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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd December 2007

No. 13039—li/1(J)-18/2004 (Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th September 2007 in Industrial Dispute Case No. 3 of 2006 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of Project Management Unit of Orissa Water Supply and Sewerage Board, Jeypore and its workman Shri Bijaya Kumar Mishra was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, JEYPORE, KORAPUT

INDUSTRIAL DISPUTE CASE NO. 3 OF 2006

Dated the 6th September 2007

Present :

Shri G. K. Mishra, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

The Project Engineer, .. First Party—Management 1
Orissa Water Supply and
Sewerage Board, Biju Pattnaik
Chhak, Tulsipur, Cuttack,
At/P.O./Dist. Cuttack.

The Member-Secretary, .. First Party—Management 2
O.W.S & Sewerages (O.W.S.S.B.),
P.H.E.D. Guest House,
Near Flyover Bridge, Satyanagar,
Bhubaneswar, At/P.O. Bhubaneswar,
Dist. Khurda.

Versus

Its Workman .. Second Party—Workman
 Shri Bijaya Kumar Mishra,
 S/o Late Krushna Chandra Mishra,
 C/o P. C. Mati, Plot No. MIG-15,
 Khurda Bata Mangala H. B. Colony,
 At/P.O./Dist. Khurda.

Under Sections 10 and 12 of the Industrial Disputes Act, 1947

Appearances :

For the Management Nos. 1 & 2	..	Shri K. Prasad Rao, Advocate, Jeypore.
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For the Workman	..	Shri B. Padhy, Advocate, Jeypore.
Date of Argument	..	31-8-2007
Date of Award	..	6-9-2007

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), have referred the following disputes vide their Order No. 1491(5), dated the 13th February 2006 for adjudication of the following disputes :

SCHEDULE

“Whether the termination of services of Shri Bijaya Kumar Mishra, ex-D.L.R. Light Vehicle Driver by the management of Project Management Unit, Orissa Water Supply and Sewerage Board, Jeypore with effect from the 4th May 2001 is legal and/or justified? If not, what relief is he entitled to?”

AWARD

2. This is a case seems to have been originated out of the reference submitted by the Government for determination of the validity and justifiability of the issue of termination effected by the management in respect of the workman coupled with relief to be granted consequent upon such determination.

3. The case of the workman purely hinges on the point of the facts that though he was a regular workman he was on the false charges of the misconduct terminated from the service without compliance of natural justice and fair play. It is also averted by him that the Enquiring Officer appointed for enquiry into the misconduct having relied upon the simple allegations without recording their statement and opportunity being not given to him for defending his

own case, he claims to declare the report basing upon which he was terminated as illegal and unjustified. Accordingly he prayed for reinstatement with full back wages.

4. The management on the other hand totally traversed the entire assertions put forth by the workman and contended *inter alia* that the termination having based on proper enquiry on material particulars the challenge meted out by the workman cannot be taken into consideration without viewing the order of termination as illegal and unjustified for which the management prayed for non-reinstatement with no back wages.

5. Admittedly the enquiry has been conducted by the Enquiry Officer appointed by the disciplinary authority without following the norms and principles of natural justice. Though there exists standing orders formulating norms of enquiry before taking any adverse action, but the principles of natural justice which is totally mandatory must be adhered to in order to give an opportunity to the workman to know about the accusation relied upon against him and to defend his own cause by adducing necessary cogent evidence as well as having an impression that the process is going on in enquiry fair reasonable and in just manner. Reliance has been placed in a decision rendered in by our Hon'ble Supreme Court in *Syndicate Bank Vrs. General Secretary of Syndicate Bank Staff Association 2000-LLR-68*. The normal rule, which is only an aspect of the rule of the law is that a public servant, before he is punished for his delinquency must have an opportunity of having his misconduct established through an enquiry and it must not be dispensed with unless extraordinary circumstances is occurred. Reliance has been placed in a decision rendered in our Hon'ble Supreme Court *Tulsiram Patel Vrs. Union of India AIR 1985 S. C., Page 1416*. The intention of the disciplinary authority is very much writ larged from the direction given for holding enquiry for proving the charges made against the delinquent. Though the presenting officer was appointed by the management but no act seems to have been entertained to co-operate the Enquiring Officer nor the Enquiring Officer seems to have taken assistance of such officers in the execution of the enquiry. The Enquiring Officer must be shown to be neutral without passing on his personal information as well as, impression who should be free from the bias. The test for bias should be whether a reasonable and fair minded person who knows relevant facts has a reasonable suspicion that the fair trial is not possible. A fair trial by an unbiased and non-partition trier of facts is of the assurance of the adjudicatory process as well as with the justice is done by adjudicator. The Enquiring Officer after receipt of charges must issue a notice to the delinquent for his appearance into the enquiry to defend his case, and so also should instruct the presenting officer to cause production of material documents. The Enquiry Officer seems to have committed laches in not issuing any notice to the workman. If the notice is not given than oblique intention can be infered for the mind of the Enquiring Officer and adverse view shall be taken on the propriety of the enquiry. If after giving notice the concerned delinquent remains absent the enquiry should be held in his absence *ex parte* but sufficient compliance must be resorted to by giving notice by resorting to different modes and wide publication should be made in the local daily newspaper in the area in which the delinquent resides and the newspaper must have wide circulation in that area. Reliance has been placed in a decision rendered in by our Supreme Court in *G. T. Lard Vrs. Chemicals and Fibers India Limited AIR 1979*

Supreme Court, Page 290. It is also well settled principles that in absence of the delinquent despite repeated opportunity it is obligatory on the part of the Enquiring Officer to conduct enquiry *ex parte* as has been propounded by our Hon'ble Supreme Court in State of U. P. Vrs. T. P. Lal Srivastava 1997-1-LLJ, Page 831. Withdrawal from the enquiry by the delinquent does not give the freedom of absolutely to the Enquiring Officer to conduct *ex parte* enquiry according to law. It does not mean that a finding against the delinquent can be given by the Enquiring Officer without further investigation. It is still necessary for the Enquiring Officer to record the evidence in support of the charges. Both the recording of such evidence oral or documentary will be in absence of the concerned workman. It is almost necessary that the Enquiring Officer should examine the case with greater care before any decision is taken about the guilty of the person. The person proceeded against has a right at a different stages of the proceedings and if he defaulted at one stage then it will not take away his right to defend himself altogether at different stages mere absence of the employee or his refusal to participate may not be regarded as proved of the charges. The requirement of proof will depend upon the notice of each cause. In absence of any evidence neither the Enquiring Officer can arrive at a conclusion nor make a report attending the assessment of evidence.

6. The Enquiry Officer though submitted an explanation of the report that opportunity was given to the delinquent for his presence, no satisfactory evidence is forthcoming to bolster up such explanation. The Enquiring Officer appears to have deliberately not issued any notice to the delinquent as shown from the circumstances depicted through the materials available on the records. The workman having conceived the delay in conducting enquiry against him after submission of charges made a representation drawing attention of the Member-Secretary to prove the charges as expeditiously for the betterment of the interest as shown in Ext.8. If that was such intention of the workman it cannot be said or inferred that the workman and deliberate intention to remain absent in the proceeding so the explanation given by the Enquiring Officer is quite unsustainable. The Enquiring Officer having not given opportunity to the workman for explaining his own cause is quite illegal and process is vitiated.

7. The Enquiring Officer appears to have scrutinised the documentary evidence available with him without recording the evidence of allegators to unearth the truth of the matter. The allegation must have to be substantiated by the examination of the allegators with giving an opportunity to the delinquent to cross-examine such allegators. If the allegations in the charge sheets are denied by the workman, it is needless to state that the burden of proving of those allegations will be on the management and the witness to be called by the management must be allowed to be cross-examined by the workman, with an opportunity to present evidence by the workman to support his plea. Fair opportunity cannot be said to have been given unless witnesses are examined ordinarily in the presence of the workman in respect of the charges and the workman should be given an opportunity to examine his own witness including himself in his defence if so wishes by him. Statement made by the witness who is to examined in the presence of the charge sheeted workman. The finding of the Enquiring Officer on the basis of the statements only would vitiate the action. Whatever statements might have been given by the allegators cannot be taken into consideration as same is not admissible in law. The burden having imposed on the management to prove guilty should have to be discharged completely.

8. The management has reported in the enquiry report basing upon the admission made by the delinquent in respect of an offence committed by him in respect of his co-employee. But the reliance on such admission cannot be given effect to. It is the duty of the Enquiring Officer to examine such workman himself in order to find out the truth of the admission by taking the sole admission. Without examination the workman will amount to an empty formality. The admission of facts must be explained through the workman in order to find out its propriety. Therefore, the admission given by the workman however may be cannot take the place of proof unless it is vouchsafed by his own examination. Moreover the person against whom offence alleged to have been committed resulting in a settlement of admission unless examined it cannot be said that the admission has got any importance. In that state of matter no reliance should have been placed by the Enquiring Officer of such an approved admission. In totality of the analysis it became crystal clear that the enquiry conducted by the Enquiring Officer is not in accordance with the principles of natural justice and rule of formal evidence required for that purpose. Even if any evidence is not recorded, the delinquent should have not to be deprived of rebutting the charges by examination of his own evidence or adduce any evidence. That aspect has not been given effect to by the Enquiring Officer.

9. It is mandatory on the part of the Enquiring Officer before submitting any report must supply a copy of a enquiry report to the delinquent for the purpose of giving opportunity for presenting explanation before the disciplinary authority. Besides that the 42nd Amendment of the Constitution of India has also provided similar provision for furnishing a copy to the delinquent to show cause against the punishment purposed. Reliance has been placed in a decision rendered by the Hon'ble Supreme Court in *Union of India Vrs. Mohamod Ramjan Khan* AIR 1991 Supreme Court-471. In this connection it is to be ascertained whether non-furnishing of report will prejudice caused to the workman even the enquiry report is accepted. On proper scrutiny there is no necessity of furnishing such report, reliance has been placed in a decision rendered by Supreme Court in *Managing Director, E. C. I. L., Hyderabad Vrs. B. Karunaka* AIR 1994-1074. Unless there is a prejudice the enquiry report cannot be set aside on the, technical ground, as has been propounded by our own Supreme Court in *State Bank of India Vrs. N. Sundarmani* AIR 1976 S. C.-41, 1976-LIC, Page 769. If any prejudice is caused then it will be obligatory on the part of the Court to remit back to the cause to the management for fresh trial keeping the delinquent under suspension and in consequence of the result favouring the delinquent, he shall be paid with back wages and reinstatement. Reliance has been placed in a decision rendered by our Supreme Court in *Bansidhar Vrs. State of Rajstan* 2007 (112) FLR-687 and *General Manager, Hariyana Road Ways Vrs. Rudhan Singh* 2005-S. C. C.-591. In the instant case the management has not supplied a copy to the delinquent to establish his case before the disciplinary authority. Further the report of the Enquiry Officer has been considered to be illegal and void due to the process not resorted to for examination of witness and their cross-examination and giving chance to the delinquent to adduce his rebuttal evidence in contest. The workman has been seriously prejudiced to his interest as the enquiry has not been conducted as per the term. If the enquiry was proper in form and delinquent was not given opportunity direction would have been given for fresh enquiry. In the instant case it is not proper to impart direction for fresh enquiry because it is very old and stale. Reliance has been placed in a decision rendered by our Supreme Court in *Gowaliar Corporation District Central Bank Ltd. Vrs. Ramesh Chandra* in

AIR-1985 (S. C.)-337. In the instant case seven years have already been elapsed for disposal of the case since the time of initiation of proceeding. The purpose of sending the case for fresh trial would indubitably frustrated the cause of sacrosanct justice which is true embodiment of the rule of law.

10. It is impossible to presume that the workman has served without any other employment. As it reveals from the record the establishment under the management has been amalgamated with the P. H. D. observing the entire staff. In the meantime most of the post have been filled up by the appointment of other staff. The workman was doing as a daily labourer. On the closure of the scheme the right of the workman for employment is ceased automatically unless it is otherwise designed by the authority to observe in any other post because the right of the workman is not against any sanction post for which regularisation of the service is not imported to. Therefore no gainful purpose would be served by directing reinstatement of the workman. The interest of justice would be best served by setting aside order of punishment as violative to the basic principles of natural justice and fair play resorted to by the management and in place of reinstatement and full back wages a lump sum compensation of Rs. 50,000 is awarded in favour of the workman which would meet the ends of justice.

ORDER

The Award is passed on contest in favour of the workman. The management is directed to pay a compensation of Rs. 50,000 within six months otherwise the workman be at liberty to take shelter of the appropriate authority for realisation of the said amount.

Dictated and corrected by me.

G. K. MISHRA

6-9-2007

Presiding Officer
Labour Court, Jeypore, Koraput

G. K. MISHRA

6-9-2007

Presiding Officer
Labour Court, Jeypore, Koraput

By order of the Governor

P. MALLICK

Under-Secretary to Government