

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

I.D. NO. 28/2014

Sh. Swatantra Kumar & Ors, S/o Late Sh. Chotey Lal,
R/o 364A, North Loco, Railway Colony,
G.T. Road, Kanpur, UP.

VERSUS

1. Medical Superintendent,
Safdarjung Hospital,
New Delhi.
2. Director General,
Ministry of Health Services,
Through- Secretary,
Government of India,
Nirman Bhawan, New Delhi.

Appearance

For claimant: Satish Sharma, Ld. AR

For respondents: Sh. Chaudhary Shamsuddin Khan, Ld. AR for M-1.

Sh. Atul Bhardwaj, Ld. AR for M-2.

AWARD

1. This is an application U/S 2A of the **Industrial Disputes Act (here in after referred as an “Act”)** for adjudication of the following disputes:

Whether the termination of the services of the applicants w.e.f 09.03.2010 by the Medical Superintendent, Safdarjung Hospital New Delhi is legal and Justified, if not what relief the concerned applicants are entitled thereto with all other details?

2. Claimants namely Sh. Swatantra Kumar, Mohd. Yusuf, Vinod Kumar, Mahesh Kumar and Rita Kumari had stated in the claim statement that they were appointed with the management as Nursing Attendant on daily wage basis at the rate of Rs. 4440+1300 Grade Pay per month plus D.A since 11.12.2009.
3. They were initially appointed as daily wage workers through a regular advertisement in Employment News, with pay aligned to the standard group- D scale for the position. Since 1984, the policy of the hospital had been to regularize eligible casual workers into permanent posts. On 12.09.2007, the hospital wrote to the DG Health Services requesting the regularization of 121 casual workers.
4. On 17.03.2008, the hospital informed that it had 125 sanctioned daily wage positions, with 86 workers granted temporary status after one year of service, and requested regularization for the remaining workers due to the high patient to nurse ratio and the technical nature of the Nursing Attendant posts. The respondents regularly regularized daily wage workers, including nursing attendants, as per the Directorate General of Health Services (DGHS) letter dated 29.2.2008. On 24.3.2008, 47 daily wage workers were regularized with a monthly pay of Rs. 2550/- in the pay scale of Rs. 2550-3200 and other allowances. On 11.6.2008, Respondent No.3 raised concerns about outsourcing nursing attendants, citing issues with suitability, accountability, and control over outsourced workers. On 11.6.2009, Respondent No.3

informed the Ministry of Health that the hospital had 125 daily wage workers, who were regularly appointed through proper procedures, including interviews, advertisements, and employment exchange processes. They requested permission to continue the 70 daily wage workers until they were regularized.

5. On 26.6.2009, Respondent No.3 wrote to the Ministry of Health, highlighting a critical shortage of 150 nursing attendants at the hospital due to the sanctioned strength not being raised since 1989, and requested an extension of the daily wage appointments for the applicants. As a result, their services were extended until 26.4.2010.
6. On 23.10.2009, Respondent No.3 again requested Respondent No.2 to expedite the approval for outsourcing 150 nursing attendants and regularizing 70 daily wage attendants after the superannuation of existing Group D employees. However, Respondent No.2 did not respond. On 13.11.2009, Respondent No.2 instructed the publication of a tender for outsourcing 70 nursing attendants. On 17.11.2009, Respondent No.3 informed Respondent No.2 about the published tender and requested the regularization of 70 daily wage nursing attendants. Their termination is unlawful, arbitrary, and violates the hospital's own policies and Sections 25F, 25G, and 25H of the Industrial Disputes Act, 1947, as they worked over 240 days. They had gone to the conciliation officer, but, it was resulted into failure. Hence, they have filed the present claim.
7. WS had been filed by the management on 02.07.2014. He denied the averment made in the claim statement. He also submitted that present application is liable to be dismissed.

8. After completion of the proceedings, following issues have been framed on 31.10.2014 i.e.-

- (i) Whether the termination of workmen on 09.03.2010 by management is in violation of Section 25F, G & H of the I.D Act of 1947? If so its effects?
- (ii) Whether workmen are entitled for regularization as they perform duties for period more than 240 days preceding their termination? If so its effects?
- (iii) Whether employee and employer relationship exists between management and workmen? If so its effects?
- (iv) To what relief workmen/claimants are entitled?

9. Evidence of WW1, WW2, WW3 and WW4 i.e. Swatantra Kumar, Mohd. Yusuf, Vinod Kumar, Mahesh Kumar and Rita Kumari and MW1 i.e. Sh. Asharam Meena have been concluded and their examination have also been done. Now, the matter is listed for argument.

10. I have heard the argument on behalf of both the parties at bar. At that time of argument, this tribunal found that this claim petition was filed by the claimants in the year 2014, much beyond the period of limitation prescribed U/s 2-A (3). 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).

11. 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 dispute 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.

12. Here admittedly, workmen had filed the claim in the year 2014 after more than 4 years of their termination which is beyond the prescribed limit for filing the claim U/s 2(A) of the I.D Act. Hence, claim petition stands dismissed. Award is accordingly passed. A copy of this award is sent to the appropriate government for notification as required U/s 17 of the I.D Act. File is consigned to record room.

Date: 14.01.2025

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