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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th June 2007

No.7725-I i/1(BH)-44/2002-LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th April 2007 in I. D. Case No 3 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the management of TATA Sponge Iron Ltd., Joda represented by the Managing Director, TATA Sponge Iron Ltd., At/P.O. Bileipada 758 034, Dist. Keonjhar and their workman Shri Kanhei Charan Barik, S/o Late Saila Barik, At/P.O. Bileipada, Via. Joda, Dist. Keonjhar 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. 03 OF 2003

Dated the 30th April 2007

Present :

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

Between :

The Management of TATA Sponge Iron Ltd. Joda First Party—Management
represented by The Managing Director,
TATA Sponge Iron Limited,
At/P.O. Bileipada- 758 034,
Dist. Keonjhar.

And

Their Workman Second Party—Wokman
Shri Kanhei Charan Barik
S/o. Late Saila Barik,
At/P.O. Bileipada, Via: Joda,
Dist. Keonjhar

Appearances :

For the First Party Management

Shri K. C. Rathand Shri B. K. Purohit
Advocates.

For the Second Party-Workman

Shri S. N Panda &
Shri P. K. Das, Advocates.

AWARD

1.This case arises out of the reference made by the Government of Orissa, Labour & Employment Department u/s. 10 &12 of the Industrial Disputes Act, 1947 vide memo No. 759 (5) - LE., dated the 21st January 2003 for adjudication of disputes scheduled below : —

SCHEDULE

“Whether the termination of the services of Shri Kanhei Charan Barik by the managing Director, TATA Sponge Iron Ltd., Bileipada, Joda, w.e.f. the 28th November 2000 is legal and/or justified? If not, to what relief the workman is entitled ?”

2. In consonance with the letter of the Government of Orissa, Labour & Employment Department the workman has filed a statement of claim wherein he has mentioned the entire developments which culminated in his discharge from service. According to him, after joining the management on the 1st August 1989, he was elected as the General Secretary of the Workers Union on the 29th July 1997, as a result, he became a 'protected workman' as per the provisions of the statute, but the management without taking note of it harboured grudge and by taking advantage of an unfortunate incident which took place on the 6th May 1999, he was roped in a departmental proceeding. In this connection it is his specific case that an altercation took place in between the medical officer of the management and the President of the Workers Union and though he was not present at the time of that occurrence, but he was entangled in it in Para-7 of the statement of claim, it is specifically stated by him that he had moved the management to solve the problem, but the management implicated him in a proceeding and conducted an enquiry through their henchman. In that enquiry proceeding inadmissible evidence was taken in to consideration and he was discharged from service. To sum up, it is the case of the workman that the departmental proceeding was not conducted fairly and properly and he was falsely implicated in it and basing on inadmissible evidence, he was terminated from service. He has prayed for reinstatement in service with full back wages.

3. The management in the body of the written statement has contested the above plea of the workman by stating that after being employed as a Helper Trainee under the management, the workman committed a lot of misconducts and on several occasions, he was charge-sheeted and even punished after due enquiry and the claim of the workman that he was discharging his duties faithfully and honestly can not be easily swallowed. In the body of the written statement the management has described the various misconducts committed by the workman and the punishment imposed on him. In relation to the domestic enquiry conducted pertaining to the incident, dated the 6th May 1999 it is the specific case of the management that it was conducted in a fair and proper manner and the allegation of the workman that it was perfunctory and not based on sound data is not correct. In the body of the written statement the management has given a comprehensive note of the commissions and commissions committed by the workman and in Para 14 of it, the loss sustained by the management is also mentioned. To sum up, the management has stated that the workman is in the habit of committing industrial unrest and the management has terminated his service on good grounds.

4. After receiving the copy of the written statement, the workman has filed a rejoinder. In it he has reiterated his version that he is not a party to the incident which took place on the 6th May 1999. He has also stated that the charge-sheet is tax based on fabricated materials and the enquiry was conducted without observing the formalities required for it. In the body of the rejoinder the workman has given emphasis to the omissions committed by the Doctor and the follow up action taken by the President of the Workers Union. In Para 9 of the rejoinder the hunger strike conducted by the President of the Workers Union is given importance. In it, the workman has denied all the allegations put forth by the management.

5. By taking note of the pleading of the parties, the following issues have been framed in this case:—

ISSUES

(i) “whether the domestic enquiry conducted by the management of M/s TATA Sponge Iron Ltd. Joda, Keonjhar is fair and proper?”

(ii) whether the termination of services of Shri Kanhei Charan Barik by the Managing Director, TATA Sponge Iron Ltd., Bileipada, Joda , w.e.f. the 28th November 2000 is legal and justified?

(iii) What relief, if any, the workman is entitled to ?”

6. *Issue No.i* – With the consent of the parties, the fairness of the domestic enquiry (issue No.i) was taken up as a preliminary issue and after giving opportunity to both the parties to adduce evidence on that issue it was decided that the domestic enquiry is fair and proper. My order dated the 11th July 2006 may be taken up as a part of this Award.

Thereafter both the parties adduced further evidence in relation to the quantum of punishment to be imposed on the workman and I have heard the learned counsels for the parties at length on the merit of the same.

7. *Issue No. ii and iii* : – Both the issues are taken up together as those are interlinked. It is an established law that imposing punishment for a proved act of misconduct is a matter for the punishing authority to decide and normally it should not be interfered with by Industrial Tribunals. The Apex Court in a catena of decisions have held that where the punishment is shockingly disproportionate regard being had to the particular conduct and past record, the Labour Courts can interfere. In the present case the charges against workman are well proved during the domestic enquiry. The charges framed against him as per Ext. 1 are of serious nature. The Chief of H.R. and I. R. in his evidence has also stated about the previous punishments imposed on the present workman and the various misconducts committed by him during his incumbency under the management. On perusal of the same it can be safely said that in addition to the charges enquired in the present domestic enquiry, the workman was also a party to other misconducts. It is also clear that the workman has never realised the misconducts committed by him and throughout the length and breadth of the proceeding, he has tried his best to justify it. Even after disposal of issue No. i by this Court the workman has adduced evidence on the 15th November 2006 justifying his stand in relation to the occurrence which took place on the 6th May 1999. There is no reason to give importance to it as the charges are well proved during the domestic enquiry and it was also endorsed by this court vide order, date the 11th July 2006. The technical points raised by the workman are also answered by this court while dealing with the issue No. i and there is no reason to differ with it at this stage. In the written argument, the learned counsel for the management has given emphasis to the long absence of the workman without leave on previous occasions which according to him are of serious misconduct and his role in the incident which was enquired duly will further strength the case of the management. After scrutiny of the entire evidence and the documents proved by the parties, I am also of opinion that the present misconduct coupled with the previous lapses committed by him are sufficient to award the punishment of discharge and there is no reason to differ with the conclusion arrived by the management. The learned counsel for the management has also submitted that they have no confidence on the workman due to his repeated misconducts. But the confidence aspect is not pleaded by the management in the previous pleadings and at this belated stage the same has no bearing. In sum and substance the punishment awarded by the management is not shocking and disproportionate and accordingly the above issues are answered against the workman and in support of the management. Hence the following Award.

A W A R D

The reference is answered on contest in support of the management and against the workman. The termination of services of Shri Kanhei Charan Barik by the managing Director, TATA Sponge Iron Ltd., Bileipada, Joda with effect from the 28th November 2000 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 . M A H A P A T R A

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P r e s i d i n g O f f i c e r

L a b o u r C o u r t , S a m b a l p u r .

P . K . M A H A P A T R A

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P r e s i d i n g O f f i c e r ,

L a b o u r C o u r t , S a m b a l p u r

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B y o r d e r o f t h e G o v e r n o r ,

N . C . R A Y

U n d e r - S e c r e t a r y t o G o v e r n m e n t