

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

I.D. NO. 31/2022

Sh. Kripa Shankar Sharma, S/o Late Sh. Baij Nath Sharma,
R/o RZB-124-A, Gali No.-07, Gurudwara Road, Mahavir Enclave,
Palam, New Delhi-110045.

VERSUS

1. **MTNL,**
08, Bhikaji Cama Place, New Delhi-110066.

2. **Stellar Dynamics Pvt. Ltd.,**
C-48, 3rd Floor, Community Center, Industrial Area,
Phase-I, Nariina, New Delhi-110028.

AWARD

12.05.2026

Item No. 02

I.D. No. 31/2022
12th May, 2026

Present:

Sh. Devendra Kumar, Ld. AR alongwith the claimant.

None for the management no. 1. (MTNL)

**Sh. Ghanshyam Mishra, Ld. AR for the management no. 2. (Stellar
Dyanmics)**

On the last date of hearing, after perusing the record, claimant was asked to clarify whether he has completed 240 working days with the management no. 2 in a single year. Ld. Counsel for the claimant submitted that he would produce a chart to clarify the working days of

the claimant; however, instead of producing the chart, he has called the workman. He emphasized that it was a fixed term contract for two years and the respondent has terminated the workman illegally.

Record of the present case states that claim was filed by the claimant, stating that he was appointed by the management no. 2 on the post of "Lineman" on 11.08.2020, and his last drawn wages were Rs. 19,864/- per month. It is the management no. 2 who has deputed to workman in the management no. 1. He used to work sincerely; however, management no. 2 had illegally and unjustifiably terminated his services on 31.03.2021 without any rhyme or reason and without paying the earned wages for the month of Jan., Feb., and March, 2021 and without giving any notice or notice pay to him. Hence, he filed the claim.

Both the managements have filed their respective written statements. Issues were framed on 29.08.2022. On the last date of hearing, this Tribunal had noted down that workman has failed to complete the 240 days in a preceding year to his termination.

For ready reference, the provision of Sections 2A, 2(oo) & 25F of the **Industrial Disputes Act, 1947** (hereinafter referred to as "**the Act**") are required to be reproduced herein:-

Section 2A:

[2A. 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)].

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 on-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:

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 [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 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette.]

Provision of Section 2A of the Act has been carved out in the year 1967 when the amendment has been made whereby dismissal, retrenchment or termination of an individual workman is deemed to be the industrial dispute. Subsequently, another amendment was made in 2010, whereby the appropriate government was relieved from applying of its

minds while making a reference to the Tribunal in cases of discharge, dismissal and retrenchment of the individual workman. The workman may directly file the application after taking the recourse of conciliation upon failure of the conciliation proceedings after 45 days. The next rider is that the application must be filed before the Tribunal within three years from the date of discharge, dismissal, retrenchment or termination.

Section 2(o) of the Act defines the retrenchment by the employer of the service of a workman for any reason whatsoever. However, five exceptions have been carved out where such termination does not fall within the definition of retrenchment.

Section 25F of the Act imposes certain conditions upon the employer before terminating the employee. The first condition is that the workman shall be given the one month's notice in writing indicating the reasons for retrenchment and the period of notice. The second condition is that the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months. The third condition is that the notice in the prescribed manner is served upon the appropriate government. The section 25F begins with the word that "No workman employed in any industry who has been in continuous service for not less than one year under an employer". Meaning thereby- the person can be retrenched without complying the condition (a), (b) & (c), if he has not completed one year of continuous service.

Section 25-B of the Act defines the term "continuous service". Clause-2 of the said section states that where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer. Clause-

2 of section 25-B of the Act is also required to be reproduced herein-

Clause-2 of Section 25-B of the Act-

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine;

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of a workman employed below ground in a mine;

(ii) one hundred and twenty days, in any other case.

Explanation.- For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which-

(i) he has been laid-off under an agreement or as permitted by standing orders made under the

Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
(ii) he has been on leave with full wages, earned in the previous year;
(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]

Here, the claimant himself has stated in his claim statement that he worked on the post of “Lineman” with the management no. 2 from 11.08.2020 to 31.03.2021. If the period of work is counted from 11.08.2020, then, the total number of days worked by the claimant with the management no. 2 is less than 240 days. The claimant actually worked only 233 days i.e.:

- 21 days in August, 2020,
- 30 days in Sept, 2020
- 31 days in Oct, 2020,
- 30 days in Nov, 2020,
- 31 days in Dec, 2020,
- 31 days in Jan, 2021,
- 28 days in Feb, 2021 and
- 31 days in March, 2021

In these circumstances, when the workman has not completed 240 days in a calendar year, then, the protection against termination cannot be given. Therefore, the claim of the claimant is not maintainable. Hence, the claim stands dismissed. Award is passed accordingly. A copy of this award is sent to appropriate government for notification under section

17 of the I.D. Act, 1947. Record of this file is consigned to record room.

ATUL KUMR GARG
Presiding Officer
CGIT-Cum-Labour Court-II