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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 4th June 2009

No.4965—li/1(BH)-10/93(Pt)/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 1st May 2009 in I.D. Case No. 48 of 2008 of the Presiding Officer Industrial Tribunal, Bhubaneswar¹ to whom the industrial dispute between the management of M/s Rail Road Construction Company, Angul, District Dhenkanal and its workmen Shri Karuna Pal & 21 others, C/o Shri Mayadhar Jena, Shop No. 8, Temporary Market Complex, NALCO, Angul was referred to for adjudication is hereby published as in the Schedule below.

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL : BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 48 OF 2008

Dated the 1st May 2009

Present :

Shri P. C. Mishra (OSJS) (Sr.Branch)
Presiding Officer
Industrial Tribunal
Bhubaneswar.

Between :

M/s Rail Road Construction Company .. First Party—Management
Angul, Dist. Dhenkanal.
And
Shri Karuna Pal & 21 others .. Second Party—Workmen
C/o Shri Mayadhar Jena
Shop No.8
Temporary Market Complex, NALCO
Angul.

Appearances :

Shri K.Bej
Authorised Representative .. For First Party— Management

Shri Karuna Pal
Authorised Representative .. For Second Party—Workmen

A W A R D

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.6526—li/1(BH)-10/93-LE., dated the 24th May 1994 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-LE., dated the 4th April 2008.

“Whether the dismissal of Shri Karuna Pal and 21 others with effect from 31st August 1991 by their management, M/s Rail Road Construction Company, Angul is Legal and/or justified ? If not, what relief they are entitled to ?”

2. The case of the workmen, numbering 22, in short is that they were all employed in various capacities/different posts under the management of Rail Road Construction Company, a contractor establishment engaged in maintenance of Railway tracks and repairing Railway engine and wagons under the C.P.P., NALCO and they all continued to work under it from 1st August 1986 till 31st August 1991. It is asserted that they were all discharging their duties satisfactorily till 10th September 1990 and when they demanded minimum wages as per the Govt. Notification with effect from 1st July 1990 and formed a Union to fulfil their aim, the management neither responded nor did it call the workers for any discussion. It is stated that for the non-co-operation of the management, they went on strike in a concerted manner w.e.f. 10th September 1990 which continued up to 12th September 1990. It is alleged that being annoyed with their Union activities the management put the workmen under suspension and charge-sheeted them on false and flimsy grounds and thereafter got the same enquired by an Enquiry Officer, who is an Advocate of Angul. It is alleged that the Enquiry Officer has not conducted the enquiry in a fair and proper manner, in as much as, he did not at all consider the statements of the witnesses produced by the delinquents; no independent witnesses were examined though the management cited the name of some witnesses who were prevented to enter into the factory premises and the Enquiry Officer did not consider the evidence of the management’s witnesses in its proper prospective. It is further alleged that even the disciplinary authority without applying his mind imposed on them the punishment of dismissal from service in a most whimsical manner, which is not at all sustainable in the eye of law. In the aforesaid background, the workmen have prayed for their reinstatement with full back wages.

3. The management filed its written statement stating there in *inter alia* that the agitational attitude adopted by the workmen w.e.f. 10th September 1990 was during currency of a tripartite settlement for which there has been a contravention of the agreed terms by the workmen and further during the said period as the workmen exhibited misconduct, in as much as, prevented the willing workers to attend to their duties and committed violence by assulting the officers of the management and abused them with filthy languages, they were all chargesheeted followed by a domestic enquiry and on conclusion thereof they were all dismissed from service. It is stated that while conducting the enquiry all the reasonable opportunities were afforded to the workmen in their defence and the disciplinary authority after affording them an opportunity of hearing on the proposed punishment passed the orders of dismissal and remitted each one of them one month’s wages and simultaneously sought approval of its action from the D.L.O., Angul as by the time a charter of demands placed by the NALCO Shramik Congress Union was pending decision before the said D.L.O., which was ultimately allowed. Under such factual backdrop of the case, the management has pleaded that its action in dismissing the workmen from service is legal as well as justified.

4. On the basis of the averments made by the parties, the following two issues have been framed:—

I S S U E S

- (1) Whether the dismissal of Shri Karuna Pal and 21 others with effect from the 31st August 1991 by their management, M/s Rail Road Construction Company, Angul is legal and/ or justified ?
- (2) If not, what relief they are entitled to?

5. In order to substantiate their respective stand while the management led oral evidence of two witnesses and brought on record documents which have been marked as Exts. A to P/9, the workmen examined three witnesses on their behalf but did not adduce any documentary evidence.

6. The Hon'ble Supreme Court in a case between Karnataka State Road Transport Corporation Vrs. Smt. Lakshmiddevamma, reported in 2001(90) (S.C) FLR — 35 have held as follows :-

“It has been consistently held that in principle, there is no difference whether the matter comes before the Labour Court /Industrial Tribunal under Section 33 or on a reference under Section 10 of the Industrial Disputes Act. In either case, the employer would have to justify that the order of dismissal or discharge was proper. xx xx xx.”

In view of the above observation of the Hon'ble Apex Court, it is to be seen whether the dismissal of the workmen was preceded by the fair and proper enquiry and on conclusion thereof whether the workmen were afforded opportunity to have their say before infliction of the major penalty of dismissal from service.

7. The Enquiry Officer who conducted enquiry against the workmen has been examined in the case as M.W.No.1. He deposed in his evidence that on being appointed as the Enquiry Officer as per Ext.A, he conducted enquiry into the charges which were levelled against the workmen as per Ext.B. He has proved Ext.C. the reply of the workmen to the said charge-sheet. Referring to Ext.D the copy of the enquiry notice, he deposed that all the workmen were noticed individually for the enquiry, on receipt whereof they represented as per Ext.E to allow them to be represented through a Lawyer and for payment of D.A. to attend such enquiry. He stated that on receiving Ext.E, he advised the management as per Ext.F to accede to the request of the workmen and accordingly the management vide Ext.G agreed to bear the legal expenses of the Lawyer of the workmen. He stated that on the dates of enquiry the workmen as well as their Advocate, Shri R. N. Debta participated and cross-examined the witnesses examined on behalf of the management and copies of depositions were served on the Advocate for the workmen. He has proved the xerox copy of the entire enquiry proceeding marked Ext.H. He deposed that on conclusion of the enquiry, he submitted his report to the management finding the workmen guilty of the charges but as it was detected that the workmen had not adduced any evidence in support of their defence, the enquiry was reopened and the workmen examined three witnesses on their behalf, who were also cross-examined by the management. He stated that on 26th July 1991 the adjournment sought for by the workmen was rejected and thereafter he submitted his supplementary enquiry report. He has proved Ext.J, the subsequent supplementary proceedings of the enquiry containing his enquiry report. M.W.No.1 was cross-examined on behalf of the workmen but nothing substantial was pointed out to discredit his version in the examination-in-chief. Except putting certain suggestions to M.W.No.1, the workmen have elicited nothing in order to shake his veracity.

On an appraisal of the evidence of M.W.No.1 read with the documentary evidence produced and proved by him in connection with holding of the enquiry, it is found that the Enquiry Officer has conducted the enquiry against the workmen in a fair and proper manner and while doing so he had afforded all reasonable opportunities to defend themselves in the said enquiry, it may be noted here that W.W.No.1 has also admitted about the fairness and propriety of the enquiry in his examination-in-chief. Hence, the enquiry against the workmen is held to be fair and proper.

8. Now coming to the role of the disciplinary authority in dealing with the matter, it is seen that M.W.No.2 has deposed that because the workmen resorted to strike and illegal activities, they were charge-sheeted followed by a domestic enquiry in which they were found guilty and consequently by remitting one month's wages to each one of them, they were dismissed from service. He has proved the copy of the tripartite settlement, Ext.L /1 which discloses that during

subsistence of the same, the workers agitated by resorting to strike and committed other misconducts. The fact of resorting to strike is also admitted by W.W.No.1 in his examination-in-chief.

The above being the evidence available on record, it is not at all inappropriate to conclude that the management with a view to curb the indiscipline attitude of the workmen had taken such a harsh step by imposing major penalty of dismissal on the workmen and before imposing such punishment since it had afforded opportunity to the workmen to have their say on the proposed punishment as per Ext.P, no infirmity can be attributable to such action. In connection with the above, it is worthwhile to refer to a decision of the Hon'ble Bombay High Court in the case between K.Z.S.D.U.Sangha, Kolhapur Vrs. S.S.Pharakate, reported in 2009(120)FLR—1164, where in their Lordships have held thus:-

“Industry survives on discipline and ought not to perish on indiscipline and least of all, indiscipline that is condoned by the Court.Preservation of the rule of law includes preservation of the rules by which business is transacted. In a rapidly evolving economy, stability of business contributes to conditions of social stability. Rules of discipline are a critical ingredient of the rule of law. Courts as institutions involved in democratic governance must enforce those rules rather than condone their breach.”

Keeping in view the observations as quoted above and the discussions made in the preceding paragraphs, it is held that the punishment imposed on the workmen basing on the report of the enquiry needs no interference and accordingly the same is confirmed.

9. In the result, the reference is answered in the following manner :—

The dismissal of Shri Karuna Pal and 21 others with effect from the 31st August 1991 by their management M/s .Rail Road Construction Company, Angul is legal as well as justified and consequently the workmen are held not entitled to any relief in the present proceeding.

Dictated and corrected by me.

P. C. MISHRA
Dt.1-5-2009
Presiding Officer, Industrial Tribunal
Bhubaneswar

P. C. MISHRA
Dt.1-5-2009
Presiding Officer, Industrial Tribunal
Bhubaneswar

By order of the Governor

K. C. BASKE

Under-Secretary to Government