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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 5th May 2009

No. 4122—li/1(B)-92/2002-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th March 2009 in Industrial Dispute Case No. 18/2003 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur and their workman Shri Bhairab Beja and 6 others was referred for adjudication is hereby published as in the Schedule below:

#### SCHEDULE

#### IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 18 OF 2003

Dated the 30th March 2009

*Present :*

Shri M. R. Tripathy,  
Presiding Officer, Labour Court, Bhubaneswar.

*Between :*

The Management of the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur. . . First Party—Management

And

Their Workmen . . Second Party—Workmen  
Shri Bhairab Beja and 6 others.

*Appearances :*

Shri K. K. Behera, . . For First Party—Management  
Asst. Executive Engineer.

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Shri C. R. Mohapatra, . . For Second Party—Workmen  
General Secretary

## AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the dispute between the parties to this Court for adjudication vide Order No. 3491—li/1 (B)-92/2002-LE., dated the 4th April 2003 of the Labour & Employment Department, Orissa, Bhubaneswar.

2. The Schedule of Reference is as follows :

“Whether the termination of services of Shri Bhairab Beja and 6 others N. M. R. workers by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur, Cuttack with effect from the 1st December 2001 is legal and/or justified ? If not, to what relief Shri Beja and 6 others are entitled ?”

3. The case of the workmen, may be briefly stated as follows :

The workmen were working as N. M. R. in different posts in the office under the control of the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur, Cuttack (in short the management) and they were retrenched from service with effect from the 1st December 2001. They had completed almost 15 years of continuous service before they were retrenched. At the time of retrenchment the principle of ‘last come first go’ was not followed. While some junior employees were retained in service, the workmen who were senior to them were retrenched. The condition precedent to retrenchment was also not followed by the management. In this regard a review meeting was held on the 4th January 2002 in the office of the Chief Engineer, Drainage, Gandarpur, Cuttack. After consideration of the grievance petitions filed by the retrenched workmen, a recommendation was made to retain them in service. Though the names of Shri Bhairab Beja, N. M. R. Operator and Shri Kalandi Behera, N.M.R. Rigger were included in the said list, they were not re-employed in service. After the workmen raised an industrial dispute a conciliation proceeding was initiated and again a list including the workmen of the present case was forwarded to the Superintending Engineer, Mahanadi-Chitrotpala Island Irrigation Circle, Gandarpur for their re-engagement but no action was taken. Hence the dispute was referred to this Court for adjudication.

4. The management in the written statement has admitted that all the workmen were working as N.M.R. workers in different posts in his office. Due to non-availability of sufficient work in the Project the services of the workmen was declared as surplus and the Government decided to retrench them from service vide letter No. 20222, dated the 29th May 2001. Accordingly they were retrenched from service with effect from the 30th November 2001. At the time of retrenchment of the workmen, the principle of ‘last come first go’ was duly followed. Also the provisions of the Industrial Disputes Act, 1947 and payment of Gratuity Act, 1972 were duly complied. It is specifically averred by the management that no employee junior to the workmen are continuing in service. The management has admitted that on the 4th January 2002 a review meeting was held to consider the grievances of the retrenched workmen.

Thereafter the names of 10 numbers of retrenched Work Charged and N.M.R. workers was recommended for their continuance in service. The cases of other 12 numbers of retrenched Work Charged and N. M. R. employees including the workmen namely Shri Bhairab Beja and Shri Kalandi Behera was also submitted to the Government for consideration. Since the retrenchment of the surplus workers was made on the basis of the policy decision of the Government and dues as admissible under rule were calculated and kept ready, the question of reinstatement of the retrenched workmen with payment of back wages is not tenable. So the claim made by the workmen is liable to be rejected.

5. The following issues were settled.

#### *ISSUES*

- (i) “Whether the termination of services of Shri Bhairab Beja and 6 others N. M.R. workers by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur, Cuttack with effect from the 1st December 2001 is legal and/or justified ?
- (ii) If not, to what relief Shri Beja and 6 others are entitled ?”

6. To substantiate their claim, the workmen examined three of them as witnesses. Shri Bhairab Beja was examined as W. W. 1, Shri Kalandi Behera was examined as W. W. 2 and Shri Bijaya Kumar Sahu was examined as W. W. 3 The management also examined a witness as M. W. 1 who is working as Assistant Executive Engineer, Mahanadi Barrage.

#### *FINDINGS*

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

W. W. 1 in his deposition has stated that he joined as a N.M.R. Helper in the Mahanadi Barrage Stores and Mechanical Division on the 25th May 1988 on a daily wage of Rs. 20. From the 1st December 1988 he was engaged as an Operator on daily wage basis. After 5 to 6 months his daily wage was enhanced to Rs. 40 per day. He was retrenched from service with effect from the 1st December 2001 without any notice. At that time Section 25-F of the Industrial Disputes Act, 1947 was not complied. Also five workers who were junior to him are still working as Operator. During cross examination he said that he did not receive the retrenchment benefits because the same was offered to him about 4 to 5 months after his retrenchment. He further stated that the five workers who are continuing in the post of Operator had joined as Helper earlier to him but they were entrusted with the work of Operator after the 1st December 1988 and therefore in the Cadre of Operator they are junior to him.

8. W. W. 2 in his deposition has stated that he was working as Helper since the 11th May 1986 on daily wage basis. On the 1st September 1988 he was asked to do the work of Rigger on daily wage of Rs. 25. He was retrenched from service on the 30th November 2001. He was paid a sum of Rs. 30,000 towards one month’s wage in lieu of notice and other retrenchment benefits. He further stated that some workers who are junior to him are still working under the management. During cross-examination he said that his juniors are working in the category of Helper as well as in the category of Rigger but subsequently he could not say any junior worker who is working as Rigger.

9. W. W. 3 similarly stated that he started his career as N.M.R. Store Choukidar on daily wage basis. He was engaged as N.M.R. Electrician on the 6th May 1993 on daily wage of Rs. 35. He was retrenched from service with effect from the 1st December 2001. He admitted that he had received all the retrenchment benefits but according to him at the time of retrenchment some workers junior to him were retained in service as Electrician as well as Store Choukidar.

10. M. W. 1 has admitted that at the time of retrenchment some senior workers were retrenched while some juniors were retained. Therefore another list was prepared and Shri Bhairab Beja (W. W. 1), Shri Bijaya Kumar Sahu (W. W. 3) and Shri Paricharan Mallik were reinstated in service with effect from the 1st December 2007. On the first date of his examination, i.e. on the 19th January 2009 he stated that the workman Shri Shyam Sundar Sethi could not be re-engaged as he was a junior workman and his name did not appear in the revised list. He was further examined on the 27th February 2009 and on that date he changed his version and stated that Shri Shyam Sundar Sethi is a senior workman, even senior to Shri Bhairab Beja. So the earlier statement given by him that Shri Shyam Sundar Sethi was a junior worker and that for the said reason his name did not find place in the revised list is not correct. According to him due to incorrect preparation of the revised list by the concerned Officials the name of Shri Shyam Sundar Sethi was not mentioned in the list. He came to know this fact after verification of the connected official records. He was cross-examined on the 19th January 2009 and during cross-examination he has stated that at the time of retrenchment, retrenchment compensation and notice pay were paid to all the retrenched employees. He specifically denied that notice pay and retrenchment compensation was not paid to Shri Bhairab Beja. In the next sentence he said that according to the endorsement made in the file some retrenched employees had received the retrenchment benefits and some others had not received the same.

11. According to settled position of law, compliance of Section 25-F of the Industrial Disputes Act, 1947 is a condition precedent to the retrenchment. The management is in the custody of the concerned files. So the management could have produced the file to prove that the notice pay and retrenchment compensation was duly paid to the retrenched employees simultaneously. Of course it is stated by M. W. 1 that retrenchment benefits and notice pay was paid to Shri Bhairab Beja but no material has been filed by the management to prove the above fact. On the other hand, it is admitted by M.W. 1 that some of the retrenched employees had not received the retrenchment benefits.

12. Since the retrenchment benefits were not given to the retrenched employees simultaneously and the retrenched employees though senior were retrenched while juniors were retained in service, so I would say that Sections 25-F and 25-G of the Industrial Disputes Act, 1947 were not duly complied by the management at the time of retrenchment of the workmen of the present case.

Out of seven workmen, admittedly three persons namely, Shri Trilochan Swain, Bijaya Kumar Mallik and Kalandi Behera (W. W. 2) have already expired. As per the death certificate filed by the authorised representative of the workmen, Trilochan Swain died on the 22nd January 2007, Kalandi Behera died on the 22nd September 2008 and Bijaya Kumar Mallik died on the 7th October 2002. Since they have already died so the question of their reinstatement in service does not arise. But it is proved that though they were senior to others they were retrenched from service with effect from the 1st December 2001. They all were alive when the reference was made and therefore had they been alive, they would have been reinstated like others. So their legal heirs are entitled to get back wages.

13. During cross-examination M. W. 1 has stated that he cannot say as to how the intervening period i.e. the period, in between the date of retrenchment and the date of reinstatement (in the case of the workmen who have already been reinstated) will be treated. It is proved that the workmen of the present case were terminated from service in an illegal manner. However three of them namely, Shri Bhairab Beja, Shri Bijaya Kumar Sahu and Shri Paricharan Mallik have already been reinstated in service with effect from the 1st December 2007. Since they were terminated from service without any fault of their that too in an illegal manner, so I think it will be appropriate to direct the management to pay full back wages to them for the intervening period, i.e. from the 1st December 2001 to the 30th November 2007.

It is admitted by M. W. 1 that Shri Shyam Sundar Sethi is a senior worker. He is senior even to Shri Bhairab Beja. It is not known why he has not yet been reinstated in service. So not only he is entitled to be reinstated in service but also he is entitled to get full back wages. It is in the deposition of W. Ws. 2 and 3 that they had received one month's pay and retrenchment compensation. It is also said by M. W. 1 that some retrenched employees had received the retrenchment benefits and some others had not received the same. Since I have awarded back wages in favour of all the workmen of the present case, so the notice pay and retrenchment benefits which they have already received is required to be recovered from them. Therefore the management shall examine each case and deduct the amount towards notice pay and retrenchment compensation while calculating the back wages of the concerned workmen. Accordingly both the issues are answered.

14. Hence Ordered :

The termination of services of Shri Bhairab Beja, Shri Trilochan Swain, Bijaya Kumar Mallik, Kalandi Behera, Shyam Sundar Sethi, Bijaya Kumar Sahu, Paricharan Mallik all N.M.R. workers by the Executive Engineer, Mahanadi-Chitrotpala Island Irrigation Stores and Mechanical Division, Gandarpur, Cuttack with effect from the 1st December 2001 is illegal and unjustified. Shri Shyam Sundar Sethi is entitled to be reinstated in service with full back wages. All the other workmen including the deceased workmen namely, Trilochan Swain, Bijaya Kumar Mallik, Kalandi Behera are entitled to get back wages. Shri Bhairab Beja, Shri Paricharan Mallik and Shri Bijaya Kumar Sahu will get back wages for the period from the 1st December 2001 to the 30th November 2007. The legal heirs of Trilochan Swain are

entitled to get back wages for the period from the 1st December 2001 to the 21st January 2007, the legal heirs of Kalandi Behera are entitled to get back wages for the period from the 1st December 2001 to the 21st September 2008 and the legal heirs of Bijaya Kumar Mallik are entitled to get back wages for the period from the 1st December 2001 to the 6th October 2002. The notice pay and retrenchment compensation if already received by the above named workmen shall be deducted from the amount of back wages and the rest shall be paid. The management shall comply the aforesaid direction within one month from the date of the publication of the Award in the Official Gazette, in default, the respective workmen and their legal heirs shall be entitled to get interest at the rate of 6% per annum on the back wages till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

M. R. TRIPATHY  
30-3-2009  
Presiding Officer  
Labour Court, Bhubaneswar

M. R. TRIPATHY  
30-3-2009  
Presiding Officer  
Labour Court, Bhubaneswar

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