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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th September 2010

No. 8213-li-1(SS)-14/2002-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st May 2010 in I.D. Case No. 47 of 2002 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the management of SAIL, Rourkela Steel Plant, Rourkela and their workman Shri P.C. Parida, represented through Rourkela Mazdoor Sabha, Rourkela was referred to 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. 47 OF 2002

The 31st May 2010

Present :

Miss Sarojini Mahapatra, M.A., L.L.B
Presiding Officer, Labour Court, Sambalpur.

Between :

The Management of the Dy. General Manager, . . . First Party—Management
Research and Control Laboratory
SAIL, Rourkela Steel Plant, Rourkela

And

Their workman Shri P.C. Parida . . . Second Party—Workman
Represented through Rourkela
Mazdoor Sabha, Bisra Road,
Rourkela-769 001, Dist. Sundargarh.

Appearances

For the First Party–Management	..	Shri J.K. Dash, Sr. Manager, Law & Shri L.K. Nayak , Dy. Manager, Law.
For the Second Party –Workman	..	Shri B.B. Sahoo, Dy. General Secretary, R.M.S., Rourkela.

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour & Employment Department under sub-section (5) of Section 12 read with Clause(c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) in Memo No. 7500(5), Dated the 17th June 2002 for adjudication of the Schedule questions :

“ Whether the punishment inflicted upon Shri P.C. Parida, Pl. No. 39254, Jr. Quality Controller, Research & Control Laboratory, Rourkela Steel Plant by reducing his basic pay by two stages from Rs. 5,325 to Rs. 5,069 in the scale S-9 and treating the period of suspension as such by the management of SAIL, Rourkela Steel Plant, Rourkela vide their Order Reference No. RCL/1769, dated the 21st June 2000 is legal and or justified ? If not, to what relief the workman is entitled ? ”

2. As per the statement of claim of the second party, the second party workman Shri P.C. Parida was charged to have committed certain misconducts as laid down in the standing order of the first party detailing in the chargesheet, dated 07-12-1999 issued by Shri D.K. Majumdar, Executive, R & C Lab. The second party workman was suspended from duty vide Order, Dt. 02-12-1999 issued by the Senior Manager, R & C Lab. Having received the chargesheet the second party submitted his explanation on Dtd. 10-12-1999. The explanation of the second party as unsatisfactory, the Senior Manager, R & C Lab. suspended him. The Senior Manager therefore constituted the enquiry committee. After completion of enquiry the first party management vide its Order Dtd. 21-06-2000 inflicted punishment on the second party workman, P.C.Parida by reducing his basic pay to Rs. 5,069 from Rs. 5,325 per month by two stages in the scale of Rs. 2,700–119–3,533–128–4,429 (S-9) as a disciplinary measure. The second party being aggrieved by such illegal order appealed to the Appellate Authority mentioning the details as to how the punishment is unjustified and illegal. The Appellate Authority remained silent but the Deputy Manager (PL), GS who was never concerned in the disciplinary matter at all intimated the second party vide its letter Dtd. 05-8-2000 that the Appellate Authority while agreeing to the decision of the Disciplinary Authority is satisfied that the punishment imposed on you .(workman) is in order and there is no scope to reduce the quantum of punishment imposed on the second party workman and not to set aside the same. When the dispute was not subsided before the Assistant Labour Commissioner-*cum*- Conciliation Officer, Rourkela the same was referred to Government of Orissa, Labour & Employment Department. Hence, the second party workman made a prayer to pass an order in favour of the second party workman by waiving out the punishment inflicted upon him or grant any other relief.

3. The first party management filed their written statement. As per the case of the first party management on Dtd. 26-11-1999 at about 11.45 A.M. while a team consisting of employees of Land Section, Town Engineering (Elect.) along with the staff of CAT VISION were engaged in removing unauthorised connections of a Cable TV Network laid through the RSP electrical poles from the

top of quarters No.T/183, Sector-9, Rourkela Steel Plant, the workman Shri P.C. Parida along with others prevented them from carrying out their lawful action while working as public servant. Further, the second party workman Shri P.C. Parida dealt slaps to Shri Ashok Das, Senior Land Supervisor of Town Service Department while he was discharging his official duties and shouted at him telling "Sala Hani Debi, Au thare jadi Sector -9 ku Asibu Safa Kari dabu" and threatened him to face dire consequences. As the acts of Shri Parida, the second party workman amounted to serious acts of misconduct, he was suspended from duty with effect from 02-12-1999 followed with chargesheet on 07-12-1999 in accordance with the provision of the certified standing order of the company applicable to him.

4. Further, it is alleged in the written statement that the explanation of Shri Parida, the second party workman being not satisfactory, an enquiry committee was constituted on 14-12-1999 to enquire into the charges. The second party workman Shri P.C.Parida participated in the proceeding along with the co-worker of his choice. The enquiry committee conducted the proceeding and submitted report holding the charges levelled against the second party workman as established. The charges established against the second party workman being of serious in nature warrant imposition of severe punishment of dismissal, but the disciplinary authority took a lenient view and to afford him an opportunity to improve his conduct. The first party management only reduced his basic pay by two stages in the existing scale of pay i.e. from Rs. 5,325 to Rs. 5,069 per month in the scale of (S-9) as a disciplinary measure and his period of suspension is treated as such. As alleged the second party workman Shri Parida preferred an appeal before the Deputy General Manager, Research and Control Laboratory on 06-07-2000 but the appellate authority did not find any merit in his appeal and did not interfere with the decision of the Disciplinary Authority and the same was intimated to Shri Parida vide letter, dated 05-08-2000.

5. Out of the pleadings of the parties the following issues have been framed for adjudication:—

- (i) "Whether the domestic enquiry conducted by the First party Management is fair and proper ?
- (ii) Whether the punishment inflicted upon Shri P.C. Parida, Pl. No. 39254, Jr. Quality Controller, Research & Control Laboratory, Rourkela Steel Plant, by reducing his basic pay by two stages from Rs. 5,325 to Rs. 5,069 in the scale of S-9 and treating the period of suspension as such by the management of SAIL, Rourkela Steel Plant, Rourkela vide their Order Ref. No. RCL/1769, dated 21-6-2000 is legal and or justified. ?
- (iii) If not, to what relief the workman is entitled ? "

6. As the preliminary issue, the issue, No. (i) i.e. "Whether the domestic enquiry conducted by the first party management is fair and proper has already been considered as per order, Dt.05-11-2009 and it was held that the domestic enquiry conducted by the first party management is fair and proper.

7. Now the rest issues No. (ii) and (iii) should be considered. The representative of management filed a petition stating that the management does not want to adduce evidence on the other issues i.e. issue No.(ii) and (iii).

The second party workman Shri P.C.Parida in order to prove his case has been examined as W.W. 1.

8. Both the parties have filed their documents in support of their case.

FINDINGS

9. *Issue No. (ii) and (iii)*:- As there is interlinked in between issue No. (ii) and (iii) that should be taken up together for adjudication. The second party workman Shri P.C. Parida stated in his evidence that he was suspended from duty vide letter No. RCL 3459, Dt. 02-12-1999 which was received by him on 02-12-1999 at the middle of shift duty but he performed his duty for full hours of the shift and was paid wages for the full eight hours. The chargesheet, Dt. 07-12-1999 was served on him on 09-12-1999 and he submitted his explanation on 10-12-1999. Further, it is alleged from his evidence that the Senior Manager, R & C Lab. who has suspended him (second party workman) communicated him that his explanation was not satisfactory and constituted the Enquiry Committee. However he appeared before the Committee and participated in the enquiry and filed documents. Since the domestic enquiry was found to be fair and proper that should not be explained furthermore.

10. It is further alleged from the evidence of the workman that the proper and appropriate Delegated Authority in the disciplinary matters have not been acted as per the delegation of power available in Rourkela Steel Plant. The finding of the Committee is one sided and erroneous in as much as the material evidence available on record from both the sides have not been taken into consideration. So the learned representative on behalf of the second party workman Shri Sahoo submitted that the importance was given only to the evidence of the first party management. So he submitted that the findings of the management is perverse and unreasonable. The second party workman also stated in his evidence that after receiving the letter, Dt. 22-04-2000 he had submitted his written views on the findings of the Committee on 02-05-2000 to the Senior Manager who is the competent authority to take into consideration his views before inflicting punishment. Relating to this point the learned representative on behalf of the workman submitted that the written views of the second party workman can not be considered as empty formalities and by ignoring the written views of the second party workman, the punishment was inflicted by the Assistant General Manager on 21-6-2000 who is not a competent authority to inflict such punishment under delegation of power. The next point raised by the workman is extended to the fact that after suspension he was not paid subsistence allowance till May, 2000. Only some small amount was paid in the month of June and July after he was allowed to join duty on 21-6-2000 after the punishment was inflicted. As alleged the second party workman requested to the Committee in course of enquiry on 01-3-2000 to make arrangement for payment of subsistence allowance as per the Standing Order, the management remained silent and no subsistence allowance was paid properly. It is further alleged from his evidence that after punishment was inflicted the second party workman made an appeal to the Deputy General Manager on 06-7-2000 as per the provision of the Standing Order but his appeal remained undisposed of and in between before the appeal period was exhausted, the inflicted punishment was implemented. He (second party workman) was intimated by Shri G.C.Cope, Deputy Manager (PL), GS on 05-8-2000 that the Appellate Authority disposed of the appeal saying that the punishment imposed upon him is in order and can not be set aside. Basing on the point the learned representative on behalf of the second party workman argued that the order of alleged Deputy Manager can not be said as order of disposal of appeal by the Appellate Authority. So, the learned representative on behalf of the second party workman submitted that the order of punishment was totally disproportionate and is multiple in nature denied several benefits. The representative of the second party workman further submitted that in view of such above facts and circumstances the order of punishment given by the management is not a speaking order which is beyond the standing order of the first party management and the reduction of basic pay by two stages is non-cumulative in nature which is illegal.

11. The first party management has relied on documents which are marked as Ext. M-1 to Ext.M-10 and subsequently the management also filed the copy of some circular i.e. circular No. 104 and circular No. 110 for debar period for promotion in case of disciplinary action as well as promotion in case of disciplinary proceedings respectively. The learned representative on behalf of the second party workman vehemently objected these above two circulars.

When the domestic enquiry conducted by the first party management was found to be fair and proper, the punishment inflicted by the first party management should be considered.

12. The learned representative on behalf of the management vehemently objected on the above submissions of the learned representative on behalf of the workman. As alleged from the case of the management on 26-11-1999 the joint inspection teams consisting of the representative of various Departments of the first party management proceeded and found that the second party workman have taken unauthorized Cable T.V. connection from a private party using Rourkela Steel Plant electrical poles alongwith the other occupants. At the time of joint inspection when teams were engaged in removing the unauthorised cable TV Network connections laid through the Rourkela Steel Plant electrical poles from various quarters of E Block, Sector-9 areas, the second party workman Shri P.C. Parida prevented them and slapped on Shri Ashok Das, Senior Land Supervisor of Town Service Department of the first party management. While a member of inspecting teams was discharging his official duty, the second party workman abusing him in obscene language and threatened him to face dire consequence. Basing on such activities of the second party workman the learned representative of the first party management submitted that such type of work of the second party workman is amounted to serious acts of misconduct. As alleged the charges established against the second party workman being of serious in nature warrant imposition of severe punishment of dismissal but the Disciplinary Authority took a lenient view and gave him punishment only reduced his basic pay by two stages in the existing scale of pay i.e. from Rs. 5,325 to Rs.5,069 per month in the scale of S-9 as a disciplinary measures and like this manner, the period of suspension was treated. The learned representative of the management submitted that in a discipline organisation, misconduct of a workman should not be entertained. So such type of behaviour and misconduct will be entertained the institution can not be sustained. So the discipline should be maintained by all the employer and employees of the concerned institution or Department. All the employer and employees should perform their work as per the standing order of the first party management. The management relied on the reported decisions (2005)3 SCC-401-MP Elec. Board *vrs.* Jagdis Ch. Sharma—Discipline is a form of civil responsible behaviour which helps to maintain social order and contributes to the preservation if not advancement of collective interests of society at large. Obviously this idea is more relevant in considering the working of the organisation like the employer herein or an industrial undertaking. So in an industry like the management it is the foremost duty of each and every employer and employee to maintain discipline there.

The learned representative on behalf of the first party management also relied on the reported decision 2008-LLR-619-Usha Braco Mazdoor Sangha *vrs.* Management of M/s. Usha Braco Ltd. and another -(a) If a misconduct has been committed within the purview of the provisions of the Standing Order whether the Certified or Model, the workman should be punished. The gravity of the offences, the impact, the same would have on the other workman as also the fact as to

whether the same will have an adverse effect over the functioning of the industry are relevant considerations, (b) Assaulted intimidation are penal offences. A workman indulging in commission of a criminal offence should not be spared only because he happens to be Union leader. The act does not encourage indiscipline. The management also relied on the reported decision. Orders of Hon'ble High Court of Orissa in OJC 2811/84-Ram Singh-Vrs. SAIL, RSP-The assault on this Court can not be viewed lightly, as any other view would amount to encourage indiscipline which in a big establishment like the Rourkela Steel Plant has to be scrupulously avoided. The punishment of dismissal was therefore not shockingly disproportionate to the misconduct.

13. In the instant case the second party workman has not led any evidence regarding the punishment nor led evidence regarding the merit of the case. Admittedly, the charge sheet was issued on 07-12-1999 and the second party workman was suspended on 02-12-1999. Subsequently the management has also taken the lenient view by reducing his basic pay. The learned representative on behalf of the management submitted that as per the standing order, the management has taken the appropriate steps against the second party workman and every punishment has its own effect. There is no such clause in the standing order that when appeal is pending no punishment can be imposed. The above circular filed by the management is also continuing till today. It is not a double jeopardy rather, it is a consequence. So the second party workman was charged for assault as well as threatening them with dire consequences and abused them in obscene language while the management team was discharging their official duty. The Industrial Disputes Act is silent regarding the lesser punishment. Both the learned representative of the parties giving stress on Section 11-A of the Industrial Disputes Act, 1947 in support of their own cases. The learned representative of the management submitted that this Court has no power to reappraise the evidence to find out whether the findings of the enquiry officer were correct or not or whether the punishment imposed was adequate or not since Section 11-A was not applicable. So as per the reported decision-AIR 2006 SC.2208-General Secretary, South Indian Cashew Factories Workers Union-Vrs. M.D., KSD Corporation Ltd. & other-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 the Management. Since Section 11-A of the I.D.Act 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. So taking all the above reported decisions relied on by the management, the points raised by the learned representative on behalf of the workman carries no worthiness. The steps taken by the first party management against the second party workman is just and proper. There is good and sufficient reasons for imposition of lesser punishment for the workman. In any institution like such industry the misconduct nor any indiscipline behaviour should not be accepted from any workman. In order to keep peace and tranquillity in an industry the behaviour of the employer as well as the employees should be polished enabling them to discharge their duties in a proper and smooth manner. In the facts and circumstances it can safely be concluded that the management has taken the proper action against the second party workman, rather it will be encouraged other employees to repeat such type of indiscipline behaviour for others at the time of discharging their official duties. Accordingly, the issue Nos. (ii) and (iii) are answered. Hence, the following Award.

AWARD

The reference is answered on contest but without any cost. The punishment inflicted upon Shri P.C.Parida, PI. No. 39254, Jr. Quality Controller, Research & Control Laboratory, Rourkela Steel Plant by reducing his basic pay by two stages from Rs. 5,325 to Rs. 5,069 in the scale of S-9 and treating the period of suspension as such by the management of SAIL, Rourkela Steel Plant, Rourkela vide their Order Ref. No. RCL/1769, dated 21-6-2000 is legal and justified. So the second party workman is not entitled to get any relief in this case.

Dictated and corrected by me.

Miss Sarojini Mahapatra
31-5-2010
Presiding Officer
Labour Court, Sambalpur

Miss Sarojini Mahapatra
31-5-2010
Presiding Officer
Labour Court, Sambalpur

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