

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 877 CUTTACK, THURSDAY, JUNE 22, 2006 / ASADHA 1, 1928

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 1st June 2006

No. 4342—li/1-79/1990(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th March 2006 in Industrial Disputes Case No. 75/1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of the General Manager (Personnel), Orissa Textile Mills Ltd., Choudwar, Cuttack and its workman Shri Bishnu Charan Ojha, T. No. 74, Engineering Department, At Marhatta Sahi (Choudwar), P. O. Choudwar, Dist. Cuttack was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 75 OF 1991

Dated the 27th March 2006

Present :

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

Between :

The General Manager (Personnel) .. First Party—Management
Orissa Textile Mills Ltd.
Choudwar, Cuttack.

And

Shri Bishnu Charan Ojha .. Second Party—Workman
T. No. 74, Engineering Department
At Marhatta Sahi (Choudwar),
P. O. Choudwar, Dist. Cuttack.

Appearances :

For the First Party—Management .. Shri R. K. Bose, Advocate
For the Second Party—Workman .. Shri S. B. Mishra, Advocate

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 the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No. 5584(5)-L. E., dated the 19th April 1991 for adjudication and Award.

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

“Whether the action of the management of Orissa Textile Mills Ltd., Choudwar in stopping annual increment of Shri Bishnu Charan Ojha, workman of Engineering Department for the year 1987 with cumulative effect and treating the suspension from the 18th June 1986 to the 7th December 1986 as such is legal and/or justified ? If not, to what relief is the workman entitled ?”

3. By way of this reference, workman Shri Bishnu Charan Ojha has challenged the legality and justifiability of the action of the management of Orissa Textile Mills Ltd., Choudwar (in short the management) in stopping annual increment for the year 1987 with cumulative effect and treating the suspension from the 18th June 1986 to the 7th December 1986 as such.

The facts of the case in brief as narrated in the statement of claim tend to reveal that the concerned workman had been working as Turner in the Engineering Department of the establishment of the management since 1960. For sometime the Mill was closed and it reopened in the year 1981. Due to Union activities the management bore grudge against him and with an ulterior motive and intention framed a charge sheet vide letter No. 7831, dated the 17th June 1986 on fictitious and baseless grounds. The workman was placed under suspension with immediate effect and he was directed to submit his explanation within 48 hours of receipt of the above mentioned charge sheet. Accordingly the workman submitted his explanation vide his letter, dated the 19th June 1986 denying the charges levelled against him. But being not satisfied with the explanation submitted by the workman, the management decided to conduct an enquiry into the charges framed against him and in fact appointed Shri P. K. Mati, Assistant Labour Welfare Officer as Enquiring Officer to conduct the enquiry on the 28th June 1986. But on that date the enquiry could not be conducted and the date of enquiry was fixed to the 30th June 1986. It is averred in the statement of claim that on the 30th June 1986 the Enquiring Officer conducted the enquiry and examined as many as three witnesses who were also duly cross-examined by the workman. According to the workman despite his request the Enquiring Officer did not supply the copies of enquiry proceeding and the deposition of witnesses. The further date of enquiry was fixed to the 5th July 1986 but on the request of the workman the enquiry was adjourned to the 15th July 1986. On the 15th July 1986, the workman attended the enquiry and filed an application before the Enquiring Officer drawing his attention regarding the non-payment of the subsistence allowance but the same was not accepted by the Enquiring Officer. Although he had filed other petitions praying to supply all the relevant connected documents but those petitions were not accepted by the Enquiring Officer. The further date of enquiry was adjourned to the 23rd July 1986. During the

course of enquiry the workman being not satisfied with the enquiry conducted by the Enquiring Officer sent a letter on the 19th July 1986 to the General Manager (Personnel) of the management stating his grievances. The said letter was acknowledged by the management on the 21st July 1986 prior to the next date of enquiry on the 23rd July 1986. On the 23rd July 1986 the workman attended the enquiry and submitted a petition before the Enquiring Officer praying for adjournment of the enquiry till he received the reply of his letter from the General Manager (Personnel), subsequently he was intimated by the General Manager (Personnel) vide letter No. 9639, dated the 29th July 1986 to take down the proceedings of the enquiry and to see the certified Standing Orders of the Mill displayed in the Mills noticeboard or to verify the same from Jatiya Shramajibi Congress Union. He was also directed in the said letter to furnish the list of witnesses and documents to be examined by him at the time of enquiry. The further date of enquiry was fixed to the 7th August 1986. In the meantime the workman again on the 4th August 1986 sent another letter to the management stating therein to change the Enquiry Officer and to intimate him accordingly. On the 7th August 1986 the workman attended the enquiry and submitted an application to the Enquiry Officer to know about his letter, dated the 4th August 1986 regarding the change of the Enquiring Officer. In his letter, dated the 4th August 1986, he had clearly mentioned that unless all the difficulties were solved, he would not be able to attend the enquiry on the next date but he was intimated by the Enquiring Officer vide letter No. 10297, dated the 14th August 1986 regarding the fixing of the date of enquiry on the 21st August 1986 as a last opportunity or also the enquiry would be commenced *ex parte*. On the 21st August 1986, the workman attended the enquiry and submitted his attendance and filed another petition but the petition was not accepted by the Enquiring Officer. Thereafter he sent the petition to the Enquiring Officer, by registered post. Subsequently he was intimated vide letter No. 11105, dated the 4th September 1986 by the Enquiring Officer that on the 21st August 1986 he had conducted the enquiry *ex parte* and submitted the enquiry report to the management. Thereafter second show cause was issued to the workman vide letter No. 13212, dated the 1st November 1986 wherein it was mentioned that the charges already levelled against him were all proved and established but on compassionate ground the management had taken a lenient view and had tentatively decided to stop annual increment for the year 1987 with cumulative effect. The workman was also directed to submit his explanation to the second show cause within 48 hours on receipt of the same and was also advised by the management to resume his duties forthwith. Thereafter he submitted his explanation to the second show cause on the 8th November 1988 by registered post with A. D. denying the charges levelled against him and the genuineness of the enquiry conducted by the Enquiring Officer. Having not satisfied with the explanation submitted by the workman, the management imposed punishment by stopping annual increment for the year 1987 and treating the period of suspension from the 18th June 1986 to the 7th December 1986 as such. According to the workman, the action of the management in stopping annual increment for the year 1987 with cumulative effect and treating the period of suspension from the 18th June 1986 to the 7th December 1986 as such was motivated *mala fide* illegal and unjustified. All though he approached the labour machinery but to no effect and the matter was ultimately referred to this Court by the Government in the Labour & Employment

Department for adjudication. While seeking industrial adjudication the workman has now prayed to set aside the managements the punishment already imposed on him by the management and to give necessary direction to make payment of all the benefits arising out of that. Hence the reference.

4. The management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman *inter alia* contended that the Mill was closed on the 15th June 1986 on account of Raja Sankranti but normally on such holidays the essential maintenance work was being carried out. So on that holiday some employees had been called for duty. When such employees were coming to perform their respective duties, the concerned workman instigated them at the main gate of the factory not to attend the work on that day. Further on the 17th June 1986 at about 4-50 P. M. the workman was found absent from his duty place and was found instigating the other employees to stage demonstration. Due to such demonstration the work in the factory hampered and there was stoppage of work. For the aforesaid misconduct a charge sheet came to be issued on the 17th June 1986. Considering the seriousness of the charges levelled against the workman, the management decided to place him under suspension and in fact he was placed under suspension. He was directed to submit his explanation and accordingly on the 19th June 1986 he submitted his explanation denying the charges levelled against him. The management being not satisfied with the explanation conducted a domestic enquiry and appointed an Enquiring Officer to conduct an enquiry in consonance with the Rules. The workman duly participated in the enquiry conducted by the Enquiring Officer. Finally the enquiry was conducted on the 7th August 1986. On that date the workman filed his Memo. of attendance and submitted an application stating therein that he would not participate in the enquiry nor would sign in the enquiry proceeding unless reply was received from the management to his letter, dated the 4th August 1986. Although he was assured by the Enquiring Officer regarding supply of the copy of the proceeding but despite the assurance he refused to participate in the enquiry which was adjourned to the 21st August 1986. The date of enquiry was also duly intimated to the workman. Although he gave his attendance in the enquiry but did not participate in the enquiry and left the place of enquiry intentionally. Finding no other way-out the Enquiring Officer proceeded with the enquiry in absence of the workman. After completion of the enquiry, the Enquiring Officer submitted his report on the 23rd August 1986 holding the workman guilty of the charges levelled against him. After careful consideration of the enquiry report and other relevant documents submitted by the Enquiring Officer, the management proposed to impose the punishment of stopping of one increment of the workman and he was accordingly directed to submit his explanation as to why the said proposed punishment would not be confirmed. The management being not satisfied with the explanation submitted by the workman confirmed the proposed punishment and released the order to stop the increment of the workman for the year 1987 with cumulative effect. The period of suspension was also ordered to be treated as such. According to the management the stoppage of annual increment was fair, proper, reasonable and *bona fide*. Similarly treating the period of suspension pending completion of the disciplinary proceeding as such was also very much in consonance with the provisions of certified Standing Order of the establishment. On the above backgrounds the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :—

ISSUES

- (i) “Whether domestic enquiry was properly held to award punishment ?
- (ii) Was the order of suspension from the 18th June 1986 to the 7th December 1986 legal and/or justified ?
- (iii) Whether the punishment awarded to the workman for the year 1987 was proportionate to the gravity of the misconduct ? If not, to what relief he is entitled ?”

6. The workman in support of his case has examined himself as W. W. 1 and another witness, namely Shri Bimbadhar Biswal as W. W. 2 and has relied upon the series of documents marked as Exts. A to R, respectively. On the other hand the management has also examined two witnesses, namely Shri Pravat Kumar Mati and Shri Saroj Kumar Samal as M. Ws. 1 and 2 and has also relied upon the voluminous documents marked as Exts. 1 to 8, 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 issues are taken up together.

The workman in his evidence has stated that since 1960 he had been working as Turner under the management. He was placed under suspension and a charge sheet came to be issued on the 17th June 1986 vide Ext. 1. Accordingly he submitted his show cause vide Ext. B denying the charges levelled against him, the then Assistant Labour Welfare Officer, Shri P. K. Mati was appointed as Enquiring Officer to conduct the enquiry into the charges levelled against him. It is stated by him that during enquiry he had submitted an application vide Ext. C which was not accepted by the Enquiring Officer. Thereafter he submitted another application stating his grievances before the General Manager on the 19th July 1986 vide Ext. D and he had also received the reply from the management vide Ext. E. When his grievances were not considered he had again reported to the management on the 4th August 1986 under Ext. F by registered post with A. D., the copy of which was submitted to the Enquiring Officer. During enquiry on the 21st July 1986 he submitted his application under Ext. K before the Enquiring Officer but as the same was not accepted by the Enquiring Officer he sent the same under registered post with A. D. He had also received the reply of the Enquiring Officer, dated the 4th September 1986 vide Ext. L. Second show cause notice was issued to him vide Ext. M. on the 1st November 1986. It further reveals from his evidence that during the enquiry neither he nor his witnesses were examined. He submitted the reply to the show cause vide Ext. N. He had applied to the management to supply the copies of the witnesses, copy of the enquiry report and other documents under Ext. P on the 19th December 1986 but the management passed the final order, dated the 20th December 1986. He has categorically stated that during suspension period he was not provided with subsistence allowance. He admits in his evidence that during 1986 he was an active member of O. T. M.

Sanjukta Shramajibi Sangathan which was a rival union of the management's union. He further admits in his evidence that during enquiry one Shri Sadhu Charan Nayak, Shri Prunananda Parida and Shri Durga Charan Das were examined. Since 1983 he was working as President of O. T. M. Shramika Sangathan and due to such union activities the management had imposed the punishment arbitrarily out of grudge for which he raised the present dispute. During cross-examination he admits that he had neither submitted the list of witnesses nor any document during the enquiry and had not attended the enquiry after the 21st August 1986 as it was completed by then. He has categorically stated that the punishment was awarded as per the Standing Order but he was not supplied with the copy of the Standing Order. W. W. 2, Shri Birabar Biswal in his evidence has stated that the workman was a leader of another union for which the management bore grudge against him. It appears from the cross-examination that he does not have any knowledge about the departmental enquiry and the imposition of any punishment on the workman.

8. The evidence led by the workman has vehemently been challenged by the management during the evidence of M. W. 1. Shri Pravat Kumar Mati who had conducted enquiry against the workman into the allegation levelled against him. M. W. 1 in his evidence has clearly stated that he was appointed as Enquiring Officer to conduct the enquiry into the allegation levelled against the workman vide charge sheet Ext. 1. Accordingly he conducted the enquiry and the date was fixed to the 28th June 1986 on which date the workman was present. He has categorically stated that he conducted the enquiry on different dates and maintained the order sheets to that effect vide Ext. 3. During enquiry he examined as many as three witnesses on behalf of the management on the 30th June 1986 in presence of both the parties and conducted further enquiry on the 5th July 1986, the 15th July 1986, the 23rd July 1986, the 7th August 1986 and the 21st August 1986. The workman was present on all the dates of enquiry. He had also recorded his evidence on the 21st August 1986 in presence of the workman on which date the witnesses, namely Shri Subash Chandra Sahoo and Shri S. V. Jawale were examined but were not cross-examined by the workman on the ground that the copies of the certified standing order was not supplied to him. It is also in his evidence that on the 7th August 1986 the workman was asked to attend the enquiry and to receive the copy of the proceeding to which he refused and in fact did not attend the enquiry. The enquiry was adjourned on that date since the workman had not received the reply of his letter, dated the 4th August 1986 from the management. Thereafter the enquiry was adjourned to the 21st August 1986 and the workman was present on that date but did not give any application to him. He received one letter, dated the 21st August 1986 either on the 23rd August 1986 or the 24th August 1986 but by that time the enquiry had been completed and the enquiry report vide Ext. 5 had already been submitted. He had also given reply to the letter, dated the 21st August 1986 of the workman vide Ext. 4. Nothing material and substantial has been elicited during cross-examination so as to discard his evidence. Rather the evidence in cross-examination of M. W. 1 clearly shows that he had fairly and properly conducted the enquiry into the allegations levelled against the workman. Further, he has stated in his cross-examination that the workman was set *ex parte* on the 21st August 1986 in the enquiry but prior to the 21st August 1986 he was present on all the dates but had not participated in the enquiry. The cross-examination of M. W. 1 clearly reveals that the workman was all along present during

the enquiry conducted on different dates but had not participated in the enquiry. The perusal of the evidence of M. W. 2 emerges that there was an enquiry against the workman which was conducted by the Enquiring Officer (M. W. 1). After completion of the enquiry, the Enquiring Officer submitted his report holding the workman guilty of all the charges levelled against him. Basing on the enquiry report and the past records of the workman, the management decided and issued notice to the workman indicating the stoppage of increment. The workman was also served with second show cause notice and accordingly he submitted his explanation but it was found not satisfactory which resulted in releasing final order of stopping annual increment. It is categorically stated by him that the allegations against the workman were as such, the management could have given major punishment but it had only stopped one increment and that too it was done as per the provisions of the certified standing order vide Ext. 9. M. W. 2 has been cross-examined by the workman at length but nothing material and substantial has been elicited so as to discard or disbelieve his evidence. During evidence, he has duly proved the second show cause notice, final order of the management, post office orders marked as Ext. 6 to 6/d, respectively.

9. Both the management and the workman have adduced evidence in support of their respective cases. The stand taken by the workman is that the punishment awarded on him was arbitrary, illegal and unjustified. He was not afforded adequate and reasonable opportunity to properly defend his case during the enquiry. But such stand taken by the workman has nowhere been substantiated during evidence rather it has been elicited from the evidence led by the management that the domestic enquiry had been conducted fairly and properly and the final order of stopping annual increment for the year 1987 with cumulative effect and treating the suspension period from the 18th June 1986 to the 7th December 1986 as such is based on legal evidence. It is categorically stated by M. W. 1 that he conducted the enquiry on different dates and the workman was present on all the dates of enquiry and had filed the memo of attendance. The final date of enquiry was posted to the 21st August 1986. Although he was present on the 21st August 1986 but did not participate in the enquiry despite the instruction of the Enquiring Officer. He rather left the place of enquiry as a result he was set *ex parte*, the order sheet vide Ext. 3 clearly testifies the above fact. On the 21st August 1986 the enquiry was completed and the report was accordingly submitted to the management. It is further categorically stated by M. W. 1 that the workman verbally told to be supplied with the copy of statement of witnesses and he expressed his willingness to take all the copies at a time. But on the next date he did not attend the enquiry and therefore, the copies could not be supplied to him. M. W. 1 has categorically denied to have received any application from the workman on the 21st August 1986. It has been elicited from the evidence of M. W. 2 that the management after careful consideration of the enquiry report and the past records of the workman passed the final order vide Ext. 7. From the above discussion of the evidence it is crystal clear that reasonable and adequate opportunity had been given to the workman during enquiry to properly defend his case but he did not avail the same. In that view of the matter, I am led to hold that the domestic enquiry conducted by the management against the workman was fair and proper and the final order vide Ext. 7 is based on legal evidence. Taking into consideration the acts of misconduct and the circumstances mentioned above I am of the view that the punishment imposed on the workman is not out of proportion. Taking an overall

and total view of the matter I am of the considered opinion that the acts of misconduct are duly proved and the action of the management in stopping annual increment of the workman for the year 1987 with cumulative effect and treating the period of suspension from the 18th June 1986 to 7th December 1986 as such was legal and justified. In that view of the matter, the workman is not entitled for any relief. All the above issues are answered accordingly.

10. Hence it is ordered.

ORDER

That the action of the management of Orissa Textile Mills Ltd., Choudwar in stopping annual increment of Shri Bishnu Charan Ojha, workman of Engineering Department for the year 1987 with cumulative effect and treating the suspension from the 18th June 1986 to the 7th December 1986 as such is legal and justified. The workman Shri Ojha is not entitled to get any relief as prayed for.

The reference is thus answered accordingly.

Dictated and corrected by me.

P. K. SAHOO
27-3-2006
Presiding Officer
Labour Court, Bhubaneswar

P. K. SAHOO
27-3-2006
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
N. C. RAY
Under-Secretary to Government