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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 19th September, 2007

No. 10851-1i/1-(B)-63/2000/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 11th May, 2007 in I.D. Case No. 83 of 2000 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Hotel Prachi, Bhubaneswar and its workman Shri Anil Kumar Das, represented through Hotel Prachi Workers Union was referred for adjudication is hereby published as in the schedule below :—

SCHEDULE

IN THE LABOUR COURT : BHUBANESWAR.

INDUSTRIAL DISPUTE CASE No. 83 OF 2000

Dated the 11th May, 2007

Present:

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

Between:

The Management of
M/s. Hotel Prachi,
Bhubaneswar.

... First-Party — Management

And

Its Workman
Shri Anil Kumar Das.

... Second-Party — Workman

Appearances :

NONE.

... For First-Party— Management

Shri A. K. Das.

... For Second-Party— Workman himself.

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the Management of M/s. Hotel Prachi, Bhubaneswar and its workman Shri Anil Kumar Das under Notification No. 5383/LE., dated the 18th May, 1998 vide Memo No. 9148(5)/LE., dated the 6th July, 2000 for adjudication by this Court.

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

“ Whether the punishment imposed upon Shri Anil Kumar Das vide letter No. 16, dated the 1st September, 1998 (copy enclosed as Annexure-B) of the Management of M/s. Hotel Prachi, Bhubaneswar is legal or justified ? If not, to what relief Shri Das is entitled ?”

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

The workman is working under the Management of M/s. Prachi Hotel, Bhubaneswar (hereinafter referred to as the Management) and continuing as such. The workman is the General Secretary of Prachi Hotel Workers Union which is a registered trade union to look after the welfare of the workmen of Prachi Hotel. The Labour Commissioner, Bhubaneswar being the statutory authority verified the membership of the Union and directed the Hotel management to accord reorganisation to the Prachi Hotel Workers Union but the Management has not yet accorded recognition to the said Trade Union of which the workman is the General Secretary. The Management placed the workman under suspension with effect from 13th March, 1994 and framed a charge-sheet clearly on baseless charges. The workman was working as a Cashier of the Management at the Airport Restaurant and was drawing salary of a Cashier in the rank of highly skilled worker. On 8th March, 1994 the duty time of the workman was from 11 A.M. to 3 P.M. and from 4-30 P.M. to 8-30 P.M.. After completing his first shift of duty at 3 P.M. the workman went out for lunch but suddenly he became ill and could not return back to join his duty again from 4-30 P.M. to 8-30 P.M. onwards. This matter was referred to the Management on 9th March, 1994. The workman requested the authorities of the Management for half day leave but the Hotel Management instead of granting half day leave to the workman charge-sheeted him on 13th March, 1994. Shri Dillip Mohanty, Advocate was appointed as

an Enquiry Officer and this appointment objected to by the workman. The Enquiry Officer connived with the Management and submitted a totally biased enquiry report against the workman. Thereafter the Management again appointed another enquiry Officer to conduct the domestic enquiry and the same ultimately ended without considering the merit of the case and without considering the views pointed out by the workman. After completion of the enquiry, the Management imposed the following punishment on the workman on 1st September, 1998:

- (a) " You are reverted to the post of Waiter without reducing your salary/wages.
- (b) Your period of suspension will be treated as such.
- (c) Your annual increment will be stopped for 3 years.
- (d) You are hereby warned severely to be more careful in future."

After receipt of the order of punishment the workman raised an industrial dispute by making complaint before the District Labour Officer, Khurda stating that the punishment was dis proportionate to the misconduct leveled against him. The workman has been suspended since the year 1994 till September, 1998 during which period the wages of the workman was not paid to him. On these averments the workman has challenged the punishment inflicted on him.

4. The Management has been set *ex parte* vide order dated 20th December, 2000.

5. The workman has examined himself as W.W.1. In his evidence the workman has stated that he was appointed as waiter by the Management on 1st January, 1988 and was promoted to the post of *Cashier-cum-Order Taker* with effect from 1st August, 1989. The appointment order has been proved as Ext.1 and the promotion order has been proved as Ext.2. The workman was transferred to the Airport Restaurant with effect from 19th December, 1991 vide Order Ext.3. According to W.W.1 he was allotted duty from 11 A.M. to 3 P.M. and 4-30 P.M. to 8-30 P.M. under duty allotment order Ext. 4. Further evidence of the workman W.W.1 is that on 8th March, 1994 he could not be able to perform his duty from 4-30 P.M. to 8-30 P.M. for which he was called upon for an explanation by the Management. The workman submitted his explanation on 9th March, 1994 vide Ext.5 but the Management framed charge against him vide Ext.6. Thereafter the Management issued a letter for domestic on enquiry appointing Enquiry Officer and the Presenting Officer under order vide Ext.7. The workman participated in the enquiry and

after conclusion of which the Management supplied the copy of the enquiry report vide Ext. 8 to the workman. As there were some mistakes in the enquiry report the workman made correspondence with the Management under his letter Ext. 9. Thereafter the workman made further request to the Management under a representation Ext. 10 to appoint Advocate Shri Nirmal Pattnaik as his lawyer but the Management refused to entertain the request of the workman vide Ext.11. During the second enquiry the workman W.W.1 made request to the Enquiry Officer vide Ext. 12 for appointment of Advocate Shri Nirmal Pattnaik to defend him but no reply was given by the Enquiry Officer. The workman participated in the second enquiry on receipt of the direction by the Management under Ext. 13. The Enquiry Officer without holding any enquiry submitted a report to the Management. The copies of the enquiry report was supplied to the workman. Ext. 14 is the said copy of the second enquiry report. The second enquiry was also not fair and proper. The Management on considering the enquiry report inflicted punishment to the workman and intimated the same vide Ext. 15. Although on 8th March, 1994 the workman had performed his duty during the first half between 11 A.M. to 3 P.M. the same was not reflected in the second enquiry report. In his evidence W.W.1 has further stated that the punishment already imposed on him are illegal and unjustified.

6. Since the Management has been set *ex parte* the evidence of W.W.1 goes un-challenged. Now it is to be seen as to whether the punishment inflicted on the workman are disproportionate. The charge under Ext. 6 reads as follows :

“ The following charges are leveled against you:

On 8th March, 1994, you were supposed to be on duty from 11 A.M. to 3 P.M. and from 4-30 P.M. to 8-30 P.M.. It was also intimated to you earlier that you will stay in the restaurant till departure of the last flight, as three days in a week, you work only 4 hours because of the reduction in number of flights.

On 8th March, 1994, you left the duty place at 3 P.M., knowing well that the Delhi flight is delayed and there is ground service. You did not report for duty in the afternoon and remained absent without any intimation or permission from the Management.

On that day, from 4-30 P.M. onwards there was heavy rush in the restaurant due to late Delhi flight and there was any body to take orders or to receive the cash and

the undersigned had to face lot of abuses and misbehavior from the passengers. Even the Indian Airlines took a very serious view of this as customers were complaining to them also.

The Management takes a very serious view of your sudden absenteeism without permission. Hence, you may submit your explanation with evidences, if any, within 48 hours of receipt of this charge sheet, for the consideration of the Management.

Sd/-

Airport Restaurant Manager”

On a plain reading of Ext.6 it is clear that the charge relates to absence of the workman from his duty place from 4-30 P.M. to 8-30 P.M.. The duty allotment order vide Ext. 4 shows that the first shift of duty was from 11 A.M. to 3 P.M. and second phase of duty was 4-30 P.M. to 8-30 P.M.. In Ext.4 it has been mentioned that the workman was entitled to one weekly off day on Mondays. Ext.5 is the explanation of the workman to the charge. In Ext. 5 the workman has only stated that he was not able to perform his duty on 8th March, 1994 due to severe headache. Admittedly one second Enquiry Officer had been appointed and the workman had attended the second enquiry. Ext. 14 is the second enquiry report. In the enquiry report the Enquiry Officer has mentioned that the workman had prior information that Delhi flight was late and there would be heavy rush at the restaurant. According to the Enquiry Officer the workman could have informed the authorities about his sudden illness because he was well aware of late departure of Delhi flight and consequence of his absence but the workman did not intimate the authorities about his illness or about his absence and the same resulted in complete dis-location of work and inconvenience to the Management. In the enquiry report it has been further mentioned that the workman did not furnish any documentary evidence regarding his illness. According to the Enquiry Officer the charge against the workman had been fully established.

7. Having gone through the charge vide Ext. 6 and the reply to the charge by the workman vide Ext. 5 and the enquiry report vide Ext. 14, I am convinced that there is no material to show that the enquiry conducted by the Enquiry Officer was in any way unfair or improper. There is also no evidence on record to show that the workman had not been

given proper opportunity to defend himself. The refusal of the Management to engage an Advocate for the workman by itself can not be said to be denial of opportunity. A workman is entitled to take the help of another co-worker during domestic enquiry for his defended but during domestic enquiry he is not entitled to be defended by an Advocate. Thus the enquiry was fair and proper. However the fact remains that the charge only related to temporary absence of the workman from duty during the second shift of work only. Headache is a type of ailment for which one seldom rushes to a doctor for medical treatment. One may take medicine for headache or may not take any medicine at all. Analgesics for cure of headache are even available in betel shops. It is true that the workman could have telephonically informed the Management for alternative arrangement during his absence. Failure of the workman to intimate the Management about his sudden illness and his failure to request the Management for making alternative arrangement had definitely resulted in a lot of inconvenience to the Management and also to the passengers at the Airport terminal and it must have also eroded the reputation of the Hotel Management. However, the punishment under four heads inflicted on the workman is really disproportionate. There is no evidence that on any earlier occasion the workman had committed any similar mistake. Therefore in the facts and circumstances of the case the Management could have inflicted lesser punishment on the workman.

8. Even after concluding that the punishment to the workman by the Management vide Ext. 15 under four heads is quite disproportionate to the alleged charge vide Ext. 6, the Labour Court can not invoke its power under Section 11-A of the I. D. Act, because Section 11-A of the I. D. Act relates to only the cases of discharge or dismissal of the workman. But in the instant case the workman has not been discharged or dismissed from service and therefore, the provision under Section 11-A of the I. D. Act can not be pressed into service.

9. The reference is answered as follows :

(1) The punishment imposed to Shri Anil Kumar Das vide letter No. 16, dated the 1st September, 1998 by the Management of M/s. Prachi Hotel, Bhubaneswar is legal because the enquiry against the workman was fair and proper but the quantum of punishment is wholly unjustified because of its severity with regard to comparatively minor nature of mis-conduct by the workman.

(2) Since the case of the workman is not one of discharge or dismissal from service the provision under Section 11-A of the Industrial Disputes Act, 1947 is not applicable to the present case at hand and the Labour Court can not extend any relief to the workman though he is entitled to lesser punishment.

The reference is answered accordingly *ex parte*.

Dictated and corrected by me.

S. K. Mohapatra
11-5-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

S. K. Mohapatra
11-5-2007
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government