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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 4th December 2008

No. 12406–li/1(B)-75/1992-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd November 2008 in Industrial Dispute Case No. 38/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Eastern Metal and Ferro Alloys Ltd., Haridaspur, Cuttack and their Workman represented through Haridaspur Alloys Workers Union was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 38 OF 2008

Dated the 22nd November 2008

*Present :*

Shri P. C. Mishra, o.s.j.s. (Sr. Branch)  
Presiding Officer, Industrial Tribunal  
Bhubaneswar.

*Between :*

The Managing Director .. First Party—Management  
Eastern Metal & Ferro Alloys Ltd.  
At/Post Haridaspur, Dist. Cuttack.

And

General Secretary .. Second Party—Workman  
Haridaspur Alloys Workers Union  
At/Post. Dhanmandal, Dist. Cuttack.

*Appearances :*

For the First Party–Management	..	Shri Prafulla Kar
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For the Second Party–Workman himself	..	Shri Subash Nayak

## AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 3864–li/1(B)-75/1992-L.E., dated the 2nd April 1993 but subsequently it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138–li/21-32/2007-L.E., dated the 4th April 2008.

“Whether the termination of service of Shri Subhash Ch. Nayak, Helper by way of refusal of employment by the management of M/s. Eastern Metal and Ferro Alloys Ltd., Haridaspur with effect from the 30th October 1990 is legal and/or justified ? If not, to what relief he is entitled to ?”

2. The case of the workman, represented through Haridaspur Alloys Workers Union in brief is that he was working as a Plant Helper under the Management from the 8th January 1984 and was getting a consolidated amount of Rs. 260 per month and with effect from the 1st January 1990 he was placed in the revised grade of Rs. 450–30–570–40–770 and continued to work as such under the management. It is pleaded that the workman proceeded on leave on the 30th October 1990 on the ground of self-illness after submitting leave application to the management and continued to remain on leave till the 18th November 1990. On the 19th November 1990 when the workman reported for duty and submitted his joining report along with the medical certificate, the management did not accept the same and instead refused him employment stating that he has been discharged from service for his involvement in union activities. In absence of any written order to the effect, the workman was reporting at the factory gate and ultimately on the 30th October 1990 he was refused employment. According to the workman, refusal of employment to him amounts to an act of victimisation and an arbitrary action on the part of the management. In the aforesaid premises, the workman has prayed for his reinstatement in service with full back wages and other service benefits.

3. The management filed its written statement stating therein *inter alia* that there has been no termination of service of the workman, much less any refusal of employment with effect from the 30th October 1990 and disputing the averment of the workman that he was working with the management as a Plant Helper from the 8th January 1984 to the 19th November 1990 on a consolidated amount of Rs. 260 per month and subsequently he was placed in the revised grade of Rs. 450–770 with effect from the 1st January 1990. The specific stand of the management is that the workman was a daily wager and was not assigned with a particular job. He was working intermittently during 1989-90 on a daily wage of Rs. 25. It is

further averred in the written statement that since the deployment of the workman was casual and temporary in nature, the question of his taking leave does not arise and further he voluntarily and wilfully absented himself from duty with effect from the 21st October 1990 and as such it is a case of voluntary abandonment of employment and not refusal of employment as alleged by the workman. The management in the premises has prayed not to consider the contentions advanced by the workman.

4. On the aforesaid pleadings of the parties, the following issues have been framed :—

#### ISSUES

- (i) Whether the termination of services of the second party workman by way of refusal of employment by the first party management with effect from the 30th October 1990 is legal and/or justified ?
- (ii) What relief the workman is entitled to ?

5. In order to prove their respective plea, both parties have adduced oral as well as documentary evidence in the case. The workman examined two witnesses including himself and brought on record five documents which have been marked Exts. 1, 3, 3/1, and 4. The management on the other hand examined one witness in the case and brought on record four documents which have been marked as Exts. A, B, B/1 & C.

6. It being the settled principle of law that in order to attract the ingredients of Section 25-F of the Industrial Disputes Act, the claimant has to establish that he was in continuous employment under the management for a period of 240 days preceding the date of his so-called termination, the Tribunal is required to adjudicate upon the said issue at the first instance. In this connection, the evidence available on record shows that the workman was working as a Helper under the management during the period claimed and Ext. 2 discloses that the name of the workman was put at Sl. No. 50 in the revised scale of pay which was issued on the 16th October 1989. On the basis of Ext. 2 therefore, it can safely be concluded that the workman was in regular employment of the management. The communication, Ext. 4 made on behalf of the management to the Medical Officer, Dharmasala P. H. C. also supports the stand of the workman that he was in regular employment under the management for which it made correspondence as per Ext. 4 for his leave of absence, which is required for a regular personnel only and not for a daily wager. In the result therefore, it is held that the burden of proof is well established by the workman in the matter of his rendering continuous service under the management.

7. Now it is to be seen as to if the management refused employment to the workman when he reported for duty after availing leave as claimed by the workman or as asserted by the management, the workman left the employment voluntarily and did not respond even after notices issued.

8. As held by their Lordships of the Hon'ble Court in the decision reported in 68 (1989) CLT-684 (*Madhabananda Jena Vrs. Orissa State Electricity Board & others*), in order to prove a case of voluntary abandonment of service, the party pleading the same should have a reasonable and plausible reason and material to pursue the same so as to consider abandonment of employment.

In the instant dispute the management has taken a stand that the workman voluntarily left the job and did not turn-up despite the notice, Ext. B. Ext. B is of no help to the management since it is a notice said to have been issued to the workman on the 3rd November 1990 whereas the claim of the workman is that on submission of his joining report along with a medical certificate on the 19th November 1990 he was not allowed to join and the Doctor concerned was requested in writing as per Ext. C to opine about the genuineness of the medical certificate issued in favour of the workman. It is the consistent plea of the workman that even after getting clarification from the Medical Officer as per Ext. 3 he was not allowed to join and instead he was asked to resign and work on daily wage basis to which he refused. The plea of voluntary abandonment of job by the workman, in the aforesaid circumstance, cannot be sustained. It is not a case that the workman stayed away from work since the 30th October 1990 and did not report thereafter. Rather, the workman has successfully proved that due to his illness he could not perform his duty from the 30th October 1990 to the 18th November 1990 and on his reporting to duty he was refused employment. Although evidence is adduced on behalf of the management but no contemporaneous material was produced to show that the workman was treated as an absconder from duty and was dealt with as such. Hence the plea of the management that the workman voluntarily absconded from work must fail.

9. On the face of the documents Exts. 4 and 3 it cannot be denied that the workman was ill from the 30th October 1990 to the 18th November 1990 and on submission of his joining report on the 19th November 1990 he was refused employment. The action as taken against the workman, therefore amounts to termination of his service and such termination of service is retrenchment within the meaning of Section 2(o) of the Industrial Disputes Act as held by the Apex Court in *Delhi Cloth and General Mills Co. Ltd. Vrs. Shambhu Nath Mukherjee* (reported in AIR 1978 SC-8) and reiterated in the case of *L. Robert D. Souza Vrs. The Executive Engineer, Southern Railway and another* (reported in AIR 1982 SC-854). It being the admitted position that the management has not followed the mandatory procedure laid down in the Industrial Disputes Act for retrenchment of the workman, the termination of his service by way of refusal of employment by the management with effect from the 30th October 1990 is held to be illegal as well as unjustified one. He is entitled to be reinstated in service forthwith.

10. Now coming to the question as to the relief to which the workman is entitled, it is seen that the workman has not uttered a single word in his evidence that during the period of termination of service he was not gainfully employed elsewhere. Hence, it is held that he is not entitled to any back wages in the present dispute.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA  
22-11-2008  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

P. C. MISHRA  
22-11-2008  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

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By order of the Governor  
K. C. BASKE  
Under-Secretary to Government