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LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th April 2007

No.3739-1i/1(B)-42/04/L.E.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 13th March, 2007 in I.D. case No.65/2004 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s. Orissa State Co-operative Agricultural and Rural Development Bank Limited, Bhubaneswar and its workman Shri Raj Kishore Rao was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.65 OF 2004

Dated The 13th March, 2007

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

Between : The Management of M/s. Orissa
State Co-operative Agricultural and
Rural Development Bank Limited,
Bhubaneswar. .. First Party— Management
AND
Their Workman
Shri Raj Kishore Rao. .. Second Party— Workman

Appearances:

Shri B. Sahoo, Advocate .. For the First Party— Management

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Shri S. Rout, Advocate }
Shri S.K. Ray, Advocate } .. For the Second Party— Workman

AWARD

The Government of Orissa, Labour and Employment Department referred the present dispute between the Management of M/s. Orissa State Co-operative Agricultural and Rural Development Bank Limited, Bhubaneswar and their workman Shri Raj Kishore Rao under notification No. 8007/LE., dated the 18th July 1985 vide Memo. No. 9050(5), dated the 11th October 2004 for adjudication by this Court.

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

“whether the action of the Management of M/s. Orissa State Co-operative Agricultural and Rural Development Bank Limited, Bhubaneswar in terminating the employment of Shri Raj Kishore Rao with effect from 13th June 2002 is legal and/or justified? if not, what relief is Shri Rao entitled to?”

3. Shorn of all un-necessary details, the case of the workman is as follows:—

The workman was working as a Driver under the Management of Orissa State Co-operative Agricultural and Rural Development Bank Limited, Bhubaneswar (hereinafter referred to as the Management) since 1st November 1977, by virtue of the appointment letter issued by the Management. There were two departmental disciplinary proceedings against the workman vide office Order No. 917, dated the 8th May 2000 and vide Memorandum No. C/150(M.D.), dated the 14th September 2000. The second one is an additional proceeding in continuation of the first disciplinary proceeding. The workman had been ordered by the Managing Director of the Management to proceed with Office Jeep bearing Registration No. OSP-4350 to Baragarh CARD Bank for one week i.e. from 18th February 2000 to 25th February 2000 with the Law Officer of Sambalpur Branch in connection with collection duty. On 22nd February 2000 the Jeep was not in running condition for which it required repairing. The workman, Driver reported the matter to the Secretary of Baragarh CARD Bank, but the Secretary without taking any step for repairing of the Jeep, asked the workman to wash the Jeep. Since there was no availability of sufficient water at Baragarh CARD Bank, the workman was directed by the Secretary to take the Jeep to the Canal to wash it. While the workman was washing the Jeep unfortunately the Jeep went inside the Canal. The workman guarded the Jeep at the Canal site in the night and on the next day morning i.e. on 23rd February 2000 morning took the help of near-by villagers and lifted the Jeep out of the Canal water and brought the

Jeep to the campus of Baragarh CARD Bank and informed about the matter to the Secretary of CARD Bank. As the Jeep had to be repaired by incurring expenditure of Rs. 5,345.50 a charge was framed against the workman stating that due to negligence of the workman, Driver the Jeep had met with an accident and that the workman had taken the Jeep unauthorisedly. Other charges included mis-behaviour of the workman to the staff of Baragarh CARD Bank and to the Law Officer of Sambalpur Branch of OSCARD Bank alleging that the workman had asked for his fooding charges and on the refusal of the Law Officer to provide such fooding charge, the workman abused him. Subsequently an additional charge was framed against the workman alleging therein that on 17th January 2000 at about 11 A.M. the workman had been to Head Office of the Management in a drunken state and scolded Superintendent of Type Section in abusive language and thereafter the workman up-rooted the flower trees of the office garden and had broken the window glasses of the office. The workman replied to the charge on 23rd May 2000 in his show cause. During pendency of the enquiry, the workman was put under suspension. Shri Umakanta Satpathy, Law Officer was appointed as Enquiry Officer to enquire into the disciplinary proceeding. The Enquiry Officer fixed the date of enquiry at Baragarh CARD Bank on 11th August 2000 at 11 A.M. and the workman was duly intimated, but the workman could not attend the enquiry due to his illness and made a request in writing for an adjournment. Notwithstanding the prayer of the workman seeking adjournment, the Enquiry Officer conducted enquiry in the absence of the workman at Baragarh, depriving the workman a chance to defend himself and thereby it had occasioned in gross violation of natural justice.

As regards additional disciplinary proceeding the workman submitted his show cause on 10th October 2000. Shri Umakanta Satapathy, Law Officer enquired into the additional charge and intimated the workman to attend the enquiry at Bhubaneswar head office at 11 A.M. on 15th December 2000. On 15th December 2000 the workman had to perform special puja and therefore, he sought for an adjournment. The Enquiry Officer allowed adjournment and fixed the date to 23rd January 2001. The workman duly attended the enquiry into the additional charge on 23rd January 2001 and also on 15th March 2001. After completion of the enquiry, the Enquiry Officer submitted his enquiry report. The workman was directed to show cause by way of second show cause notice as to why severe punishment should not be meted out to him as because he was found guilty of the charges. The workman on receipt of notice submitted his show cause on 25th June 2001 but the Management without considering the show cause submitted by the workman, terminated the services of the workman and the termination order was communicated to him.

After termination of his service, the workman initiated a dispute under the provisions of the Industrial Disputes Act, 1947 (here-in-after referred to as the I.D. Act) and on failure of the conciliation, the matter was referred to this Court for adjudication and hence this case. It is contended by the workman that the Management did not follow the provisions under Section 25-F of the I.D. Act at the time of terminating the services of the workman.

4. The Management in its written statement has contended that the workman was found guilty of the charge levelled against him after due enquiry against him for gross violation and dis-obedience of officer orders, negligence in his duty coupled with mis-conduct, breach of trust and doing acts detrimental to the interest of the Management. Prior to the charge relating to the present case, the workman on two prior occasions i.e. in the year 1987 and in the year 1988 had been placed under suspension and departmental proceedings had been enquired into against him and in the said two departmental proceedings also he had been awarded with the punishment after due enquiry. It is contended that as per office order the workman arrived at Baragah CARD Bank with the office Jeep in the evening of 17th February 2000 accompanied by Shri J.C. Mohanty, Law Officer, Sambalpur Branch, but on 22nd February 2000 the workman refused to drive the vehicle to proceed for collection duty demanding payment of Rs.50/- per day in advance as his fooding charge and submitted an application to the Secretary of Baragarh CARD Bank in the matter and threatened that unless such fooding charge is paid to him , he would return to the Sambalpur Branch with the office Jeep, inspite of a lot of persuasion by Shri Mohanty, Law Officer and CARD Bank staff for which office work was hampered. In the evening of 22nd February 2000 the workman-Driver left the CARD Bank with the office Jeep at about 6 P.M. without permission and without intimation and did not return to the office in the night. On 23rd February 2000 at about 11 A.M. the workman informed that the vehicle had met with an accident some where at Lakhapur. When the CARD Bank staff accompanied with the Driver went to the spot they found that the vehicle had fallen into canal water at Nuagarh on the way to Bhedan about 15 Kms. away from Baragarh. The vehicle was brought out from the canal with the help of the local men and was towed to Baragarh and was repaired with a cost of Rs. 5,345.50. Shri I.C. Mohanty, Law Officer, Sambalpur submitted a preliminary report in the matter on 28th February 2000 to the head office. Because of such negligence and mis-conduct of the workman charge was duly framed and charge-sheet was supplied to the workman and after due enquiry, the Enquiry Officer Shri Umakanta Satpathy found the workman guilty of the charge. On 15th July 2000 at about 9.20 A.M. while the main gate of office building at the head office at Bhubaneswar was

locked, the workman came in a drunken state and tried to enter into the office building forcibly and struck the gate by kicks resulting in breaking of the gate of the head office. After entering into the office building the workman asked one D.D. Patra, Sub-staff for telephone key and on refusal of the said staff, the workman rushed to upstairs and knocked the entrance door of the hall and shouted loudly to enter into the Managing Director's Chamber. The staffs present there tried to restrain the workman from forcibly entering into the Chamber of Managing Director. An additional charge was also framed for such mis-conduct. After due enquiry as per procedure and after giving full scope to the workman to defend himself, it was found that the charge had been established and the show cause submitted by the workman was not satisfactory and therefore after adopting due procedure the service of the workman was terminated vide order No. 1640, dated the 13th June 2002. At the time of termination of services of the workman, the Management duly followed the provisions of Section 25-F of the I.D. Act and paid him all his dues including gratuity amount after deducting the dues those were to be recovered from the workman. On these averments, the Management has sought for dismissal of the present proceeding.

5. On the aforesaid pleadings of the parties, the following issues have been framed for determination.

ISSUES

- (i) Whether the action of the Management of M/s. Orissa State Co-operative Agricultural and Rural Development Bank Limited, Bhubaneswar in terminating the employment of Shri Raj Kishore Rao with effect from 13th June 2002 is legal and/or justified ?
- (ii) If not, to what relief is Shri Rao entitled to ?

6. It is an admitted fact that the workman had been entrusted with office Jeep bearing No. OSP-4350 and had been directed to proceed to Baragarh for use of the said Jeep in collection drive of Baragarh Branch of OSCARD Bank M.W. 5 in his evidence has deposed about the application dated the 22nd February 2000 submitted by the workman demanding daily food charge. In Ext. A the workman Driver has categorically written that unless the fooding charge of Rs. 50/- is paid to him he would not drive the office vehicle and that he would take away the office vehicle to Sambalpur Branch office. It is also admitted that the vehicle in question had fallen into a canal M.W.1, who is the Secretary of Baragarh CARD Bank, in his evidence has stated that on 22nd February 2000 at about 11 A.M. the workman-Driver came to the office at Baragarh and stated that the vehicle had met with an accident on the way to Sambalpur at Village Lakhanpur, but when M.W.1 went to the accident spot with the workman he found that the vehicle had been kept by the road side at

Nuagada Village on Baragarh Bheden Road about 12 Kms. away from Baragarh and further found that there was water inside the engine of the vehicle. Further evidence of M.W.1 is that the workman told him that the vehicle had fallen into the canal by the road side. According to M.W.1 on his return he submitted a report to the Management-in-charge and that the vehicle in question was towed with a hired vehicle and at a cost of Rs. 5,345.50 the vehicle was repaired. According to M.W.1 the workman-Driver had taken the office Jeep to Nuagada without any authority and without any permission from the higher authority and had caused the accident in question. Further evidence M.W.1 is there washing facility inside the Baragarh CARD Bank. In the cross examination of M.W.1 only few suggestions have been given denying the evidence of M.W.1 but nothing substantial has been brought out to discard the evidence of M.W.1. It is an admitted fact that charge had been framed into the allegations regarding negligence in duty by the workman at Baragarh and regarding his mis-conduct at the head office. In his cross examination the workman has categorically admitted that under Ext.7 the General Manager of OSCARD Bank had supplied him the copies of documents Exts.1 to 6 and had directed him to make representation if any within 15 days and had also intimated him in the letter Ext.7 that charge had been duly proved against the workman and major penalty was imposed on him. The workman has also proved the second show cause notice to him as Ext.9. Ext.1 is the copy of the disciplinary proceeding No. 917, dated the 8th May 2000 drawn up against the workman and Ext.3 is the Xerox copy of the enquiry report and Ext.4 is the Xerox copy of the additional proceeding dated the 14th September 2000 and Ext.6 is the enquiry report regarding the additional proceeding. The workman has admitted that all these documents had been supplied to him. Now looking at the report of the Enquiry Officer vide Ext. 4, it is clear that the Enquiry Officer had duly enquired into the charges. The pleading of the workman that he had prayed for adjournment due to his illness and that the Enquiry Officer without giving him adjournment proceeded with the enquiry has not been duly proved by the workman because he has not proved a scrap of paper regarding his supposed illness. In the pleading, the workman has admitted that the date of enquiry had duly been intimated to him. It is not the duty of this Court to scan the evidence regarding the charge proper as if it is sitting in a Criminal trial. The only duty of this Court is to see as to whether the domestic enquiry against the workman was duly conducted after giving due opportunity to him to defend himself. The very pleading and the evidence of the workman himself makes it very clear that the workman had been supplied with all the relevant documents into the alleged charge and that he had been duly intimated about the dates of enquiry and that due opportunity was given to him to defend

himself and therefore, there has not been any violation of the principle of natural justice. In his cross-examination the workman has admitted that prior to the present proceeding under Exts. 1 and 4, he had been suspended from service on 24th January 1987 and also on 12th September 1988. The Management has proved the documents Exts.A to P which substantiate that the domestic enquiry against the workman was duly conducted and before a major punishment was inflicted, he had been duly given chance to make representation if any and thereafter second show cause notice was issued to him. Ext.N is the order the termination and Ext.P is the copy of the Service Book of the workman. All these documents pin point to the fact that the workman was guilty of serious mis-conduct and gross dereliction in duty. Therefore, the punishment to the workman by way of termination of service is also proportionate to the charge framed against the workman which after due enquiry was found established.

The other allegation of the workman is that the provisions of Section 25-F of the I.D. Act had not been duly followed at the time of termination of his service. In his cross-examination the workman has admitted that he had received his gratuity amount and money in lieu of 240 days of Earned Leave after his termination. Since it is a case of termination from service after domestic enquiry into the charges, the question of payment of notice pay and compensation does not arise at all. Therefore, it is held that :

The action of the Management of M/s. Orissa State Co-operative Agricultural and Rural Development Bank Limited, Bhubaneswar in terminating the employment of the workman namely Shri Raj Kishore Rao with effect from 13th June 2002 is legal and proper and therefore, the workman is not entitled to any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me. _____

S.K. Mohapatra
(13-03-2007)
Presiding Officer
Labour Court
Bhubaneswar

S.K. Mohapatra
(13-03-2007)
Presiding Officer
Labour Court
Bhubaneswar

By order of the Governor

N.C. RAY

Under-Secretary to Government