

**BEFORE CENTRAL GOVT. INDUSTRIAL-TRIBUNAL CUM-LABOUR COURT
NO-II, NEW DELHI**

I.D. No. 127/2018

Smt. Kalpana Sharma, W/o Sh. Surender Sharma,
C/o: Through- General Secretary,
All India Central PWD (NRM) Karamchari Sangathan (Regd.)
House No.- 4823, Gali No. 13, Balbir Nagar Extension,
Shahdra, New Delhi-110032.

I.D. No. 128/2018

Sh. Shan Mohammad, S/o Sh. Jahur Baksh,
C/o: Through- General Secretary,
All India Central PWD (NRM) Karamchari Sangathan (Regd.)
House No.- 4823, Gali No. 13, Balbir Nagar Extension,
Shahdra, New Delhi-110032.

I.D. No. 129/2018

Sh. Kanwar pal, S/o Sh. Bishamber,
C/o: Through- General Secretary,
All India Central PWD (NRM) Karamchari Sangathan (Regd.)
House No.- 4823, Gali No. 13, Balbir Nagar Extension,
Shahdra, New Delhi-110032.

I.D. No. 130/2018

Sh. Sunny Basist, S/o Firey Ram,
C/o: Through- General Secretary,
All India Central PWD (NRM) Karamchari Sangathan (Regd.)
House No.- 4823, Gali No. 13, Balbir Nagar Extension,
Shahdra, New Delhi-110032.

I.D. No. 131/2018

Smt. Rajbala, W/o Vijender,
C/o: Through- General Secretary,

All India Central PWD (NRM) Karamchari Sangathan (Regd.)
House No.- 4823, Gali No. 13, Balbir Nagar Extension,
Shahdra, New Delhi-110032.

I.D. No. 132/2018

Sh. Pawan, S/o Jagdish Prasad,
C/o: Through- General Secretary,
All India Central PWD (NRM) Karamchari Sangathan (Regd.)
House No.- 4823, Gali No. 13, Balbir Nagar Extension,
Shahdra, New Delhi-110032.

I.D. No. 150/2018

Sh. Prem Giri, S/o Sh. Dev Giri,
C/o: Through- General Secretary,
All India Central PWD (NRM) Karamchari Sangathan (Regd.)
House No.- 4823, Gali No. 13, Balbir Nagar Extension,
Shahdra, New Delhi-110032.

Versus

M/s The Superintendent, Delhi Circle,
Archaeological Survey of India,
Puratatwa Bhawan,
GPO Campus, E- Block, INA, New Delhi.

AWARD
05.12.2025

1. By this composite order, I shall dispose of these seven applications **U/S 2A of the Industrial Disputes Act, 1947 (herein after referred to as “the Act”)** filed by the different claimants against the same respondents. Having the common respondents and same cause of action, these cases are taken together for the purpose of deciding of these cases. Names and particulars of their employment are given under-

List of Workmen

Sr. no	Name	Post	Dates of Joining	Dates of Termination	Salary (In Rs.)
1	Kalpana Sharma	Beldar	01.07.2006	12.02.2018	9000-10000 p.m
2	Sh. Shan Mohd.	Beldar	01.05.2017	13.02.2018	9000-10000 p.m
3	Kanwar Pal	Beldar	10.05.2017	13.02.2018	9000-10000 p.m
4	Sunny Basist	Beldar	01.04.2017	12.02.2018	9000-10000 p.m
5	Smt. Rajbala	Beldar	28.02.2000	12.02.2018	9000-10000 p.m
6	Pawan	Beldar	01.04.2017	13.02.2018	9000-10000 p.m
7.	Prem Giri	Beldar	01.09.2016	16.03.2018	9000-10000 p.m

2. Workmen in their claim statement have asserted that they were working as “Beldar” on a contractual basis at the last drawn salary of Rs. 9,000-10,000/- per month. They were working in the campus of Red Fort and Humayun Tomb respectively. Works performed by workmen are of perennial in nature. Their services were terminated by the management in the year 2018 (mentioned above) without assigning any reason and without giving any notice, notice pay and retrenchment compensation etc. which is the violation of the provisions of the I.D Act. After terminating the services of the workmen, others workmen were immediately appointed by the above said management through contractor. Workmen connected to these cases have sent the representation on 8.03.2018 and 09.03.2018 respectively by speed post through his authorized union for reinstatement w.e.f. the date of illegal

termination. When the representation of the workmen was not entertained by the above management, they have requested the office bearers of this Sangathan for extending necessary help to them and the Central Committee of the Sangathan passed an espousal to this effect for helping the workmen by way of filing a case before the Conciliation Officer. Conciliation Officer had served the notices to both the parties for appearing in the hearings but, the above management under his adamant behavior refused to reinstate their service of the workmen. Hence, they have filed the present claims with the prayer that they be reinstated with full back wages.

2. Notices were issued to the management, who had appeared and filed it written statement. He had taken several preliminary objection inter-alia that Archaeological Survey of India is neither an industry nor industrial establishment undertaking so as to attract the provisions of I.D Act; Archaeological Survey of India (ASI) is discharging its duties for the preservation and conversation of ancient and historical monuments and archaeological sites which are declared to be of national importance; Archaeological Survey of India has not violated any provision of the I.D Act and every action is within the ambit of law; reference is bad in law and without application of mind.

3. On merits, respondent admitted that these workmen were engaged on daily wages as “Beldar” as alleged. It was also submitted that respondent was hiring casual labours as and when required for casual or intermittent nature of work not for full time, and only on daily wage basis. Management submitted that workmen had never been appointed against any post borne on regular establishment of the department; therefore, the question of termination with or without serving any notice does not arise. He submits that claims be dismissed.

4. Rejoinders have been filed by the claimants affirming the averments, what has been stated by them in their claim statement and denying the averments made by the respondent in the WS.

5. After completion of the pleadings, identical issues have been framed in all the cases vide order dated 06.02.2019 i.e.–

1. Whether the proceeding is maintainable.
2. Whether the service of the workmen were terminated illegally by the management in violation of statutory provision.
3. Whether the workmen are entitled to reinstatement of services with full back wages.
4. To what other relief the workmen are entitled to.

6. In order to prove his case, workmen had appeared in the witness box. They had filed the affidavit in support of their claims. They have reiterated the averment made by them in the claim statement. In rebuttal, management has examined one witness **Sh. Ankur Vats**. He has also reiterated the stand taken by the respondent in his WS. He had relied upon the two documents i.e. MW1/1 and MW1/2.

7. Whole of the argument of the workmen centered around the fact that they had been appointed as “Beldar” on daily wage basis on the dates mentioned herein above and their services have been terminated without following the provisions of the Act. As such, their termination be declared as illegal and they be reinstated. They also stated that they had worked more than 240 days.

8. On the other hand, management’s case is that Archaeological Survey of India is neither an industry nor an industrial establishment and they have been performing the sovereign functions. In support of their contentions he has relied the judgment of **Bhagirath Sharma S/o Sh. Radheshyam Sharma vs. Superintendent, Archaeological Survey of India, Jaipur** passed by the Hon’ble CGIT and Labour Court whereby it was held that Industrial Dispute Act does not attract the Archaeological Survey of India. Moreover their case is that workmen were appointed as daily wages as Beldar. Respondent was hiring casual labours as and when required for casual or intermittent nature of work not for full time. Moreover, the policy has been changed by the

Government of India and the Archaeological Survey of India was also directed to disengage the workers due to change of the policy because Government of India has adopted the outsource policy.

9. In the light of the above evidence and argument advanced by the respective AR of the party in advance, my issue wise findings are as follows.

10. **Issue No. 1-** It is also important to mention here that respondent has taken the plea that the proceeding is not maintainable because alleged dispute is not an industrial dispute because **Archaeological Survey of India** is discharging his sovereign function. However, keeping the monumental faith and employing the casual labour for guarding and cleaning their sites does not come within the purview of the sovereign functions. If the plea of the management is taken as true then every government functionary would be exempted from the purview of Industrial Law. Job of the workmen are the Beldar for cleaning, grass cutting and other manual job. It is the common knowledge that people use to come to visit the monument for seeing the monument and there is no evidence led by the management contrary to the fact that no one is allowed to visit the above said sites. It is further the common knowledge that visitors visiting the site used to pay the fee. Therefore the management even though, being the government functionaries has come within the definition of an industry if we applied the triple test laid down by the Hon'ble Supreme Court for abundant in **Bangalore Water Supply Case**. Admittedly the workman had been employed as casual labour on the different dates as mentioned in their claim, however, nothing contrary had been brought on record.

11. Respondent has taken the plea and relied the judgment of **Bhagirath Sharma S/o Sh. Radheshyam Sharma vs. Superintendent, Archaeological Survey of India, Jaipur** passed by the Hon'ble CGIT and Labour Court of Jaipur, whereby it has been held that Industrial is not attracted with the Archaeological Survey of India, however, respectfully I am not agreed with the above said decision. Therefore, this issue has gone in favour of the workmen.

12. **Issue no. 2-** All the workmen have claimed to have worked with the management from different dates as “Beldar”.

13. Before parting the decision on this issues, text of **Section 2 (oo)** and 25F of the Act are required to be produced herein:

Section 2 [(oo)] “retrenchment” means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include-

***(a) Voluntary retirement of the workman; or
(b) Retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or***

[(bb)] termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health;

section 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].***

Definition of retrenchment has been couched in a comprehensive manner. It covers every type of termination of the service of the workman by the employer for any reason whatsoever, otherwise then as a punishment inflicted by way of disciplinary action. The case of voluntary retirement of the workman, retirement on reaching the age of superannuation, termination of service as a result of non-renewal of the contract of employment or of such contract being terminated under a stipulation contained therein or termination of the service of the workman on the ground of continued ill health by condition doesn't fall within the ambit of retrenchment.

14. Workmen have stated that without compliance of the provisions of Section 25F of the Act, their services have been terminated. For this, they have led their evidence. However, the workmen namely Sh. Shan Mohd., Kanwar Pal, Sunny Basist and Pawan at Sr. No. 2, 3, 4 & 6 had not led any evidence to show that they have worked for 240 days in a calendar. Section 25F of the Act prescribes the condition precedent to retrenchment of worker. It has been worded that no worker employed in any industry that has been in continuous services for not less than one year under an employer shall be retrenched. However, the workmen have to prove first

that they have worked one year continuously. Continuous service of one year means that at least he has worked 240 days in a calendar year. Admittedly, the management has not followed any of these conditions. They disengaged the services of the workmen without complying of the provisions of Section 25F of the Act, in respect of Smt. Kalpana Sharma (01.07.2006 to 12.02.2018), Smt. Rajbala (28.02.2000 to 12.02.2018) and Sh. Prem Giri (01.09.2016 to 16.03.2018).

15. Nothing has been brought by the respondent to buttress the fact that these workmen had not worked for 240 days in any calendar year. Once the workmen assert that they have worked for more than one year then, than the burden shifts to the management to prove otherwise. Here, the management has failed to rebut the same.

16. Management further pleaded that services of these workmen have been disengaged because of the change of the government policy. In **2017**, government has brought the **General Finance Rules (GFR)**, under which casual labours, muster roll labours have been made outsource, so, their services have been disengaged. However, the government decision cannot change or alter the industrial law. Change of policy does not mean that department can fire the employee at any time without following the procedure prescribed by law. Industrial law does not differentiate between the regular workman, temporary workman, muster roll employee or daily wager. He can, but, he has to follow the procedure. Judgment of **State of Karnataka vs. Uma Devi & Ors. [2006 (4) SCC 1]**, relied by the management does not come in the way regarding the illegal termination.

17. In view of the above discussion, **ID No. 128/2018** (Shan Mohammad vs. Archaeological Survey of India), **ID No. 129/2018** (Kanwar Pal vs. Archaeological Survey of India), **ID No. 130/2018** (Sunny Basist vs. Archaeological Survey of India) and **ID No. 132/2018** (Pawan vs. Archaeological Survey of India) stand dismissed, as the workmen failed to prove that they had ever worked for more than 240 days in a calendar year.

Their services are merely for eight months or less than eight months, so, they cannot say that they have completed 240 days in a calendar year.

18. So far so, the **ID No. 127/2018** (Smt. Kalpana Sharma vs. Archaeological Survey of India), **ID No. 131/2018** (Smt. Rajbala vs. Archaeological Survey of India) and **ID No. 150/2018** (Sh. Prem Giri vs. Archaeological Survey of India) are concerned. Their disengagement amounts to be declared illegal.

Relief

Generally, when the termination is held illegal then naturally reinstatement with full back wages would follow. However, in the present case, these three workmen have claimed to have worked as “Beldar”. Their claims are not for regularization; their claims are that their services as Beldar have been terminated illegally; therefore, putting them as casual labour like Beldar is not an appropriate relief. Rather than, lump sum compensation is an appropriate relief against their illegal disengagement from the services. Considering the length of services of Smt. Rajbala, Smt. Kalpana and Sh. Prem Giri which they did with the respondent for 18 years, 12 years & 2 years respectively, a lump sum compensation of Rs. 8 Lac, Rs. 6 Lac & Rs. 2 Lac respectively are considered as an appropriate relief. Hence, the management is hereby directed to pay the compensation within two months of notification of this award, failing which the management shall also pay interest @ 8% per annum on the aforesaid amount from the date of award till the date of realization. Award is passed accordingly. A copy of this award be sent to the appropriate government for notification under section 17 of the I.D. Act. A copy of this award is placed in each of the file. Records of these files are consigned to record room.

Dated 05.12.2025

ATUL KUMAR GARG
(Presiding Officer)