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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 14th July 2010

No. 5736–li/1(B)-31/2007-L. E.–In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th May 2010 in I. D. Case No. 46 of 2007 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the management of Orissa State Co-operative Marketing Federation Ltd., Bhubaneswar and its workman Shri Brundaban Mohapatra was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

#### IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 46 OF 2007

Dated the 24th May 2010

*Present :*

Shri S. K. Dash  
Presiding Officer  
Labour Court, Bhubaneswar.

*Between :*

The management of Orissa State Co-operative . . . First Party–Management  
Marketing Federation Ltd., Bhubaneswar.

And

Its workman . . . Second Party–Workman  
Shri Brundaban Mohapatra

*Appearances :*

For the First Party–Management . . . Shri S. K. Pattanaik, Advocate  
Shri S. Mohanty, Advocate

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For the Second Party–Workman . . . Shri A. K. Rath, Advocate

## 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 matter in dispute to this Court vide Order No. 11506—li/1(B)-31/2007-L. E., dated the 11th October 2007 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of Orissa State Co-operative Marketing Federation Ltd. (MARKFED-ORISSA), Bhubaneswar in dismissing Shri Brundaban Mohapatra, Driver from service with effect from the 31st December 2002 is legal and/or justified ? If not, to what relief Shri Mohapatra is entitled ?”

3. The case of the workman in brief is that he was appointed as a Driver under the management in the year 1981 to drive the light vehicle. He was working diligently for 21 years in the office of the management without any blemish. A tour to Jeypore and Rayagada was fixed by the Manager (Marketing-cum-Establishment) of the management on the 28th June 2002 and the workman was duly instructed by the office to proceed with the officer in the early morning on the said date in the office vehicle bearing No. ORF-5300 and accordingly, the workman had taken an advance of Rs. 3,000 on the 26th June 2002 to meet the urgent expenditure for the vehicle. The workman suffered severe dysentery with vomiting in high frequency in the previous night of the 28th June 2002 and was under treatment by a doctor namely Dr. Sachidananda Das of A. C. H. Medical College and Hospital, Bhubaneswar. He could not intimate his ailment to the management. One Ramakanta Sahoo had taken him to the Doctor in the night of the 27th June 2002 who did not turn up in the next day morning to help the workman. The workman reported the office at about 11-40 A. M. on the 28th June 2002 when his condition became slight better and he came to the office and came to know that the concerned officer had left for tour as scheduled earlier by another office vehicle. The workman was placed under suspension on the 8th July 2002 and a disciplinary proceeding was initiated against him. A charge memo was framed on the allegation of disobedience of order, negligence in duty, misconduct and temporary misappropriation of Federation Funds. After submission of show cause by the workman, the management was not being satisfied with it, an order was passed for a domestic enquiry. Shri Balabhadra Patra, Special Officer of the management was appointed as an Enquiry Officer. The enquiry was conducted in a single day and no evidence of witness was taken and the workman was not given any chance to cross-examine the witness. Any how the domestic enquiry was completed and the Enquiry Officer submitted his report and for recommendation of punishment on the 5th November 2002. A second show cause notice was given to the workman stating therein as to why major punishment will not be imposed on him by the Secretary of the management. A fresh charge of indiscipline against the workman was also alleged at that time. There was no hint of date and event as to when and where the workman had shown indiscipline behaviour in his service career. However the workman has submitted his defence explanation. The disciplinary authority

without application of mind and without proper assessment of the factual position imposed major punishment of dismissal from service and treated the period of suspension as such. The workman finding no other alternative, preferred an appeal on the 21st February 2003 under Rule 87 of the Service Rule of the management against the illegal action of the disciplinary authority. After lapse of three years of filing appeal and on direction of the Hon'ble Court, the appellate authority pleased to dispose of the same on the 5th September 2006 confirming the punishment order passed by the disciplinary authority. The appellate authority inclined to confirm the order of the disciplinary authority stating the reason that the workman had been charge-sheeted vide disciplinary proceeding No. 7715, dated the 11th February 1993 for his rash and negligent driving resulting in the damage of the Management's vehicle. But the workman was exonerated from such charge earlier. So the order of the appellate authority confirming the order of the disciplinary authority is honest in the eye of law. The quantum of punishment is also highly disproportionate to the alleged charges. So in this background the workman has raised an industrial dispute before the labour authority and after failure of the conciliation, the matter was informed to the Government and this reference is received from the Government for adjudication. The workman has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement denying the plea of the workman. According to the management, when the workman remained absent in his duty without any authority he was rightly put under suspension and a domestic enquiry was duly held and the disciplinary authority did not agree with the punishment recommended by the Enquiry Officer for which second show cause notice was issued and after considering the second show cause notice, major punishment was imposed against the workman. There was no defect in the domestic enquiry. The absence from duty was admitted by the workman and it was for the workman to prove the reason of his absence by producing witness and documents in support of his stand, but the workman has utterly failed. Hence, no fault can be found with the management in not examining any witness. The workman being a Driver the life and safety of the officers and the property of the management as well as life and safety of the other users of the public road is dependent on the skill, ability and sincerity of the driver and his habit of taking alcohol even while on duty and causing accident have compelled the management to dismiss him from service in the interest of the management as well as in the public interest. So in this background the management has prayed to answer the reference in his favour.

5. In view of the above pleadings of the parties, the following issues have been framed:—

#### ISSUES

- (i) "Whether the action of the management of Orissa State Co-operative Marketing Federation Ltd. (MARKFED-ORISSA), Bhubaneswar in dismissing Shri Brundaban Mohapatra, Driver from services with effect from the 31st December 2002 is legal and/or justified ?
- (ii) If not, to what relief Shri Mohapatra is entitled ?"

6. In order to substantiate his plea, the workman has examined himself as W. W. 1 and proved the documents marked as Exts. 1 to 12. Similarly the management has examined one Jalandhara Mohanty, Manager, Establishment in the office of the management as M. W. 1 but no document has been proved on behalf of the management.

#### FINDINGS

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

It is an admitted fact that the workman was working as Driver under the management to drive the light vehicle of the management. It is also an admitted fact that a tour was fixed by an officer of the management to proceed to Jeypore and Rayagada on the 28th June 2002. It has been argued by the Advocate for the workman that as the workman was suffering from severe dysentery with vomiting in high frequency in the previous night of the 28th June 2002 he was unable to attend duty in due time to proceed with the vehicle on tour and he came to the office late at about 11-40 A.M. and came to know that the officer had already left for tour. So it has been argued that the non-attendance of the workman from duty on the scheduled date and time was beyond his control, but the management without considering the same suspended him and started a domestic enquiry. Further it has been argued that without following the due procedure of law and without affording the reasonable opportunity to defend himself in the domestic enquiry, the domestic enquiry was completed on a single day recommending the minor punishment. The workman was charged with disobedience of office order, negligence in duty, misconduct and temporary misappropriation of fund. Out of the four charges as revealed from the enquiry file marked as Ext. 12, the Enquiry Officer found that the charge of disobedience of order and negligence in duty was proved and recommended the punishment accordingly. According to the management the workman had already deposited the advance money on the 1st July 2002 amounting to Rs. 2,540 and on the 6th August 2002 amounting to Rs. 460. Further it has been argued that the disciplinary authority while issuing second show cause levelled another charge against the workman for indiscipline and after considering the second show cause submitted by the workman imposed the punishment of dismissal from service. However the workman has preferred an appeal before the Appellate Authority which was disposed of after long period as per the direction of the Hon'ble High Court confirming such punishment. While confirming the punishment, the Appellate Authority had taken into consideration of the previous charge against the workman in which he had already exonerated. However on the whole the Advocate for the workman argued that the domestic enquiry was not fair and proper and no opportunity was given to the workman to put forth his grievances. On the other hand, it has been argued by the Advocate for the management that the domestic enquiry was conducted properly. The workman was very much present in the enquiry but he has not taken any step to adduce any evidence. On the evidence available the Enquiry Officer completed the enquiry and submitted his report recommending the punishment. Strainingly enough the management has not examined the Enquiry Officer and also no document has been proved on behalf of the management. However the workman has

proved all the details about the enquiry and the enquiry report has been marked as Ext. 3 and the enquiry file has been marked as Ext. 12 as mentioned earlier. So from the materials available now I have to see whether the domestic enquiry was fair and proper.

8. The enquiry report reveals that the enquiry was conducted on the 29th October 2002 in which one Girija Sankar Mohapatra, Senior Assistant was the Marshalling Officer but no evidence has been adduced on behalf of the management to prove the charges levelled against the workman. Admittedly the workman has deposited the amount taken in advance in two phases. It is also admitted that he has not attended the duty on the fixed time but his plea that he was suffering from ailment was not taken into consideration and it has been stated that the workman failed to produce the medical certificate on demand. On the other hand it is the plea of the workman that he has produced the same but it was not accepted. The xerox copy of such medical certificate filed in the Court has been marked as Ext. 11. Perused the same. The Enquiry Officer submitted his report on the 5th November 2002. The M. W. 1 has admitted in his evidence that no evidence was adduced on behalf of the management by the Marshalling Officer to establish the charge. So basing on it, it has been argued that when no witness has been examined on behalf of the management and no opportunity was given to the workman to put forth his grievance by adducing evidence, the domestic enquiry conducted by the management is not fair and proper and the principle of natural justice has not been followed at all. In support of his contention he has relied upon the authority reported in 1984 STPL (LE) 11912 S. C. in the case *Rajinder Kumar Kindra Vrs. Delhi Administration through Secretary (Labour) and others*. In such authority it has been held that Supreme Court can reject findings of misconduct based on no legal evidence. Arbitrator and Court can reappraise evidence led in domestic enquiry to satisfy whether the misconduct against the workman is established. Arbitrator and the Court can reject evidence of misconduct based on no legal evidence. But in the instant case no evidence has been led by the management and no opportunity was given to the workman to adduce evidence on his behalf. So on a careful consideration of all the materials available it can safely be concluded that the domestic enquiry conducted by the management was not fair and proper and the principle of natural justice has not been followed at all for which consequential act of imposing punishment and findings of the Appellate Authority should not be taken into consideration. Further on careful consideration of all the materials available as discussed above now I came to the finding that the action of the management in dismissing the workman from service with effect from the 31st December 2002 is neither legal nor justified.

9. The workman has prayed for reinstatement in service with full back wages. It is an admitted fact that the workman has not worked for the management during the relevant period. As per settled principle of law reported in 2004 (Supp.) O. L. R. 694 when the workman had not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere payment of back wages is not justified. Similarly it is now well settled by reason of catena of decisions of the Hon'ble

Supreme Court that the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. However taking into consideration of the facts and circumstance of this case instead of back wages I am of the opinion that a compensation to the extend of sum of Rs. 10,000 will meet the ends of justice and he is also entitled to be reinstated in service. Hence the workman is entitled to be reinstated in service with a lump sum amount of Rs. 10,000 (Rupees ten thousand) only as compensation in view of back wages. The management is directed to implement the award 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.

S. K. DASH

24-5-2010

Presiding Officer  
Labour Court, Bhubaneswar

S. K. DASH

24-5-2010

Presiding Officer  
Labour Court, Bhubaneswar

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By order of the Governor

P. K. PANDA

Under-Secretary to Government