

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 146 CUTTACK, MONDAY, JANUARY 17, 2011 / PAUSA 27, 1932

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th January 2011

No. 169-li/1(SS)-17/2003(Pt)-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 11th October 2010 in I. D. Case No. 25 of 2003 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of SAIL, Rourkela Steel Plant, Rourkela, Dist. Sundargarh and their workman Shri N. K. Jena represented through Vice-President, Rourkela Mazdoor Sabha was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT,
SAMBALPUR

I.D. CASE No. 25 OF 2003

The 11th October 2010

Present :

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

Between :

The Management of SAIL, . . . First party-Management
Rourkela Steel Plant, Rourkela
Dist. Sundargarh.

And

Their Workman Shri N. K. Jena represented . . . Second party-Workman
through Rourkela Mazdoor Sabha,
Vice-President, Bisra Road, Rourkela-11,
Dist. Sundargarh.

Appearances :

Shri J. K. Dash, Sr. Manager (Law), . . . For the First-party–Management
 Shri L. K. Nayak, Dy. Manager (Law).

Shri B. B. Sahoo, Dy. General Secretary, . . . For the Second-party–Workman
 Rourkela Mazdoor Sabha.

AWARD

This matter arises out of the reference made by the Government of Orissa, Labour & Employment Department 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 (14 of 1947) in memo No. 5734(5), dated the 11th June 2003 for adjudication of the Schedule question :-

“Whether the punishment inflicted upon Shri N. K. Jena, PI. No. 41889, Safety Inspector of Safety Engineering Department by way of reducing his basic pay from Rs. 4,271 to Rs. 4,065 per month in the scale of S-7 by the Deputy General Manager, Slag Granulation Plant of Rourkela Steel Plant, Rourkela is legal and/or justified ? If not, what relief Shri Jena is entitled to ?”

2. The statement of claim of the second-party workman stated as follows :

The Rourkela Steel Plant under the Steel Authority of India Limited is a Public Sector Undertaking of Government of India. The Rourkela Steel Plant has several departments. Out of which Safety Engineering Department and Slag Granulation Plant are two separate departments of Rourkela Steel Plant having separate heads of department. The Assistant General Manager have been declared under the delegation of power prevailing in R. S. P. as Appointing Authorities of the non-executives employees working under the respective departments. The second-party workman Shri N. K. Jena is a Safety Inspector of Safety Engineering Department of R. S. P. He was looking after the safety aspects in the Slag Granulation Department. The service condition of the second-party was regulated by the authorities of the Safety Engineering Department. The Assistant General Manager of Safety Engineering Department has been declared as the Appointing Authority of second-party. The authority of Slag Granulation Department (SGP) has no jurisdiction upon second-party on disciplinary matters.

There is a Co-operative Credit Society in Slag Granulation Department known as S. G. P., C. C. S. There was election in the year 1998 and the Board of the Management of the Society was replaced by new body. The new board of management brought allegation of misappropriation and mismanagement against the previous board of management. Shri D. Sunani and Shri K. Senapati were elected as President and Treasurer of the said Society respectively. They both were running in the same shift. Shri Chelam was the President of the Society and had good relationship with different authorities of S.G.P. Department particularly with Shri D. K. Bhanja. The management of S.G.P. being influenced and pressurized by Shri Chelam (previous President of the Society) transferred to Shri K. Senapati to another shift without any jurisdiction. Shri N. K. Jena the second-party workman was the representative of Rourkela Mazdoor Sabha. He along with the others went to Senior Manager, S.G.P. for discussion on transfer issue of Shri K. Senapati. In this connection the second-party was charge-sheeted vide Charge-sheet Ref. No. S.G.P./605, Dt. 30-9-1998 issued by Shri P. Badapanda, Senior Executive, S.G.P. The second-party submitted his explanation on 6-10-1998. Shri J. Trikey, Deputy Manager, S.G.P. as was not satisfied with the explanation of the second-party, he constituted an Enquiry Committee appointing Mrs. Minati Mohapatra, Manager (PL-Eng.) as Enquiry Officer to enquire the charges and to submit the report.

3. The formal enquiry commenced on 22-12-1998 and was concluded on 1-10-1999 out of which two charges the enquiry officer established one charge, i.e. indecent behaviour in the work premises in her findings Dt. 7-4-2000. The Deputy Manager, S.G.P. supplied incomplete report of the Enquiry Officer, Dt. 10-5-2000. The second-party also submitted his views on the findings for the Enquiry Officer. Thereafter the Deputy General Manager, S.G.P. inflicted punishment upon the second-party vide Order Ref. No. S.G.P./377-382, Dt. 6-6-2000 by reducing his basic pay to Rs. 4,065 from Rs. 4,271 by two stages on the scale of S-7 per month with immediate effect. Being aggrieved the second-party preferred an appeal vide his representation, Dt. 23-6-2000 within the stipulated time but the Appellate Authority did not dispose of the appeal of the second-party. The second-party approached the Union. Through the Union the matter was placed before the District Labour Officer, Rourkela. As the matter could not be settled by D.L.O., Rourkela, then the dispute was brought to this court as reference by the appropriate Government of Orissa under the purview of the Industrial Disputes Act, 1947 for adjudication. The second-party made a prayer to answer the reference in favour of him with all consequential benefits from the date of institution of the disciplinary action.

4. The case of the first-party management stated as follows :

The reference is bad, unfounded on fact, devoid of merit and as such not maintainable. The dispute raised by the Union relates to an individual workman and not supported by substantial number of workman of the first-party management and the same is not an Industrial Dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947 and the reference is not maintainable. The alleged dispute not being a case of discharge or dismissal Section 2A of the Industrial Disputes Act has no application.

On 21-9-1998 the second-party workman Shri N. K. Jena, Safety Inspector, Slag Granulation Plant was discharging his duty in general shift duty. At about 10.00 A.M., he proceeded to the office of Shri B. Badapanda, Senior Executive, S.G.P. (Mechanical) along with some employees of Slag Granulation Plant and demanded from Shri Badapanda and Shri B. N. Dhar, Senior Manager, S.G.P., Mechanical that the shift change in Slag Granulation Plant (Mechanical) should be discussed with him. Shri D. K. Bhanja, Senior Manager I/C, S.G.P. while clarifying and answering the queries of Shri Jena (second-party) Shri Jena the second-party became violent and abused Shri Bhanja in filthy language and threatened to beat him by raising his hand with clinched fist. This act of Shri Jena (second-party) being serious act of misconduct, the first-party management issued charge-sheet to Shri Jena as per the provisions of the Certified Standing Orders of the Company giving him an opportunity to submit his written explanation. Since the explanation of the second party was not satisfactory, an Enquiry Committee was constituted to enquire about this matter. The domestic enquiry was conducted. The copy of the enquiry proceeding and findings were supplied to the second-party and the second-party received on 12-5-2000 and submitted his representation on Dt. 16-5-2000 which was taken for consideration by the Disciplinary Authority. The Disciplinary Authority agreed with the findings of the Enquiry Committee. As the charge established against the second-party is serious in nature, the Disciplinary Authority instead of imposing punishment of dismissal took a lenient view and afforded him an opportunity to improve his conduct and behaviour and reduced the basic pay from Rs. 4,271 to Rs. 4,065 per month in the existing scale of pay as a disciplinary measure vide Order, Dt. 6-6-2000. The second-party preferred an appeal before the General Manager (Iron) on 23-6-2000 but the Appellate Authority has not accepted the appeal to reconsider the punishment and accordingly the same was intimated to the second-party. The first party-management denied the averment made in the claim statement.

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

ISSUES

- (i) “Whether the punishment inflicted upon Shri N. K. Jena, PI. No. 41889, Safety Inspector of Safety Engineering Department by way of reducing his basic pay from Rs. 4,271 to Rs. 4,065 per month in the scale of .S-7 by the Deputy General Manager, Slag Granulation Plant of Rourkela Steel Plant, Rourkela is legal and justified ?
- (ii) To what relief, if any the workman is entitled ?
- (iii) Whether the domestic enquiry conducted by the management is fair and proper ?”

6. Both the parties have filed their documents in support of their case. The witnesses are remained on behalf of the second party-workman. W.W.1 Shri Naba Kishore Jena (the second party), W. W. 2 Bhaja Govinda Dalei, Retired R. S. P. employee and ex-Deputy Manager, Slag Granulation Plant (Operation), SAIL, Rourkela Steel Plant, Rourkela.

The Management has examined two witnesses. M.W.1 Shri J. N. Mohanty, Assistant General Manager (Personnel), SAIL, Rourkela Steel Plant, Rourkela, M. W. 2 Bholanath Dhar, Assistant General Manager, Slag Granulation Plant, SAIL, Rourkela Steel Plant, Rourkela.

FINDINGS

7. *Issue No. (iii)*—Whether the domestic enquiry conducted by the management is fair and proper ? This issue has already been answered as per the Order, Dt. 12-5-2010. It is held that the domestic enquiry conducted by the management is not proper nor fair. This issue is disposed of as preliminary issue.

In order to facilitate the case, issue Nos. i and ii should be taken up for consideration at a time.

8. *Issue No. (i) and (ii)* : The Rourkela Steel Plant under the Steel Authority of India Limited is a Public Sector Undertaking of Government of India. The Rourkela Steel Plant has several departments out of which Safety Engineering Department and Slag Granulation Plant are two separate and distinct departments having separate heads of the department. Slag Granulation Plant Department consists of Mechanical, Electrical and Operation Section. There are several groups to run the plant in Mechanical area for 24 hours in shifts duty. Admittedly, the second-party is an employee of Safety Engineering Department of SAIL, Rourkela Steel Plant. He was looking after the safety provisions of the said department.

There is a Co-operative Credit Society in Slag Granulation Plant known as S.G.P., C. C. S. The second-party workman was the active member and representative of the Rourkela Mazdoor Sabha Union. As alleged in the year 1998 there was an election for Board of Directors Management. Shri S. Sunani and Shri K. Senapati were elected as President and Treasurer of the Society respectively. Shri Sunani replaced the earlier President Shri Chelam. Shri Senapati and Shri Sunani were working in the same shift. There was some allegation of misappropriation of money of the Society by the previous Board. Shri Sunani and Shri Senapati investigated to find out the real culprit. Shri Chelam was disputing the functions of the Society and influenced the Head of Department to transfer Shri Senapati to other shift with ill motive as well as to effect the function of the said Society. These are the above reasons for which the second-party Naba Kishore Jena along with some other co-workers went to the office of Shri P. Badapanda, Senior Executive, S.G.P. (Mechanical) on 21-9-1998 at about 10.00 A.M. to discuss about the transfer change schedule of Shri Senapati.

It is the specific allegation of the management that the second-party with some co-workers came to the office of Shri Badapanda and interfered in the managerial functions of the first-party

and demanded from Shri P. Badapanda and Shri R. N. Dhar, Senior Manager, S.G.P. that the shift change in Slag Granulation Plant (Mechanical) should be discussed with him. Shri D. K. Bhanja, Senior Manager is in-charge, S.G.P. while answering Shri Jena (the second-party) became violent and abused Shri Bhanja in filthy language and threatened to beat him by raising his hand with clinched fist. Thereafter the first-party management issued charge-sheet to Shri Jena. Admittedly, there was no written complaint by any official of the first-party management relating to this incident.

The first-party management had filed several documents to prove its case. Ext.M 1 is the copy of the charge-sheet. Ext.M 2 is the copy of the reply to the charge-sheet. Ext.M 3 is the copy of the letter, Dt. 2-11-1998 (which is filed with objection). Ext. M. 4 is the copy of the proceeding of Enquiry (filed without objection). Ext.M 5 is the copy of the enquiry. Ext. M 6 to Ext. M.8 are the copies of letter, Dt. 10-5-2000 to 6-6-2000 and 1-9-2000, respectively. Ext. M.9 is the copy of Circular, Dt. 21-9-1992. Ext. M.10 is the copy of the proceeding of enquiry held on 17-4-1999 (filed with objection). In this regard M.W.1 Shri J. N. Mohanty, Assistant General Manager, Personnel, SAIL, Rourkela Steel Plant in his evidence stated that on 21-9-1998 the second-party workman Shri N. K. Jena, Safety Inspector, Slag Granulation Plant while in general shift duty at about 10.00 A.M. came to the office of Shri P. Badapanda, Senior Executive, S.G.P. (Mechanical) and interfered in the managerial function of the first-party by demanding vociferously from Shri B. N. Dhar, Senior Manager, S.G.P., Mechanical and Shri P. Badapanda that any shift change in Slag Granulation Plant (Mechanical) should be discussed with him. Hearing the loud voice Shri D. K. Bhanja, Senior Manager in-charge S.G.P. came to the office of Shri Badapanda. While Shri Bhanja was clarifying and answering the question to the said queries, the second-party all of a sudden became violent and abused Shri Bhanja in filthy language and raised his hand with clinched fist threatening to beat him. In this respect the evidence led by M.W.2 Shri B. N. Dhar, Assistant General Manager, S.G.P., SAIL, Rourkela Steel Plant that on 21-9-1998 at about 10.00 A.M. while he was in the office of Shri Badapanda the second-party with some fellow employees of S.G.P. came to the room and challenged Shri B. N. Dhar (M.W.2) in a high pitch as to why the change of shift of Shri K. Senapati, Technician was made without any concurrence. In spite of clarifying the position that since it is the management function and posting of one Welder in each group of mechanical area was necessary for smooth function of the department, the second-party in high pitch telling that it is compulsory to consult him before any change of shift. Hearing the loud voice of Shri N. K. Jena, Shri Bhanja the then Senior Manager in-charge and H. O. D. of the department came to the room of Shri Badapanda and asked the reason of "Halla Gulla". The second-party challenged Shri Bhanja saying why the shift change is made without consulting him. While Shri B. K. Bhanja was clarifying the change of the shift, the second-party all of a sudden became violent and in a high pitch shouted at Shri Bhanja saying that "Steel Plant ku Khaigale" and "Sala Chori kari Sabu Khaijaichanti, Samstanku Maripakeiba". Both left the room of Shri Badapanda and M.W.2 followed them. It is further alleged from the evidence of M. W. 2 that while both of them were outside the room and standing on the Verandah. Shri Jena threatened Shri Bhanja with dire consequences and with the intention to hit him by raising his hand with clinched fist saying "Sala ku bartaman Maripakeibi". The evidence of M. W. 1 is fully contradicted from the evidence of M.W.2. In his cross-examination he (M.W.2) stated that while he was discussing with the second-party. Mr. Badapanda came. Other workers such as P. C. Rout, Crane Operator, G. Mohanty, Auto Operator, D. Sunani, Technician, Mechanical and others came with the second-party at the time of discussion. M. W. 1 in his cross-examination stated that he was not present at the time of incident.

The second-party has filed some documents which are marked as Exts. W.1 to Ext.W.11. The second-party workman was the executive member of the Rourkela Mazdoor Sabha. As alleged,

he received permission from the General Secretary over phone to place grievance before the concerned authority. So he only placed the grievance before the concerned authority. W.W.2 Bhanja Govinda Dalei, ex-Deputy Manager, Slag Granulation Plant (Operation), SAIL, R.S.P. stated in his evidence that when he was working as a Senior Executive in the S.G.P. (Operation) he was in-charge of operation and Shri D. K. Bhanja was the H.O.D. of S.G.P. It is contended from the evidence of W. W.2. that on 21-9-1998 while W.W.2 was in general shift looking after the production, at about 9-55 A.M. the second-party along with others came to W.W.2 and asked about the transfer of Shri K. Senapati, Technician. W.W.2 advised them to meet with Shri B. N. Dhar (M.W.2), Senior Manager as he was in-charge of Mechanical Section. Accordingly, the second-party along with the others proceeded towards the office of B. N. Dhar (M.W.2). He was watching them standing from the Verandah and saw that the second-party along with the others entered into the room of Shri Badapanda where Shri Dhar M.W.2 was sitting. Thereafter they had some discussion in the office. It is further alleged from evidence of W.W.2 that there was a meeting with the H.O.D. where W.W.2, Shri Dhar M.W.2 and Shri P. Badapanda were present. The H.O.D. communicated that there was some discussion regarding the transfer of Shri Senapati with Shri Jena which was not desirable. For such discussion Shri Jena should be charge-sheeted. W. W. 2 was asked by the H.O.D. to issue the charge-sheet to the second-party. So as per the evidence of W.W.2 there was discussion in between the second-party and other workers with H.O.D. Shri Bhanja and there was no "Halla Gulla" there. So far as the incident is concerned the evidence led by the management witness does not corroborate to each other. Moreover the abusive words used by the second-party has not reflected in the evidence of M.W.1 as well as in the written statement. Besides that the words given in the evidence of M.W.2 has not been reflected in the charge-sheet.

9. However, there are two charges such as (i) indecent behaviour in the work premises and act subversive of discipline, (ii) intimidating officer of the Company in works premises subversive of discipline. As per Ext.M.5 (finding of the Enquiry Committee)—Except the charge of "Indecent behaviour in works premises subversive of discipline", all other charges brought against C.S.E. Shri N. K. Jena, the second-party workman, Safety Inspector, Slag Granulation Plant vide Charge-sheet No. SGP/605. Dt. 30-9-1998 is not established. It is contended by the management that all the employees of the Rourkela Steel Plant, SAIL should follow the provision of the Standing Order Clause 27. In this respect, the management relied upon the decision 2008 LLR-619 (SC)—Industrial Employment (Standing Order) Act, 1946—Enquiry holding of—The management is not only required to scrupulously follow the procedures laid down therein but was otherwise bound to comply with the principles of natural justice—If a misconduct has been committed within the purview of the provisions of the Standing Order, whether certified or Model, the workman should be punished—The gravity of the offence, 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. The management also relied upon the reported decision (2005) 3 SCC-401 (M.P. Electricity Board-Vrs-Jagdish Chandra Sharma). The management also relied upon the reported decision-2009-IV-LLJ-191(Orissa)-Mangalam Timber Products Ltd.-Vrs.-Shri Sailesh Kumar Gantayat-Industrial Disputes Act (14 of 1947), Section 11A-Labour Court's power to interfere with punishment Charge of theft proved against workman—It being major conduct as per Certified Standing Orders, Labour Court's interference with punishment of dismissal of workman, could not be justified. The management also relied upon the decisions—2000(85) FLR 381 (SC)—The Collector, Dist. Thanjavur-Vrs.-S. Rajagopalan & others.

10. The second-party workman denied all the allegations made against him. It is contended in the written statement of the management that the Disciplinary Authority took a lenient view and afforded the second-party an opportunity to improve his conduct and behaviour and reduced his basic pay from Rs. 4,271 to Rs.4,065 per month in the existing scale of pay as a disciplinary measure vide Order, Dt. 6-6-2000.

11. It is contended from the case of the second-party workman that the punishment inflicted upon was not warranted. The evidence of the management witness goes to prove that there was discussion with loud voice which could be said as indecent behaviour. So the representative on behalf of the second-party submitted that the order of punishment Ext. M 7 is liable to be set aside. Moreover the contention of the second-party workman that the Standing Order 33 provides for appeal against the order of punishment which is required to be filed within 30 days of receipt of the order. Similarly the Appellate Authority is required to dispose of the appeal within 30 days from the date of receipt of the appeal. It is further contended from the case of the second-party that the appeal and the disposal of the same require a total period of 60 days maximum for his disposal which implies that unless the appeal is disposed of, the order of punishment should not be executed. If it is executed during the pendency of the appeal it will amount to illegal and the order of punishment required to be set aside as decided by the Hon'ble High Court of Allahabad reported in FLR-1993 (66) at page 145-146 in the case of Bijaya Bahadur Yadav Vrs.-Chairman, U.P. Co-operative Federation Limited. In the instant case, the order of punishment (Ext.M 7) was executed immediately in the month of June, 2000 whereas the appeal was disposed of on 1-9-2000, i.e. much later within the period stipulated in the Standing Order 33. So, the above decision of the Hon'ble High Court is liable for this case. Moreover, it is contended by the second-party workman that the order of punishment Ext. M 7 is executed with the cumulative effect though there is no provision in the Standing Order 29 to impose penalty cumulatively. So, the learned representative on behalf of the workman submitted that the disciplinary authority while inflicting the punishment should have taken this above Standing Order into consideration. In the instant case, verifying the evidence on record as well as documents filed by both the parties it can safely be concluded that the management has not followed the Standing Orders properly, since such allegation made against the second-party workman has not been proved by the management in a clear and proper manner, the punishment inflicted upon the second-party workman Shri N. K. Jena is not proper. Accordingly, issues are answered. Hence the following Award :

AWARD

The reference is answered on contest but without any cost. The punishment inflicted upon Shri N. K. Jena, PL No. 41889 Safety Inspector of Safety Engineering Department by way of reducing his basic pay from Rs. 4,271 to Rs. 4,065 per month in the scale of S-7 by the Deputy General Manager, Slag Granulation Plant of Rourkela Steel Plant, Rourkela is not legal nor justified. The second-party workman is entitled to get his basic pay of Rs.4,271 per month from the date of reduction and other subsequent financial benefits, if the second-party workman in the meantime is not entangled with any other allegations or departmental proceeding by the management.

Dictated and corrected by me.

S. MAHAPATRA
11-10-2010
Presiding Officer
Labour Court
Sambalpur

S. MAHAPATRA
11-10-2010
Presiding Officer
Labour Court
Sambalpur

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