation. Ld. AR

further argued that keeping the claimants/workmen without regularisation and confirmation of their services has malafide on the part of management so as to avoid their claim of regularisation and this is the only reason for their intentional absence from the proceeding despite the notice of the proceeding and different stages therein.

16. Evidence on record further shows and tend to prove that in the present dispute there is relationship of employer and employee between the management of 'Hotel Ashok' and the claimants/workmen. Their documents like attendance register, duty roaster, identity card, security pass, etc. have sufficiently and satisfactory establish that they are working in the premises of the management since the date of their initial joining and continuing as such. The said established fact on evidence stand uncontroverted, in absence of any document contrary to those filed by the claimants/workmen. The tribunal reached at a conclusion that they cannot be presumed to be employees of the contractor only.

#### **What for the claimant are entitled?**

17. To answer the entitlement of the claimants/workmen for regularisation in the services of management this would be material fact to be considered, whether the claimants/workmen are subjected to unfair labour practice or not. Unfair labour practice as defined under section 2(ra) of the Act, means any of the practices specified in the 5<sup>th</sup> schedule of the Industrial Dispute Act in item no. 10 includes to employ/workmen as *Badlis*, *Casual* or temporaries and to continue them as such for years, with the object of depriving them of the status and privilege of permanent workmen. The evidence on record shows that the claimants are working in the different categories for the prolonged period and they have expertise in their work. The management in utter disregard of law deprive them from regularising their services against the vacant post. The expertised services of the claimants/workmen are regularly being utilised by the management in their direct supervision and control. They are being paid their wages also by the management. The management is the beneficiary of the service of the workmen.

18. On the basis of the evidence produced by the workmen it is very clear that the present workmen are employee of 'Ashok Hotel' and they are entitled to regular pay scale of their post with all allowances and consequential benefits from the day they are working. The management of Ashok Hotel is committing unfair labour practice by paying them salary through contractor rather than paying them directly. High Court of Jammu and Kashmir in case of the J&K Bank Ltd. Vs Central Government Industrial Tribunal and others reported in 2018 LABI.C. 2970 have held:

*"Unfair Labour practice means to continue workmen in temporary/ Contractual capacity for years together despite availability of vacant post, aimed to deprive them of status and privileges of permanent workmen".*

19. In the present case the oral and documentary evidence prove the continuous service of the workmen rendered for the management without regularising their services against the permanent vacancy is held to be illegal and unjustified the issue is therefore answered in favour of the workmen that they are entitled for regularisation of their services with the management of Ashok Hotel.

**Whether the claimants are entitled wages at par with their regular counterparts working in their respective category as drivers and mechanics.**

20. This is a case where as indicated above the workmen have been victimised on account of unfair labour practice by the management. The posts for which they are aspirants are perennial in nature but they are not getting the pay scale which their counterparts (the regular employees) are getting. Keeping the situation in view it is felt proper and just to issue direction to the management to frame a scheme for regularisation of the claimants/workmen against the permanent post according to their eligibility, experience and expertise which would meet the ends of justice. They are also held entitled for pay scale equal to that of the permanent employees holding similar post in the management (Ashok Hotel) from the date of their initial appointment. The management is further liable to complete the exercise of regularising the workmen/claimants within the time stipulated in the award and to pay the arrear of the dues to them without interest if they comply with the order and award within next 2 months from the date of award failing which the amount accrued shall carry interest @ of 6% from the date of their accrual. Accordingly, the award is being ordered in following terms.

## **AWARD**

The present reference dated 31.01.2018 No.L-42011/169/2017-IR(DU) Ministry of Labour is answered and decided in favour of the claimants/workmen namely Sh. Suresh Chander and 13 ors. (whose names are mentioned in the list which is made part of the award).

The management of 'Ashok Hotel' is directed to frame a scheme for regularisation of these workmen within 3 months and regularise their services against the permanent post according to their eligibility, experience and expertise and to grant them pay scale equal to the pay scale of the permanent and regular employees holding similar post from the date of their initial joining in the management of Ashok Hotel. This direction is specific in respect to the workmen of this claim petition as per the list annexed to the award.

The management is further directed to complete exercise of regularisation of the claimants/workmen as directed above within the time stipulated (within 3 months) and pay arrear of the dues to the individual claimant without interest within next 2 months failing which the amount accrued shall carry interest @ of 6% from the date of approval and till the final payment is made.

Send the copy of this award to the appropriate Govt. for notification as required as under section 17 of the ID Act 1947,

### **List of the claimants**

The 14 claimants/workmen are enumerated here under namely,

S. No.	NAME	DESIGNATION	WORKING SINCE
1	Suresh Chander	CPA	25-07-2007
2	BabuLal	Driver	2009
3	Mahesh Kumar	Driver	20.09.2012
4	Hari Singh	Driver	13.09.2014
5	Dinesh Kumar	Driver	06/2014
6	Vijay Singh	Driver	19.06.2010
7	Sanjay Kumar	Driver	20.04.2010
8	Suresh Kumar	Driver	01.10.2014
9	Jalsingh	Guard DVR	1993 1996
10	Suresh Kumar	M/c/Driver	29.03.2005
11	Deepak Kumar	Driver	2008

12	Deepak Kumar	Driver	11.08.2012
13	Mukesh Kumar	Driver	01.10.2012
14	Pushpender	Driver	12.04.2012

**Justice Vikas Kunvar Srivastava (Retd.)**

Presiding Officer

*Ashish*

Date: 05.02.2024