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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th February 2008

No. 1733—li/21-1/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th January 2008 in Industrial Dispute Case No. 5 of 2001 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the District Transport Manager (Administration), O.S.R.T.C., Bargarh and their workman Shri Nityananda Sahoo was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC. CASE No. 5 OF 2001

Dated the 30th January 2008

Present :

Shri Srikanta Nayak, o.s.j.s. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

Shri Nityananda Sahoo, .. Complainant—Workman
Conductor, O.S.R.T.C., Bargarh.

And

The District Transport Manager (A), .. Opposite Party—Management
O.S.R.T.C., Bargarh.

Appearances :

For the Complainant—Workman . . . Shri M. C. Sahoo,
Authorised Representative.

For the Opposite Party—Management . . . Shri D. Adhikari,
Labour Welfare Officer.

AWARD

This Award arises out of a petition filed by the abovenamed complainant under Section 33-A of the Industrial Disputes Act, 1947.

2. The case of the complainant (hereinafter referred to as the 'workman') is that he was working as a Conductor till the 24th January 2001 when he was discharged from his service. On the 19th May 2000 he was moving as a Conductor in bus bearing No. OR-15-8815 plying from Nowrangpur to Bargarh. The A.T.M. and other staff checked the bus and found that 15 passengers were travelling in the bus without ticket. These passengers boarded the bus from a distance of 1 Km. from the spot of checking and the checking staff checked the vehicle while he was negotiating with the passengers and issuing tickets. On checking he was directed to deposit Rs. 7,500 which he deposited. So, the starting of a proceeding on the selfsame ground is invalid one. The State Transport Employees Federation challenged the service conditions in Industrial Dispute Case No. 103 of 1995 which was pending. The workman was a concerned workman in that Industrial Disputes Case. The management had not taken permission nor sought for approval of their action. So, the termination order is illegal and he has prayed to reinstate him with all back wages.

3. The case of the management is that the present workman is not a concerned workman in the Industrial Disputes Case No. 103 of 1995. The Conductor was found issuing tickets to 15 passengers when the bus was checked. So, a proceeding was instituted and sufficient opportunity was granted to the Conductor to place his case. The Conductor was found guilty and his service was terminated. The present petition is not maintainable.

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

ISSUES

- (i) "Whether the action taken by the management in dismissing the workman from service is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to" ?

5. The workman examined one witness in support of his case and the management examined two witnesses in support of its case.

6. *Issue Nos. (i) & (ii)*—C. W. No. 1 deposed that on the 19th May 2000 while he was returning in bus as a Conductor the vehicle was checked at Kusumkhunti. 15 passengers got into the bus at Kusumkhunti and they had not paid the fare till the time of checking. while he was negotiating with the passengers the vehicle was checked and it was found that

15 passengers were travelling without ticket. A proceeding was started against him and Ext. 1 is the said proceeding. The D. T. M. had not examined any independent witness nor enquired the matter properly and submitted his report as per Ext. 3. He was not given any subsistence allowance during the period of suspension and the penalty was recovered from him by the Corporation. He was a member of the State Transport Employees Union, Bargarh and the Union is affiliated to the State Transport Employees Federation which instituted Industrial Dispute Case No. 103 of 1995.

M. W. No. 1 deposed that Industrial Dispute Case No. 40 of 1996 was filed by the O.R.T. Staff Federation and the workman is not a concerned workman in the said dispute. A proceeding was drawn up against him as he had not issued tickets to 15 passengers on the 19th May 2000 and he was appointed as the Enquiry Officer. He examined the Reporting Officer, A.T.M. and S.S.M. The workman participated in the enquiry but did not adduce any evidence and he was found guilty.

M. W. No. 2 deposed that he along with others checked the vehicle conducted by the workman and found that 15 passengers were travelling in the bus without ticket. So, he issued ticket at the spot. All the passengers had paid their fare prior to checking. Ext. A is the checking report and Exts. A/1 to A/3 are the signatures.

7. In a proceeding under Section 33-A the power of the Industrial Tribunal is limited one and in order to entitle the workman the protection under Section 33-A it has to be proved that there should be pendency of any industrial dispute and the workman claimed protection as a concerned workman in the dispute pending and the act in question changed the service conditions and such alteration should be in regard to any matter connected with the pending dispute. In the decision reported in 1978 (II)LIJ (S.C.) Page-1 (M/s Punjab Beverages Vrs. Suresh Chand), Their Lordships held that "the first issue which is required to be decided in a complaint filed by the aggrieved workman under Section 33-A is whether the order of discharge or dismissal made by the employer is in contravention of Section 33. If the contravention of Section 33 is established, the next question would be whether the order of discharge or dismissal passed by the employer is justified on merit".

8. In the case in hand the institution of Industrial Dispute Case No. 103 of 1995 instituted by the State Transport Employees Federation is not at all disputed. But, admittedly the workman is a member of State Transport Employees Union, Bargarh. So, the industrial dispute pending was not related to the Bargarh Union and in the decision reported in Civil Appeal No. 15605 of 1996 arising out of SLP(C) No. 471 of 1992 [D.T.M. (Admn.), O.S.R.T.C., Orissa Vrs. Dilip Kumar Nayak and another], their Lordships held that "for efficient transaction of the business and co-ordinated services of the transport operations, several zones have been created by the Corporation and each zone is independent of its operational efficacy. Therefore, all the zones are not an integral part or parcel of co-ordinated transport service as a single unit. In these circumstances, the decision of the High Court that all the zones would be considered to be an integral unit of the Corporation and pendency of industrial dispute in respect of one employee of a different zones, would be a bar for the management to take disciplinary action against an employee in that particular zone is clearly wrong. We are of the opinion that in such a case there is no need for the management to seek and obtain leave of the Industrial Tribunal under Section 33-A of the Act". In this case, as already stated, the workman belongs to the State Transport Employees Union, Bargarh and the said Union has

not instituted any industrial dispute. So, no industrial dispute lies when the workman was dismissed.

9. The plea of the Conductor is that the passengers entered into the bus from a distance of 1 Km. away from the checking spot and he had no time to issue tickets and he was negotiating with them. Except the official witnesses the Enquiry Officer had not examined any independent witnesses. O.P. W. No. 1 clearly stated that he only examined the D.T.M., A.T.M. and S.S.M. and no outsider was examined. In view of the plea of the workman, it would have been proper to examine some independent witnesses, so that it could have been come to light when the passengers entered into the bus. In O.J.C. No. 1098 of 1984 (B. C. Sahoo *Vrs.* O.S.R.T.C.) decided on the 17th September 1990 Their Lordships held that it would have been proper for the authorities concerned to require independent evidence at least for the purpose of corroboration of the evidence of the A. T. M. but none appears to have been examined to speak about the above even though there were so many other passengers who must have witnesses the same. This lapse on the part of the Enquiry Officer shows that the enquiry held by him is not proper. Likewise the evidence of C. W. No. 1 reveals that he had paid the fine amounting to Rs. 7,500. So, once the fine is paid it was proper to drop the proceeding and the proceeding instituted after compounding the offence is illegal one. In the decision reported in AIR 1996 (S.C.) page 2523 (P.R. Rao *Vrs.* State of Andhra Pradesh), Their Lordships held that "in the event of the petitioner's willing to have the offence compounded the authorised officer gets jurisdiction and authority to compound the offence and call upon the accused to pay the same. On compliance thereof, the proceeding, if already instituted, would be closed or no further proceeding shall be initiated". In the case in hand, it is not disputed that fine was imposed and realised from the workman. So, further proceeding is not legal. However, in view of my finding that the petition filed by the complainant under Section 33-A is not maintainable, he is not entitled to any relief.

The Misc. Case is disposed of accordingly.

Dictated and corrected by me.

SRIKANTA NAYAK
30-1-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

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Presiding Officer
Industrial Tribunal, Bhubaneswar

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