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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 12th July 2010

No. 5684—li/1(B)-166/1998-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th March 2010 in I. D. Case No. 179 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of the Managing Director, M/s O. T. M. Ltd., Choudwar, Cuttack and its workman Shri Madan Mohan Jena was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 179 OF 2008

Dated the 29th March 2010

Present :

Shri P. C. Mishra, o. s. j. s. (Sr. Branch)
Presiding Officer
Industrial Tribunal, Bhubaneswar.

Between :

The Managing Director .. First Party—Management
M/s O. T. M. Ltd., Choudwar, Cuttack.

And

Shri Madan Mohan Jena .. Second Party—Workman
Vill. Majana, P. O. Angarpada, Dist. Khurda.

Appearances :

For the First Party—Management .. None

For the Second Party—Workman himself .. Shri Madan Mohan Jena

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. 15153—li-1(B)-166/1998-L. E., dated the 23rd December 1998 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 dismissal of Shri Madan Mohan Jena, T. No. 2003 of Processing Department by the management of M/s. O. T. M. Ltd., Choudwar with effect from the 22nd February 1996 is legal and or justified ? If not, what relief Shri Jena is entitled to ?”

2. The case of the workman in brief is that being employed in the Processing Department of the management he was attached to the Printing Section and during continuance thereof a long period of 18 years there was no stigma to his career. The workman has pleaded that in March, 1994 he suffered from Psychosis for which he was undergoing treatment, but during the period he was also attending to his duties. It is stated that while attending his duty all of a sudden the management suspended him from service on the 26th March 1994 and subsequently charge sheeted him on the allegation of theft of company's property by him on the 22nd March 1994 to which he submitted his explanation on the 6th May 1994 denying the charges framed against him. It is stated that thereafter the management with an ulterior intention get the matter enquired through an enquiry and ultimately dismissed him from service on the 22nd February 1996. The workman has alleged that he was not being paid subsistence allowance regularly during the period of his suspension and further the enquiry officer without supplying him the copies of the proceeding and deposition of witnesses and violating the principles of natural justice has arrived at an unreasonable finding. He further alleges that without giving him an opportunity to reply against the punishment the disciplinary authority straightaway dismissed him from service bring fully aware that a copy of the enquiry report was also not furnished to him. In the premises, the workman has prayed to declare the action of the management to be illegal and unjustified and to grant him reinstatement in service with full back wages.

3. Despite notice the management neither appeared nor filed its written statement and consequently it was declared *ex parte* vide Order No. 12, dated 7th July 2001. The workman thereafter filed his evidence on affidavit and proved certain documents which have been marked Exts. 1 to 8.

4. The workman in his unchallenged evidence has admitted about his suspension from job, the charges framed as per Ext. 4 and the ultimate action of dismissal taken against him by the management as per Ext. 7 but at the same time while defying the charges as per Ext. 6 he has also challenged the fairness and propriety of the enquiry that was conducted against

him. It is in his evidence that the disciplinary authority without communicating him a copy of the enquiry report and without issuing him any second show cause notice has imposed on him the punishment of dismissal which is a clear violation of the principles of natural justice. No contrary evidence is available to disbelieve the version of the workman. Hence, in absence of any material on record showing that the dismissal order of the workman was preceded by a due enquiry and further by affording him all reasonable opportunity in his defence, I am not inclined to hold the action of the management to be either legal or justified. Accordingly, the workman is held entitled to reinstatement in service but in the facts and circumstances of the case without any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

P. C. MISHRA
29-3-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

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29-3-2010
Presiding Officer
Industrial Tribunal
Bhubaneswar

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