

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1090 CUTTACK, SATURDAY, MAY 7, 2011/BAISAKHA 17, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 28th April 2011

No. 4115—li/1(BH)-58/1995-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 9th March 2011 in Industrial Dispute Case No. 97/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of (1) Talcher Thermal Power Station, Talcher, (2) GRID Corporation, Orissa, Bhubaneswar, (3) National Thermal Power Corporation, Talcher Thermal, Angul and its workman Shri Madhabananda Rath was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 97 OF 2008
(Previously registered as I. D. Case No. 423 of 1995 in
the file of the P.O., Labour Court, Bhubaneswar)
Dated the 9th March 2011

Present :

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

Between :

The Managements of—

(1) Talcher Thermal Power Station, Talcher, . . . First Party—Managements
(2) GRID Corporation of Orissa, Bhubaneswar,
(3) National Thermal Power Corporation,
Talcher Thermal, Angul.

And

Shri Madhabananda Rath, . . . Second Party—Workman
Qrs. No.2-RA/132, Sector-2,
At /P.O. Talcher Thermal, Talcher.

Appearances :

Shri B. Patnaik, Advocate	. . For the First Party—Management No. 1
None	. . For the First Party—Management Nos. 2 & 3
<hr/>	
Shri A. K. Mohanty, Advocate	. . For the Second Party—Workman

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short 'the Act') made by the Government of Orissa in the Labour & Employment Department, vide their Order No. 17288—li/(BH)-1-58/1995-LE., dated the 2nd December 1995 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication vide Labour & Employment Department's Order referred to above but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Departments Order No. 4138—li/-21-32/2007-LE., Dt. 4-4-2008. The schedule of reference runs as follows—

“Whether the dismissal of Shri Madhabananda Rath, ex Sr. Technician, T.T.P.S., Talcher, by the General Superintendent, T.T.P.S. with effect from Dt. 23-11-1992 is legal and/or justified? If not, to what relief Shri Rath is entitled?”

2. Material facts admitted by both the parties are that the second party- workman was a Senior Technician in Talcher Thermal Power Station (for short, 'T.T.P.S.') which was initially under the Orissa State Electricity Board but subsequently vested with GRIDCO and then with effect from Dt. 3-6-1995 it was vested with National Thermal Power Corporation (for short, 'N.T.P.C.').

The workman was tried on the charge of committing offences under Section 5 (1) (d) and Section 5 (2) of the Prevention of Corruption Act and Sections 468 and 471 of I.P.C. for having encashed total sum of Rs.3,065.22 paise towards reimbursement of medical bills by producing false cash memos, prescriptions and certificates and he was ultimately convicted under Sections 468 and 471 of I.P.C. and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500 by the Hon'ble Supreme Court in Criminal Appeal No.529 of 1990. After serving out the sentence the workman was released from Jail on 1-4-1991.

3. In his claim statement the workman has pleaded that after his release from Jail he reported for duty on Dt.2-4-1991. He resumed duties but later on he was intimated that he would not be allowed to join duty. On 9-4-1991 he was asked to show-cause on alleged unauthorised absence from duty. He submitted his reply on 22-4-1991. Sometime thereafter the Superintendent of Police (Vigilance), Sambalpur wrote to the management to dismiss the workman from service forthwith. On that intimation the management issued another show-cause notice to the workman on 31-5-1991 proposing his dismissal from service on the ground of his conviction in criminal offences involving moral turpitude. After a long gap on 24-4-1992 the workman was given notice for personal hearing on 25-4-1992. Without taking into consideration the workman's plea the management passed order of dismissal on 23-11-1992 in a mechanical manner. That order of dismissal was approved by this Tribunal in I. D. Misc. Case No. 44 of 1992, a case under Section 33 (2) (b) of the Act.

Consequently the workman has raised the present dispute challenging the order of dismissal on the ground that it was not preceded by a proper enquiry as prescribed in the management's Certified Standing Orders. It is further claimed that prior to imposing the penalty the authority did not apply his mind to the spotless past service of the workman. The order of dismissal only on the recommendation of the Superintendent of Police (Vigilance), Sambalpur is illegal. Besides, the punishment awarded is also shockingly disproportionate considering the following attending facts and circumstances :

- (i) taking the facts and circumstances of the criminal case into consideration the Hon'ble Supreme Court had reduced the sentence substantially ;
- (ii) the workman was released from Jail on remission of a substantial part of his substantial sentence due to his excellent behaviour inside the Jail ; and
- (iii) the workman had rendered 23 years of clean service.

4. The management's plea is that the workman committed serious criminal offences involving moral turpitude. The Criminal Act was connected with his employment. It amounts to a misconduct as per Cause 15 (2) (xv) of the Certified Standing Orders of the Orissa State Electricity Board (for short, 'O.S.E.B.'). The Criminal Act had close link with employer's establishment. Added to it, the workman in order to conceal the fact that being arrested by the Police in connection with the criminal case he had been in Jail custody had applied for leave on false ground such as illness of his father and mother. So, the management lost confidence in him and there being no extenuating circumstances the management was constrained to dismiss him from service. Denying the allegation that the order of dismissal was mechanically passed only on the suggestion of the Superintendent of Police (Vigilance), Sambalpur, it is pleaded that the Superintendent of Police (Vigilance) had simply intimated to the management about the exact state of affairs in respect of the conviction of the workman in the said criminal case. According to the management, the punishment cannot be said to be disproportionate.

5. The following issues have been settled :—

ISSUES

- (i) "Whether the dismissal of Shri Madhabananda Rath, ex Sr. Technician, T.T.P.S., Talcher, by the General Superintendent, T.T.P.S., with effect from Dt. 23-11-1992 is legal and/or justified ?
- (ii) If not, to what relief Shri Rath is entitled ?"

6. Two witnesses from side of the second party and one from the management side have been examined. W.W. No.1 is the workman and W.W.No.2 is a relative of the workman. M.W.No.1 is a General Manager of the first party.

FINDINGS

7. *Issue No.(i)*—Admittedly, the workman stands convicted for the offences punishable under Sections 468 and 471 of I.P.C. There is also no dispute that no domestic enquiry was conducted by the management before passing the order of dismissal. To support the contention that in this case domestic enquiry was not necessary learned Advocate for the first party has cited the decision in *J. Jaisankar Vrs. Government of India*, reported in 1997 (1)LLJ (S.C.) 49. In the reported case the workman who was the petitioner before the Hon'ble Supreme Court was convicted for an offence under Section 509 of I.P.C. and sentenced to pay a fine of Rs. 200. Consequently, he was dismissed from service. Subsequently, he raised an industrial dispute which led to a reference under Section 10 of the Act for adjudication of his dismissal from service. In the said case Hon'ble Supreme Court have observed as follows :

“When a Government servant is dismissed from service on conviction by a Criminal Court involving moral turpitude it automatically leads to removal from service, without further enquiry. Can a worker be put at a higher pedestal than the Government servant ? The obvious answer is 'No'.”

Thereafter the Hon'ble Supreme Court observed that due to conviction for an offence under Section 509 I.P.C. the order of dismissal was rightly passed. In *Divisional Personnel Officer, Southern Railway and another Vrs. T. R. Challappar* AIR 1975 (S.C.) 2216, Hon'ble Supreme Court have held that where a workman has been convicted in a criminal trial and for that misconduct he is to be departmentally punished, in such a case a further departmental enquiry by way of recording evidence, etc. is not necessary.

Ext. 2 is the Certified Standing Orders of the O.S.E.B. which is admittedly applicable to the workman. Clause 15(2) (xv) of the Standing Order contemplates that conviction in any Court of law for any criminal offence involving moral turpitude is a misconduct. It is not pleaded by the second party that the offences of which he was convicted do not involve moral turpitude. Since the criminal act of the second party is in connection with his employment it has far reaching implications and there is no doubt that it involves moral turpitude. Therefore, absence of a departmental enquiry will not invalidate the order of dismissal.

8. The main contention raised by the workman in this proceeding is that the management punished him solely on the instruction of the Superintendent of Police (Vigilance) and that prior to imposing the penalty the management did not take into consideration his past conduct and other extenuating circumstances. Denying this allegation the management has taken the stand that the criminal act of the workman having close link with the employer's establishment as well as the workman's employment and it having involved moral turpitude the management had lost confidence in the workman and that while imposing the punishment all relevant factors were taken into consideration.

In this regard the workman has relied on Clause 15 (3) (h) of the Standing Orders which runs as follows :

“In awarding punishment under this Standing Order the management shall take into account the gravity of the misconduct, the previous record of the workman, if any, and any other extenuating or aggravating circumstances that may exist.”

Ext. 21 is the copy of the order passed by the disciplinary authority in the office Note Sheet which in as been marked as exhibit on behalf of the management. It reflects that the disciplinary authority before deciding to impose the penalty had perused the personal file of the workman and observed that though the workman had no previous punishment to his credit, his making a false application for leave on the ground of his mother's treatment as well as father's illness was an aggravating circumstance weighing against him and the offences for which he was held guilty are serious misconducts in his employment which justified the exemplary punishment. So, it is not correct to say that the disciplinary authority had not considered the previous records of the workman.

It is found from the order passed in the Note Sheet marked Ext. 21 that the workman while in Jail custody had made a false application for leave on the ground of his mother's treatment and subsequently sent a telegram seeking extension of leave on the ground of his father's illness. This is considered to be an aggravating circumstance. In this regard the workman has pleaded in his rejoinder that there is nothing to show that he had applied for leave while he was in jail custody. It is further pleaded that after the workman was sent to jail his brother made use of certain blank signed papers of the workman in order to apply for leave without his consent and therefore, for such act of his brother he personally cannot be held responsible. On this plea the workman has adduced evidence by examining himself so also his cousin. He has stated in his affidavit that on 27-7-1990 he went on leave for treatment of his mother. On 30-7-1990 he was preparing to take his mother to Burla Hospital when he was arrested by the Vigilance Police and sent to Jail custody in connection with the Vigilance case. While he was preparing to take his mother to the Hospital he had handed over a signed blank paper to his cousin to submit it before the Manager, PMM-III, TTPS for extension of leave up to 31-8-1990. This statement is contradictory to his pleading in the rejoinder that his cousin had used his signed papers without his consent. In his deposition he has further stated that instead of using the signed paper his cousin sent a telegram for one month's extension of leave up to 31-8-1990 and thereafter his cousin used the signed paper to apply extension of leave up to 30-9-1990. This seems to be an after thought because there is no pleading to that effect. That apart, the evidence of W.W. No.2 on this point is quite contradictory. W.W. No.2 has stated that he had handed over the blank signed paper to the workman's sons at his resident in Talcher and came back to Bhubaneswar and on the same day in the evening one of the workman's son informed him over telephone that he had handed over the signed paper to the Assistant Manager of the workman's office who took the same for taking further course of action in the office of the workman. Thus, he wants to say it was the Assistant Manager who used the blank signed paper. All these things are not in the pleadings of the second party. Such oral evidence does not inspire confidence.

Now, I shall consider the submission of the learned counsel for the second party on the propriety of use of this conduct of the workman as an aggravating circumstance. It is submitted that with the alleged false application for leave allegedly made by the workman to conceal the fact of his detention in jail has not been proved in any departmental proceeding the management could not have taken that as an aggravating circumstance. It is further submitted that had the allegation not been taken into consideration the authority might not have imposed the punishment of dismissal. It is true that no enquiry was conducted on the aforesaid allegations. But, during trial the workman has adduced

evidence to prove the circumstances under which the ground of illness of his father and mother was mentioned in his leave applications even though, during the period of leave so applied for, he was in Jail custody in connection with the aforesaid criminal case. The workman has tried to make out a case that he himself had not written leave applications and therefore he is not responsible for any incorrect/false grounds which were mentioned in his leave applications. But, the fact remains that even though he was in Jail custody for a long period of about eight months he did not give any intimation to his employer about his detention in Jail custody which he could have done. That apart, he admits to have handed over a blank sheet of paper signed by himself to one of his cousin with a request to hand it over to the manager under whom he was working for the purpose of extension of his leave. The workman cannot avoid the responsibility of having failed to intimate his authority about his arrest and detention in jail custody. He also cannot avoid the consequences of the action of his agent whom he had authorised to use the blank signed paper to apply for leave on his behalf.

Even assuming that the management could not have taken into consideration the alleged false intimation to the management as an aggravating circumstance, let it be considered as to whether without the aid of this circumstance the management could have inflicted the punishment of dismissal on the workman. In other words, it is to be considered as to whether the order of dismissal is disproportionate to the act of misconduct and whether the punishment is improper or unjustified.

9. On behalf of the workman a number of reported cases have been cited to show instances of disproportionate punishment but each of the reported case has got peculiar facts and circumstances and none of them can be made applicable to the case at hand. On the other hand, the management has cited the Judgement in Indian Oil Corporation Ltd., *vrs.* Ashok Kumar Arora, AIR 1997 (S.C.) 1030 in which the delinquent workman was found by the Enquiry Officer to have actively involved himself and was the brain behind procuring false medical certificates and medical bills not only for himself but for other employees on the basis of which reimbursement claims were made by him and other employees. For that misconduct he was dismissed from service and that has been upheld by the Hon'ble Supreme Court. In J. Jaisankar case (*supra*), the petitioner was convicted for an offence under Section 509 IPC and sentenced to pay a fine of Rs. 200. His dismissal from service was held to be legal and justified. In the case at hand the workman has stated in his claim statement that he had drawn a total sum of Rs. 3,065.22 paise from the Department in different instalments as medical reimbursement. This happened in or prior to 1979. The amount involved cannot be said to be a small amount considering that it related to the year 1979 or prior to that. As already stated, it involves moral turpitude and is a misconduct as per the Certified Standing Orders of the Company. No doubt this is a serious misconduct and the management could have removed him from service solely on the ground of such misconduct even if there were no other extenuating or aggravating circumstances.

It is contended that since the workman was not holding a post of trust and was not working in departments like Finance Department, the management is not correct to take plea that it lost confidence in the workman, more so when he had more than 20 years of clean service records to his credit. It is not a case of negligence in duty or absence from duty for compelling reasons or the like. The workman has been convicted for offence which involve moral turpitude. Therefore, this submission does not hold ground. It is also not a case of removal from service merely on the ground of loss of confidence.

It is also argued that the reduction of sentence by the Hon'ble Supreme Court and the remission of custodial period on the recommendation of the jail authorities are extenuating circumstances which the disciplinary authority ought to have taken into consideration while imposing penalty. In my considered view these are not relevant factors that the disciplinary authority could have taken into consideration before passing the order for removal of the workman.

10. It is urged by the learned counsel for the workman that while exercising power under Section 11-A of the Act this Tribunal can consider the past record of the workman. The support this contention he has cited a decision in the case of Smt. Vasanti Mahendrakumar Singh Vrs. All India Handloom Fabrics Marketing Co-operative Society Ltd., Ahmedabad, reported in 1985 Lab. I.C.1104 (Gujarat High Court). This legal position is not under challenge. It is true that the management has not show the workman to have had possessed unclean past record but this Tribunal is of the considered view that in the facts and circumstances of this case the clean past record of the workman should not be used by this Tribunal to setaside the order of dismissal of the workman. However, in view of the observations made in Shiva Anand Vrs. Indian Airlines Ltd., & Others, 2008 LLR 93 (S.C.) and Gurdeep Singh Vrs. Dhadogal Co-operative Agricultural Service Society Ltd., Dhadogal & Another, 2009 LLR 1324 (Punjab & Haryana High Court), the long good career of the workman may be taken into consideration to modify the order of dismissal to a milder punishment in the nature of removal/termination of service to allow the workman to avail all terminal benefits that may become payable for his services from the date of joining till the date of removal from service i.e. 30-11-1992.

11. Though the management has raised questions in their pleadings on the maintainability of the reference, those are not pressed into service. The grounds on maintainability are also not found to be tenable. No authority is cited in support of such contention. So, this point need not be gone into indetails.

12. *Issue No (ii)*—Since I have already observed that on account of long clean career of the workman he should be visited with a lesser penalty, the punishment of dismissal is modified to termination of service with effect from 30-11-1992. Therefore, this Tribunal further directs that the workman be given all terminal benefits that is payable for his services from the date of his joining till 30-11-1992.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
9-3-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
9-3-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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