

**SH. ATUL KUMAR GARG, PRESIDING OFFICER, CENTRAL
GOV. INDUSTRIAL-TRIBUNAL CUM – LABOUR COURT NO
II, NEW DELHI**

ID No. 22/2019, 23/2019, 24/2019

Decided on: 07.06.2024.

Sh. Rajender Sharma, Sh. Ajay Kumar and Sh. Harbeer Singh

Vs.

Director (Chief) of NDDTC, AIIMS and Ors.

Counsels:

For Applicants/ Claimants:

Sh. Chandrashekar Azad, Ld. AR For claimants.

For Managements/ Respondents:

Sh. Rohit Lochav, Ld. AR for AIIMS.

Sh. Abhishek Shukla, Ld. AR for M/s A.S. Associates.

Award

1. These are the three cases filed by different workmen against the same respondents. Having common cause of action and common respondents, these cases are taken together for deciding the issue of maintainability in view of section 2-A of the Industrial Dispute Act which sets out the limitation for filing of claims.
2. Before proceeding further, the brief fact in regard to these claim petitions are required to be produced. Workmen particulars, whose claims are being dealt are given below in tabular form:

workman	Post	Salary	Date of appointment	Date of termination
Sh. Rajender sharma	Electrician	5500/- p.m.	01.12.2003	01.06.2013
Sh. Ajay Kumar	Electrician	3500/- p.m.	01.04.2009	01.06.2013
Sh. Harbeer Singh	Electrician	5000/- p.m.	02.08.2007	01.06.2013

3. The case of workmen is that they were appointed through management-1 with their respective dates at the post of electrician. They had always performed their duty with utmost care and diligence. Management had not been providing them legal facilities like appointment letter, attendance, earned leave, casual leave, overtime bonus and pay-scale. When the workmen demanded the above said legal facilities, the management without any intimation, started to pay their wages through contractor since 2010. When the workmen raised objection, their services had been terminated on 01.06.2013. Workmen have been rendered jobless since the date of their illegal termination. Workmen sent a demand notice regarding their illegal termination and orally requested the management for reinstatement through the conciliation officer and Assistant Labor Commissioner (Central), (Dehradun) but it yielded no result. Hence, they filed the present claim with the prayer that they be reinstated with continuity of service and full back wages along with consequential benefits and regularization of their services at the post of electrician with the retrospective effect from their initial date of joining. Respondent-1 and respondent-2 had appeared and filed their respective written statements

where they denied the averment made by claimants in their claim petition. Management-1 stated that the workmen had left the services of their own. Management-2 denied to have had any employer-employee relationship between them and the workmen. Issues had been framed in the present cases on 17.09.2019. Following issues were framed:

1. Whether the proceeding is maintainable.
 2. Where there exists any relationship as employer and employee between management-1 and management-2 and the claimants.
 3. Whether the services of the workmen were terminated illegally by the managements.
 4. To what relief the workmen are entitled to.
4. These matters were listed for filing of reply of application U/s 11 (3) (b). At that time, this tribunal found that these claim petitions were filed by the claimants in the year 2019, much beyond the period of limitation prescribed U/s 2-A (3). On 21.05.2024, these matters were fixed for consideration on maintainability of these petitions. On 30.05.2024, AR for the workmen sought adjournment stating that he was not well. He was given one week's time for giving clarification in regard to the fact whether these applications are maintainable in view of specific bar imposed by statute. Before we proceed further, it is necessary to produce the text of section 2-A:

“2-A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.- [(1)] where any employer discharges, dismisses,

retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

- (2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this act and all the provisions of this act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.*
- (3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise*

termination of service as specified in sub-section (1).

5. A perusal of the aforesaid section would go to show that a dispute connected with or arising out of discharge, dismissal, retrenchment or otherwise termination of services of the workman can be directly agitated by workman U/s 2-A of the act and it is not necessary that such disputes should be sponsored by the trade union or a substantial number of workmen. However, what is required is that workman who has been discharged, dismissed, retrenched or terminated as specified in sub-section (1) of section 2-A can make an application directly to Labour Court or Tribunal for adjudication of his individual dispute after expiry of 45 days from the date he has made an application to conciliation officer of appropriate government for conciliation of dispute. Sub-section 3 of section 2-A lay down the time limit for making such application to Labour Court or the tribunal. It provides that such application to Labour Court or tribunal shall be made before expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section-1. This right is available to the workman without any effect upon remedy available in section 10 of the act.

6. Ld. AR of workmen has relied upon the judgments **Ajayab Singh Vs Sirhind Cooperation** and **Raghubir Singh Vs General Manager, Haryana Roadways, Hissar** passed on 08.04.1999 and 03.09.2014 respectively by Hon'ble Supreme Court of India and submitted that limitation act is not applicable in the Industrial

Dispute Act. He submitted that in both of the said judgments, it was held as such.

7. On the other hand, Ld. AR for management relied upon the judgments **Balwan Singh and Ors. Vs. Sahara India Parivar and Ors., W.P. (C) 4357/2013** and **Sh. Lal Chand Vs. Himachal Pradesh State Electricity Board Limited and Ors., CWP No. 3058/2023** and stated that the case is barred by limitation as set out in clause 3 of section 2-A of act.

8. Judgments relied by AR of claimant are not relevant in the present case. The Apex Court in both the judgments passed in 1999 and 2014 had held that the limitation act is not applicable to the references made under Industrial Dispute act, 1947 and those judgments had been delivered in respect of section 10 (1) (C) of the act. Section 10 (1) of the act enables the appropriate government to make reference of an industrial dispute which exists or is apprehended at any time to one of the authorities mentioned in the section. How and in what manner or through what machinery, the government is apprised of the dispute is hardly relevant. The only requirement of taking action U/s 10 (1) is that there must be some material before the government which will enable the appropriate government to form an opinion that an industrial dispute exists or is apprehended. These cases in hand are not referred by the appropriate government by making the reference to this tribunal. These cases relied by AR of the claimants is not in reference to section 2-A of the act where the limitation is set out for approaching Labour Court or tribunal directly after expiry of 45 days of approaching the conciliation

officer in respect of their termination, retrenchment, discharge or dismissal of the services.

9. Next contention of AR for claimants is that plea of limitation has not been raised by the management, that is also not relevant. The tribunal is bound to follow the dictate of the law enacted by the legislature.
10. Reading of section 2-A (3) would lead to an irresistible conclusion that time stipulated for invoking jurisdiction of Labour Court or the tribunal as the case maybe, has to be necessarily before expiry of three years from date of discharge, dismissal, retrenchment or otherwise termination of services as specified in sub-section (1). It is mandatory, not directory.
11. Now, in cases in hand, admittedly, the services of workmen were terminated on 01.06.2013. Failure of conciliation certificate was issued by the Assistant Labour commissioner (Central), Dehradun on 20.11.2018 and the claims had been filed after three months of receiving the failure certificate i.e. on 01.02.2019 after 05 years and 08 months of their termination.
12. In view of the above discussion, all these three petitions are not maintainable in view of specific bar of section 2-A (3) of Industrial Dispute Act. Hence, these claim petitions stand dismissed. Award is accordingly passed. A copy of this award is placed in each of the file. Copy of this award is sent to the

appropriate government for notification as required U/s 17 of the I.D Act. These files are consigned to record room.

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