

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

**ID No. 31/2018, 32/2018**

**Sh. Sanjay Kumar and and Sh. Ashok vs. D.M.R.C. & Ors.**

1. **Sh. Sanjay Kumar**  
S/o Kulanand Jha,  
R/o B-788, J.J. Camp  
Suraj Park Sector-18 Rohini  
New Delhi-42.
2. **Sh. Ashok Kumar**  
S/o Sh. Vijay  
R/o N-41 B-974 JJ Camp  
Surajpark Badli  
Delhi-110042.

...Applicants/Claimants

Versus

1. **M/s Delhi Metro Rail Corporation**  
Metro Bhawan, Barakhamba Road  
New Delhi-110001.
2. **M/s Scan Guard Protection Services (P) Ltd.**  
29/1 A, D/S First Floor, Ashok Nagar  
Delhi-18. ... Managements/respondents

**Counsels:**

For Applicants/ Claimants:

*Sh. Ramjeet Singh, Ld. AR.*

For Managements/ Respondents:

*Sh. Gulab Chandra Jha, Manager, Legal for management-1 i.e. DMRC.*

*Sh. Dhiraj, representative for management-2 i.e. M/s Scan Guard Protection Services (P) Ltd.*

**Award**  
**07.03.2025**

By this Composite order, I shall dispose of the two petitions filed under section **2-A of Industrial Disputes Act, 1947 (Herein after referred as 'the Act')**. Since the respondents are the same in both petitions, these are being taken together.

2. Both claimants allege that they were in the employment of DMRC through the contractor **M/s Scan Guard Protection Services (P) Ltd.** Before proceeding further, brief facts regarding these claim petitions are required to be produced herein. The details of the claimants, whose claims are being dealt with, are given below in the tabular form:

workman	Post	Salary	Date of appointment	Date of termination
Sh. Sanjay Kumar	Housekeeper	14,000/- p.m.	15.09.2015	01.09.2017
Sh. Ashok	Housekeeper	12,000/- p.m.	One year prior to termination	01.09.2017

3. The claimants submitted that though the management used to deduct contribution of ESI and PF, but didn't provide them with the said facilities. They also alleged that the management used to withdraw Rs. 4,000/- from their bank accounts through ATM. Additionally, the management failed to provide them with legal facilities, such as Appointment Letter, Annual Leaves, Casual Leaves, Bonus, Overtime etc. When they demanded the said facilities, the management got irritated and terminated their services w.e.f. 01.09.2017. They averred that the action of management in terminating their services is bad illegal, bad, unjust and malafide. They sent their demand notice dated 23.09.2017, but no reply was received. Therefore, they were constrained to file the complaint before **Assistant Labour Commissioner (Central), Jeevan Deep Building, 4<sup>th</sup> Floor, Sansad Marg, New Delhi**. Despite filing the complaint, they were not reinstated. Hence, they filed these claims.

4. In response, **management-1 (DMRC)** appeared and filed the reply, objecting that there was no employee-employer relationship between them and the claimants. The claimants were the employees of an independent contractor **M/s Scan Guard Protection Services Ltd.,** (impleaded as management-2). Management-1 stated had entered into service agreement with management-2 for providing a work force. The claimants had been enrolled under the **Employees Provident Fund and Miscellaneous Provisions Act, 1952, Employees State Insurance under the Employees State Insurance Act, 1948,** and their contributions used to be deposited by management-2. Lastly, management-1 submitted that claims of the claimants be dismissed qua him.

5. Management-2 didn't file a formal written statement, as it didn't enclose the affidavit. It filed a letter addressing the tribunal, submitting that they were working as a Housekeeping Contractor for the mechanized cleaning at the three stations of Badli Section under contract awarded by the Delhi Metro Rail Corporation Ltd., New Delhi. It submitted that the claimants were engaged by them as Housekeepers at badli Metro Station. It further submitted that strength of manpower, under the contract, was subject to change as per directions of the principle employer. The strength of work force was rationalized by the Delhi Metro Rail Corporation Ltd. and they were directed to reduce the manpower strength at the metro station under their contract w.e.f. 01.09.2017. The decision of management-1 was conveyed to them in the last week of July 2017, and a letter dated 02.08.2017 was also issued to them, by the Delhi Metro Rail Corporation. Accordingly, they issued one month notice dated 01.08.2017 to the claimants, clearly mentioning their last day of work as 31.08.2017. One month notice was duly issued to the claimants and wages for notice period were also duly credited to the bank accounts of the claimants.

6. After completion of the pleadings, following issues were framed vide order dated 18.12.2018 :

1. If the proceeding is maintainable.

2. If the termination of service of the workman applicant is legal and justified.
3. If the workman is entitled to reinstatement with full back wages.
4. If both the respondents are jointly or severally liable for the relief sought for.

7. Both claimants and management-1 had tendered their affidavit of evidence. **Management-2 i.e. M/s Scan Protection Services (P) Ltd.** didn't bring any evidence to rebut the claimants' claims. Both claimants in their evidence reiterated the facts, as mentioned in their respective claim statements, submitting that managements had terminated their services w.e.f. 01.09.2017 in violation of legal provisions of the Act. Claimant Sh. Ashok relied upon five documents i.e. legal demand notice (Ex. WW1/1), postal receipt (Ex. WW1/2), complaint written to the Central Labour Commissioner, New Delhi (Ex. WW1/3), Identity card issued to him by management-2 (Ex. WW1/4), and his bank passbook (Ex. WW1/5), whereas Sh. Sanjay also relied upon five documents i.e. legal demand notice (Ex. WW1/1), postal receipt (Ex. WW1/2), complaint written to the Central Labour Commissioner, New Delhi (Ex. WW1/3), Identity card issued to him by management-2 (Ex. WW1/4), and his bank passbook (Ex. WW1/5). Both claimants were cross-examined by management-1. They admitted that:

- They were working as housekeeping staffs respectively at Rohini, sector-18 and Samaypur Badli metro station.
- Identity cards were issued to them by the contractor (management-2),
- Initially they were getting their remuneration in cash and subsequently started to get their salary through bank transfer. The amount used to be transferred by team leader of management-2.
- Their work used to be supervised by the officials of management-2.

- they made oral complaint to management-1 (DMRC) when their service was terminated, and no termination letter was supplied to them by management-2.

8. Management-1 had also tendered its affidavit of evidence, reiterating that there was no employer-employee relationship between DMRC and the claimants, and they were the employed at the premises of management-1 through the contractor.

9. AR for the claimants argued that, since they were employed through management-2 and their services had been terminated illegally by management-2. Since management-2 didn't lead any evidence to rebut the claimants' averment. Hence, it is proved that the claimants' service had been terminated illegally by management-2.

10. So far so, the management-1 is concerned, AR for the claimants has conceded that no relief has been sought from them. However, management-1 had been impleaded as the principal employer, and it was management-1's responsibility also to comply with the legal provisions and ensure PF and ESI deductions by management-2.

11. 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.*

12. In light of the evidence and arguments addressed, my findings are as follows:

i. The claimants in their cross-examination admitted that their services had been terminated illegally and management-2 failed to rebut the claimants' averment, the proceeding is held to be maintainable. Therefore, issue-1 goes in favor of the claimants.

II. In the present scenario, it is undisputed that the claimants in question were the employees of management-2 and they were deployed as Housekeeping staffs at the premises of management-1. However, management-2 hasn't complied with any condition as prescribed under section 25F of the Act before retrenching the claimants from their respective roles, which is mandatory by law. Management-2 did not lead any evidence to prove that they had complied with any condition before retrenching the claimants. They only took the defense that they had complied with the condition that they had served the notice pay, in

pursuance of the letter issued by management-1, requesting them to reduce the strength. Management-2 failed to bring its evidence to prove their defense. Therefore, the assertion of the claimants, in their respective claim statements as well as evidence that they had been terminated illegally, remains unchallenged, un rebutted and uncontroverted. It has been established from their testimonies that they had worked with management-2 for the relevant periods (mentioned in the table above). In the light of above findings, issue no.2 goes in favor of the claimants, as they have proved that they had worked in an industry and had been terminated illegally.

iii. So far so, the issue no. 4 is concerned, it has been admitted by the claimants that they had been employed and supervised by management-2. Therefore, only management-2 is held liable for the relief sought. Hence, issue no.4 is decided accordingly.

iv. Now the question remains what relief the claimants are entitled. Both claimants in their evidence submitted that they were unemployed since the date of their termination. Management-2 didn't lead any evidence to rebut these claims and prove gainful employment of the claimants. The defense set out by management-2 in the alleged written statement is that they had retrenched the claimants in compliance of direction issued by management-1 for reducing the man power strength, and they had paid the claimants one month salary as well as the notice. However, they failed to prove their defense, as they didn't lead any evidence.

v. It is held by the Hon'ble Supreme Court of India in the case titled as **Employers, Management of central P& D Inst. Ltd. Vs Union of India & Another, AIR 2005 Supreme Court 633** that it is not always mandatory to order reinstatement even after the termination is held illegal. Instead, compensation can be granted by the industrial adjudicator. Similar views were expressed by Hon'ble High Court of Delhi in the case titled as **Indian Hydraulic Industries Pvt. Ltd. Vs. Kishan Devi and Bhagwati Devi & Ors., ILR (2007) Delhi 219** wherein it was held by the court that even if the termination of a claimant is held illegal, the industrial adjudicator is not supposed to direct reinstatement along with full back wages and the

relief can be moulded according to the facts and circumstances of each case and the court can allow compensation to the claimant instead of reinstatement with back wages. Same view has been expressed by the Apex Court in **Maharashtra State Road Transport Corporation vs. Mahadeo Krishna Naik 2025 Latest Caselaw 157 SC** stating that upon dismissal, being set aside by a court of Law, reinstatement with full back wages is not an automatic relief. In some cases, lump sum compensation is a better relief.

vi. Here, the claimant Sh. Ashok had worked with management-2 for one year, whereas Sh. Sanjay Kumar had worked for almost two year. As the proceedings have been lingered on for over six years. Considering the length of their service, this tribunal considers it just and proper to award lump sum compensation in lieu of reinstatement.

Accordingly, compensation of **Rs. 1,00,000/- (Rupees One lakh Only)** and **Rs. 1,50,000/- (Rupees One lakh Fifty Thousand Only)** is awarded to **Sh. Ashok** and **Sh. Sanjay Kumar** respectively. The award is accordingly passed. A copy of this award be sent to the appropriate government for notification U/S 17 of the I.D Act. A copy of this award is also placed in each of the relevant files. The files are consigned to record room.

Dated 07.03.2025

ATUL KUMAR GARG  
Presiding Officer  
CGIT – cum – Labour Court – II