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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 7th April 2007

No.3461-1i/15-2/2007/LE.— In pursuance of section 17 of the Industrial Disputes Act,1947 (14 of 1947), the award dated the 27th February, 2007 in I.D.Misc. Case No. 4/ 2005 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial disputes between the Management of District Transport Manager (Admn.), Orissa State Road Transport Corporation , Bargarh and its workman Shri Basudev Mohapatra, represented through Shri K. K. Nayak, President, S.T.E. Federation was referred for adjudication is hereby published as in the schedule below: —

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE MISC. CASE No. 4 of 2005
Dated, the 27th February, 2007.

Present:

Sk. Jan Hossain, o.s.J.s.(Sr.Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between:

Shri Basudev Mohapatra,
Ex-Conductor, O.S.R.T.C., Bargarh,
Dist : Bargarh.

... Complainant —Workman.

And

District Transport Manager (Admn.),
O. S. R. T. C., Bargarh.

Dist: Bargarh .

... Opposite Party —Management.

Appearances :

Shri K.K. Nayak, President,
S.T.E., Federation.

... For the Complainant—Workman.

Shri D. Adhikari, Labour Welfare
Officer.

... For the O. P. —Management.

AWARD

The complainant is the workman. He filed an application u/s 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as the (Act') challenging the order No. 5009 dated the 5th September 2003 passed by the O.P.-Management.

2. The relevant facts to the present case are that the workman was employed as A Conductor with the Corporation at Bhadrak and subsequently transferred to work under the Padampur unit, Bargarh. A departmental proceeding was started against him for carrying 15 without ticket passengers in bus bearing registration No. OR 15-A 3122 plying from Bhadrak to Machhagarh on 22nd March 2001. On the basis of report submitted by Shri G.C. Samantaray A.T.M. (Vig.), OSRTC, Bhubaneswar a domestic enquiry was conducted. The enquiry officer held that the charges were proved. Since the past record of the complainant was not satisfactory, an order was passed removing him from service. It is stated that the O.R.T. Staff Federation raised an industrial dispute which was already pending before the Tribunal being I.D. Case No. 40 of 1996 and the complainant was a concerned workman there. In the complaint it is specifically pleaded that the enquiry was biased, defective and in violation of the Rules and the principles of natural justice.

3. In the reply filed by the O.P.-Management before this Tribunal it is stated that the present complaint is not maintainable either in law or in fact, in as much as, the complainant is not a concerned workman in I.D. Case No. 40 of 1996. He was transferred to Bargarh w.e.f. 30th April 2003 and after his transfer the disciplinary authority, Bargarh had exercised his disciplinary power. It was detected that the complainant was carrying passengers without ticket in the bus plying the Bhadrak Machhagarh route. According to it, the presence of without ticket passengers in the running bus is a misconduct as per the Standing Orders. The complainant had deposited the penalty amount as per the Rules.

4. On the basis of the aforesaid averments this Tribunal framed the issues given below for consideration:

ISSUES

- (i) Whether the action taken by the D.T.M. (A), O.S.R.T.C., Bhadrak against the workman by way of dismissal from service is legal and/or justified ?
- (ii) If not, what relief the workman is entitled ?

5. At the time of hearing the complainant has examined himself as C.W. No. 1 and filed documents marked as Exts.1 to 13. The O.P.- Management in support of its case has examined four witnesses and relied upon documents marked as Exts.A to A/1 & B to B/1.

6. It is pleaded in the complaint that the O.R.T. Company was merged with the O.S.R.T.C. in the year 1990 and all the employees enmasse and the assets and liabilities were merged and transferred to the O.S.R.T.C.. After merger of the O.R.T. Company with the O.S.R.T.C. , the Management became one and both the organisations were controlled and guided under one Board of Directors. The pay structures and other privileges were made applicable to all the employees. The O.R.T. Staff Federation raised an industrial dispute being I.D. Case No.40

of 1996 regarding payment of Dearness allowance to the employees of the O.R.T. Company at par with the State Government employees and the said dispute was pending. The complainant was a concerned workman in the said case at the time of passing the order of dismissal being an employee of the O.S.R.T.C.. To this written statement of the workman the Management filed a rejoinder where in except a vague denial of the averments that the complainant was a concerned workman made there in nothing was said.

O.P.W. No.2, Shri Netrananda Nayak, D.T.M., Bargarh in his evidence has denied his knowledge about pendency of I.D. Case No.40 of 1996 in the Tribunal. Except a baro suggestion given to the complainant in the course of cross-examination that he had absolutely no connection with I.D. Case No. 40 of 1996, which he denied, there is no acceptable material to that effect. The emerging facts therefore, can be summarised as following :—

The O.R.T. Company merged with the O.S.R.T.C.. After merger the employees received equal benefits in all respect. The O.R.T. Staff Federation filed I.D. Case No. 40 of 1996 for enhancement of Dearness allowance at par with the State Government employees. The State Transport Employees Federation is also a party to the dispute and by the time the complainant was removed from the job, I.D. Case No. 40 of 1996 was subjudice. It appears that the Management had not sought for approval of its action in dismissing the complainant from service. In the case of *United Bank of India Vrs. Sidhartha Chakraborty*, reported in 2006-I-LLJ, Page-476 it has been held : —

“ Industrial Disputes Act, 1947- Section 33(2)(b)- Employer Bank not applying for approval under Section- Such omission, held clear case of contravention of statutory protection afforded to workman.

Respondent, a cash clerk in respondent Bank was dismissed from service for making fictitious entries in savings bank accounts and misappropriation. although there was a pending industrial dispute, the appellant Bank did not apply for approval of its action under Section 33(2) (b) of the Industrial Disputes Act, 1947. A single Judge, hearing writ petition of the respondent against an adverse award of the Industrial Tribunal, held the dismissal was vitiated for omission on the part of the appellant to seek approval under Section 33(2) (b) of the Industrial Disputes Act. Hence the present appeal by the Bank. It was dismissed.

HELD : The High Court observed omission on the part of employer to apply under Section 33(2) (b) was contravention of the provision. On the question whether the Supreme Court's decision in *Jaipur Zila Shahkari Bhoomi Vikas Bank Ltd., Vrs. Ram Gopal Sharma* case 2002-I-LIJ-834 only prospective effect, the High Court said the Apex Court nowhere in the judgment had recorded that the Doctrine of Prospective Ruling would apply in the instant case.”

In the given circumstances, the omission on the part of Management, the employer to make an application under Section 33(2) (b) seeking approval is a clear case of contravention of the provisions laid down under Section 33(2) (b) of the Act.

The written statement filed by the Management is totally silent about payment of one month's wages at the time of removal of the complainant from service. O.P.W. No.2, Shri Netrananda Nayak in his evidence has said that one Month's wages was not given to the complainant at the time of his dismissal from job. From this it is clear that one Month's wages was not sent to the complainant alongwith the removal order. This would constitute a breach of mandatory provision of Section 33(2) (b) of the Act.

7. Now the questions arise for consideration are whether there was a proper domestic enquiry, whether the principles of natural justice were followed and a *prima facie* case was made out.

8. The Enquiry Officer in his report, Ext.9 has found that the charge about carrying 15 passengers without ticket at the time of checking has been duly established against the delinquent-complainant. Show-cause notice, Ext.6 was issued. He submitted reply to the second show-cause, Ext.10. It is necessary to state here that initially Shri P. K. Behera, A.T.M., Bhadrak enquired into the case. The D.T.M., Bhubaneswar appointed the A.T.M. Bhubaneswar as the enquiry officer on 12th December 2002 vide Ext.8. The delinquent was asked to appear in person on 28th August 2003 by the D.T.M., Bargarh vide Ext. 11. He attended the personal hearing and dismissed from service eventually.

The Checking Officer, O.P.W. No. 1, Shri G. C. Samantaray in his evidence has stated that he had not verified the cash. According to him, he prepared the checking report and submitted the same. The Driver put the signature in the checking report at the spot. In cross-examination he was unable to say as to why the enquiry officer was changed.

O.P.W. No. 2, Shri N. N. Nayak has stated that the case record of the complainant came to Bargarh D.T.M. as he was transferred to padampur. He recorded his statement in course of personal hearing. On the basis of materials available on record, he recorded the order of his dismissal from service. In cross-examination he has said that the D.T.M., Bhubaneswar directed to conduct de novo enquiry into the proceeding. The witness was frank enough to admit that no independent witness was examined in the enquiry. In the de novo enquiry the driver on steering was not examined.

O.P.W. No.3, Shri Subash Ch. Mohanty in his cross-examination has admitted that he had not checked the case in the hands of the conductor.

O.P.W. No. 4, Shri Ashok Kumar Das in his evidence has stated that he conducted the enquiry on the basis of Office Order No. 6933 dated the 12th December 2002 of the D.T.M. and submitted report after concluding the proceeding. In the cross-examination he has admitted that Shri P. K. Behera had enquired into the matter earlier and submitted report. The witness has also admitted that he did not examine the driver and cleaner of the Bus as they did not attend the enquiry despite notice. He also did not examine any independent witness. The principles of natural justice demand that some independent witnesses like the without ticket passengers should be examined to depose the real truth in the case, but no such person has been examined. There is also no evidence that the complainant has collected fare from

the 15 without ticket passengers or that the Checking Officer has checked the case with the Conductor. In such state of affairs it is difficult to conclude that a *prima facie* case did exist in support of the Corporation.

9. In conclusion, I would hold that the action of the Management in discharging the complainant from service was not proper. The workman is permitted to join the duties in the Corporation in the post from which he was removed. It is nowhere stated in the application that the workman remain unemployed and could not get any kind of employment despite his efforts. The claim of back wages is not something which automatically flows to the particular relief of reinstatement granted to the workman in all cases. In the application no averment has been made and it is not even the normal human conduct that a workman would remain unemployed for a long period. Taking into consideration all the aspects, I think a compensation to the tune of Rs. 2,000/- (Rupees two thousand only) would meet the ends of justice in this case.

The Misc. Case is disposed of accordingly.

Dictated & corrected by me.

Sk. Jan Hossain
Dt.27-2-2007
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Sk. Jan Hossain
Dt.27-2-2007
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

By order of the Governor

N. C. RAY
Under-Secretary to Government