

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 553 CUTTACK, SATURDAY, MARCH 1, 2008/FALGUNA 11, 1929

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st February 2008

No. 2211—li/15-1/2008 -L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th February 2008 in I. D. Misc. Case No.8 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., Central Zone, Cuttack and their workman Shri Bijay Kumar Rout, Conductor, O.S.R.T.C., Keonjhar was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC. CASE No.8 OF 2002

Dated the 16th February 2008

Present :

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

Between :

Shri Bijay Kumar Rout, Conductor, .. Complainant—Workman
O.S.R.T.C., Keonjhar.

And

District Transport Manager (Admn.), .. Opposite Party—
O.S.R.T.C., Central Zone, Cuttack. Management.

Appearances :

Shri M.C. Sahu, Authorised .. For the Complainant—
representative. Workman.

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

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 on the 27th February 1980 and worked as such till the 6th April 2002 when his service was terminated. On the 24th October 2001 he was moving as the Conductor in the bus bearing No.OR 09-2904. The A.T.M. checked the Bus and found that 13 and 1/2 passengers were travelling in the Bus without ticket and he reported the matter and Rs. 5,500 was realised from him as penalty. Thereafter a proceeding was instituted against him and without proper enquiry and without examining the Driver and other independent witnesses his service was terminated. The Orissa State Transport Employees Federation raised a dispute in I.D. Case No. 103 of 1995. Similarly, the O.R.T. Staff Federation raised a dispute in I.D. Case No. 40 of 1996 for grant of D. A. and both the I. D. Cases are pending in which he was a concerned workman. The management had not taken permission of the Tribunal while terminating his services. The order passed is arbitrary and is liable to be set aside.

3. The case of the opposite party (hereinafter referred to as the 'management') is that during the course of check 13 and 1/2 passengers were found travelling in the Bus without ticket and the bus was conducted by the workman. He is not a concerned workman either in I.D. Case No. 103 of 1995 or I.D. Case No. 40 of 1996. After giving opportunity and observing the principles of law the service of the workman was terminated and he was served with a copy of the same. The workman has not made any application which shows that he accepted the punishment. Since the workman was not a concerned workman, Section 33 (2) (b) of the Act is not applicable and the workman is not entitled to any relief.

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

ISSUES

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

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

6. *Issue Nos. 1 and 2* :— In a proceeding under Section 33-A the power of the Tribunal is limited one and in order to entitle the workman the protection u/s 33-A it has to be proved that there should be pendency of any industrial dispute 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 (Punjab Beverages Vrs. Suresh Chand), their Lordships held that “ the first issue which is required to be decided in a complain filed by the aggrieved workman u/s 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. In this case it is not disputed that I. D. Case No. 103 of 1995 was instituted at the instance of the State Transport Employees Federation and I.D. Case No. 40 of 1996 was instituted at the instance of O.R.T. Staff Federation. W. W. No.1 deposed that he was a member of the State Transport Employees' Union, Keonjhar. So, as per his own version he was not a member either of the State Transport Employees Federation or of the O.R.T. Staff Federation. In the 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 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 the case in hand since the workman was not a member of the Unions, who have raised I. D. Case No. 103 of 1995 and I. D. Case No. 40 of 1996, it can be said that no industrial dispute was pending while terminating the service of the workman and as such, the present application u/s 33-A is not maintainable.

8. Coming to the merit of the case, M. W. No. 1 deposed that on the 24th October 2001 he checked the Bus conducted by the workman and found that 20 full and one 1/2 passengers were travelling in the Bus. The conductor had not issued tickets to 13 and 1/2 passengers and he issued 7 advance tickets which was taken into account. So, he issued ticket for the other passengers and prepared the check report and intimated this to the authority and Ext. B is the ticket book. M.W. No.2 deposed that he conducted the enquiry and examined the Reporting Officer and found the workman guilty and Ext. C is the enquiry report. The evidence of both these witnesses remained unchallenged which proves that there was due enquiry and after due enquiry the workman was found guilty and terminated from service. The Conductor occupies the office of trust and breach of trust by not issuing tickets is a serious offence which causes loss to the public at a large. So, the penalty imposed cannot be treated as excessive one. It is true that Rs. 5,500 was recovered from the workman as penalty by way of compounding the offence but it is also well settled that collecting penalty in no way affects the power to impose any other punishment. In the decision reported in 1999 (2) SCC

page-313 (Commissioner, Rural Development Vrs.A.S. Sagarnathan), their Lordships held that “ the Tribunal was wrong in holding that if order is passed for recovery of amount from the employee no punishment can be imposed on him ” The evidence on record clearly establishes that the workman was guilty of the misconduct and he was not a concerned workman in the pending disputes. So, Section 33-A is not applicable and consequently he is not entitled to any relief.

The Miscellaneous case is disposed of accordingly.

Dictated and corrected by me.

SRIKANTA NAYAK
16-2-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

SRIKANTA NAYAK
16-2-2008
Presiding Officer
Industrial Tribunal, Bhubaneswar

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