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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 20th August 2011

No. 7634—li/1(BH-1)-6/2006-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 23rd April 2011 in Industrial Dispute Case No. 92 of 2006 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of NESCO, Balasore and their workman Shri Girish Kumar Mohapatra represented through O.S.E.B. Shramik Mahasangha was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 92 OF 2006

Dated the 23rd April 2011

Present :

Shri S. K. Dash,
Presiding Officer,
Labour Court, Bhubaneswar.

Between :

1. The Chief Executive Officer,
NESCO, Balasore. First Party—Managements

2. The Superintending Engineer,
NESCO, Balasore Circle, Balasore

And

Shri Girish Kumar Mohapatra Second Party—Workman
C/o O.S.E.B. Shramik Mahasangha

Appearances :

For First Party—Management No. 1 None
For First Party—Management No. 2 Shri D.N. Naik, A.M. (Legal)
Second Party—Workman himself Shri G. K. Mohapatra

AWARD

The Government of Orissa in exercise of powers conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act have referred the matter in dispute to this Court vide Order No. 11263—li/l (BH-1)-6/2006-LE., dated the 20th December 2000 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the punishment imposed on Shri Girish Kumar Mohapatra, Clerk-B by the Management of NESCO, Balasore vide Order No. 220, dated the 24th December 2003 of the Superintending Engineer, read with Order No. 110, dated the 16th November 2004 and No. 18, dated the 12th January 2005 of the Chief Executive Officer by (1) with holding of next increment for a period of one year with cumulative effect, (2) Recovery of Rs. 26, 470.00 and (3) treating the period of suspension as such is proper and justified ? If not, what relief the workman is entitled to ?”

3. The case of the workman in brief is that he was working as Clerk-B in C.E.D., Balasore under the management with effect from the 7th October 1970. He was a Trade Union Office Bearer and was the Vice-President of O.S.E.B. Shramik Mahasangh. While the O.S.E.B. was divided into different distribution Companies as per Reform Act, 1955, the workman was transferred to the control of NESCO by virtue of notification of the Government of Orissa. The O.S.E.B. Shramik Mahasangha is functioning all over the State in the said distribution Companies. A false charge was framed against the workman vide Order No. 90, dated the 27th June 2003 and thereby he was suspended without any justified ground and an Enquiry Officer was appointed who was not impartial to conduct the enquiry and biased by the management. The Enquiry Officer was also not followed the principle of natural justice while conducting the enquiry and adequate chance was not given to the workman to defend the charges levelled against him. The Enquiry Officer has also not followed the provisions of the Model Standing Orders before conducting the enquiry. The Chief Executive Officer of NESCO is not the disciplinary authority. The major punishment imposed on the workman are illegal, unjustified and disproportionate to the charges. The workman has availed the L.T.C. to visit the places of his interest for the first time and claimed the reimbursed cost of train tickets. He has not claimed excess amount beyond the permissible limit. However in this background he has raised an industrial dispute before the labour authority and when the conciliation failed the matter was informed to the Government and this reference has been received and this I.D. Case has been initiated wherein the workman has prayed for quashing the orders passed by the management.

4. The Management No. 1 did not appear in spite of notices to him and was set *ex parte*.

5. The Management No. 2 appeared and filed written statement partly admitting and partly denying the plea of the workman. According to the management No. 2, the workman applied to

visit Baishnodevi on L.T.C. for which an amount of Rs. 23,000.00 was sanctioned as advance in his favour which was received by him. Thereafter on the 21st February 2002 he applied to visit Okha on L.T.C. instead of Baishnodevi from the 16th March 2002 to the 26th March 2002 which was allowed. But the workman actually proceeded on L.T.C. to Okha from the 24th March 2002 to the 7th April 2002 as per his application dated the 23rd March 2002 and after returning from L.T.C. he joined in his duty on the 8th April 2002 as per his joining report. The workman submitted the final T.A. bill along with train tickets and vouchers and the said T.A. bill was also passed. But prior to payment, the genuineness of the train tickets, vouchers etc. were suspected and the said bill along with the train tickets were sent to the Manager (Finance) I.A.O., NESCO, Balasore who was the competent authority for the purpose to confirm the genuineness of the claim. Basing on the information of I.A.O., NESCO, Balasore necessary proceeding bearing No. 90, dated the 27th June 2003 was drawn against the workman and was duly served. Subsequently the workman was put under suspension. The workman submitted his reply to the charges and when it was not found satisfactory, an Enquiry Officer was appointed to enquire into the charges. The Enquiry Officer conducted the enquiry and submitted his report to the S.E.E.C., Balasore. Basing on the findings of the Enquiry Officer, the disciplinary authority i.e. S.E.E.C., Balasore passed orders regarding punishment of with holding of next increment for a period of one year with cumulative effect, to recover an amount of Rs. 26,470.00 from the pay of the workman and to treat the period of suspension as such. The workman has taken an advance of Rs. 23,000.00 with interest at the rate of 12% which comes to Rs. 31,625.00, but the interest amount for a sum of Rs. 5,155.00 was waived out. Thereafter the workman filed an appeal before the Managing Director, NESCO on the 6th February 2004 challenging the order dated the 24th December 2003 of the disciplinary authority. In the appeal it was partly allowed. Punishment in respect of Sl. No. 1 and 2 was confirmed and the rest punishment was modified. Regarding the period of suspension be treated as such was modified to may be adjusted against admissible leave. So in this background that the case of the workman has no merit and the workman is not entitled to get any relief in this case.

6. In view of the above pleadings of the parties, the following issues are settled.

ISSUES

- (i) "Whether the domestic enquiry conducted against the workman was fair and proper ?
- (ii) Whether the punishment imposed on the workman by the management with holding of next increment for a period of one year with cumulative effect and recovery of Rs. 26,470.00 and treating the period of suspension as such is proper and justified ?
- (iii) If not, to what relief the workman is entitled ?"

7. In order of substantiate his plea the workman has examined himself as W.W. 1 and proved the documents marked as Exts. 1 to 10. Similarly the contesting management has examined the Legal Assistant of B.E.D., Balasore as M.W. 1 and proved documents marked as Exts. A to G.

FINDINGS

8. *Issue No. (i)* — This issue is taken up first for discussion

According to the management, charge was framed against the workman vide proceeding No. 90, dated the 27th June 2003 as per Ext. C. Four charges were framed against the workman

as mentioned thereon. The workman submitted his reply to such charge vide Ext. 4. According to M.W. 1, enquiry was conducted by one Shri N.R. Mishra and one Sudarsan Patri was the Marshalling Officer. Shri B.S. Parida, S.D.O., Electrical was examined as a witness for the management. The delinquent-workman had participated in the enquiry. He was found guilty in the enquiry and accordingly punishment was imposed on him with a direction for recovery of Rs. 26,470.00 with holding his next increment for a period of one year with cumulative effect and treating the period of suspension as such. The workman in his pleading had taken the plea that the Enquiry Officer as well as the Marshalling Officer did not follow the principles of natural justice while conducting the departmental enquiry. But in the evidence he has stated that without enquiry and without giving opportunity, proceeding was started against him bearing No. 90, dated the 27th June 2003 and he was placed under suspension. The xerox copy of the enquiry report has been marked as Ext. D. The xerox copy of statement of the witness examined on behalf of the management has been marked as Ext. G. The xerox copy of order of punishment has been marked as Ext. 3. Basing on these materials it has been argued by the workman that the domestic enquiry is not fair and proper and that should not be taken into consideration. On the other hand, the representative of the management has argued that the domestic enquiry was fair and proper and all reasonable opportunities have been given to the workman and the principles of natural justice has been duly followed. In view of the authority reported in A.I.R. 1963 Supreme Court 1914 an enquiry cannot be held to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined ordinarily in the presence of the employee in respect of the charges, (iii) the employee is given a fair opportunity to cross examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishess on any relevant matter, and (v) the Enquiry Officer records his findings with reasons for the same in his report. So in view of the authority now let us see how far the present domestic enquiry was fair and proper basing on the materials available. The Sl. No. (i) has been duly complied. In respect of Sl. No. (ii) the statement of witness namely Shri Brajasundar Parida has been examined, but his statement was recorded in form of questions and answers. In Ext. G. it has been mentioned that he had heard the charges. So it shows that this witness had no direct knowledge about the charges. However this witness has not given clear picture about the charges. Futher more Ext. G. does not disclose that sufficient opportunity was given to the workman and it was recorded in presence of the workman. On the other hand, in Para. 4 of the cross-examination of M.W.1, he clearly admitted that the examination of witness as per Ext. G. was recorded in absence of the workman. The enquiry proceeding has also not been filed in this Court to know about the truth. In respect of Sl. No. (iii) nothing has been shown that the workman was given a fair opportunity to cross-examine the witness. In respect of Sl. No. (iv) there is also nothing on record to show that the workman was given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and in respect of Sl. No. (v) the Enquiry Officer has not recorded his findings with reasons for the same in his report. So in this background on careful consideration of

all the materials available in the case record, I found that due to non-compliance of mandatory provisions of law as mentioned above, the domestic enquiry conducted against the workman was not fair and proper. Hence the Issue No. (i) is answered accordingly.

9. *Issue Nos. (ii) and (iii)* :— Both the issues are taken up together for discussion for convenience.

As mentioned earlier the domestic enquiry was not fair and proper. So now let us see whether the management is able to establish the charges on merit against the workman as alleged. As per Ext. A the workman has applied E.L. for L.T.C. from the 24th March 2002 to the 7th April 2002 and in the affidavit evidence he has clearly mentioned that he had taken leave from the 24th March 2002 to the 7th April 2002. Further he deposes that he could not join on the 8th April 2002 due to some personal problems and filed application for leave vide Ext. 5. The management has denied to have received such application from the workman and there is also no material to show that actually such application was received by the management. The workman was permitted to proceed to Okha on L.T.C. It has been argued on behalf of the management that the workman joined on the 8th April 2002 and claimed for T.A. towards L.T.C. but on verification it was found that the date of his return train ticket was dated the 10th April 2002. So when doubt arose, the said bill along with train tickets and vouchers was sent to I.A.O., NESCO, Balasore about the genuineness of the claim and on basing of such enquiry of I.A.O. proceeding was started. The M.W. 1 was totally silent on this point. The Enquiry Officer came to the finding that it is a false and tempered train tickets and T.A. bill which amounts to gross misconduct. But there is no material on record to show how such train tickets are found to be false and tempered one. On the other hand, it has been argued by the management that from the conduct of the workman it can safely be concluded that he did not perform the journey for L.T.C. and submitted false train tickets. If the workman returned from journey and joined on the 8th April 2002 and submitted his joining report vide Ext. B, how his return train ticket from Dwaraka to Khurda Road was of the 10th April 2002. On perusal of the case record, I found that in Ext. 4 the workman has taken the plea that unfortunately the return journey could not be completed within the 8th April 2002 due to some dislocation of train service but no material has been placed in support of it. Further in the show-cause to the charge he had taken the plea that he returned from journey on the 12th April 2002, the 13th April 2002 and the 14th April 2002 was the Second Saturday and Sunday and he had applied for leave from the 15th April 2002 to the 17th April 2002 and on the 18th April 2002 he joined in his duty and due to his mental agony for illness of his son he mentioned the date of joining as the 8th April 2002 instead of the 18th April 2002. But such plea has neither been substantiated in his pleading nor in the evidence clearly. He has not taken any permission from the authority even after returning from the journey for approval of the authority about the extended journey period. Further as per his application vide Ext. 5 it shows that he had applied for leave due to Diarrhoea of his son. But no material has been put forth in support of his claim. Furthermore in Ext. E the workman had clearly admitted that as per the findings of the enquiry

it has been established that the Executive Engineer, Balasore Electrical Division, Balasore passed orders to effect the recovery of the L.T.C. amount in instalment basis which was also not objected by him. In the aforesaid circumstance the L.T.C. amount may kindly be recovered from his salary and he may be reinstated in service. In Ext. F he had also admitted that the L.T.C. amount taken by him may be deducted from his monthly salary as ordered previously. So in both the documents the workman has admitted the punishment imposed on him regarding recovery of L.T.C. amount due. It has been argued by the management that though he had taken advance of Rs. 23,000.00, order was passed to recover Rs. 26,470.00 which includes interest. The original train tickets submitted by the workman has not been sent to the railway authority to confirm about its genuineness. It has also not been sent to the handwriting experts to know about the manipulation thereon. But from the admitted facts available in the case record when the workman returned to the headquarters on the 12th April 2002 as stated by him how he submitted his joining report on the 8th April 2002 to the management vide Ext. B. In such document the date, the 8th April 2002 has been clearly mentioned under the signature and body of the application. The workman has not taken any steps to show that actually he had not joined on that date. He has not called for the relevant documents from the management like attendance register, salary register etc. to know that actually he was on duty or absent for the said period. So without any specific evidence in this regard it can safely be concluded that he had joined in his duty on the 8th April 2002. So when he joined the duty on the 8th April 2002 how he returned from L.T.C. on the 10th April 2002 and arrived at the headquarters on the 12th April 2002. So it cannot be believed at all. So claiming of T.A. basing on such false train tickets cannot be overruled. So on careful consideration of all the materials available in the case record, I came to the finding that all charges are proved by the management on merit subject to change that the railway train tickets furnished by the workman though false not fabricated. Regarding punishment, on careful consideration of all the materials available in the case record as discussed above, I am of the opinion that all the punishment decided by the disciplinary authority and appellate authority will remain same subject to change of Sl. No. 1 regarding withholding of next increment for a period of one year with cumulative effect which is to be modified as withholding of next increment for a period of one year without cumulative effect for the interest of justice. Hence both the issues are answered accordingly.

10. Hence Ordered :

That the punishment imposed on Shri Girish Kumar Mohapatra, Cleark B by the management of NESCO, Balasore vide Order No. 220, dated the 24th December 2003 of the Superintending Engineer, read with Order No. 310, dated the 16th November 2004 and No. 18, dated the 12th January 2005 of the Chief Executive Officer by—(1) withholding of next increment for a period of one year with cumulative effect, (2) recovery of Rs. 26,470.00; and (3) treating the period of suspension as such is partly proper and justified and modified as follows :

(1) Withholding of next increment for a period of one year without cumulative effect.

(2) Recovery of Rs. 26, 470.00; and

(3) The period of suspension may be adjusted against admissible leave.

Both the managements are directed to implement this Award within a period of one month from the date of its publication, failing which if any amount accrued on the workman, the said amount shall carry interest at the rate of 9% (nine per cent) per annum till its realisation.

The reference is answered accordingly on contest against the management No. 2 and *ex parte* against the management No. 1.

Dictated and corrected by me.

S. K. DASH
23-4-2011
Presiding Officer
Labour Court, Bhubaneswar

S. K. DASH
23-4-2011
Presiding Officer
Labour Court, Bhubaneswar

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