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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th February 2008

No. 2096—li/15-1/2008-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 2nd February 2008 in Industrial Dispute Misc. Case No. 12 of 2002 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of District Transport Manager (Admn.), O.S.R.T.C., Cuttack/District Transport Manager (Admn.), O.S.R.T.C., Bhubaneswar and its workman Shri Ashok Kumar Pradhan, Conductor was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC. CASE No. 12 OF 2002

Dated the 2nd February 2008

Present :

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

Between :

Shri Ashok Kumar Pradhan, .. Complainant—Workman
Conductor, O.S.R.T.C., Cuttack.

And

1. District Transport Manager (A), .. Opposite Party—Management
O.S.R.T.C., Cuttack.
2. District Transport Manager (A),
O.S.R.T.C., Bhubaneswar.

Appearances :

For the Complainant—Workman	..	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 (hereinafter referred to as the 'workman') under Section 33-A of the Industrial Disputes Act, 1947.

2. The case of the workman is that he was working as a Conductor under the O.S.R.T.C. till the 27th November 2001 when his services were terminated. He was a member of the Local Union which is affiliated to the State Transport Employees' Federation. At the instance of the State Transport Employees' Federation Industrial Dispute Case No. 103 of 1995 was instituted and at the instance of the O.R.T. Staff Federation Industrial Dispute Case No. 40 of 1996 was instituted and he is a concerned workman in both the Industrial Dispute Cases. So, termination of his service without taking permission of the Tribunal is illegal one. On the 23rd May 1996 the bus bearing No. OSK-5921 in which he was moving as the Conductor was checked by the D.T.M. and it is alleged that 21 passengers were travelling therein without ticket but actually three and half passengers were moving in the bus and the rest 18 were standing on the road. On the allegation of the D.T.M. a proceeding was instituted against him and without a proper enquiry his services were terminated. The order passed is against the principles of natural justice and he has prayed to set aside the same and to reinstate him in service 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 either in Industrial Dispute Case No. 103 of 1995 or Industrial Dispute Case No. 40 of 1996. On the 23rd May 1996 the D.T.M. found that 21 passengers were travelling in the bus without ticket and he issued usual ticket at the spot. A proceeding was instituted against him and he was given full opportunity to place his case. Since the conduct of the workman amounts to a grave misconduct, his service was terminated. As the workman was not a concerned workman in any of the Industrial Dispute Cases, no application was made under Section 33(2)(b) of the Industrial Dispute Act.

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

ISSUES

- (i) "Whether the action taken by the D. T. M., O.S.R.T.C., Cuttack against the workman by way of dismissal from service is legal and/or justified ?
- (ii) If not, what relief the workman is entitled to get ?"

5. The workman examined one witness in support of his case and the management examined none.

6. *Issue Nos. (i) and (ii)*—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) LLJ (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.

7. C. W. 1 deposed that he was a member of the State Transport Workers Union, Cuttack and was contributing membership fees regularly. So, from his own admission it is clear that he was neither a member of the State Transport Employees Federation nor the O.R.T. Staff Federation, who have raised disputes in Industrial Dispute Case No. 103 of 1995 and Industrial Dispute Case No. 40 of 1996, respectively. In Civil Appeal No. 15606 of 1996 arising out of SLP(C) No. 471 of 1992 between the District Transport Manager (Admn.), O.S.R.T.C., Orissa and Dilip Kumar Nayak and another, the Hon'ble Supreme Court have 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 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 the case in hand since the O.R.T. Staff Federation instituted Industrial Dispute Case No. 40 of 1996 and the State Transport Employees Federation instituted Industrial Dispute Case No. 103 of 1995 but not the Union to which the workman belongs, it can be said that no industrial dispute was pending while terminating the services of the workman and as such, the present application under Section 33-A is not maintainable.

8. Now coming to the merit of the case, the workman has not disputed about the checking of the bus in which he was the conductor but he alleged that only three passengers were travelling in the bus and the rest were standing on the road. His own version stands contradicted by Ext. 5, the enquiry report which reveals that the conductor had not issued tickets to 21 passengers and the checking authority issued the ticket and in the proceeding the conductor was given opportunity and he also cross-examined some witnesses and after hearing the parties the order was passed. Non-issuance of ticket is undoubtedly a breach of trust and deserves deterrent punishment. However, since the petition is held to be not maintainable, a detail discussion on the point is not required.

9. In view of my discussions made above, the Misc. Case is held to be not maintainable and consequently the workman is not entitled to any relief.

The issues are answered and the Misc. case is disposed of accordingly.

Dictated and corrected by me.

SRIKANTA NAYAK

2-2-2008

Presiding Officer, Industrial Tribunal
Bhubaneswar

SRIKANTA NAYAK

2-2-2008

Presiding Officer, Industrial Tribunal
Bhubaneswar

By order of the Governor

K. TRIPATHY

Under-Secretary to Government