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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 21st July 2011

No. 6144—li/1 (BH)-48/1993(Pt.)-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 13th April 2011 in Industrial Disputes Case No. 124/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of the Branch Manager, Orissa Air Products Ltd., Gundichapada, Dhenkanal and its workman Shri Narayan Chandra Rout was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 124 OF 2008
(Previously registered as I. D. Case No. 101 of 1996
in the file of the P. O., Labour Court, Bhubaneswar).

Dated the 13th April 2011

Present :

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

Between :

The Branch Manager, . . . First-party Management
Orissa Air Products Ltd.,
Gundichapada, Dhenkanal.

And

Shri Narayan Chandra Rout, . . . Second-party Workman
S/o Late Harekrushna Rout,
At/P.O. Palasingha,
P.S. Pattamundai,
Dist. Kendrapara.

Appearances :

Shri P. K. Chand, Advocate	. .	For the First-party Management
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Shri T. Lenka, Authorised Representative	. .	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. 8842—li/1(BH)-48/1993-L.E., dated the 30th July 1993 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-L.E., dated the 4th April 2008. The Schedule of Reference runs as follows :

"Whether the discharge from services of Shri Narayan Chandra Rout, Operator, by the management of Orissa Air Products Ltd., Dhenkanal with effect from the 4th October 1992 is legal and/or justified ? If not, to what relief Shri Rout is entitled ?"

2. The second-party workman in his claim statement has taken the stand that he was working as a Plant Operator in the factory of the first-party management. He was a sincere workman discharging his duties to the utter satisfaction of the management. On the 27th June 1992 while he was performing 'C' shift duty from 10 P.M. to 6 A.M. he felt acute pain in his left side scrotum for which he was taking rest but without being negligent towards his duty. While he was in vigilant rest, the Branch Manager of the factory made a visit and finding him taking rest, the Manager thought that he was in deep sleep and for that suspended him from service with effect from the 28th June 1992. It was followed by a charge-sheet dated the 28th July 1992. He submitted his explanation to the charge along with medical reports. He also begged apology for the alleged incident. But, the management conducted a Departmental enquiry by engaging an Advocate as the Enquiry Officer who being paid by the management conducted the enquiry in one-sided manner and hurriedly concluded the proceeding without giving full opportunity to the workman to defend himself. The enquiry was not conducted in a fair and proper manner. Copy of depositions recorded in course of the enquiry was not supplied to him nor a copy of the enquiry report was provided to him despite of his repeated request. Though there was no allegation of any loss caused to the management for the alleged incident, the management inflicted the punishment of discharge which is shocking disproportionate to the misconduct alleged.

3. The management in its written statement has to the stand that the past conduct of the workman was full blemishes. On several occasions he had been charge-sheeted and on his begging apology he was once let off with a warning and on another occasion he was reprimand and warned for his involvement in riotous and disorderly conduct inside the factory. On the 28th June 1992 while he was on night duty in the factory premises the General Manager made a round inside the factory at about the 4.15 A.M. and the workman sleeping near his work place by arranging chairs, stool, etc. as a make-shift bed. At that time two Compressors, Nitrogen Blower, Heater, Water Pumps and other machines were running which needed to be watched constantly in order to avoid heavy damage to the machine. The workman, as the Plant Operator, was required to check the machines frequently and to record the pressure temperature, etc. in a log sheet. But, he was found in deep sleep making entries in the log sheets in advance. Not only the workman but also his Helper was

found asleep. When the General Manager awoke him he took the plea that he was suffering from scrotum pain. Since the workman was reported to have committed negligence in duty and made false entries in the log sheets he was charge-sheeted and a Departmental proceeding was initiated against him. The Enquiry Officer fairly and properly conducted enquiry giving full opportunity to the workman to defend his case. Considering the gravity of the misconduct committed by him along with his past conduct the management decided to discharge him from service with effect from 4th October 1992.

4. The following issues have been settled :

ISSUES

- (i) "Whether the discharge from services of Shri Narayan Chandra Rout, Operator by the management of Orissa Air Products Ltd., Dhenkanal with effect from the 4th October 1992 is legal and/or justified ?
- (ii) If not, to what relief Shri Rout is entitled ?
- (iii) Whether the domestic enquiry has been conducted fairly ?"

5. The management has examined the Enquiry Officer as M. W. No. 1 and its Office Manager as M. W. No. 2 and has exhibited documents marked Exts. 1 to 9. On behalf of the workman documents have been marked as Exts. A to L.

6. Since the management has taken the plea that it may be allowed to adduce evidence on the merit of the case if the Tribunal finds that the enquiry conducted by the management was not fair and proper, this Tribunal has taken-up Issue No. (iii) as a preliminary issue and vide Order No. 80, dated the 22nd September 2010 this Tribunal has already answered the issue in favour of the management. To make the findings on Issue No. (iii) a part of this Award the same are reproduced hereunder :

FINDINGS

Issue No. (iii)—"In this reference the legality of the order of discharge from service of the second party has been challenged by the second-party. Admittedly, the dismissal order is preceded by a domestic enquiry. The workman faced the enquiry on the following charges :

- (1) That, on the early morning of the 28th June 1992 around 4.05 A.M. when the undersigned entered the Oxygen Plant Room, you were found sleeping. The undersigned called you by name twice but you did not get up. When he came nearer to you and made sound you woke up.
- (2) That, Shri L. N. Das was also on duty in the Oxygen Plant in 'C' shift. Instead of attending his duties at cylinder charging rack and/or assisting you, he was also found sleeping. This indicated not only you slept but also you allowed your Khalasi to sleep during duty hours which is very serious.
- (3) That, sleeping on duty hours that too when the Plant is running condition is a very serious misconduct and could have caused irreparable damages to the Plant and machinery.
- (4) That, while going through the log-sheet which maintained by you at the time of its seizure at 4.10 A.M. it was found that you have already recorded in advance the reading of both

the Compressors, column pressure, purity of gas, temperature, etc. which were supposed to be seen at actuals and recorded at 5.00 A.M. & 6.00 A.M., respectively. This amounts misrepresentation facts, manipulation of record also negligence in performing your duties.

- (5) That, when the undersigned was proceeding towards Gate Office from Oxygen Plant after collecting seizure of the log-sheet, you requested him for handing over the log-sheet to you. Although you were told to record the various plant data on new log-sheet paper, you did not care to do it. This amounts negligence of duty, disobedience the order and insubordination too.

The management appointed one Advocate namely, Shri Pramod Kumar Tripathy as the Enquiry Officer (for short, 'E. O.'). The workman participated in the enquiry proceeding. On completion of the enquiry, the Enquiry Officer submitted his report finding that all the charges were found proved. On the basis of that report the management passed the impugned order of dismissal.

The workman in his claim statement challenged the fairness of the enquiry on the grounds that.— (i) the management engaged a Lawyer as the Enquiry Officer which is not supported by law of the land; (ii) the Lawyer being paid by the management conducted one-sided enquiry; (iii) though at the instance of the management the workman was examined by a Doctor, the report of the Doctor was made available to the workman; (iv) the list of witnesses and the copy of deposition of witnesses examined by the management during the enquiry were not supplied to the workman; and (v) the copy of the enquiry report was not given to the workman. During argument on the preliminary issue in relation to the aforesaid grounds, it was also contended that subsistence allowance was not paid to the workman.

Now it is to be examined as to whether the grounds raised by the workman are true and if so, whether on any, or, on all of these grounds the domestic enquiry can be said to have been unfair.

The ground related to the engagement of a Lawyer as E. O. does not appear to be tenable. There is no prohibition against a Lawyer being appointed as an E. O. Often the management appoints an outside agency to probe into the charges lest there should be objection that its paid officers appointed as E. O. will never be impartial. That apart, no authority is cited in support of the contention that engagement of a Lawyer as E. O. is against any provisions of law.

On the allegation that E. O. being paid by the management conducted one-sided enquiry is a bald allegation. The E. O. faced cross-examination as M. W. No. 1 but nothing was brought-out from his mouth to show he was ever paid by the management or that he had any interest in the management.

It is alleged that list of witnesses and copy of deposition of witnesses examined by the E. O. were not supplied to the workman. The order sheets maintained by the E. O. to record the day-to-day proceeding of enquiry do not reveal that the workman had ever raised objection for non-supply of list of witnesses. It also does not disclose that the workman had asked for supply copy of deposition of witnesses. The management examine two witnesses before the E. O. on the 9th September 1992 and thereafter, the same day the workman declined to adduce any evidence which is reflected in the order-sheet marked Ext. 4. In claim statement the workman has not alleged that though wanted to adduce evidence, the E. O. did not give him opportunity to adduce evidence. During argument it is submitted that the workman had not filed anything in writing declaring to adduce evidence before the E. O. and therefore, the E. O.'s mention in the order-sheet that the workman

had refused to adduce evidence should not be believed. With this submission it is also argued that the workman was not given opportunity to adduce evidence. When this plea was not taken in the claim statement and when the workman has put his signature below the order-sheet, dated the 9th September 1992 without raising any objection and in the absence of workman's written prayer to give him a scope to adduce evidence the plea taken at a belated stage is not to be accepted.

The management does not claim that a copy of the enquiry report was served on the workman. If not shown a copy of the enquiry report was served on that workman. But the workman has failed to plead that non-supply of the copy of the enquiry report had caused any prejudice to him. Even during argument it is not shown as to how the workman was prejudiced due to non-supply of a copy of the enquiry report. Therefore, in view of the observation taken in *Sarv U. P. Gramin Bank Vrs. Manoj Kumar Sinha*, reported in AIR 2010 (S. C.) 2491 the enquiry will not vitiate on this ground.

On the allegation of non-supply of the medical report to the workman, the management has taken the plea that its copy was served on the workman. This context, it is to be mentioned that when the workman was allegedly found to be sleeping inside the factory as on night duty, he was caught and at that time he had taken the plea of his illness. To find his veracity the management had referred him to the C. D. M. O., Dhenkanal for medical check-up and the C. D. M. O. submitted his report after check-up. The workman submits that copy of report was not supplied to him. It is not specifically pointed-out as copy of which medical report was not supplied to the workman. The E. O.'s report discloses that the E. O. had referred to Letter No. 7308, dated the 9th September 1992 of the C. D. M. O., Dhenkanal and mentioned in his report that the letter of the C. D. M. O. revealed that the explanation of the delinquent about his suffering from Hydrocele pain was suspicious. The said letter has been marked as Ext. 8. It reflects that the C. D. M. O. had not examined the workman medically but had gone through a treatment note of the workman given another Doctor and expressed his suspicion that the workman was having severe pain. The E. O. has not recorded his finding relying on this report. That apart, the workman who had taken the plea of illness, could have adduced evidence to prove his illness but as already stated he did not want to adduce any evidence before the E. O. Therefore, non-supply of a copy of the report of the C. D. M. O. does not prejudice the workman. It is well settled that a complain by an employee for violation of facet of natural justice has to be examined on the touchstone of prejudice since the interest of justice equally demand that the guilty should be equally punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice [1998(31) Lab. I. C. Page-1 & AIR 1996 (S. C.) 1669].

In this case non-supply of copy of the medical report is therefore, not found to be a case of infraction of the principle of natural justice.

The plea of subsistence allowance is taken by the workman in his claim statement. It is only during argument it has been raised. In this regard also is to be mentioned that unless prejudice is shown and established, mere non-payment of subsistence allowance cannot *ipso facto* be a ground to vitiate the proceeding in every case. In *U. P. State Textile Corporation Ltd. Vrs. P. C. Chaturvedi* 2006 (109) FLR-411 (S. C.), it is observed that non-payment of subsistence allowance and in what way it affected the employee is to be specifically pleaded and established. In this case the alleged incident occurred on the 27th June 1992 and enquiry was completed on the 9th September 1992. There is no pleading from either side that the workman was ever put under suspension (However, Ext. B shows that the workman was suspended on the 28th June 1992). Under such circumstances, the ground is also found not tenable.

Having considered all the objections raised on behalf of the workman on the fairness of the domestic enquiry, this Tribunal finds that there was no denial of natural justice to the workman and the E. O. has fairly conducted the enquiry. Accordingly, Issue No. (iii) is answered in favour of the management".

Findings on other issues

7. *Issue No. (i)*—To decide the justifiability or otherwise of punishment awarded on a workman for misconduct, the Tribunal is to consider it in the context of perverse finding, unfair labour practice, victimisation, *mala fides* and the like. In the claim statement the workman has stated that the punishment inflicted on him is disproportionate to the charges and that it was passed to victimise him. It is elaborated as to for what reason the workman considers to be a case of victimisation. That apart, it is not shown that there was a kind of strained relationship between the workman and the management on account of the former's Trade Union activities or for any other reason whatsoever. In this regard the following observation of the Hon'ble Supreme Court in *Brooke Bond (India) Ltd. Vrs. Their Workmen*, 1966 LLJ 402 (S. C.) may be referred to.

"Turning now to the question of victimisation we have already said that there is no clear finding of the tribunal that there was victimisation. But it appears to be suggested in Para. 53 of the Award that the tribunal felt that this was victimisation. Of the six superseded employees we find that only one was an official of the Union while the other five were merely members just like Manerikar. Dhume, it appears, was not a member of the Union. But there was no evidence to show that there were any strained relationship between the management and these six employees on account of their Trade Union activities. We have already said that five of them were ordinary members of the Union like Manerikar and only one Balgi, was an official of the Union. But there was nothing to show that because of that there was not any bad blood between Balgi and the management. We are, therefore, of the opinion that there was no evidence worth the name on which the Tribunal could have come to the conclusion that these two promotions were as a result of victimisation of those persons who were superseded."

Apart from that it is observed in *Lalla Ram Vrs. D. C. M. Chemical Works Ltd.*, AIR 1978 (S. C.) 1 that no question of victimisation or the management having a bias against the workman will arise once it is held that a findings of misconduct alleged against the workman are not properly arrived at and the domestic enquiry is in no way vitiated.

In the case in hand, there is no evidence on the alleged victimisation. Taking the facts and circumstances into consideration this Tribunal holds that the plea of victimisation is without any basis.

8. Having gone through the enquiry proceedings and the relevant documents exhibited in this case I find that the conclusion arrived at by the Enquiry Officer holding that the workman guilty of the charges are based on evidence and it cannot be said to be a case of perverse findings resulting in the infliction of the punishment. Therefore, on that ground also the punishment cannot be said to be unjustified.

9. Now it is to be considered as to whether the punishment of discharge imposed on the workman is highly disproportionate to the misconducts found proved. On behalf of the workman it

is submitted that for a single instant of negligence which has not caused any damage to the management the punishment in the form of discharge or dismissal is shockingly disproportionate. But, according to the management, the workman being an Operator on duty should have been vigilant throughout his duty hours and he was found guilty of not only having slept inside the Plant while on duty, but also he was found to have manipulated the machine-operation-chart by making entries there in advance.

In the written statement the management has mentioned that the workman's past conduct was not blameless. He was earlier charge-sheeted for wilful negligence in duty on the 5th January 1988 and then on the 7th May 1988 he was charge-sheeted for negligence in duty and on his begging apology he was let off with a warning. He was also charge-sheeted on the 22nd January 1990 and 5th August 1991 on alleged unauthorised absence from duties. He was again charge-sheeted on the 18th May 1991 for his riotous and disorderly conduct inside the factory for which he was reprimanded and warned. Though this pleading is not in the written statement, the management has not adduced evidence to prove the same. In the absence of any evidence it cannot be said that the workman was guilty of misconduct on several occasions prior to the incident that took place on the 27th June 1992. Ext. K is the order of discharge but it is not reflected in the order that while considering the quantum of punishment the management had considered the past conduct of the workman.

Thus, the fact remains that the workman was discharged from service for a single instance of negligence. The workman was appointed as a Plant Operator in year 1987. He had put in five years of continuous service. Never before he was found to be negligent in his duties. It seems, he was in the beginning stage of his career as a Plant Operator, So, there was every possibility of his mending his own conduct if he had been given an opportunity to continue in his service by imposing any other kind of punishment. No doubt sleeping while on duty inside the Plant and manipulating records related to the operation machineries are serious misconducts. But, a single instance of such misconduct does not seem to be sufficient for removal from service. The management has not stated anywhere to have got its own Certified Standing Orders. As per the Model Standing Orders for workmen as formulated under the Orissa Industrial Employment (Standing Orders) Rules, 1946, a workman may be dismissed if he is found to guilty of misconduct. Order No. 14 (iii) enumerates the act and omissions those shall be treated as misconducts and commit of them which is related to negligence of a workman is "habitual negligence or neglect of work". In the case at hand, the management has not charge-sheeted the workman the allegation of habitual negligence or neglect of work. A single instance of negligence while on duty cannot be considered to be habitual negligence on the part of the workman and for that reason also the management could not have discharged the workman from service. Therefore, according to this Tribunal, the punishment seems to be highly disproportionate to the misconducts alleged against the workman and the issue is answered accordingly in favour of the second-party workman.

10. *Issue No (ii)*—The workman was a regular employee of the first-party. He had rendered five years of service prior to his discharge for which he has been kept out of employment for a long period of about 19 years. But, he has not adduced any evidence to show that he was not gainfully employed elsewhere during the relevant period. The management on its part did not get any contribution from the workman during the said period. The misconduct committed by the workman seems to be of serious nature and if the workman is not visited with any punishment it would send

a wrong signal to other workmen which would generate indiscipline Keeping all these facts and circumstances in mind this Tribunal while setting aside the order of discharge imposes the penalty of stoppage of two increments of the workman with cumulative effect. In view of the setting aside of the order of discharge, the workman be reinstated in service with 50% of back wages from the date of discharge till this Award becomes enforceable and after that with full back wages till the date of his actual reinstatement. For the purpose of other service benefits the workman shall be deemed to have been in the employment of the first-party throughout.

13. The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
13-4-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
13-4-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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