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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 3rd February 2009

No. 1027—li/1(S)-27/2002(pt.)-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st December 2008 in Industrial Dispute Case No. 74/2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the management of SAIL, Rourkela Steel Plant, Rourkela and their workman Shri Gopal Das represented through Rourkela Mazdoor Sabha, Rourkela was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, SAMBALPUR
INDUSTRIAL DISPUTE CASE No. 74 OF 2002
Dated the 31st December 2008

Present :

Smt. Suchismita Misra, L.L.M.,
Presiding Officer, Labour Court, Sambalpur.

Between :

The Management of SAIL, .. First Party—Management
Rourkela Steel Plant, Rourkela.

And

Their Workman .. Second Party—Workman
Shri Gopal Das represented
through Rourkela Mazdoor Sabha,
Rourkela.

Appearances :

For the First Party—Management .. Shri D. P. Mishra,
Law Officer, R.S.P.

For the Second Party—Workman .. Shri B. B. Sahu, General Secretary,
Rourkela Mazdoor Sabha, Rourkela.

AWARD

The Government of Orissa in the Labour & Employment Department have, in exercise of power conferred upon them under Section 12, read with clause (c) of the sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short, "the Act"), referred the following disputes for adjudication by this Court :

"Whether the action taken by the management of Rourkela Steel Plant, Rourkela in inflicting punishment upon Shri Gopal Das, P.L. No. 873728, Sr. Operative, S.M.S. 1 (Opn.) by reducing his basic pay by one stage i.e. Rs. 3,859 from Rs. 3,962 in the existing scales of pay vide order dated the 19th November 1997 is legal and/or justified ? If not, what relief is Shri Das entitled to ?"

2. Shorn of unnecessary details, the facts leading to the present dispute between the first party management of SAIL, Rourkela Steel Plant, Rourkela on the one hand and the workman, Shri Gopal Das on the other are stated below :

The claim of the second party workman as would appear from the claim statement filed by him in the present proceeding runs as below :

A charge-sheet dated December 19, 1995 was issued to the workman for his alleged misconduct such as (i) Holding meeting and organising demonstration in works premises without previous written permission of the management and (ii) showing disorderly behaviour in the works premises on the 18th December 1995. The workman submitted his explanation/ reply to the aforesaid charge-sheet on the 27th December 1995 denying the above mentioned charges of misconduct levelled against him. The first party management however, not being satisfied with his explanation initiated a disciplinary enquiry against him on the aforesaid charges of misconduct. In the domestic enquiry, he was found guilty of only one charge out of the two i.e. for holding meeting and organising demonstration in the work premises without previous written permission of the management, since the other charge of misconduct i.e. the disorderly behaviour of the workman in the work premises during the relevant time could not be proved against him due to want of evidence in that regard. On the basis of the findings/ report of the Enquiry Officer, the Disciplinary Authority inflicted punishment upon the workman by reducing his basic pay to Rs. 3,859 from Rs. 3,962 i.e. by one step in the scales of pay of Rs. 2,480—94—3,138—103—3,859 (S-7). Being aggrieved by the said order of punishment, the workman preferred an appeal which was heard by the Appellate authority and disposed of against him much beyond the stipulated time as provided in the standing orders of Rourkela Steel Plant, Rourkela. The second party workman, thus assailed the entire disciplinary proceeding against him alleging that the same was actuated on account of malice towards him by the management due to his involvement in trade union activities. Further the enquiry was not conducted in a fair and proper manner in as much as by not following the principles of natural justice and punishment was inflicted upon him only with the sheer motive of victimising him. Thus, the workman contended that as the findings of the Enquiry Officer are perverse, he raised an industrial dispute through the union. Rourkela Mazdoor Sabha of which he is a member seeking the relief of setting aside the order of punishment inflicted upon him and to

grant him all service benefits which he would have got in normal course of his service had the punishment not been inflicted upon him by the Disciplinary Authority.

3. The first party management in their written statement contested the pleas advanced by the second party workman on the following grounds :

- (a) That the second party workman while working as Senior Operative in Steel Melting Shop (Opn. Pit Side) Department, had organised a demonstration inside the plant premises on the 18th December 1995 without permission of the first party management having the participation of about two hundred contract labourers in the said demonstration and shouted slogans against the management. As holding of such demonstration/meeting inside plant premises without permission is an act of misconduct as per the provisions of the standing orders of the company, the second party workman was issued with a charge-sheet. The workman submitted his explanation in respect of the aforesaid charge-sheet.
- (b) Since the explanation submitted by the second party workman after service of charge-sheet on him was not found satisfactory an Enquiry Committee was constituted to enquire into the charges levelled against him. The domestic enquiry against the workman was conducted adhering to the principles of natural justice where the second party workman participated and availed all the opportunities extended to him by the Enquiry Committee. The Enquiry Committee after consideration of the evidence and materials on record submitted its finding holding that the charge against the workman regarding his holding of meeting and organising demonstration in work premises without previous written permission of the management was established. Thereafter observing all the prescribed procedure before infliction of punishment, the Disciplinary Authority imposed punishment on the second party workman by reducing the basic pay of the second party workman at his one incremental stage i.e. from Rs. 3,962 per month to Rs. 3,859 per month vide order dated the 19th November 1997.
- (c) The punishment imposed on the second party workman being a cumulative one as per rules the same continued having perpetual effect and as such there was no question of victimisation of the workman by the first party management in that regard.

The second party workman also filed a rejoinder to the written statement of the first party management denying the pleas advanced by the first party management.

4. On the above pleadings, the following issues were framed in this proceeding :—

- (i) “Whether the domestic enquiry conducted by the management is fair and proper ?
- (ii) Whether the action taken by the management of Rourkela Steel Plant, Rourkela in inflicting punishment upon Shri Gopal Das [P.L. No. 873728, Sr. Operative

SMS-1(Opn.)] by reducing his basic pay by one stage i.e. Rs. 3,859 from Rs. 3,962 in the existing scales of pay vide order dated the 19th November 1997 is legal and justified ?

(iii) If not, to what relief the workman Shri Das is entitled ?”

5. In this proceedings on behalf of the workman, he got himself examined as W.W. 1 and proved seven documents marked as Exts. A. to G. Similarly the first party management examined two witnesses M. W. 1 and M. W. 2 on their behalf who are manager (personnel) C.M.S. and G.S. and Assistant Manager, Personnel respectively. Twelve documents were exhibited on behalf of the management as Exts. 1 to 7, Ext.7/1 and Ext. 8 to Ext. 11.

6. At the outset I would like to mention that in the present proceeding issue No. (i) as to whether domestic enquiry conducted by the management is fair and proper has already been answered by this court as preliminary issue vide order dated the 18th November 2006. It was held by this court that the aforesaid domestic enquiry against the second party workman was conducted in a fair and proper manner. Therefore, the next important point which arises for consideration is as to whether the punishment inflicted upon the second party workman by reducing his basic pay by one stage i.e. Rs. 3,859 from Rs. 3,962 in the existing scales of pay vide order dated the 19th November 1997 is legal and justified ?

It is contended from the side of the first party management that the Labour Court after coming to a conclusion that the domestic enquiry was held in a fair and proper manner does not have the power to interfere with the punishment imposed by the Disciplinary Authority in as much as when the punishment is not one of dismissal or discharge of the workman concerned. To fortify their argument, the first party management cited decisions of the Hon'ble Apex Court and Hon'ble Court in the following cases :—

- (i) General Secretary, South Indian Cashew Factories Workers Union Vrs. Managing Director, Kerala State Cashew Development Corporation Ltd. & Ors reported in AIR 2006 SUPREME COURT 2208;
- (ii) Karnataka Bank Ltd.—Appellant Vrs. A.L. Mohan Rao—Respondent reported in III(2006) SLT 259;
- (iii) Usha Breco Mazdoor Sangha Vrs. Management of M/s. Usha Breco Ltd. & Anr. reported in 2008 LLR at page 619;
- (iv) M/s. Bharat Iron Works—Appellant Vrs. Bhagu Bhai Balu Bhai Patel and Ors.—Respondant reported in AIR 1976 SUPREME COURT 98; and
- (v) S. Madhavan Vrs. The Management of Sundram Motors reported in 2006 LLR 187.

Similarly the second party workman also cited a decision in the case between Rajasthan State Road Transport Corporation and Ram Karan Chauhan and Anr. reported in 1995-II-LLJ at page 452 to support his argument that even if it is held by the Labour Court that a domestic enquiry was conducted in a fair and proper manner, it can interfere with the quantum of

punishment in cases other than discharge or dismissal if it finds the action of the employer is unjust, arbitrary or an act of unfair labour practice.

Thus on a thorough reading of all the aforesaid decisions cited by both the parties, I found that the guidelines prescribed by the Hon'ble Apex Court and Hon'ble High Courts in this matter are to the following effects :

That when a domestic enquiry is found to have been conducted fairly and properly in the absence of any of the allegations of victimisation or *mala fide* or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed by the management unless the findings arrived at by the Enquiry Officer are perverse and the punishment inflicted upon the delinquent is found to be so disproportionate of gravity of misconduct in as much as to disturb the conscience of the Court or there exists some mitigating circumstances which requires the reduction of sentence. It has been held by the Hon'ble Apex Court in the case of General Secretary, South Indian Cashew Factories Workers Union Vrs. Managing Director, Kerala State Cashew Development Corporation Ltd. & Ors. reported in AIR 2006 SUPREME COURT 2208 that:

“When enquiry was conducted fairly and properly, in the absence of any of the allegations of victimisation or *mala fides* or unfair labour practice, Labour Court has no power to interfere with the punishment imposed by management. Since Section 11-A is not applicable, Labour Court has no power to reappraise the evidence to find out whether the findings of the Enquiry Officer are correct or not or whether the punishment imposed is adequate or not, of course, Labour Court can interfere with the findings if the findings are perverse.”

Therefore, keeping in view the above mentioned guidelines of the Hon'ble Apex Court and Hon'ble High Courts on the aforesaid matter it is to be seen whether the punishment inflicted upon the second party workman in this case on the findings of the Enquiry Officer needs interference by this Court as claimed by the second party workman since it has already been held that the domestic enquiry was conducted in a fair and proper manner.

7. It is not in dispute that a domestic enquiry was held against the second party workman on two charges. Those are :

Charge No. (i)—Holding meeting and organising demonstration in work premises without previous written permission of the management.

Charge No. (ii)—Disorderly behaviour in the work premises and these two charges were framed on the following allegations :—

On the 18th December 1995 the second party workman was scheduled for 'C' shift and he unauthorisedly entered the plant premises and between 11-30 A.M. and 12-30 P.M. he along with about 200 Contract Labourers held a meeting and staged demonstration inside the plant premises in front of the office of the Chief General Manager (CLC). During the demonstration he shouted logans and incited the contract labourers through public speech

against the management. As his action of staging demonstration, shouting slogans and holding meeting inside the work premises with the assembled contract labourers had disrupted the normal work of the management (CLC) and as such disorderly behaviour on his part amounted to an act of subversive of discipline in the work premises, he was charged with serious acts of misconduct in accordance with Clause 28 (ix) and 28 (xvi) of the Certified Standing orders of the Company. The second party workman in response to the charges gave his reply on the 27th December 1995. After conclusion of enquiry, a report was submitted by the Enquiry Officer with findings that there was sufficient evidence to prove that the charge-sheeted employee (CSE) had organised demonstration in work premises without previous written permission of the management and further there was no evidence regarding his disorderly behaviour during the relevant time and as such the charged alleged against the charge-sheeted employee i.e. holding meeting and organising demonstration in work premises without previous written permission of the management was established. On the basis of the findings of the Enquiry Officer the disciplinary Authority imposed upon the second party workman punishment of reduction of his basic pay by one stage in his time scale i.e. S-7 as a disciplinary measure. For better appreciation I would like to quote the punishment inflicted upon the workman in exact words as revealed from Ext. 7.

“The charge brought and established against you being serious in nature, you deserve severe punishment, such as removal from service. However, before coming to any conclusion I have also gone through your past records to find out if any thing exists in your favour to merit leniency but I did not find any. However, in order to give you an opportunity to improve your conduct I am inclined to take a lenient view and accordingly I have decided to impose a lesser punishment on you by reducing your basic pay by one stage in your existing scales of pay as a disciplinary measure. Accordingly, your present basic pay is hereby reduced from Rs. 3,862 per month to Rs. 3,859 per month in the scales of pay of Rs. 2,480—94—3,138—103—3,859(S-7) with immediate effect as a disciplinary measure”.

8. Now the question comes whether the enquiry proceeding and the order of the infliction of punishment on the second party workman by the Disciplinary Authority are found to be perverse or actuated by malice or vindictive attitude towards the second party workman and the same has been done by the management with a view to victimising the second party workman because of his involvement in the union activities as alleged by the workman in his claim statement.

9. In the present proceeding the first party management besides adducing oral evidence also exhibited the charge-sheet (Ext. 1.) Reply given by the workman to the said charge (Ext. 2) : Proceeding of the Enquiry (Ext. 4) which includes the evidence of the witnesses taken by the Enquiry Officer and Findings of the Enquiry Officer (Ext. 5). In the instant case the workman had also taken a plea of *alibi* before the Enquiry Officer by adducing oral evidence

in that regard and filing medical certificate to the effect that on the 18th December 1995 i.e. the alleged date of incident he was on half pay leave and was engaged in attending his ailing son at Rourkela Government Hospital. His such evidence was also considered by the Enquiry Officer who ultimately rejected this plea of the workman while assigning good reasons for the same. It is found that the workman in his reply to the charges levelled against him vide Ext. 2 did not whisper a single word regarding the improbability of his presence at the work place on the 18th December 1995 because of his other engagements as stated above. Therefore, the plea of *alibi* as taken by him is found to be an afterthought and the same was not substantiated properly before the Enquiry Officer. The Enquiry Officer in his finding has elaborately assigned the reasons for him to disbelieve the pleas advanced by the workman vide Paragraph 19.0 of his report (Ext. 5). On a careful scrutiny of all these aforesaid documents I do not find the report of the Enquiry Officer holding the second party workman guilty of misdemeanour to the extent of his holding meeting and organising demonstration in the work premises without previous written permission of the management is either unfounded/ unreasonable or perverse in any manner. It was argued from the side of workman that it is quite unusual to expect that any employer would give prior permission to its employees to hold meeting and demonstration in the work premises and therefore, holding of such meeting in the work premises by the employees without prior permission of their employer should not be viewed seriously. To justify his such argument, the workman also cited a decision in the case of Ahmedabad Textile Research Association Vrs. ATIRA Employees Union & Anr. reported in 1995 L.L.R. 91. The facts and circumstances in the said decision are found to be quite distinguishable from the present proceeding. In the instant case as it is noticed that the workman was punished for committing an act of misconduct in violation of the Standing Orders of the Company and it has been amply established by the first party management that on some previous occasions also this workman was warned for committing the same mistake (vide Ext. 10), I feel that there is absolutely no justifiable reason for this court to come to a conclusion that the findings of the Enquiry Officer and the punishment inflicted upon the workman are perverse, disproportionate or being actuated with malice and victimisation of the workman.

10. Under the aforesaid circumstances, I find, there is very little scope for this court to interfere with the findings of the Enquiry Officer and the punishment inflicted upon the second party workman by the Disciplinary Authority which at the cost of repetition is mentioned below :

“ x x x x x x” I have decided to impose a lesser punishment on you by reducing your basic pay by one stage in your existing scales of pay as disciplinary measures. Accordingly, your present basic pay is hereby reduced from Rs. 3,962 per month to Rs. 3,859 per month in the scales of Rs. 2,480—94—3,138—103—3,859 (S-7) with immediate effect as a disciplinary measure.

11. However, as it is revealed from the pleadings of the parties that the punishment inflicted upon the workman has been given cumulative effect, I feel such interpretation of the punishment imposed upon the second party workman is not correct and as such needs

interference by this court. A plain reading of penalty imposed upon the second party workman as described above does not indicate that the Disciplinary Authority had ever intended that this punishment should have cumulative effect. Had that been the intention of the Disciplinary Authority then they should have mentioned the reduction of the basic pay of the workman by one stage with cumulative effect or they would not have categorically mentioned that there would be reduction of his basic pay by one stage in his existing scales of pay which as per their order was reduced from 3,962 per month to Rs. 3,859 per month in the scale of pay of Rs. 2,480—94—3,138—103—3,859 (S-7) with immediate effect as a disciplinary measure. The first party management has not provided any material or rule from which it can be ascertained that the aforesaid punishment order would automatically be taken or deemed as having a cumulative or perpetual effect for the rest of the service period of the second party workman. Since this sort of interpretation of the order of punishment against the second party workman by the first party management affects his future financial prospects for no rhyme and reason I feel it would be appropriate to direct the first party management that while executing the order of punishment they must go by the order of punishment inflicted upon the second party workman in accordance with its strict literal meaning without importing effects for it which are not only extreneous/foreign to the punishment itself but also causes gross violation of all fairness and justice expected of a responsible first party management.

12. Thus as per the discussion made in the foregoing paragraphs this reference is answered accordingly only with the aforesaid observation regarding the punishment inflicted upon the workman. The first party management is to reduce the basic pay of the second party workman by one stage only in his scales of pay commencing from Rs. 2,480—94—3,138—103—3,859—Rs. 3,962 and not in any other scales of pay applicable to the workman in course of his service tenure.

An award is passed accordingly.

Dictated and corrected by me.

SUCHISMITA MISRA
31-12-2008
Presiding Officer
Labour Court, Sambalpur

SUCHISMITA MISRA
31-12-2008
Presiding Officer
Labour Court, Sambalpur

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