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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 31st January 2008

No. 1072—li/1(B)-202/94-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th November 2007 in I. D. Case No. 483 of 1995 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Orissa State Commercial Transport Corporation Ltd., Cuttack and its workman Shri Raghunath Mohanty was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 483 OF 1995

Dated the 29th November 2007

Present :

Shri S. K. Mohapatra, o.s.j.s. (Jr. Branch)
Presiding Officer, Labour Court
Bhubaneswar.

Between :

The Management of M/s Orissa State Commercial Transport Corporation Ltd.
Cuttack. .. First Party—Management

And

Its Workman Shri Raghunath Mohanty .. Second Party—Workman

Appearances :

Shri R. Sahoo, Advocate .. For First -Party Management

Shri D. Patra, Advocate .. For Second-Party Workman

AWARD

The Government of Orissa in the Labour & Employment Department referred the present dispute between the Management of M/s Orissa State Commercial Transport Corporation Limited, Cuttack and its workman Shri Raghunath Mohanty under Notification No. 7559-LE, dated the 27th June 1995 vide memo No. 18585-LE., dated the 21st December 1995 for adjudication by this Court.

2. The terms of reference by the State Government is as follows :

“Whether the termination of services of Shri Raghunath Mohanty, Junior Storekeeper with effect from the 3rd February 1993 by the management of M/s Orissa State Commercial Transport Corporation Limited, Cuttack is legal and/or justified ? If not, to what relief Shri Mohanty is entitled ?”

3. Shorn of all unnecessary details, the case of the workman is as follows :

The workman was working as Storekeeper under the management of M/s Orissa State Commercial Transport Corporation Limited, Cuttack (hereinafter referred to as the management) since the year 1971 and was continuing in the said post. The workman was placed under suspension with effect from the 31st August 1991 pending a disciplinary proceeding against him. Charge was framed and the same was communicated to the workman directing him to submit his explanation. On receipt of the charge, the workman prayed for supply of specific documents to prepare his explanation but those documents were not supplied to the workman. The workman however submitted his interim explanation within the stipulated time denying the charges. It is further contended that after being placed under suspension the workman was asked to handover charge of the store to one Shri Hrushikesh Nayak and when the workman wanted time to handover the charge, the Chairman-*cum*-Managing Director of the management took away the keys of the store from the workman on 27th August 1991 during his surprise visit and therefore, the workman was not aware of the position of the stock of the store and according to the workman if any shortage had been found after on 27th August 1991 the workman could not be blamed for that. After receipt of the reply of the workman to the charges, the management appointed an Enquiry Officer for a domestic enquiry. On the 2nd June 1992 the workman was asked to remain present at the headquarters for enquiry by the Enquiry Officer but on the said date the Enquiry Officer was not present. The workman prayed for adjournment till all relevant documents are supplied to him. Consequent upon the transfer of the former Enquiry Officer, the management appointed another Enquiry Officer. The new Enquiry Officer fixed the date of enquiry to the 19th August 1992 but the workman again took adjournment on the same ground of non-supply of relevant documents and thereafter the workman again took several adjournments on the same ground. The workman was intimated to see the relevant documents in the office room of the Assistant Administrative Officer but the workman again insisted for supply of those documents to him. In this way the workman himself took adjournments after adjournments. While the matter stood thus, additional charge was framed against the workman vide order, dated the 31st October 1992 for disobedience of orders and the workman was directed to submit his explanation to the additional charge and finally the date of enquiry was fixed to on the 11th November 1992. The workman again requested for providing of copies

of all relevant documents. The workman was directed to attend the enquiry positively. On the 17th November 1992 the workman was intimated that additional charge would be enquired into on the 30th October 1992. While the matter stood thus, the workman was directed to show cause against the proposed punishment of dismissal. The workman filed his show cause. The management after considering the show cause, dismissed the workman from his service with effect from the 3rd February 1993. The workman preferred an appeal before the Principal Secretary, Commerce & Transport Department, Orissa, Bhubaneswar vide his appeal memo, dated the 9th April 1993 but the workman was directed to appear before the Chairman-*cum*-Managing Director of the management on the 14th July 1993 for hearing of the Appeal. In course of personal hearing of appeal, the workman was not asked anything and his appeal was rejected vide letter, dated 31st July 1993. Being aggrieved by the action of the management, the workman filed O.J.C. No. 4532/94 before the Hon'ble High Court of Orissa. The Hon'ble High Court of Orissa quashed the order of appeal passed by the Chairman-*cum*-Managing Director and directed to the Principal Secretary to Government of Orissa, Commerce & Transport Department to consider the appeal. Pursuant to the order of the Hon'ble High Court of Orissa the Commissioner-*cum*-Secretary to the Government, Commerce & Transport Department, Orissa, Bhubaneswar considered the appeal of the workman and rejected the same vide his order dated the 1st December 1994, Being aggrieved by the order of dismissal the workman raised an industrial dispute before the labour authorities who tried for a conciliation which failed and therefore the present reference. Thereafter the workman again filed O.J.C. No. 2751/95 before the Hon'ble High Court of Orissa challenging the order of the Appellate Authority. The Hon'ble High Court of Orissa however found that as because an industrial dispute and a reference was pending before the Labour Court, the Writ Petition became infructuous and the Hon'ble Court directed for disposal of the present reference.

4. Shorn of all unnecessary details, the management in its written statement has contended that on the basis of materials available, charge had been drawn up against the workman and he was asked to submit his explanation. On receipt of the explanation from the workman, found that the explanation was not satisfactory and therefore, an Enquiry Officer was appointed to conduct the enquiry. The main charge against the workman was that on the 27th August 1991 the then Chairman-*cum*-Managing Director of the management on a surprise inspection of the Store found that there were no stock of spare parts said to have been supplied by M/s Arrora Traders and that some substandard old quantity of spare parts were lying in place of new stocks. Although goods had been shown to have been received, the same were not available in the store and in this way it was found that there had been shortage of stocks amounting to lacs of rupees. Therefore, the Chairman-*cum*-Managing Director sealed the Store room in presence of the Stores Purchase Officer, Accounts Officer and the workman who was placed under suspension. All reasonable opportunities had been given to the workman and he was intimated to inspect all relevant documents in the office room of the Assistant Administrative Officer but the workman did not inspect any of the relevant documents deliberately. The workman did not co-operate and did not attend the enquiry to defend himself on one ground or other. Although reasonable opportunities had been given to the workman, the workman deliberately did not attend the enquiry and therefore the enquiry was conducted *ex parte* and the workman was found guilty of the charges which were quite serious. The enquiry report was duly supplied to the workman and he was asked to give his show cause and thereafter due notice was given to the workman of proposed

punishment and he was directed to submit his show cause in the matter. Since the charge proved against the workman was quite serious, his continuance in the department would have been detrimental to the interest of the department and therefore, the workman was dismissed from service. The management in its written statement has stoutly defended the enquiry conducted by the Enquiry Officer and the punishment of dismissal of the workman from his service on conclusion of the said enquiry. The management has contended that the workman is not entitled to any relief whatsoever.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination—

ISSUES

(I) Whether the termination of services of Shri Raghunath Mohanty, Junior Storekeeper with effect from the 3rd February 1993 by the management of M/s. Orissa State Commercial Transport Corporation, Cuttack is legal and/or justified ?

(II) If not, what relief Shri Mohanty is entitled to ?

6. *Issue no. (i)*—It is of paramount importance to first consider as to whether the domestic enquiry conducted against the workman was fair and proper and as to whether reasonable opportunities had been given to the workman to defend himself.

M.W. 1 is the Enquiry Officer who conducted the enquiry into the charges against the workman. In his evidence M.W. 1 has stated that as per direction of the management vide Ext. 1 he was appointed as Enquiry Officer to conduct the enquiry. The Accounts Officer-II was appointed as the Marsalling Officer vide office order Ext. 1. M.W. 1 has stated that he issued notice to the workman fixing dated the 19th August 1992 for enquiry. Ext. 2 has been proved as the copy of the notice issued to the workman. On the 19th August 1992 the workman remained absent and prayed for adjournment on ground of illness. On the 13th August 1992 the workman had filed a petition for supply of documents vide his application Ext. 4. Under Ext. 5 the workman was directed to specify the documents he intended to rely and in Ext. 5 the workman was directed to see the relevant documents at the time of enquiry. The enquiry was adjourned to 28th August 1992 and the said fact was communicated to the workman vide Ext. 6 but on the said date enquiry could not be held as the Enquiry Officer M. W. 1 remained absent at the headquarters in connection with urgent official works. The workman again in his letter Ext. 7 demanded supply of documents to him and under Ext. 8 the workman had been directed to attend the enquiry on the 15th September 1992 and he had been directed to see the documents in the office on the 7th September 1992 in the office of the Assistant Administrative Officer. Under Ext. 9 the workman again made prayer for supply of attested copies of documents. The enquiry was adjourned to 22nd September 1992 and the fact was communicated to all concerned vide Ext. 10. On the 21st September 1992 i.e. one day prior to the proposed enquiry the workman came to the office of the Assistant Administrative Officer and submitted an application for adjournment on the ground of his own illness and the workman did not attend the enquiry on the 22nd September 1992 and therefore,

the enquiry was adjourned to 8th October 1992. The workman was informed in the matter by Registered Post with A.D. and also through local Dak. M. W. 1 has proved Ext. 12 as the xerox copy of the letter, dated 30th September 1992 under which the workman was informed about the adjourned date. The registered postal cover returned unserved as the workman was found absent in his address. Exts. 1 and 14/a are the reports of the office Peon who could not serve Ext. 12 on the workman due to his absence in his residence. Therefore, the enquiry was again adjourned to 11th November 1992 and the workman was informed about the adjourned date vide letter dated the 30th October 1992. Ext. 15 is the office copy of the letter dated the 30th October 1992. The said letter was received by the workman on the 31st October 1992. On the 7th November 1992 the workman again submitted an application regarding supply of documents to him vide his letter Ext. 16. On the 9th November 1992 the Enquiry Officer, M. W. 1 informed the workman that copies of documents could not be supplied to him and that the workman would be given opportunity to inspect the documents himself. Ext. 17 has been proved as the xerox copy of the letter, dated the 9th November 1992. On 11th November 1992 also the workman did not attend the enquiry but prayed for an adjournment. Ext. 18 is the xerox copy of the request of the workman for adjournment. Since the workman did not attend the enquiry on the 11th November 1992, the enquiry proceeded *ex parte*. In his evidence M.W. 1 has deposed in detail about the procedures he followed during the enquiry in which Ch. N. K. Nanda was the Marshalling Officer. Further evidence of M. W. 1 reveals that charge framed under Ext. 19 had been duly supplied to the workman and he had been given due opportunity to submit his explanation to the said charge Ext. 20 is the reply of the workman to the charge. Exts. 21, 22 and 23 are the xerox copies of statement of witnesses who deposed during the *ex parte* enquiry. Further evidence of M. W. 1 reveals that on the 27th August 1991 the Chairman-cum-Managing Director of the management had inspected the store in which the workman was working as Junior Storekeeper. Ext. 24 is the xerox copy of the inspection report of the Chairman-cum-Managing Director which reveals that the Chairman-cum-Managing Director had physically verified the spare parts supplied by M/s Arrora Traders, Cuttack vide their Bill No. AT/185/91-92, dated the 13th August 1991 and No. AT/190/91-92, dated the 14th August 1991 amounting to Rs. 2,99,988.35 and found that the quantity of spare parts supplied by M/s Arrora Traders did not tally with the entries in the bills and the cost of the items supplied was only Rs. 50,000 at best and that quality of materials was very poor and the spare parts were unserviceable and were of bad quality. During the inspection by the Chairman-cum-Managing Director the workman behaved in a highly irresponsible manner and the workman had made entries in the stock register without proper check and verification of the materials, etc. The Chairman-cum-Managing Director seized the related files and the stock and formed a committee consisting of Accounts Officer, Assistant Mechanical Engineer and the Assistant Accounts Officer to verify the spare parts supplied by the dealer one by one and submitted a report. The workman was formed vide Ext. 26 to remain present during full inventory by the Committee. Ext. 27 reveals that the Committee by observing necessary formalities made inventory of the stock and found huge shortages in stock. In his evidence M. W. 1 has proved a large number of documents i.e. xerox copies of purchase orders, dated the 12th August 1991, xerox copies of bills and has

further proved Ext. 32 consisting of xerox copies of challans (11 sheets) under which the workman had received materials supplied by M/s Arrora Traders against purchase orders Exts. 28 and 29. Ext. 35 has been proved as the duplicate stock register opened by the workman unauthorisedly without the knowledge of the authority and Ext. 36 is the xerox copy of note sheet under which the workman had unauthorisedly recommended for sanction of payment to M/s Arrora Traders. The enquiry report has been proved as Ext. 37. The lengthy cross-examination of the Enquiry Officer M. W. 1 has failed to elicit anything to show that the enquiry conducted by M. W. 1 was in any way unfair and improper. From the evidence of M. W. 1 it is very clear that although ample opportunities had been given to the workman to remain present during the enquiry, he deliberately on one ground or other sought for adjournments of the enquiry dates and always insisted for supply of documents and although ample opportunities had been given to the workman to inspect the documents in the office, the workman did not inspect those documents. The workman W.W. 1 in his evidence has mainly stressed that he had not been given due opportunity to defend himself as because he was not supplied with the copies of the documents by the Enquiry Officer in spite of his repeated prayers in the matter. This by itself does not render the enquiry improper or unfair. On the other hand, the clinching evidence of M. W. 1 which has been supported by large numbers of documents show that the enquiry conducted by M. W. 1 was fair and proper. The proceeding Ext. F is very clear and the workman had been given a detail charge sheet and had been given time to offer his explanation. In his reply Ext. H the workman has partially admitted to the charges by stating that on verbal order of the Accounts Officer he had placed the file before the Commercial Manager for payment of sums to M/s Arrora Traders. In Ext. H although the workman has claimed that during his absence the store was opened and goods were allowed to be taken out after dated the 27th August 1991, he has not tendered any proof in that regard. Considering all these evidence on record it is clear that the enquiry into the charges against the workman had been duly enquired by the Enquiry Officer, M.W. 1 and reasonable opportunities had been given to the workman to defend himself properly and that the enquiry was fair and proper. The principles of natural justice was adhered to by the management in the matter of conducting the enquiry into the charges through the Enquiry Officer M.W. 1. It is not for this Court to reopen the enquiry and go into the factual aspects of the charge proper and to find out whether there were shortages or not, etc. Since the enquiry was fair and proper and reasonable opportunities had been given to the workman to defend himself and all charges were proved against the workman and the management had rightly dismissed the workman from his service. The charges against the workman were quite serious and all those charges had been duly proved through a fair and proper enquiry. Hence, the issue No. (i) is answered to the effect that the termination of services of the workman Shri Raghunath Mohanty, Junior Storekeeper with effect from the 3rd February 1993 vide order Ext. M/18 by the management of M/s Orissa State Commercial Transport Corporation Ltd., Cuttack is legal and justified. The Issue No. (i) is answered accordingly.

7. *Issue No. (ii)*—In view of my answer to Issue No. (i), the workman is not entitled to any relief whatsoever. The Issue No. (ii) is answered accordingly.

The reference is answered accordingly .

Dictated and corrected by me.

S. K. MOHAPATRA

29-11-2007

Presiding Officer

Labour Court

Bhubaneswar

S. K. MOHAPATRA

29-11-2007

Presiding Officer

Labour Court

Bhubaneswar

By order of the Governor

K. TRIPATHY

Under-Secretary to Government
