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**LABOUR & EMPLOYMENT DEPARTMENT**

NOTIFICATION

The 28th April 2010

No. 4106—li/1(B)-117/2000-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th February 2011 in Industrial Dispute Case No. 238 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of the General Manager, M/s Konark Jute Ltd., Dhanmandal, Jajpur and its workman Shri Sridhar Charan Bhuyan was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 238 OF 2008

(Previously registered as 132 of 2000 in the file of the Presiding Officer,  
Labour Court, Bhubaneswar)

Dated the 5th February 2011

*Present :*

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),  
Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar.

*Between :*

The General Manager, . . . First-party Management  
M/s Konark Jute Ltd.,  
At/P.O. Dhanmandal, Dist. Jajpur.

And

Shri Sridhar Charan Bhuyan, . . . Second-party Workman  
At Tarada, P.O. Munda Sahi,  
Dist. Jagatsinghpur.

*Appearances :*

Shri P. K. Lenka, Advocate	. . For the First-party Management
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Shri T. Lenka, Advocate	. . For the Second-party Workman

## AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act') made by the Government of Orissa in Labour & Employment Department vide their Order No. 12340—li/1(B)-117/2000-LE., dated the 21st September 2000 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li/21-32/2007-LE., dated the 4th April 2008. The Schedule of reference runs as follows :—

"Whether the action of the management of M/s Konark Jute Ltd., Dhanmandal in terminating the services of Shri Sridhar Charan Bhuyan, Br. Receiver-*cum*-Finisher Card Feeder of Preparatory Department vide Letter No. 4200, dated the 10th March 1999 with effect from the 10th March 1999 on the ground of continued ill health is legal and justified ? If not, what relief Shri Bhuyan is entitled to get ?"

2. In the claim statement the second-party/workman has taken the stand that he joined in the establishment of the first-party in 1979 as an Apprentice and then appointed as a Probationer and subsequently on 1-8-1980 got confirmed in the post of 'Breaker Receiver-*cum*-Finisher Card Feeder'. In 1992 he was found to be suffering from 'Tuberculosis'. He was under treatment both in the E.S.I. Hospital and S.C.B. Medical College Hospital, Cuttack. When he became fully cured the doctor declared him fit but advised him to perform light work. Accordingly, the workman resumed duties and made a prayer to the management to allot him light work. The management without paying any heed deployed him in the Preparation Department of the Mill where he was previously working and which is a work place susceptible to Tuberculosis. Having worked for six months he again fell ill and remained under treatment in the Cardiology Department of the S.C.B. Medical College Hospital up to 29-9-1993. After he was cured he was advised by the doctor to perform light work. Therefore, he made a representation to the management to place him in some other Department which is free from jute dust. But, he was compelled to work in the same Department where he was previously working. As a result he could not perform his duty and absented from duties with due intimation to the management. On 29-4-1995 he was served with a charge-sheet for alleged unauthorised absence from duty from 6-2-1995. When he went to report for duties again he was asked to work in the old work place. Therefore, he made repeated request to allot him light work in any other Department but the management did not respond as a result he could not join his duties. Vide letter No. 3087, dated the 18th December 1998 the management served him another charge-sheet on the alleged continuous absence and he was asked to appear before the Mill Medical Officer or else to face the order of termination. On 4-1-1999 the workman made a representation which was not considered and vide Letter No. 4200, dated the 10th March 1999 the management terminated his service.

3. The management has taken the stand that the entire service period of the workman under the Mill was replete with gross absentism. Previously the workman had remained unauthorisedly absent from 29-4-1984 in spite of notices and for that his services were terminated. However, in a conciliation proceeding a settlement was reached and the workman was reinstated on 29-11-1985. However, the period of his absence was treated as special leave without pay. At that time the workman had given an undertaking not to remain on unauthorised leave in future. But, the

workman repeated the habit of remaining absent from duties during the periods from 14-5-1989 to 24-3-1990, 3-2-1992 to 3-1-1993 and 21-9-1996 onwards. Due to his frequent long absence he was found to be more of a liability to the management than an asset for the reason that the normal operation of the Mill got seriously hampered due to his frequent absence. So, the management by letter, dated the 11th December 1998 advised the workman to appear before the Mill Medical Officer for health assessment or else his services would be terminated. The workman did not respond to that notice. So, treating that the workman was not interested to continue in his employment the management terminated his services on the ground of continuous ill health which is covered under Section 2(o) (c) of the Act.

4. Two issues have been framed as follows :

#### ISSUES

- (i) Whether the action of the management of M/s Konark Jute Ltd., Dhanmandal in terminating the services of Shri Sridhar Charan Bhuyan, Br. Receiver-cum-Finisher Card Feeder of Preparatory Department vide Letter No. 4200, dated the 10th March 1999 with effect from the 10th March 1999 on the ground of continued ill health is legal and justified ?
- (ii) If not, what relief Shri Bhuyan is entitled to get ?

5. The workman examined himself as W.W. No. 1 and exhibited documents which are marked Exts. 1 to 21. The management has examined one of its Senior Clerk working in the Personnel Department as M.W. No. 1 and exhibited documents marked Exts. A to N.

#### FINDINGS

6. *Issue No. (i)*—Since it is admitted by the management that the service of the workman was terminated with effect from the 10th March 1999 there is a limited field of consideration as to whether the said termination is legal and justified on the ground that it is on the ground of the workman's continued ill health.

During cross-examination the workman has admitted that from 3-2-1992 till termination of his service he was suffering from ill health and that because of his ill health he used to remain absent from duties for about fifteen days in almost every month during the period of his illness. He has also admitted that during the years 1997 and 1998 he had never worked even for a single day. He does not firmly deny that in 1993 he had worked for 159 days only, in 1994 for 125 days, in 1995 for 124 days and in the year 1996 he had worked for ten days. He has further admitted that the periods of his absence during the aforesaid calendar years were on the ground of his ill health.

7. M.W. No. 1 has adduced evidence to the effect that the second-party had absented from duty from 14-5-1989 to 24-3-1990, from 3-2-1992 to 19-1-1993 and from 21-9-1996 onwards on the ground of his illness. In view of the clear admission of the workman and the evidence adduced by the management there is no room for any doubt that it is a case of continued ill health of the workman.

8. The workman has contended that since he had suffered from Tuberculosis, he had requested the management to allot him light work by engaging him in a work place which was free from jute dust but the management with an ulterior intention did not pay an heed. In this regard he has exhibited his representations to that effect. There is no elaboration on the alleged "ulterior intention" on the part of the management while refusing him light work and that too in a place which was dust free. On behalf of the management it is argued that since it is a Jute Mill there was no place free from dust. It is not shown by the workman that he had a right to be allotted with light work. He did not approach the Labour Union to raise an industrial dispute on the alleged refusal of the

management to allot him light work. For a long period he went on making prayer to give him light work and frequently remained absent from duties on the ground of ill health. Therefore, it cannot be said that it is a case of victimisation and the workman was forced to remain absent from duties.

9. On behalf of the workman it is argued that there should have been a domestic enquiry before passing order of termination of the workman's service vide Ext. 16, more so when the management had served a charge-sheet on the workman on 29-4-1995 alleging unauthorised absence since 6-2-1995 and subsequently another charge-sheet vide Letter No. 3087, dated the 18th December 1998 on alleged continuous absence from duties. The management does not dispute that such charge-sheets were served on the workman but it is argued that it is left to the discretion of the management as to whether the unauthorised absence should have been treated as misconduct or with the admitted fact that the workman had been suffering from continuous ill health he should be terminated without any disciplinary proceeding. There is force in the contention raised by the learned counsel for the management. Since it is a clear case of continued ill health the impugned order cannot be held to be illegal or unjustified on the ground that it was not preceded by any disciplinary proceeding. Had it been a case where the workman had disputed the management's plea of the workman's continued ill health, then there would have been the necessity of a domestic enquiry.

Ext. 16, the copy of the order of termination clearly states that the services of the workman had been terminated on the ground of continued ill health. The definition of the word "retrenchment" appearing in Section 2(oo) of the Act excludes termination of service of a workman on the ground of continued ill health. Therefore, the question of non-compliance of the provisions contained in Section 25-F of the Act does not arise. Considering from different angles this Tribunal finds that the termination of service of the workman is neither illegal nor unjust.

10. *Issue No. (ii)*—In view of the finding that the termination of service of the workman is neither illegal nor unjust, the workman is not entitled to any relief in the present proceeding.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
05-02-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
05-02-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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

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