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EXTRAORDINARY

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## LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th May 2005

No. 4399-li/1(b)-33/2005-L.E.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th April 2005 in I.D. Case No. 49/1990 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Nayagarh Central Co-operative Bank Ltd., Nayagarh and its workman Shri Jayadev Mahalik, Cadre Secretary represented through Cadre Sampadak Sangha, N.C.C. Bank Ltd., Nayagarh was referred for adjudication is hereby published as in the schedule below :

### SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 49 OF 1990

Dated the 29th April 2005

*Present :*

Shri P. K. Sahoo, O.S.J.S. (Jr.Branch),  
Presiding Officer,  
Labour Court, Bhubaneswar.

*Between :*

The Management of . . First-party—Management  
Nayagarh Central Co-operative  
Bank Ltd., Nayagarh.

And

Their workmen represented through . . Second-party—Workman  
Cadre Sampadak-Sangha, N. C. C. Bank,  
Limited, Nayagarh.

*Appearances :*

Shri G. S. Dalabehera . . For First-party—Management

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Shri S. Ch. Satapathy, Advocate . . For Second-party—Workman

## AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No. 9061(5)/ L.E., dated 21-7-1990 for adjudication and Award.

2. The terms of reference may briefly be stated as follows :

“Whether the discharge from service of Shri Jayadev Mahalik, Cadre Secretary with effect from 19-9-1989 by the Management of Nayagarh Central Co-operative Bank Limited, Nayagarh is legal and/or justified ? If not, to what relief is Shri Mahalik entitled ?”

3. The brief facts giving rise to the present reference are that workman Jayadev Mahalik was discharged from service with effect from 19-9-89 by the Management of Nayagarh Central Co-operative Bank Ltd., Nayagarh ( in short the Management) after he was found guilty in a departmental proceeding initiated by the management on several charges. The Union raised a dispute before the District Labour Officer, Bhubaneswar but the conciliation proceeding initiated by the District Labour Officer, Bhubaneswar ended in failure and the matter was ultimately referred to this Court by the Government in the Labour & Employment Department for adjudication. According to the workman, the charges levelled against him are all false, baseless, concocted and are based on no material evidence. It is categorically averred by the workman in his statement of claim that he was not afforded due and reasonable opportunity to defend his case during enquiry. Therefore, the action of the Management, according to the workman, in discharging him from service with effect from 19-9-1989 was illegal and unjustified. On the above backgrounds the workman has now prayed for his reinstatement in service with full back wages along with other service benefits. Hence, the reference.

4. The Management, on the other hand, has filed written statement denying all the allegations of the workman reflected in his statement of claim. According to the Management, the workman during his tenure of service was placed in different societies under the Management but he could not be able to render service to the satisfaction of the Management as a result he was attached to the main branch but even then he could not discharge his duty to the satisfaction of the Management. He committed severe illegalities and irregularities during tenure of his service as a result proceedings were initiated against him under compelling circumstances and opportunity of personal hearing was given to him to justify his claim with regard to his discharge from service. Charges were framed against him on 12-4-1988 and he was called for to submit his explanation by 25-4-1988. Subsequently he was placed under suspension vide Memo No. 8023, dt. 12-4-1988 for the charges of gross negligence in official duty, misappropriation of Society fund and disobedience of official orders. Domestic enquiry was conducted and all reasonable opportunities were given to him to defend his case during the enquiry. During enquiry he was found guilty of the charges levelled against him and the Management was constrained to discharge him from service with effect from 19.9.89. According to the Management, the action taken in this respect was legal and justified and therefore, the workman is not entitled to any relief as prayed for. On the above background, the rejection of the claim of the workman has been prayed for by the Management under the present reference.

5. Basing on the above pleadings of the parties, the following issues have been framed.

## ISSUES

- (i) “Whether the domestic enquiry was properly held to establish the misconduct of the workman ?
- (ii) Is the discharge of the workman from service with effect from 19-9-1989 legal and/ or justified ?
- (iii) To what relief ?”

6. The workman in support of his case has examined himself as W.W.1. and has relied upon series of documents marked as Exts. A to B respectively. On the other hand, the Management has examined five witnesses and has relied upon the series of documents marked as Exts.1 to 11 respectively in support of its case.

## FINDINGS

7. *Issue Nos. (i), (ii) and (iii)*—For better appreciation and adjudication of the dispute under reference, all the above three issues are taken up together.

In the present case the Management in order to prove and establish its case has led evidence first. M.W.1, Chhayakanta Routaray in his evidence has clearly stated that the workman was the Cadre Secretary of the Bank and he was retrenched from service on 19.9.89 as per the decision of the Cadre Committee vide Ext.1. Subsequently the workman made representation by way of mercy petition vide Ext.3 and basing on the mercy petition he was reappointed in service with effect from 4-9-1991 vide Ext.2. He has further stated that prior to filing of the mercy petition, the workman has approached the concerned Minister who also recommended for his immediate reappointment in the Bank vide Ext.4. During cross-examination he has categorically stated that due to gross negligence in duty, misappropriation of society fund and in-subordination, he was charge-sheeted. Charges were framed and enquiry was conducted against him. During enquiry he was given all reasonable opportunities to defend his case. Due to the above misconduct he was terminated from service. The perusal of the evidence of M.W.5, Tusarkanti Panda clearly reveals that while the workman was working as Secretary there were allegations of gross negligence in duty, misappropriation of fund and in subordination for which disciplinary proceeding was drawn up. Enquiry to the above charges was conducted by the Enquiry Officer appointed by the Management who enquired into the matter fairly and properly. Subsequently the Enquiry Officer submitted his report to the Management wherein the charges levelled against the workman were established. The matter was placed in the cadre committee and as per the decision of the cadre committee the workman was dismissed from service. The workman was asked to appear for personal hearing but he appeared with an advocate which was not acceptable to the cadre committee. The workman did not appear subsequently and the punishment of discharge was inflicted on him. During cross-examination he has categorically stated that the enquiry conducted by the Enquiry Officer was fair and proper. He has further stated during cross-examination that all legal dues were paid to the workman after he was discharged from service. M.W.4, Prafulla Chandra Samantaray in his evidence has successfully proved the charges leveled against the workman and nothing material and substantial has been elicited during cross-examination by the workman so as to discard his evidence. It is in the evidence of M.W.3, Gangadhar Sahoo that as per the audit report the workman was to pay to the Management a sum of Rs. 22,922 and the Management was to recover the aforesaid amount from him. M.W.2, Subal Charan Jena in his evidence has clearly and categorically stated that he was appointed as Enquiry Officer and conducted enquiry against the workman with regard to the charges levelled against him. Out of the total allegations two allegations were fully established and one of the allegations was partly established and the workman was exonerated from another charge levelled against him with regard to the poor collection. After completion of enquiry he submitted the enquiry report to the management vide Ext.6. He has been cross-examined at length but nothing material and substantial has been elicited to discredit his evidence. The evidence in cross-examination is not scattered by the workman in any manner. Rather the cross-examination of M.W.2 clearly shows that he had conducted the enquiry fairly and properly and during enquiry the workman was afforded all reasonable opportunities to defend his case.

8. Now coming to the evidence of the workman, it is seen that although he belonged to scheduled caste but the Management did not give him promotion inspite of the rules of the Government rather gave promotion to the employees belonging to general caste. It is also in his evidence that the Management had made seniority list but ignoring his seniority it gave promotion to the juniors. The Management also gave fresh appointments to the juniors violating the rules and regulation of the Bank for which they all raised protest and accordingly formed an Union in which he was the President. They all made protest and gave dharana against the illegal action of the Management for which a departmental proceeding was initiated against him. During enquiry one Subala Charan Jena (M.W.2) was appointed as Enquiry Officer inspite of his protest. The enquiry was accordingly conducted and after completion of the enquiry the Enquiry Officer submitted the enquiry report to the management. He was asked to submit his show cause but on 15-10-1988 he was placed under suspension. He submitted his show cause on 19-10-1988 and basing on his show cause he was reinstated in service on 31-10-1988 but subsequently the Management discharged him from service with effect from 19-9-1989. Again on 4-9-1991 he was reinstated in service but without any back wages. Accordingly he raised a dispute before the District Labour Officer but the conciliation proceeding ended in failure and the matter was referred to this Court by the Government for adjudication. He has categorically stated that he was illegally discharged from service with effect from 19-9-1989 and the action of the Management in discharging him from service was unjustified. During evidence he has categorically denied the charges levelled against him. In support of his case he has proved certain documents marked as Exts. A to R respectively. It is in his evidence that he was harassed by the

Management in several occasions and he was illegally discharged from service with effect from 19-9-1989 without any proper enquiry. It reveals from his cross-examination that the cadre committee had issued show cause with regard to his termination from service. The workman admits in his cross-examination that the Secretary, Cadre Committee had issued a letter bearing No. 729, dt. 7-8-1989 for personal hearing on the show cause and he made a representation to the Secretary, Cadre Committee for his reinstatement in service. After careful consideration of the mercy petition he was reinstated in service on 4-9-1991 and is still continuing in the service and is receiving his salary regularly. It has been suggested to him that he was found guilty of the charges levelled against him in the enquiry conducted by the Management to which he has replied in the negative. He has also denied his knowledge/if the Enquiry Officer had recommended for disciplinary action against him.

9. Both the Management and the workman have adduced evidence in support of their respective cases. On a close scrutiny of the evidence and documents adduced by both the parties, it is crystal clear that the domestic enquiry was fairly and properly conducted by the Management and the final order of discharge is based on legal evidence. I am therefore led to hold that the domestic enquiry conducted by the Management was fair and proper and the Management has successfully brought home the charges levelled against the workman. On the other hand the workman has nowhere proved that the enquiry conducted by the Management was not fair and proper and that he was not found guilty of the charges levelled against him during enquiry. Rather he admits in his evidence that the Secretary, Cadre Committee had issued a letter for personal hearing on the show cause submitted by him and he was given opportunity to attend the personal hearing which clearly leads me to arrive at a just conclusion that there was an enquiry and during enquiry the workman was found guilty of the charges levelled against him. In absence of any rebuttal evidence, the evidence of the workman cannot be safely relied and acted upon. In the above promises the action of the Management in discharging him from service with effect from 19-9-1989 was legal and justified. In that view of the matter, the workman is not entitled to any relief as prayed for. All the above issues are answered accordingly.

10. It is admitted by the workman that he is in service since 4-9-1991 and has been receiving his salary regularly. On the other hand, the Management has also nowhere disputed the reinstatement of the workman in service with effect from 4-9-1991. In such view of the matter, he is no more entitled to the relief of further reinstatement.

11. Hence it is ordered:

#### ORDER

That the discharge from service of Shri Jayadev Mahalik, Cadre Secretary with effect from 19-9-1989 by the Management of Nayagarh Central Co-operative Bank Limited, Nayagarh is legal and justified. The workman Shri Mahalik is, therefore, not entitled to any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me

P. K. SAHOO  
29-4-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

P. K. SAHOO  
29-4-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

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By order of the Governor

D. MISHRA  
Under-Secretary to Government