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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th February 2008

No. 1642—li/1(B)-24/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th December 2007 in Industrial Dispute Case No. 82 of 1993 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s Konark Jute Limited, Dhanmandal, Cuttack and their workman Shri Rohini Kumar Nayak, was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 82 OF 1993

Dated the 5th December 2007

Present :

Shri S. K. Mohapatra, o.s.j.s. (Junior Branch)
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of
Konark Jute Limited
Dhanmandal. . . First Party—Management

And

Their Workman
Shri Rohini Kumar Nayak . . Second Party—Workman

Appearances :

For the First Party—Management . . Shri A. K. Das

For the Second Party—Workman himself . . Shri R. K. Nayak

AWARD

The Government of Orissa, Labour & Employment Department referred the present dispute between the management of M/s Konark Jute Limited, Dhanmandal and their workman Shri Rohini Kumar Nayak under Notification No. 3043-L.E., dated the 6th March 1991 vide Memo. No. 6916(5)-L.E., dated the 31st May 1993 for adjudication by this Court.

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

“Whether the dismissal of Shri Rohini Kumar Nayak, Security Guard from service by the management of M/s Konark Jute Limited, Dhanmandal with effect from the 10th December 1988 is legal and/or justified ? If not, what relief is Shri Nayak is entitled ?”.

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

The workman joined the management organisation as a Special Security Guard on a monthly salary of Rs. 200 in March 1978. The management refused further employment to the workman verbally with effect from January, 1980 without any reason. When the workman approached the management repeatedly he was given fresh employment vide order No. 1185, dated the 14th April 1982 to work as Security Guard with a condition to remain on probation for a period of six months. In response to the letter of appointment the 14th April 1982, the workman joined the management organisation on the 2nd May 1982. there was a lock-out in the management Mill in the years 1983 and 1984. After the lock-out the workman was directed to work as Security Guard from 10 P.M. to 6 A.M. in ‘C’ shift. In December 1985 the workman approached the Security Officer and the General Manager to change his shift duty on weekly rotation basis which was being allowed to other Security guards but the management did not consider the request of the workman. Thereafter the management framed a false and motivated charge sheet against the workman on the 10th December 1985 and placed the workman under suspension after the lapse of 10 months vide order dated the 14th October 1986. After vacation of the suspension order with effect from the 14th October 1986 the shift incharge again placed the services of the workman in ‘C’ shift (night shift) continuously for about two years. When the workman again approached the management for a change of his shift duty the Security Inspector and the Security Supervisor Shri P. K. Mohapatra and Shri K. C. Sahoo respectively falsely alleged charge of misconduct against the workman and accordingly vide order dated the 6th September 1988 a charge sheet was framed against the workman and he was again placed under suspension. The charge as against the workman read as follows :

- (1) Reporting duty much earlier to the scheduled time of 10 P.M. on the 2nd August 1988 and absent in course of duty.
- (2) Leaving the duty place on the 5th September 1988 at 11-30 P.M. and threatened to Shri N. Mallick and Shri P. Sethi, Security guards on Main Gate.
- (3) On the 5th September 1988 at 12 night you have caused disturbances to Shri P. K. Mohapatra, S.S.I. and Shri K. C. Sahoo, S.S. while they are enquiring the allegation of the 11-30 P.M. and exhibited riotous and disorderly behaviour.

The workman filed his explanation to the charge on the 8th September 1988 not being satisfied with the explanation offered by the workman, the management appointed Shri J. B. Biswal as the Enquiry Officer. The workman appeared before the Enquiry Officer on the 28th September 1988, the 11th October 1988, the 6th November 1988 and the 28th November 1988 but the Enquiry Officer took the deposition of the management witnesses in his chamber ignoring the workman and later on asked the workman to read the depositions of the witnesses and returned the same to him. After reading of the depositions of witnesses for the management, the workman prayed to the Enquiry Officer for supply of the copies of depositions and to cross-examine the witnesses but the Enquiry Officer refused to allow the workman to cross-examine the witnesses of the management and did not supply the copies of the depositions. The Reporting Officer i.e. the Security Inspector and the Security Supervisor asked the workman to adduce his evidence only. As the whole process adopted by the Enquiry Officer during the enquiry by recording the evidences of the witnesses for the management behind the back of the workman was gross violation of natural justice, the workman boycotted the enquiry. The domestic enquiry was finally concluded on the 28th November 1988 and thereafter an order of dismissal was passed vide order dated the 10th December 1988. In the said order it had been falsely mentioned that the workman had shown gross disorderly behaviour on the 8th December 1988. during enquiry proceeding had also misbehaved the Enquiry Officer and thereafter the workman left the enquiry spot deliberately as a result of which the enquiry was conducted and closed in the absence of the workman. The management by conducting an enquiry behind the back of the workman had closed down all chances to the workman to prove his innocence. The workman was not provided any opportunity to appeal against the order of dismissal. The domestic enquiry against the workman was not fair and proper and besides that the order of dismissal from service was severe. On these averments the workman has claimed reinstatement in service with back wages. During the conciliation proceeding the management insisted that it had rightly dismissed the workman from his service after conducting a free and fair domestic enquiry by following the principles of natural justice. Since there could be no conciliation between the parties, the Government made the present reference to this Court for adjudication of this case.

4. The management in its written statement has denied the averments made by the workman and has contended that the workman was first appointed as Casual Security Guard with effect from the 12th July 1979 for three months on a consolidated monthly salary of Rs. 200. During such casual engagement the performance of the workman was unsatisfactory for which his service was discontinued with effect from the 30th October 1979. Thereafter the workman made a representation to the then Chief Minister of Orissa and therefore, the workman was appointed afresh as Security Guard on a consolidated salary of Rs. 380 and was kept under probation for a period of six months with effect from the 14th April 1982. During such period of probation the workman had been cautioned and charge-sheeted on number of occasions for committing misconducts. After his fresh appointment the workman was allotted duty in shifts on weekly rotation basis but it was observed that he used to avoid allotted shifts other than 'C' shift (night shift) and therefore on the personal approach of the workman he was allotted to perform the duty in 'C' shift. There was serious allegation of misconduct against the workman and therefore he was placed under suspension on the 28th

November 1985 followed by a charge sheet in detail. The explanation the 14th December 1985 filed by the workman was found unsatisfactory and therefore, it was decided to conduct a domestic enquiry. The workman vide his application dated the 10th October 1986 admitted all the charges and made a prayer for unconditional apology and therefore, the order of suspension was vacated and the workman was let off with a strong warning vide order the 14th October 1986. Then again the workman conducted several misconducts for which he was charge sheeted on the 6th September 1988. Shri J. B. Biswal was appointed as the Enquiry Officer to conduct the domestic enquiry. The workman had appeared before the enquiry Officer and finally participated in the enquiry held on the 22nd September 1988, the 28th September 1988, the 8th October 1988, the 22nd October 1988, the 29th October 1988, the 18th November 1988 and participated partially in the enquiry dated the 8th December 1988. During enquiry the workman made prayer for adjournments on four occasions and as such enquiry had been adjourned on the request of the workman. Prior to the 8th December 1988 four numbers of witnesses for the management had been examined in presence of the workman and his co-worker and they had been duly cross-examined. The statements of such witnesses were recorded in Oriya and the copies of the statements were supplied to the workman. The management had also proved eight numbers of documents Exts. 1 to 8 in presence of the workman. On the 8th December 1988 the workman and his co-worker appeared in the enquiry and while M. W. 5 was giving his statement in presence of the workman, the workman became very angry and all on a sudden snatched away the enquiry file and demanded the Enquiry Officer for supply of incomplete deposition of M. W. 5 and created disturbance. The Enquiry Officer out of fear supplied incomplete deposition of M. W. 5 but after much request the workman threw those documents on the table of the Enquiry Officer and after making false endorsement on the said deposition sheet left the place with his co-worker with a declaration not to participate any further in the enquiry. In spite of all reasonable opportunities offered by the Enquiry Officer, the workman with ill-motive deliberately left the enquiry spot without participating in the enquiry by showing gross disorderly behaviour. The Enquiry Officer being fully satisfied about the wilful avoidance of the workman to participate in the enquiry conducted with the enquiry on the 8th December 1988 on merit and concluded the same in the absence of the workman. The enquiry Officer found the workman guilty of all the charges and submitted his report to the management. The management after consideration of the enquiry report dismissed the workman from service with effect from the 10th December 1988. The enquiry against the workman was fair and proper and all reasonable opportunities had been given to the workman to defend himself. The imposition of punishment of dismissal of the workman from his service was justified and it was proportionate to the gravity of proved misconduct. On these averments the management has contended that the workman is not entitled to any relief whatsoever.

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

ISSUES

- (i) Whether the dismissal of the second party workman, Security Guard by the first party management with effect from the 10th December 1988 is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?

6. *Issue No. (i)*— Before going to the Issue No. (i) proper, it is to be first decided as to whether the domestic enquiry conducted into the charges against the workman had been conducted in a fair and proper manner and as to whether reasonable opportunity had been given to the workman to defend himself.

M. W. 3 was the enquiry Officer who conducted the enquiry. In his evidence M. W. 3 has stated that he was working as a Legal Assistant under the management in August, 1987 and that he had been appointed as enquiry Officer to conduct the enquiry in respect of the charges against the workman vide Ext. 11. According to M. W. 3 the enquiry commenced from the 22nd September 1988 and closed on the 8th December 1988 and that during the enquiry all reasonable opportunities had been given to the workman who participated in the enquiry being assisted by his co-worker namely Shri Trilochan Baral. In his evidence M. W. 3 has stated that he recorded the statements of seven numbers of witnesses on behalf of the management out of whom four witnesses had been cross-examined by the workman through his co-worker. On the 8th December 1988 while the Enquiry Officer recorded the evidence of witnesses namely Sk. Yusuf Alli, the workman snatched away the enquiry file and did not allow him to conduct the enquiry. According to M. W. 3 after some time workman threw the file on his table and did not participate in the enquiry and therefore the enquiry was conducted in the absence of the workman who had deliberately left the place of enquiry. Three witnesses who were examined by the Enquiry Officer in the absence of the workman were not cross-examined by the workman who did not participate in the enquiry on the 8th December 1988, although he had been given opportunity to remain present during the enquiry and to cross-examine such witnesses. The co-worker of the workman falsely made an endorsement on the 8th December 1988 that the Enquiry Officer did not conduct the enquiry at the said specified time and place. After completion of the enquiry, the Enquiry Officer submitted his enquiry report Ext. 12 in which the workman was found guilty of all charges. The proceedings of the enquiry has been proved as Ext. 14 in which Ext. 14/d is the endorsement of the workman and Ext. 14/e is the endorsement of the Enquiry Officer. As regards the unruly behaviour of the workman on the 8th December 1988 during the enquiry, the Enquiry Officer had reported the matter to the management vide Ext. 16 and the management on its part lodged an F.I.R. Ext. 17 in the matter. In the cross-examination the Enquiry Officer has denied that the enquiry had been conducted behind back of the workman and has also denied that there was no occurrence on the 8th December 1988. The workman has examined himself as W.W. 1. In his cross-examination the workman has admitted that during the domestic enquiry he had attended the enquiry and had been assisted by his co-worker Shri Trilochan Baral. In his statement of claim the workman has admitted that he had attended the enquiry on the 28th September 1988, the 11th October 1988, the 6th November 1988 and the 28th November 1988. Ext. 14 is the enquiry proceeding which clearly shows that the charge was read over and explained to the workman who attended the enquiry on all days except on the last date. As regards the absence of the workman on the last date, it is available from the evidence of the Enquiry Officer M. W. 3 that on the 8th December 1988 the workman created trouble by showing unruly behaviour to the Enquiry Officer and deliberately left the place of enquiry. The xerox copies of depositions of four numbers of witnesses who had been examined prior to the 8th December 1988 shows that the four numbers of witnesses for the management had been

duly cross-examined. In the deposition of three numbers of witnesses M.Ws. 2 to 4 of the enquiry there is endorsement of the co-worker of the workman that he received the copies of depositions. The endorsement on the deposition of M. W. 1 who had duly been cross-examined, the endorsement is not clear. It is already on record that M. Ws. 5 to 7 were examined on the 8th December 1988 on which date the workman had deliberately left the place of enquiry after showing unruly behaviour. From such evidence it is clear that the copy of the charge sheet had been duly supplied to the workman and he had been offered reasonable opportunities to defend himself during the enquiry and that the conduct of the enquiry was fair and proper. The evidence of M. Ws. 1, 2 and 4 support the evidence of the Enquiry Officer regarding proper conduct of the enquiry and regarding opportunity that was given to the workman to defend himself. Therefore, it is held that the enquiry conducted by the enquiry Officer into the charges against the workman was fair and proper and reasonable opportunity had been given to him to defend himself.

7. As regards the quantum of punishment, it is seen that all the charges vide Ext. 20 are all serious. It is also on record that the workman was in the habit of showing gross misconduct on several occasions. Thus the punishment of dismissal from service is proportionate to the charges proved against the workman.

In view of the discussion made above it is held that the dismissal of the workman namely Shri Rohini Kumar Nayak, Security Guard by the management with effect from the 10th December 1988 is legal and justified. The Issue No. (i) is answered accordingly.

8. *Issue No. (ii)*—In view of my answer to Issue No. (i), it is held that the workman is not entitled to any relief whatsoever. The Issue No. (ii) is answered accordingly.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. MOHAPATRA
5-12-2007
Presiding Officer
Labour Court, Bhubaneswar

S. K. MOHAPATRA
5-12-2007
Presiding Officer
Labour Court, Bhubaneswar

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