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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th June 2007

No.7704-1i/1(BH)-54/2002/L.E.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 27th April 2007 in I.D. Case No. 42/2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Tata Sponge Iron Ltd., Bileipada, Joda represented by the Managing Director, M/s. Tata Sponge Iron Ltd., At- Bileipada, P.O.-Joda, Dist- Keonjhar and their workman Shri M.N. Nag, C/o. Shri Ram Singh Nag, Qr. No. 1-2/9 Kaveri Road, Sakchi, Jamshedpur-1, Dist- East Singhbhum (Jharkhand) was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 42 OF 2003

The 27th April 2007

Present :

Shri P.K.Mohapatra, LL.B.,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The Management of
Tata Sponge Iron Ltd., Bileipada, Joda
represented by

The Managing Director,
M/s. Tata Sponge Iron Ltd.,
At- Bileipada, P.O.-Joda,
Dist- Keonjhar.

.. First-party—Management

AND

Their workman
 Shri M.N. Nag,
 C/o. Shri Ram Singh Nag,
 Qr. No. 1-2/9, Kaveri Road, Sakchi,
 Jamshedpur-1,
 Dist- East Singhbhum (Jharkhand)

.. Second-party—Workman

Appearances :

For the First-party—Management

.. Shri K.C Rath &
 Shri B.K. Purohit, Advocates

For the Second-party—Workman

.. Shri R.K. Mohanty, Advocate

AWARD

This case arises out of the reference made by the Government of Orissa, Labour & Employment Department U/s. 10 and 12 of the Industrial Disputes Act, 1947 vide Memo No. 8031(5)/LE., dated the 18th August 2003 for adjudication of disputes scheduled below:—

“Whether the termination of services of Shri M.N. Nag by the Managing Director, M/s. Tata Sponge Iron Limited, Bileipada, Joda, with effect from the 18th June 2001 is legal and/or justified? If not, to what relief the workman is entitled ?”

2. The workman named above has filed a statement of claim wherein he has taken the plea that he was discharging his duties satisfactorily and honestly under the Management and there is nothing adverse against him at any point of time, but the Management took exception to his Trade Union Activity and by playing hand and glove with his anti-group members of the trade union falsely implicated him in some cooked up allegations and then initiated a departmental proceeding and conducted an enquiry under the leadership of an incompetent officer and then by adopting dubious means hold him guilty and after accepting the enquiry report an incompetent officer also passed an order on discharge though on the self same allegation the Management exonerated other employees. To sum up, according to the workman the Management conducted the departmental enquiry in a perfunctory manner and without observing the minimum formalities required for it discharged him from service with a view to satisfy their grudge.

3. The Management side is represented by the Managing Director of M/s. Tata Sponge Iron Limited. He has come up with the plea that prior to the misconduct as enquired in the present domestic enquiry, the workman was a party to various other misconducts and even on many occasions, he was subject to disciplinary action, but no change was manifested in his official activity and then on 4th September 2000 at the end

of "B" shift at about 10.00 P.M. he became a party to obstruct the free flow of the factory work by shouting against group IV Security Personnel and instigating the workman of the Contractor not to enter inside the plant from 10.00 P.M. to 11.30 P.M., as a result of which the shut down job suffered and the company faced loss. The matter does not end here. Even on the next day at about 1.25 P.M. he along with others instigated some persons of Birikala Panchayat to assault the security staff. It is the further case of the Management that the enquiry was conducted in a fair and proper manner and by taking note of his previous misconduct and his participation in the riotous behaviour on dated the 4th September 2000 near the main gate of the factory, he was discharged from service. In sum and substance the Management has justified the action taken by it.

4. The workman has filed a rejoinder. In it, he has challenged the stand taken by the Management in the written statement and even pointed out some omissions and commissions committed by the enquiry officer during the domestic enquiry. In the rejoinder, he has given explanations pertaining to his previous misconducts which were given importance by the Management in the body of the written statement. In it, he has prayed that he be reinstated in service with full back wages.

5. By taking the note of the pleadings of the parties the following issues have been framed.

ISSUES

- (i) "Whether the domestic enquiry conducted by the Management is fair and proper ?
- (ii) Whether the termination of services of Shri M.N. Nag by the Managing Director, M/s. Tata Sponge Iron Limited., Bileipada, Joda with effect from 18th June 2001 is legal and justified ?
- (iii) To what relief, the workman is entitled ?"

FINDINGS

6. Issue No. i :- With the consent of the parties and in consonance with the law decided by the Apex Court in Cooper Engineering Limited Vrs. P.P. Mundhe (1975) 48 FJR 152 (SC) the fairness of the domestic enquiry was taken up as a preliminary issue and after hearing both the parties this Court vide Order, dated the 30th March 2006 arrived into a conclusion that the domestic enquiry was conducted in a fair and proper manner and accordingly issue No.i was answered in support of the Management and against the workman. My order, dated the 30th March 2006 may be treated as a part of this award. As

such, there is no reason to discuss issue No. i at length in the body of this award. I will now deal with the other issues settled in this case.

7. Issue No. ii and iii:- Both the issues are taken up together as those are interlinked. The workman has given his evidence and he has also filed Exts. A to E to suffice his plea. Ext. A is the copy of an application, dated the 14th February 2001 presented to Enquiry Officer for summoning some witness and Ext. B is the certified copy of the award passed by this Court in connection with I.D. Case No. 20/2002 wherein Benudhar Barik was the workman. Ext. C is the Xerox copy of the office order and Ext. D is the standing order of the Company. Ext. E is the copy of the appointment order whereby the workman was appointed in the Company.

The Management side examined Shri B.M. Mishra, Chief of H.R. and I.R. of the Company and another officer namely Shri Srikanta Kumar Mishra, Senior Divisional Manager of accounts to substantiate the plea taken by it. A host of documents which are marked Exts. 1 to 17 are also filed from the side of the Management. I will deal with the documents filed by it as and when required.

8. Before going to deal with the points raised by the workman it would be better to first of all mention some facts and circumstances which are not presented by him as per law. Admittedly, pleadings in industrial disputes need not strictly confirm to the provisions of Civil Procedure Code. It is a settled law that the pleadings in Industrial adjudication cannot be strictly construed. But the rules of natural justice require that the pleadings must atleast be such as to give sufficient notice to the other party of the case which is called upon to meet. In the present case the workman has adduced his evidence on dated the 26th October 2006 and in the body of the examination-in-chief, he has stated some facts which are not available in his pleading. In this connection Para-5(a), (b) and (c) are relevant. In the body of the examination-in-chief there are some other facts which are also not available in the pleading. As per law the Court should not permit evidence to be led on matters which are beyond the pleadings of the parties and even if such evidence finds place in record, the Court is not entitled to look into it for any purpose. On perusal of the examination-in-chief of the workman it is forthcoming that he has taken an alternative plea though the said alternative plea is not available in his pleading. In a Civil trial an alternative plea is not tenable though such a plea is acceptable in a Criminal Trial. As it appears the workman in the body of the pleading has justified his action and also took the plea that he is not a party to the alleged omissions and commissions put forth by the Management. But in his evidence-in-chief dated the 26th October 2006, he has raised some points which

indicate that even if such allegations are true, he is not entitled for the extreme penalty imposed by the Management. There are good reasons not to take judicial note of such averments available in the body of the examination-in-chief as those are not available in his previous pleading.

9. It is a well settled law that when an enquiry is not defective and a competent authority passed an order of punishment, the Labour Court is to see whether the punishment awarded is reasonable on the basis of the charges or not. The principle laid down by the Apex Court in various judicial pronouncements is that the kind and quantum of punishment has to be modulated in accordance with the facts and circumstances of each case. In the case at hand, the allegation against the workman is that on the 4th September 2000 at about 10.00 P.M. while standing near the time office of the factory, he was shouting against the Group-IV security personnel and even he instigated the contractor's workmen not to enter inside the plant, as a result they did not enter inside the plant from 10.00 P.M. to 11.30 P.M. and the shut down job of the Company offered causing loss to the Company. So far the second charge is concerned, the Enquiry Officer holds him not guilty and then the E.I.C. (Operation) vide Ext. 10 passed an order of discharge after going through the records of enquiry proceedings and other connected papers produced before him. On perusal of Ext. 10 it is forthcoming that the Enquiry Officer gave emphasis to the misconduct committed by the workman on dated the 4th September 2000 and then passed the above punishment. The submission advanced by the learned counsel for the workman that the misconduct on dated the 5th October 2000 was also taken into account by the E.I.C. (Operation) cannot be easily swallowed as the relevant Para. of Ext.10 is very specific in this regard. In view of the above position, it can be safely said that the Executive Incharge (Operation) imposed the punishment by taking note of the misconduct committed by him on the 4th September 2000.

10. Whether a workman should merit discharge or lighter punishment depends mostly on the nature of misconduct committed by him and the circumstances under which it was committed. In awarding a punishment, the quantum is to be decided not only by taking note of the gravity of the misconduct which was enquired, but the previous record of the workman and any other extenuating or aggravating circumstances that might exist should also be taken into consideration. When a "misconduct" is defined in the standing orders and a particular punishment for that misconduct is provided, then the Management has a right to impose that punishment and that cannot be set aside on the ground that it is too excessive or severe. In the written note of argument the learned counsel for the

Management has given emphasis to Clause-19 of the certified standing order. The acts of misconduct available in Clause-19 is wide enough to include the overt acts committed by the workman on the 4th September 2000. The learned counsel for the Management has also relied on some judicial pronouncements to suffice that the punishment of discharge which is a lesser punishment than dismissal as per standing order is appropriate in the circumstances and a judicial review by this Court is not necessary. On the other hand the learned counsel for the workman has filed some judicial pronouncements as per the Memo. of citation to suffice his claim that the punishment of discharge imposed on the workman is severe and shocking. I will now scrutinize as to whether the punishment is appropriate or it is severe in nature.

11. The relevant charge basing on which the workman was discharged from service relates to the instigation made by him to the Contractor's labourers. The Management has examined the Chief of H.R. and I.R. and in his evidence he has stated as out the tumultuous behaviour of the workman. In a proceeding of the present type a high degree of proof is not necessary. Discipline in an industrial unit is highly necessary for its success. In his evidence the Chief of H.R. and I.R. has stated the previous omissions and commissions committed by the workman. The present misconduct is well proved from the side of the Management through the witnesses during the domestic enquiry. It is difficult to say that the workman was a passive participant in the occurrence committed on the 4th September 2000 night as a result of which he deserves lenient punishment. Rather it is proved that he was fomenting the Contractor's Labourers not to enter inside the factory and because of his such action the shut down of the factory suffered. His previous record is also bad and the evidence adduced by the Chief of H.R. and I.R. in this connection is not seriously challenged while cross-examining him. The learned counsel for the workman has given importance to the words used in the standing orders of the company and submitted that the alleged act is not sufficient to interpret that the misconduct is of serious nature. But after scrutiny, I am of opinion that the misconduct committed by the workman is of serious nature. My above conclusion is deriving support in view of his previous record which is also not upto the mark. The submission that he was a Trade Union Leader and such a course of action was taken up by the Management to sabotage him cannot be accepted as it is not expected from a leader of Trade Union to behave in a manner which would jeopardise the interest of the company. Even at times a minor offence can become grave when the workman repeats it inspite of warning issued to him on earlier occasions. In the case of the present workman there are materials to conclude that he was warned on

previous occasions for his misconduct. On a totality of facts and circumstances as described above, I am of firm view that the punishment imposed on the workman by the Management is not shocking and severe. In view of my above conclusion, the workman deserves no sympathy of this Court.

12. The learned counsel for the workman has given emphasis to the lesser punishment awarded to the delinquents namely Shri P.C. Naik and Shri B.D. Barik. According to him, the workman Shri B.D. Barik and Shri P.C. Naik though roped in connection with the same misconduct, but were treated leniently by the Management. As it appears this Court passed an award in favour of Shri B.D. Barik and the other delinquent workman Shri P.C. Naik was reinstated in service by the Management as he deposed in support of the Management and against the present workman in the departmental proceeding. To sun up it is his submission that parity was not maintained in awarding the punishment to the above referred two workmen who were also involved in the incident dated the 4th September 2000.

The learned counsel for the Management has submitted that the case of Shri P.C. Naik is completely different as he after realizing the mistakes committed by him begged apology and accordingly the Management reinstated him in service. So far the other workman Shri B.D. Barik is concerned, the Management has challenged the award passed by this Court in the Hon'ble High Court of Orissa and the writ case is still subjudice. He has also relied on a judicial pronouncement reported in AIR 2005 SC 3510 (M/s. Obettee Private Limited Vrs. Md. Safiq Khan) wherein it is held that the workman tendering apology stands on a different footing than the workman who justified his action. By taking note of the above referred judicial pronouncement it can be safely said that the case of the present workman is different from that of the delinquent workman namely Shri P.C. Naik. On totality of facts and circumstances as narrated above, I am of view that the workman was a militant participant in the occurrence which took place on 4th September 2000 near the main gate of the factory and his such action incited the Contractor's Labourers who did not participate in the shut down work and such action of the workman is in violation of the provisions of the standing orders on and in the premises, the order of discharge which is lesser than the punishment of dismissal is justified. Hence the award.

AWARD

The reference is answered on contest in favour of the Managements and against the workman. The termination of service of Shri M.N. Nag by the Managing Director, Tata

Sponge Iron Limited, Beliepada, Joda with effect from the 18th June 2001 is held to be legal and justified and the workman is not entitled to get any relief in this case from the Management.

Dictated and corrected by me

P.K. Mohapatra
Dt. 27-04-2007
Presiding Officer,
Labour Court,
Sambalpur.

P.K. Mohapatra
Dt. 27-04-2007
Presiding Officer,
Labour Court,
Sambalpur.

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