

**BEFORE CENTRAL GOVERNMENT INDUSTRIAL  
TRIBUNAL – CUM – LABOUR COURT-II, NEW  
DELHI**

**I.D. NO. 127/2019**

**Smt. Mithilesh, LR's of Late Sh. Anil Kumar**

R/o- Plot No. 427, Village Bijwasan,

Near Railway Crossing, New Delhi-110061.

VERSUS

**1.3251/Deepak Chibbar Security Agency,**

Shop No. 1, Plot No. 398, Khasra No. 130, Gali No. 7,

D- Block Prem Nagar, Najafgarh, P.S. Najafgarh,

New Delhi-110043.

**2.ESIC Dispensary,**

D-22, Phase-II, Mayapuri, New Delhi-110064.

**AWARD**

1. This is an application filed by the workman U/S 2A of the **Industrial Disputes Act (here in after referred as an "Act")**. Claimant had stated in his claim statement that he was working with the M-2 through M-1 as a "Security Guards" since 02.07.2012 at the last drawn wages of Rs. 23,967/- p.m. He was performing his regular duty with utmost satisfaction with the management and never given any complaint from the management. He was retired from Army

and joined with the management-2 through M-1. Management used to take a refund of Rs. 5,000/- back through workman's bank account every month after paying salary. When he refused or protested for this, he was threatened by the management to terminate his service. Workman was taken signatures in some blank papers and vouchers by the management. He had also denied the benefits of Appointment Letter, Attendance Card, Leave Book, Bonus, minimum wages, Overtime, Leave etc. When he demanded for the same and opposed for the deduction of Rs. 5,000/- p.m. then, management got annoyed and terminated his services w.e.f. 23.08.2018 without assigning any valid reason. Hence, he filed the claim with the prayer that he be reinstated with full back wages.

2. M-1 had never appeared and he was proceeded ex-parte vide order dated 15.01.2020. As per record, M-2 i.e. ESIC had appeared and had taken preliminary objections stating that no employer-employee relationship existing between the claimant and the answering management. Claimant was engaged by the independent Contractor i.e. M-1. M-1 was the real employer of the claimant. M-2 submitted that no industrial dispute could exist and also submitted that claim qua him be dismissed. After filing the WS by M-2, he has stopped coming, and he was also proceeded ex-parte.
3. Workman himself appeared in the witness box to prove his claim. In his evidence, he had reiterated the facts mentioned in his claim statement. He had relied upon the following documents. In between he was expired. His LR's has been brought on record. His wife Smt. Mithilesh had come into the witness box. She had reiterated the same fact as

mentioned in the claim statement of her deceased husband. She had relied upon the following documents i.e.:

1. Copy of Aadhar Card is exhibited as **Ex. WW1/1.** (OSR)
2. Copy of death certificate of her deceased husband Sh. Anil Kumar is exhibited as **Ex. WW1/2.**
3. Copy of legal demand notice is **Ex. WW1/3.**
4. Postal slip is **Ex. WW1/4.**
5. Copy of statement of claim filed before the conciliation officer dated 05.09.2018 is **Ex. WW1/5.**
6. Copy of letter issued by IMO incharge dated 02.08.2018 is **Ex. WW1/6.**
7. Copy of attendance sheet of the month of July 2018 is **Ex. WW1/7.**
8. Copy of I-card issued by the contractor i.e Deepak Chhibbar Security Agency dated 30.06.2017 is marked as **Mark A. Ex. WW1/8 is de-exhibited** as no original document is shown.
9. Copy of complaint to anti corruption department dated 16.10.2017 is **Ex. WW1/9.**
10. Copy of failure report is **Ex. WW1/10.**

4. I have heard the argument and perused the record. Entire case set out in the claim statement is towards M-1. M-2 is the principal employer and denied the relationship of employer-employee. Documents relied by the claimant which reflects that he was the employee of M-1 i.e. **Deepak Chhibbar Security Agency.** Documents Mark-A i.e. Photocopy of the Identity card reflects so. Even the claim statement had stated

that he was posted at ESI dispensary through M-1, therefore, the claim qua the ESI dispensary is not maintainable.

5. So far as the document relied by the LR's of the claimant is concerned that her husband (deceased claimant) was employed with M-1. I-card Mark-A suggests that he was employed with the M-1. Document i.e. Ex. WW1/6 is the attendance of security guard for the month of July, 2018 of the ESI dispensary which was forwarded to **Assistant Director, Estate Cell by IOM incharge of ESIC** for payment to the contractor. Presence of the claimant in the month of July, 2018 is also exhibited as Ex. WW1/7 where it had shown that he had worked for 27 days. Further Ex. WW1/9 reveals that claimant workers had lodged complaint in Anti Corruption Department, New Delhi regarding the above said facts.
6. Before proceeding further, text of section 25F, G and H of the Act are required to be reproduced herein :

***25F. Conditions precedent to retrenchment of workmen:*** *No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-*

*(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment*

*and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*

*(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and*

*(c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].*

**25G. Procedure for retrenchment.**—*Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.*

**25H. Re-employment of retrenched workmen.**—*Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity 4[to the retrenched workmen who are citizens of India to offer*

*themselves for re-employment and such retrenched workman] who offer themselves for re-employment shall have preference over other persons.*

7. From perusal of the above said sections, it is inferred that the claimants have no absolute right to remain in the employment of the management. The management can discontinue or retrench the workmen who have completed not less than one year of service under the employer if he has given a one month notice in writing indicating the reason for retrenchment and the period of notice has expired or he has paid the wages in lieu of notice period. The second condition is that the retrenchment compensation shall also be paid equivalent to 15-days of average pay for every completed year of continuous service. Besides this, appropriate government shall also be informed regarding the retrenchment.
  
8. Statement of claim and these documents clearly established that claimant is the employee of the M-1. As the M-1 has not brought any evidence contrary that the workman himself had left the job or his services had been terminated by way of punishment or he had been given any one month salary, therefore, it is established by the claimant by preponderance of evidence that his services had been terminated illegally and unjustified and in violation of Section 25 of the ID Act.

9. Now, the question arises as to what relief the workman is entitled. Since the workman was expired and his Legal heir has come on record, therefore, it is assuming that the workman was in service till his death from the date of termination. M-1 is directed to pay the entire salary at the rate of last drawn salary till his death. He is also directed to pay the salary within one month of passing this award failure of which 9% interest per annum shall be attracted. Award is passed accordingly. A copy of this award is hereby sent to the appropriate government for notification under section 17 of the I.D Act 1947.

Date: 04.03.2025

ATUL KUMAR GARG  
Presiding Officer.  
CGIT-cum-Labour Court-II