

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 532 CUTTACK, THURSDAY, FEBRUARY 28, 2008/FALGUNA 9, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 13th February 2008

No. 1748—li/21-1/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st January 2008 in Industrial Dispute Case No. 2 of 2005 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of District Transport Manager (A), O.S.R.T.C., Bhubaneswar and their workman Shri Balabhadra Panda was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC. CASE No. 2 OF 2005

Dated the 31st January 2008

Present :

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

Between :

Shri Balabhadra Panda, .. Complainant—Workman
Conductor, O.S.R.T.C., Bhubaneswar.

And

District Transport Manager (A), .. Opposite Party—Management
O.S.R.T.C., At Baramunda Bus Stand,
Bhubaneswar, Dist. Khurda.

Appearances :

For the Complainant—Workman	..	Shri K. K. Nayak and Shri M. C. Sahu, Authorised representatives.
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For the Opposite Party—Management	..	Shri D. Adhikari, Labour Welfare Officer.

AWARD

This Award arises out of a petition filed by the complainant workman 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 joined as a Conductor in the year 1983 under the O.S.R.T.C., Balasore on temporary basis. After closure of the Balasore unit he was posted at Cuttack and then he was posted at Bhubaneswar Zone till the 1st February 2005 when his services were terminated on the allegation that he had less income during the period from June, 2004 to October, 2004. He joined at Bhubaneswar in September, 2004. So, he is not responsible for the low income prior to that. The income of a vehicle depends on various factors such as condition of the vehicle, road and the occasion of the day. So, the Conductor cannot be held responsible for the low income. The enquiry was not properly held and he was illegally terminated. The O. R. T. Staff Federation raised an industrial dispute in Industrial Dispute Case No. 40 of 1996 regarding payment of D. A. and he was a concerned workman in the said Industrial Dispute Case. The authority had not taken permission either under Section 33(1)(b) nor they applied for approval under Section 33(2)(b) of the Industrial Disputes Act. So, the termination order is illegal and he filed the present application to reinstate him with full back wages.

3. The case of the opposite party (hereinafter referred to as the 'Management') is that the present workman is not a concerned workman in Industrial Dispute Case No. 40 of 1996. Moreover, the said Industrial Dispute Case has nothing to do with the dismissal of the workman. During the period of the workman there was low income amounting to Rs. 42,288. Since the workman caused the loss to the Corporation an enquiry was started against him and after observing the principles of natural justice the workman was found guilty in the said enquiry and ultimately his service was terminated. The Misc. Case is not maintainable.

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

ISSUES

- (i) "Whether the action taken by the D. T. M. (A), O.S.R.T.C., Bhubaneswar against the workman by way of dismissal 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 three witnesses in support of its case.

6. *Issue Nos. (i) and (ii)*—C. W. No. 1 deposed that he was working as a Conductor in the O.S.R.T.C. from the 1st January 1987 to the 1st February 2005 when he was dismissed on the allegation that he had low income and Ext. 3 is the proceeding. The A.T.M. conducted the enquiry and on the 6th January 2005 the copy of the enquiry report was served on him and Ext. 4 is the said report. The appeal preferred by him was also failed. Proceeding was started against him for low income for the period from June, 2004 to October, 2004 but he joined in the month of August, 2004 at Bhubaneswar and prior to that he was working at Cuttack. So, he is not responsible for the low income for the months of June and July. He was a member of the State Transport Employees Union, Bhubaneswar. The O.R.T. Staff Federation filed Industrial Disputes Case No. 40 of 1996 relating to D. A. in which he was a concerned workman. The management had not taken permission prior to dismissing him from service.

M. W. No. 1 deposed that he was working as A.T.M., Bhubaneswar on the 21st October 2004 and he was appointed as the Enquiry Officer as per Ext. A. He conducted the enquiry and recorded the statements of different persons and Exts. B and C are the statements and Ext 4. is the report submitted by him. There was a shortfall of income to the tune of Rs. 42,288.

M.W. No. 2 deposed that the shortfall in August was Rs. 7,178, in September Rs. 7,490 and in October Rs. 11,066. His evidence is silent about the shortfall of June and July.

M.W. No. 3 deposed that the enquiry was conducted by the A.T.M. and Ext. E is the show cause and after conducting the enquiry the workman was found guilty. On verification of the past conduct of the workman it was found that he had been proceeded against and called upon to explain ten times in the past and he was awarded punishments in those occasions. Under the circumstances, the service of the Conductor was terminated.

7. In order to get the protection under Section 33-A of the Industrial Disputes Act, the workman has to prove that there was pendency of an industrial dispute and the workman was a concerned workman and the alteration changed the position of the workman and has connection with the industrial dispute.

It is stated in the petition that the workman was a member of the local union and C. W. No. 1 deposed that he was a member of the local union of Bhubaneswar Zone but the Industrial Dispute Case No. 40 of 1996 was instituted at the instance of the O.R.T. Staff Federation. In Civil Appeal No. 15606 of 1996 arising out of SLP(C) No. 471 of 1992 [D.T.M. (Admn.), O.S.R.T.C., Orissa Vrs. Dillip Kumar Nayak & 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.” Since the workman cannot be regarded as a member of the O.R.T. Staff Federation and as admitted by him he was a member of the Local Union of Bhubaneswar Zone, it can be said that no Industrial Dispute was pending in relation to the present workman at the time of his dismissal from services, So, the petition under Section 33-A is not maintainable.

8. The evidence of the workman reveals that he was working at Bhubaneswar Zone from the month of August. M. W. No. 2 also deposed about the shortfall of these three months and no document was placed to show the low income for the month of June and July for which the workman was charge sheeted. It is not disputed that the workman was not at Bhubaneswar in the month of June and July, 2004. So, he cannot be held responsible for the shortfall of these two months but the charge related to the shortfall from June to October, 2004. Since the workman was not there he cannot be held responsible for the shortfall of June and July, 2004 and on this ground alone the enquiry is held to be illegal but in view of my finding that the petition is not maintainable, the workman is not entitled to any relief.

The Misc. case is disposed of accordingly.

Dictated and corrected by me.

SRIKANTA NAYAK

31-1-2008

Presiding Officer, Industrial Tribunal
Bhubaneswar

SRIKANTA NAYAK

31-1-2008

Presiding Officer, Industrial Tribunal
Bhubaneswar

By order of the Governor

K. TRIPATHY

Under-Secretary to Government