

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

No. 144 CUTTACK, FRIDAY, FEBRUARY 6, 2009 / MAGHA 17, 1930

---

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 22nd January 2009

No. 648—li/21-32/2007(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th December 2008 in Industrial Dispute Case No. 71 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of (1) Mayurbhanj Central Co-operative Bank Limited, Baripada (2) Managing Director, Bankisole LAMPCS and their Workman Shri Prafulla Kumar Naik was referred for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 71 OF 2008

Dated the 29th December 2008

*Present :*

Shri P. C. MISHRA, o.s.J.S. (Sr. Branch)  
Presiding Officer, Industrial Tribunal  
Bhubaneswar.

*Between :*

- The Management of .. First Party—Management
1. The Secretary, Cadre Committee  
Mayurbhanj Central Co-operative  
Bank Limited, At/P.O. Baripada  
Dist. Mayurbhanj.
  2. The Managing Director  
Bankisole LAMPCS  
At Sripadganj, P.O. Baripada  
Dist. Mayurbhanj.

*And*

Shri Prafulla Kumar Naik .. Second Party—Workman  
At/P.O. Badjod, Via. K. C. Pur  
Dist. Mayurbhanj.

*Appearances :*

For the First Party—Management No. 1	.. Shri B. K. Padhi, Law Officer
For the First Party—Management No. 2	.. None
<hr/>	
The Second Party—Workman himself	.. Shri Prafulla Kumar Naik

## AWARD

Originally, the Government of Orissa in the Labour & Employment Department had referred the following dispute for adjudication by the Presiding Officer, Labour Court, Bhubaneswar vide its Order No. 8442—li/1-BH.-13/1994-L.E., dated the 17th July 1995 but subsequently, it transferred the dispute to be adjudicated by the Presiding Officer, Industrial Tribunal, Bhubaneswar vide its Order No. 4138—li-21-32/2007-L.E., dated the 4th April 2008.

“Whether the action of the Member-Secretary, Cadre Committee, Mayurbhanj Central Co-operative Bank, Baripada in terminating Shri Prafulla Kumar Naik, Branch Manager, Badjod Branch of Bankisole LAMPCS from services with effect from the 26th March 1987 is legal and justified ? If not, what relief he is entitled to ?”

2. Briefly stated, the case of the workman is that he was working as Branch Manager of Badjod Branch of the Bankisole LAMPCS and while working so he was put under suspension on the 21st November 1985 and thereafter his services were terminated with effect from the 26th March 1987. The workman has alleged that during the period of suspension, he was not paid any subsistence allowance. It is pleaded that the Cadre Scheme came into operation with effect from the 1st April 1986 and he being a non-cadre staff of the Mayurbhanj Central Co-operative Bank, the termination order made by the Cadre Committee is illegal and so also unlawful. Further, it is pleaded that while terminating his service, the management has not complied with the provisions of the Industrial Disputes Act, inasmuch as, neither any notice was served on him nor he was paid notice pay and retrenchment compensation. In the aforesaid premises, the workman has prayed for his reinstatement in service with all service benefits and back wages.

3. Out of the first party managements, the Member-Secretary, Cadre Committee, Mayurbhanj Central Co-operative Bank Limited, Baripada (Management No. 1) filed its written statement. The Management No. 2, i.e. Managing Director, Bankisole LAMPCS, Mayurbhanj did not file any written statement nor participated in the hearing of the dispute as a result of which it was set *ex parte* vide order, dated the 1st February 2001.

In their written statement, the Management No. 1 has pleaded *inter alia*, that the reference as laid is not maintainable and further that as the workman during his incumbency as Branch Manager, Badjod Branch of Bankisole LAMPCS committed misconduct, he was charge-sheeted and after due enquiry into the charges, his services were terminated with effect from the 26th March 1987 as per the decision of the Cadre Committee. It is pleaded by the management that the workman had participated in the enquiry and all reasonable opportunities were afforded to him in his defence and thus there has been no violation of the principles of natural justice. Further, the management has pleaded that the Cadre Committee being competent enough to initiate and finalise disciplinary proceedings, there has been no illegality in disposing of the proceeding initiated against the workman who was working as a Branch Manager and was a cadre employee under the Cadre Committee of the Mayurbhanj Central

Co-operative Bank Ltd., According to the management, the misconduct of the workman having been proved in a duly constituted enquiry, the action taken by the management basing on such enquiry needs no interference and as such it has prayed to answer the reference in the negative as against the workman.

4. On the basis of the pleadings of the parties, the following issues have been framed :—

- (1) Whether the action of the Member-Secretary, Cadre Committee, Mayurbhanj Central Co-operative Bank, Baripada in terminating Shri Prafulla kumar Naik, Branch Manager, Badjod Branch of Bankisole LAMPCS from services with effect from the 26th March 1987 is legal and justified ?
- (2) If not, what relief he is entitled to ?

5. To substantiate their respective stand, both parties adduced oral as well as documentary evidence. The workman examined himself and brought on record five documents which have been marked as Exts. 1 to 4. The management on the other hand examined one witness in the case and proved documents which have been marked as Exts. A to K.

6. Relying on the evidence and materials available on record, it was contended on behalf of the management that its action in terminating the services of the workman being based on the report of the Enquiry Officer who found the charges to have been established against the workman, the same needs no interference. But on the other hand, it was contended by the workman that the enquiry said to have been conducted for the alleged misconduct is nothing but simply an eye-wash which can be well visualised from the enquiry report itself and consequently the punishment imposed basing on such report is not at all sustainable; the same being illegal and unjustified. In view of the arguments advanced by the respective party, first of all it is required to be determined in the dispute as to whether the allegations of misconduct brought against the workman have been well proved in a domestic enquiry warranting his termination from service by the disciplinary authority.

7. Both in his pleading as well as in evidence, the workman has admitted about his suspension from service but alleges that during the period of his suspension, he was not paid with any subsistence allowance. Further, while admitting about his termination from service he disputes about holding of an enquiry into the charges by asserting that the so called enquiry was an eye-wash and it was conducted only with a view to impose upon him the severe punishment of termination from service. It is the settled position that non-payment of subsistence allowance to a person who is under suspension can be termed to be an act of unfair labour practice and thus is a violation of the principles of natural justice. The allegation of the workman that during the period of his suspension, he was not paid with any subsistence allowance appears to have not been considered by the authority and no positive evidence is forthcoming from the side of the management to hold it otherwise. In view of the workman's assertion regarding non-payment of subsistence allowance, the management ought to have led either oral or documentary proof in the matter but as the record reveals, no such evidence is there basing on which it can be held that subsistence allowance was paid to the workman during the period of his suspension. In absence of evidence, therefore, the action of the management is not paying subsistence allowance to the workman during the period he remained under suspension can be said to be a denial of the legitimate right of the workman and consequently the same is violative of the principles of natural justice.

8. Apart from what has been stated above, there reveals a total non-application of mind of the authority in relying upon the report of the Enquiry Officer marked Ext. D and subsequently inflicting punishment on the workman basing on such findings of the Enquiry Officer. There appears a total infraction of the principles of natural justice by the Enquiry Officer while conducting the enquiry against the workman, inasmuch as, no notice about the enquiry was given to the workman nor the misconducts alleged were established in the enquiry by examining any departmental witnesses, more particularly by referring to the documents. The enquiry report, Ext. D itself is suggestive of the fact that the same was conducted in a most perfunctory manner. As it reveals, the Enquiry Officer without holding any enquiry into the misconducts alleged only recorded the charges and as against such charges reached his conclusions. It is well settled that a disciplinary enquiry has to be a quasi-judicial enquiry held according to the principles of natural justice and the Enquiry Officer has a duty to act judicially. In the case in hand, the Enquiry Officer save setting out the charges merely recorded his ipse dixit that the charges are proved. Where a disciplinary enquiry affects the livelihood and is likely to cast stigma and it has to be held in accordance with the principles of natural justice, the minimum expectation is that the report must be a reasoned one. The Court then may not enter into the adequacy or sufficiency of evidence. But where there is no evidence at all in support of the charges, it has to be held that it is not an enquiry report at all. Therefore, it is held that there has been no enquiry in this case worth-the-name and the order of termination basing on such proceeding discloses the non-application of mind of the disciplinary authority and thus is unsustainable in the eye of law. Hence, it is held that the action of the management in terminating the services of the workman with effect from the 26th March 1987 is neither legal nor justified.

9. In view of my finding, as aforesaid, now it is to be seen as to what relief the workman is entitled. The record reveals that presently the workman is aged about 64 years and no fruitful purpose would be served by directing for his reinstatement in service. Considering the aforesaid aspect, therefore, the management is directed to pay a lump sum amount of Rs. 50,000 (Rupees fifty thousand only) towards compensation to the workman within a period of two months from the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA  
29-12-2008  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

P. C. MISHRA  
29-12-2008  
Presiding Officer  
Industrial Tribunal, Bhubaneswar

---

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