THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/C/14/2005

Present: P.K.Srivastava
H.J.S. (Retd)

Shri Kishore Kumar Sharma — Applicant

Versus

DOT,BSNL,District Shahjapur — Respondent

ORDER

(Passed on 22-7-2022)

1. The case has been registered on the basis of an application under Section 33(C)(2) of the Industrial Disputes Act,1947, hereinafter referred to by the word 'Act' has been filed by applicant/workman Kishore Kumar Dubery against DOT, BSNL, Shajapur with a claim that this applicant was employed with the management as casual employee during the period 1989 to 1992. The Central Administrative Tribunal in the case of Dhaniram & Others (details not given) held that the casual employees who had completed 240 days in any calendar year prior to their date of retrenchment are entitled to be absorbed on regular basis and their termination from service was held bad in law by Tribunal. ***This judgment is judgement in rem*** and cover the claim of the applicant. It is further claimed that the Management has deliberately not taken the applicant workman in service inspite of this judgement. It has been accordingly, prayed that it be held that the workman is entitled to be in service and entitled for back wages.

2. The Management has countered the claim with a case that firstly, the claim is not maintainable under Section 33-C(2) of the Industrial Disputes Act,1947 and secondly, since no details of this workman regarding the period of his engagement and place has been specifically mentioned, the management is not in a position to be very specific in denial of the claim but according to the management, the aforesaid

Judgement of Central Administrative Tribunal referred to from the side of the applicant/workman was relating only to those casual labours who had completed more than 240 days in a calendar year prior to 22-6-1988 without break were deemed to be in continuous service. According to the management, the applicant workmen were never engaged continuously for a period of 240 days or more in a year. Further according to the Management, the claim is barred by delays and latches as it has been filed after 17 years of cause of action. Accordingly, the Management has prayed that the petition be dismissed.

3. The applicants have not lead any evidence documentary or oral. The management has filed affidavit of its witness Shri N.K,.Nandanvar, Assistant General Manager, Legal which is on record. None was present at the time of argument. Parties were given chance to file written argument, which they did not avail. I have gone through the record.

4. The claim of the applicant/workmen have been disputed by the Management on the grounds firstly, that it is delayed and secondly, the applicant/workman never worked for 240 days and thirdly this claim is not cognizable under Section 33-C (2)of the Act. Provisions of Section 33-C(2) of the Act is being reproduced as follows:-

[*33-C(2)*. Recovery of money due from an employer.-

(1) Where any money is due to a workman from an employer under a settlement or an award or under the provisions of 4*[Chapter VA or Chapter VB], the workman himself or any other person authorised by him in writing in this behalf, or, in the case of the death of the workman, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government for the recovery of the money due to him, and if the appropriate Government is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner as an arrear of land revenue: Provided that every such application shall be made within one year from the date on which the money became due to the workman from the employer: Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant

had sufficient cause for not making the application within the said period.

(2) Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and if any question arises as to the amount of money due or as to the amount at which such benefit should be computed, then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government; 1[within a period not exceeding three months:]

2*[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]

5. A perusal of Section 33-C (2) goes to reveal that the petition under this provision should be filed within one year from the date when the claim is due. According to the applicant/workman, he was engaged in 1989 and was dis-engaged in the year 1992, hence the cause of action arose in the year 1992, hence the petition under Section 33-C 2 for any relief under the provisions could be maintainable within one year from 1992.

6. Secondly, according to the applicant workmen they worked regularly for 240 days. The management denies this claim. Whether the applicant workmen worked for 240 days in any calendar year from 1989 to 1992 is a question of fact to be decided on the basis of evidence which has scope of Section 33-C 2 of the Act. It can only be done under Section 10 of the Act. Thirdly, as the Section reads, a petition can be filed under this Section only for enforcement of pre-adjudicated claim or computing any amount under the pre-adjudicated, pre-settled claim. In the case in hand, the claim of the applicant workman that he worked continuously for 240 days in any calendar year is yet to be decided because it is disputed, hence the petition and the relief claimed in the petition is not a pre-adjudicated and pre-settled claim on this score also and the point is not maintainable.

7. In the light of the above discussion and findings, the petition deserves to be dismissed and is dismissed accordingly.

No order as to costs.

(P.K.SRIVASTAVA)
PRESIDING OFFICER

Date:-22-7-2022