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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 20th August 2011

No. 7615—I.D.6/10—7615/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th March 2011 in Industrial Dispute Case No. 3/2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the management of Rourkela Steel Plant represented by the Executive Director (P&A) SAIL, Rourkela Steel Plant, Rourkela, Dist. Sundargarh and their workman Shri Ghana Nag represented through Rourkela Mazdoor Sabha was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

#### THE COURT OF THE PRESIDING OFFICER

#### LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 03 OF 2010

The 25th March 2011

#### *Present :*

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

#### *Between :*

The Management of Rourkela Steel Plant  
represented by the Executive Director, P & A,  
SAIL, Rourkela Steel Plant, Rourkela,  
Dist. Sundargarh. . . . . First Party—Management

And

Shri Ghana Nag represented  
through Rourkela Mazdoor Sabha, . . . . . Second Party—Workman  
S. C. Boit, Executive Member, Bisra Road,

Rourkela Township Office. C/8, Sector-6,  
Rourkela- 2.

*Appearances :*

- |  |                                |
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| 1. J. K. Dash, Sr. Manager (Law)       | For the First Party—Management |
| 2. Shri L. K. Nayak, Dy. Manager (Law) |                                |

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Shri S. C. Boit, Executive Member, Rourkela Mazdoor Sabha.	.. For the Second Party—Workman
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AWARD

1. This case 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. 832 (5), Dated the 5th February 2010 to adjudicate the Schedule in question :—

“Whether the action of the management of SAIL, Rourkela Steel Plant by superannuating Shri Ghana Nag, P. L. No. 41566 of Power Distribution Department w. e. f. 30-10-2008 is legal and/or justified ? If not, what relief he is entitled to ?”

2. The dispute raised in between the second party workman and first party management regarding the date of birth of the second party workman. The case of the second party workman stated as follows:

The second party workman joined Rourkela Steel Plant on 14-6-1979 vide appointment letter No. 16063-PLR 39 Dtd. 31-5-1979. The second party on joining declared his date of birth as 10-10-1952 and the same is recorded in service book and descriptive roll. The second party workman also submitted an affidavit sworn in the Court of Shri P. B. Patnaik, Executive Magistrate, Panposh, Uditnagar on 25-11-1975 in which his date of birth has been recorded as 10-10-1952. He had filed affidavit before the said Executive Magistrate four years prior to joining in the Rourkela Steel Plant. The first party management arbitrarily changed his date of birth to 10-10-1948 in the service book, but in the descriptive roll the actual date of birth i. e. 10-10-1952 remained unchanged. The second party workman made several representations before the management but it was in vain. The management did not pay any heed to it. The second party workman made a representation on dated the 12th December 2007 before the Deputy General Manager, Power Distribution Department, SAIL, Rourkela Steel Plant who referred this case to the Director (M & HS) Department, SAIL, RSP on 18-12-2007 requesting him for the medical examination of Shri Ghana Nag, the second party workman to ascertain his age. Accordingly, the second party workman was examined by the specialist of the Medical Board on 08-01-2008. The X-ray conducted on his teeth but no intimation was sent to him. The Union raised the dispute before the D. L. C., Rourkela on 14-04-2008 and while the matter was under consideration, the Management of SAIL, Rourkela Steel Plant

superannuated the second party workman on 31-10-2008 without making any reference of the claim of the second party workman about his date of birth. In the first page of the service book, descriptive roll and other service records it was mentioned the date of birth as 10-10-1952. The second party workman produced the certified copy of the voter list prepared by the Government of Orissa and his date of birth recorded as 24 years as on October 1975 against SI. No. 795.

It is further alleged from the case of the second party workman that the second party workman submitted his voter identity card, the certificate from the Sarpanch, Bargaon G. P., Bargarh wherein his date of birth is written as 10-10-1952. The management did not take all these documents into consideration. So he raised the dispute through the Rourkela Mazdoor Sabha Union. Hence the second party made a prayer for his reinstatement with promotional benefit as well as prayed for full payment of wages, incentives and other financial benefits with effect from 01-11-2008 till the date of reinstatement.

3. The written statement filed by the first party management alleging that the reference is bad in law, unfounded, devoid of merit and as such not maintainable. The second party workman on his selection to the post of Sweeper was issued with appointment offer on 31-5-1979. The establishment of the first party management selected the candidate as per the employment formalities. In the instant case, the second party workman required to declare his personal data such as address, qualification, date of birth along with the supporting documents enabling the first party management to enter the facts in its permanent data/service records for the purpose of future service in the first party company. The descriptive roll *pro forma* was filled up by the second party workman. It is mentioned in the descriptive roll that "No educational qualification" but the second party workman declared his date of birth as 10-10-1952 without producing any document in support of his declaration of date of birth. So, the first party management as per rule, sent the second party workman for medical examination by the Company's Medical Officer for determination, confirmation of his age/date of birth as declared. The second party workman was examined by the Company's Medical Officer on 09-6-1979 and his date of birth was determined as 10-10-1948 by the Company's Medical Officer and the second party workman after knowing about his date of birth as 10-10-1948 put his signature on the said document. Moreover after joining in the Company with effect from 14-6-1979, the second party filed an application before the first party management on 07-7-1979 for obtaining medical treatment book for getting free medical treatment for himself and for his family members wherein he mentioned his date of birth as 10-10-1948.

4. It is further alleged from the case of the first party management that an office order was issued on 14-7-1979 regarding his appointment as Sweeper in Project Engineering Department with effect from 14-6-1979 in terms of appointment offer, Dtd. 31-05-1979 and his date of birth was recorded as 10-10-1948. Accordingly the date of birth mentioned in the service book and on the basis of his declaration the descriptive roll was corrected on 17-7-1979 by the Senior Project Engineer, the Head of Department. The second party workman made a representation on 30-10-1980 disputing his date of birth as 10-10-1948 and filed an affidavit sworn by him showing his

date of birth as 10-10-1952 and the Superintendent, Project Engineering Department disposed his representation and intimated him confirming his date of birth as 10-10-1948 by the Company Medical Officer. The second party workman filed several applications such as application for the post of Khalasi-cum-Sweeper on dated 08-10-1987, self declaration for the purpose of Medical Card submitted on 22-7-1993, application for House Building Advance submitted on 23-6-1997, application Dtd. 01-3-2002 for loan seeking enlargement of house inclusion in the seniority list of House Allotment. The first party management has accepted his date of birth as 10-10-1948 and accordingly suspended the second party workman on 30-10-2008 on completing the age of superannuation i. e. 60 years with effect from 30-10-2008. So, the first party management made a prayer for dismissal of this case.

5. The rejoinder filed by the second party workman denying the above facts of the first party management.

6. Out of the pleadings of the parties, the following issues have been framed for adjudication of this case:—

#### I S S U E S

- (i) “Whether the action of the management of SAIL, Rourkela Steel Plant by superannuating Shri Ghana Nag, P. L. No.41566 of Power Distributing Department w. e. f. 30-10-2008 is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?”

6. The second party workman examined two witnesses including himself. W. W. 1 Shri Jagannath Mahanta, retired employee, SAIL, Rourkela Steel Plant, W. W. 2 Shri Ghana Nag, the second party workman.

The first party management examined only one witness i. e. M. W. 1 Shri Anup Kumar Acharya, Assistant General Manager (Personnel) under SAIL, Rourkela Steel Plant.

7. The second party workman relied on the documents which are marked as Ext. W. 1 to Ext. W. 14. The first party management filed some documents in support of its case which are marked as Ext. M. 1 to Ext. M. 12.

#### FINDINGS

8. *Issue No.i*— As per the case of the second-party workman, the second party joined in his service on 14-6-1979 and declared his date of birth as 10-10-1952 without any document but how the management sent him on 09-6-1979 for medical examination to ascertain his date of birth and although the management obtained medical report regarding his date of birth as 10-10-1948, how the date of birth mentioned in the Descriptive Roll and Service Book as 10-10-1948. So as per the case of the second party Shri Ghana Nag, the medical report is vague and it does not indicate any report regarding the examination of X-ray on teeth, pathological report on bone, etc. In this respect,

M. W. 1 stated in his evidence that the second party was working in Power Distribution Department and retired on 31-10-2008 after reaching the age of superannuation i. e. 60 years as per Office Order Ext. W-10 basing on the date of birth in the official records as 10-10-1948. The second party appeared in an interview held in the year 1976 for the post of Sweeper in Project Engineering Division after the application for the said post is considered. He was offered the appointment order Ext. W-1 as per letter Dtd. 31-5-1979. As per Ext. W-1 Clause-10 employees have to declare their date of birth supported by documentary evidence. Once the date of birth declared by the workman has been accepted by the management after verification, no change in it will be allowed on any other grounds subsequently. Accordingly, the second party was offered to join on or before 14-6-1979 along with the supporting documents. The second party workman on receipt of Ext. W-1 put his signature with date 08-6-1979. Admittedly, he appeared before the Personnel Officer without filing any document. Accordingly, he was sent by the Personnel Officer for medical examination to ascertain his age by the Company's Medical Officer as per letter Dtd. 08-6-1979 Ext. W-8 and Ext. W-8 discloses that after examination the concerned Medical Officer mentioned his date of birth as 10-10-1948 and his age was about 31 years. The concerned Doctor put his signature on Ext. W-8 with the date 09-6-1979. The signature of the second party workman appears on Ext. W-8. The Doctor opined his date of birth as 10-10-1948. The learned representative on behalf of the second party submitted that the second party was not aware of any test nor copy of the medical report was provided to the second party. This plea taken by the workman is not accepted basing on the above facts. It further appears from Ext. W-8 that the test was conducted by the Medical Officer on 09-6-1979. On 14-6-1979 the second party workman was allowed to join as a Sweeper in Project Engineering Department. Ext. M-4 is the xerox copy of the Office Order No. 175, Dtd. 14-7-1979. As per Ext. M-4 the second party Shri Ghana Nag has been appointed as Sweeper in Project Engineering Department with effect from forenoon of 14th June 1979 and his date of birth appears in Ext. W-4 as 10-10-1948 determined by the Medical Officer of the Company as per rule. The second party workman also applied for issue of medical treatment book for himself and for his family members on 07-7-1979 as per Ext. M-1 from which it is clear that his date of birth is 10-10-1948. Shri Ghana Nag also put his signature therein vide Ext. M-1/a. So the point raised by the second party workman is not accepted. The second party workman filed Ext. W-1 to Ext. W-14 in support of his case.

9. Further point raised by the second party workman alleging that the date of birth mentioned in the descriptive roll Ext. W-3 of the workman is 10-10-1952. The service book Ext. W-2 the date of birth recorded as 10-10-1952 and subsequently it is changed to 10-10-1948. But Ext. W-2 indicates that after verification Shri K. C. Parija, Senior Project Engineer corrected the date of birth and mentioned the date of birth as 10-10-1948 as per the Medical Doctor's Report. Shri Ghana Nag also put his signature therein. The second party workman keeps his step by striking the case of the management on many points such as (1) The date of birth of Shri Ghana Nag has been arbitrarily changed by the management, (2) The date of birth mentioned in Descriptive Roll in pursuance to Ext. W-3 discloses that the date of birth of Shri Ghana Nag is 10-10-1952, (3) The second party has submitted the affidavit on the date of his joining on 14-6-1979 and based on records his date of birth written in Ext. W. 2. Ext. W-3 which was accepted by the Magistrate. He has filed the affidavit on

25-11-1975 prior to his joining date of 14-6-1979 as the same is required for his interview since he was an illiterate man, (4) Shri S. K. Bhattacharya, D.G.M. the Personnel Department has stated in the note sheet that Shri Ghana Nag declared his date of birth as on 10-10-1952 but the same was changed later on, (5) The evidence of M. W. 1 should not be believable as he was not in the said Department at the time of joining, (6) The second party does not know reading and writing other than his signature, (7) Shri Ghana Nag the second party produce the xerox copy of the certificate obtained from Gram Panchayat, Bargarh and Pan Card Ext. W-11 wherein it is mentioned his date of birth as 10-10-1952. He has filed the Voter list Ext. W-9 prepared by the Election Authority wherein it is mentioned the second party workman Shri Ghana Nag is aged about 24 years old as on 1975 in SL. No. 795 indicating his approximate date of birth is 10-10-1952, (8) After joining on 14-6-1979 Shri Ghana Nag was asked to apply for obtaining free medical treatment book in which the date 07-7-1979 was cut up and mentioned as 28-7-1979 and the management arbitrarily corrected this date. Being an illiterate man the second party requested the Office Assistant of Project Engineering Department to fill up the *pro forma* and Office Assistant insisted to write the date of birth as 10-10-1948 and he was forced to sign on Ext. M-1. The learned representative of the second party submitted that all these irregularities were conducted by the first party management in arbitrary manner which is illegal.

10. The second party has been superannuated with effect from 31-10-2008 vide Office Order Dtd. 15-7-2008. The management has relied on the documents which are marked as Ext. M-1 to Ext. M-12. The second party disputing his retirement on 31-10-2008 on the ground that his date of birth is 10-10-1952 but his services record disclose that his date of birth is 10-10-1948. Ext. M-4 the Office Order discloses that the date of birth of Shri Ghana Nag is 10-10-1948. Accordingly all his records including service book were maintained. Ext. M-4 was issued on July 1979. Moreover admitting the date of birth as 10-10-1948 the second party submitted several applications. He has filed Ext. M-2 application Dtd. 08-10-1987 for the post of Khalasi and applications Ext. M-5 to Ext. M-9 mentioning his date of birth as 10-10-1948. Shri Ghana Nag made a representation i. e. Ext. M-5, Ext. M-5/a and Ext. M-5/b for correction of his date of birth but the management rejected all his above representations basing on the Officer Order Ext. M-3, Ext. M-10 and Ext. M-11 from which it is clear that the date of birth of Shri Ghana Nag is 10-10-1948. Then the second party has filed another application on Dtd. 12-12-2007 for correction of his date of birth which was rejected by the management on Dtd. 18-12-2007 as per Ext. W-7. Ext. M-12 the Circular Dtd. 26-8-1968 is prevalent for this purposes. Ext. M-1 also discloses that the date of birth of Shri Ghana Nag is 10-10-1948. Ext. W-14— Rules regarding determination of date of birth as per Rule 4.6 “Where the employee has not passed matriculation/ School final examination/ equivalent examination or has not studied in a School and none of the documents indicated in Rule 4.4 can be produced by him, an affidavit attested by a Magistrate to that effect shall be given by him along with the declaration of his age which after due co-roboration by a Medical Board nominated by the management may be accepted as the proof of age. In case of difference between the age declared in the affidavit and the age certified by the Medical Board, the higher age shall be accepted and recorded. As per Ext. W-4 the second party workman has no document such as horoscope nor any document regarding education. Admittedly, he had not filed any documents at the time of joining in service. Although the second

party workman is disputing on the date of birth as 10-10-1948 but he submitted several applications on different dates. Ext. M-1, Ext. M-3, Ext. M-5, Ext. M-6, Ext. M-7, Ext. M-8 and Ext. M-9 wherein Shri Ghana Nag has mentioned his date of birth as 10-10-1948 and he put his signature on all such documents. Shri Ghana Nag was intimated as per letter, Dtd. 22-12-1980 Ext. M-10.

11. The Management relied on the reported decision 2006–III–LLJ p. 759 SC (Seema Ghosh *Vrs.* Tata Iron & Steel Company)– “Date of birth of employee – Assessment of his age made by Medical by Medical Board. Opinion of Medical Board accepted by employee–Labour Court’s award in favour of workman perverse and illegal. The first party management also relied on the reported decision 2011–LLJ p. 532 SC (G. M., B. C. C. Ltd. *Vrs.* S. K. Dishad and others). Constitution of India 1950–Art. 226–Date of birth–Termination–Employee gave year of birth as 1932 and same recorded in Form “B” Register maintained under Mines Act–Employee transferred to services of corporation consequent upon nationalisation of Coal Mines– Employee raising claim after 20 years that date of birth is February 9, 1946 based on Certificate of Gas Testing and Mining Shirdarship– Employee referred to Medical Board as per procedure for determination of date of birth followed by Corporation–Medical Board determined employee’s age as 52 years in 1986 which is accepted by Corporation–High Court cannot interfere with decision of employer with regard to alteration of date of birth as such controversy was raised long after joining services and when date of birth is determined as per rules and regulations and when there is no claim that date of birth recorded is either by arithmetical mistake or typographical error–High Court not appropriate authority for undertaking enquiry into disputed question of fact”.

12. The workman submitted the voter list Ext. W-9, Pan Card Ext. W-11, Sarpanch Certificate Ext. W-12, Guidline–1982 Ext. W-14 showing his date of birth as 10-10-1952. Voter list is a public document and it should be proved by any other authentic documents or evidence. Voter list obtained in the year 2008 by the second party. As per voter list Ext. W-9 he was aged about 24 years in the year 1975. He has not filed voter list at the time of joining. So, the voter list is not helpful to the case of the second party. Pan Card Ext. W-11 was issued in the year 2000 which is prepared on self declaration of the workman. So the date of birth i. e. 10-10-1952 as per Ext. W-11 is not accepted. Ext. W-12 Sarpanch Certificate which is not filed at the time of joining. It is just a conduct certificate and it has not been issued under the G. P. Act, 1965 and Rule 1968. It is not mentioned which records the concerned Sarpanch verified at the time of issuing the certificate. Ext. W-14 came into existence in the year 1982 but the second party workman joined in the year 1979. Moreover he submitted that his father died from his childhood. But he collected information from his parents in the year 1975 that his date of birth is 10-10-1952. There is no corroboration in Ext. W-4 to Ext. W-9. In view of such above facts and without any corroboration the plea taken by the second party workman cannot be accepted.

13. The learned representative on behalf of the management submitted that as per the standing order the second party workman has been superannuated vide Order, Dtd. 15-7-2008 Ext. W-10 on reaching the age of 60 years basing on the recorded date of birth as 10-10-1948 and has been

paid the post retirement dues. Moreover after superannuation on 31-10-2008 the second party workman had joined the Pension Scheme 1995 administered by Regional Provident Fund Commissioner, Rourkela vide Provisional Pension Order as per the Employees' Provident Fund and regularly drawing pension every month. In view of such above facts and circumstances, the actual date of birth of the second party Shri Ghana Nag is 10-10-1948 and the action taken by the management in superannuating the second party workman is on Dtd. 31-10-2008 legal and justified. Accordingly, issue No.i is answered.

15. *Issue No.ii* – In view of such facts and circumstances it can safely be held that the second party workman Shri Ghana Nag is not entitled to get any relief in this case. Hence the following Award:–

#### A W A R D

The reference is answered on contest but without any cost. The action of the Management of SAIL, Rourkela Steel Plant by superannuating Shri Ghana Nag, P. L. No. 41566 of Power Distribution Department w. e. f. 31-10-2008 is legal and justified and the second party workman is not entitled to get any relief in this case.

Dictated and corrected by me.

SAROJINI MOHAPATRA  
25-3-2011  
Presiding Officer  
Labour Court, Sambalpur

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25-3-2011  
Presiding Officer  
Labour Court, Sambalpur

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