

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 2007 CUTTACK, TUESDAY, SEPTEMBER 6, 2011/BHADRA 15, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 19th August 2011

No. 7586—li/1 (BH)-58/2001-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 22nd March 2011 in Industrial Dispute Case No. 110 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of Dhenkanal Electrical Division, Dhenkanal and its Workman Shri Jagabandhu Mohanty was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 110 OF 2002

Dated the 22nd March 2011

Present :

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

Between :

The Management of Dhenkanal
Electrical Division, Dhenkanal.

.. First Party—Management

And

Its Workman
Shri Jagabandhu Mohanty

.. Second Party—Workman

Appearances :

Shri B. C. Bastia, Advocate	. . . For the First Party—Management
Shri B. B. Dalai, Advocate	
Shri A. K. Sahoo, Advocate	
<hr/>	
Shri P. K. Sahoo, Advocate	. . . For the Second Party—Workman
Shri D. K. Pani, Advocate	

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. 12531-li/1-BH-58/2001-LE. Dt. 10-10-2002 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

“Whether the dismissal from service of Shri Jagabandhu Mohanty, ex-Lineman ‘C’ with effect from 1-3-2001 by the Executive Engineer, Dhenkanal Electrical Division, Dhenkanal is legal and/or justified ? If not, what relief he is entitled to ?”

3. The case of the workman in brief is that he was working as an Electrical Lineman ‘C’ under the management as on 28-5-2000. On that date he was present in Gudia Kateni Chhaka of Motanga Police Station of Dhenkanal District. At about 8 A.M. he got a message from a person that the Electrical Helper namely Chhaila Rout who was working under the management as on 28-5-2000 was dead by touching the electric line near the stone crusher of village Patala. He suddenly rushed to the spot and found that the said helper was lying dead. He learnt from the outsiders that due to carelessness of the said Helper and touching of the electric wire to the charged line of 11 K.V. wire which was just passing over the L.T. Line at village Patala, he died. A departmental enquiry was conducted against him by the management violating the principle of natural justice and the dismissal order was passed during the pendency of the proceeding before the Assistant Labour Commissioner-*cum*-Conciliation Officer, Angul in contravention to Section 33 of the Industrial Disputes Act with a desire victimise him. So he 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 reinstatement in service with full back wages.

4. The management appeared and filed written statement partly admitting and partly denying the plea of the workman. According to it, the workman was working as Lineman ‘C’ and one Chhaila Rout who is dead was working as Electrical Helper. Both of them were posted at Hindol Road Electrical Section under the Dhenkanal Electrical Division. The workman was the leader of the maintenance group of Hindol Road Section, and on 28-5-2000 (Sunday) the workman without taking any permission of the superior authority and control room and without taking line clearance

for L.T. or H.T. overhead line took up the work of one Birabar Sahoo's Stone Crusher Unit and attempted to energize the newly installed transformer to supply with improved voltage to the said Stone Crusher Unit along with his Helper Chhaila Rout. Both of them made the L.T. power supply dead but did not take shut down of the 11 K.V. overhead line. A piece of conductor for jumpering purpose was thrown to the L.T. pole top by the workman who was standing on the ground. The deceased Helper was then sitting on the cross-arm of the pole. The said piece of conductor thrown by the workman over reached and made contact with the 11 K.V. overhead conductor and the L.T. Line/L.T. cross-arm etc. through successive flash over and ultimately causing the snapping of 11 K.V. conductor at the point of contact. The snapped end of the 11 K.V. conductor from the source-end side fell down over the L.T. cross-arm and got entwined causing thereby instant electrocution of the Helper of the pole top. The 11 K.V. line was disconnected from 33/11 K.V. sub-station and the dead body was brought down off the pole top by the police, fire brigade and departmental staff of CESCO and was sent for postmortem examination by the police. A preliminary fact finding enquiry was conducted by the Chief Safety Officer of CESCO giving adequate opportunities to the workman to have his say regarding such electrical fatal death of the Helper. Then the Chief Safety Officer submitted his report on 5-6-2000. On the basis of the initial fact finding enquiry it revealed that there was *prima facie* evidence against the workman. Therefore charges were framed against the workman vide proceeding No. 4662, Dt. 19-6-2000. The charge-sheet was duly communicated to the workman and he submitted his written explanation on 26-6-2000. The authority i.e. Executive Engineer decided to start a domestic enquiry and accordingly Shri Ashim Kumar Chand, Assistant Engineer (E) and the S.D.O. (E) Dhenkanal, Shri Amiya Kumar Das were appointed as Enquiry Officer and Presenting Officer respectively. The workman was asked to participate in the enquiry on the date fixed by the Enquiry Officer. The workman also participated in enquiry availing of all reasonable opportunities for preparation of his defence. After conclusion of the enquiry, the Enquiry Officer submitted his report. The authority was agreed with the enquiry report and proposed to impose punishment of dismissal from service and the period of suspension will be treated as such and accordingly a second show cause notice was served on the workman. The workman has also submitted his reply to the second show cause notice. After due consideration of all the materials the disciplinary authority taking into account the gravity of charges proved against the workman was pleased to dismiss him from service with immediate effect treating the period of suspension to be absent from duty without any remuneration for such period and ordered that subsistence allowance already paid to him during the suspension period shall not be recovered from him. Since an industrial dispute was pending before the Assistant Labour Commissioner-*cum*-Conciliation Officer, Angul wherein the present workman was party, he was paid along with the order one month's wages in accordance with the provision of Section 33 (2) (b) of the Industrial Disputes Act and the Assistant Labour Commissioner, Angul has approved the action of the management. So in this back ground the workman is not entitled to get any relief in this case and prayed to pass orders confirming the action of the management.

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

ISSUES

- (i) Whether the dismissal from service of Shri Jagabandhu Mohanty, ex-Lineman 'C' with effect from 1st March 2001 by the Executive Engineer, Dhenkanal Electrical Division, Dhenkanal is legal/or justified ?
- (ii) If not, what relief he is entitled to ?

ADDITIONAL ISSUE

- (iii) Whether the domestic enquiry into the charges against the workman by the Enquiry Officer was fair and proper with due observance of natural justice and as to whether reasonable opportunity had been afforded to the workman to defend himself during the enquiry ?

6. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved documents marked as Exts.1 to 4. Similarly the management has examined two witnesses altogether on its behalf out of which M.W.1 is the Superintending Engineer, SESU and the Presenting Officer in the domestic enquiry and M.W.2 is the retired General Manager (Electrical), SESCO and was the Enquiry Officer and proved documents marked as Exts. A to R/1.

FINDINGS

7. *Issue No. (iii)*—This issue has been taken first for discussion being important

It has been argued by the advocate for the management that after death of the helper Chhaila Rout a preliminary enquiry was held by the Chief Safety Officer, CESCO and submitted his report to the management and basing on such report a charge was framed against the workman vide Ext. A. M.W.2 was appointed as an Enquiry Officer and M.W.1 was appointed as Presenting Officer in that enquiry and the domestic enquiry was conducted in one day and the workman has given his statement and Trailokya Mohanty and Rabi Narayan Panigrahi had also given a joint statement on behalf of the management. After completion of the enquiry, the Enquiry Officer submitted his report vide Ext.D wherein he had that the charges against the workman were proved. Thereafter second show cause notice was issued to the workman proposing the punishment and after receipt of the reply to the show case notice from the workman, the Disciplinary Authority passed the order of dismissal from the service of the workman and he was dismissed from service forthwith.

8. Basing on these materials, it has been argued by the advocate for the workman that the domestic enquiry conducted against the workman was not fair and proper at all as the principle of natural justice has been not been followed and other mandatory provisions has violated. Initially according to the workman, the appointment of the Enquiry Officer was totally illegal and it clearly violates the Clause 15-3 (a) of Certified Standing Orders vide Ext.4. In such clause it has been

mentioned that enquiry will be conducted by an officer other than the officer who has either reported the alleged misconduct or has issued the charges-sheet or is directly subordinate to him. In the instant case, the M.W.2 in his cross-examination has admitted that he was appointed as Enquiry Officer by the Executive Engineer and at that time he was working as Assistant Engineer (Estimator) and his service was under the said Executive Engineer. So from it, it clearly shows that he was subordinate to the Executive Engineer as argued. Further it has been argued by the advocate for the workman that list of documents was not supplied to the workman and list of witnesses examined by the management was not supplied to the workman and the statement Ext.E and the statement of the management witnesses vide Ext.E/1 were written by the same person and no opportunity was given to the workman to cross-examine the management witnesses in enquiry. So in this background it has been argued by the advocate for the workman that the domestic enquiry conducted against him was not fair and proper. Let us examine this aspect basing on the materials available in the case record. M.W.2 in his affidavit evidence has stated that the delinquent (workman) participated in the enquiry held on 14-11-2000. The workman was given full opportunity in the enquiry for his defence. He also participated in the enquiry availing all opportunities for preparation of his defence. No one wanted to cross-examine the other. After conducting the enquiry, the Enquiry Officer submitted his report and findings. In the cross-examination he deposes that the statement of the workman was recorded by a person accompanied with him who was a co-worker and the statement witnesses on behalf of the management who were co-workers were written by themselves. The enquiry was completed in one day. But M.W.1 deposes that only Trailokya Mohanty and Rabi Narayan Panigrahi had given their statement in the domestic enquiry. Further he deposes that it is a fact that the statement of witnesses of the management have been written by the same person as it appears from the handwriting. So the evidence of Enquiry Officer is contrary to the evidence of Presenting Officer in the domestic enquiry as to who had prepared the statement of the workman and the management witnesses. On their perusal of Exts. E and E/1 it shows that the same has been written by the same person. In Ext.E the workman had only put his signature and in Ext. E/1 both the witnesses of the management had signed at a place where "X (cross) mark" has been given. It is an admitted fact by M.Ws.1 and 2 that the witnesses examined in the domestic enquiry were not the eye witness to the alleged incident. It has been argued by the advocate for the workman that basing on Exts.E and E/1 it can safely be concluded that the enquiry was not conducted fairly and properly and those were recorded behind the back of the workman and no scope was given to the workman to cross-examine the management witnesses. Before accepting any evidence on record it is a principle of natural justice that scope should have been given to cross-examine the witness to test the veracity. But in the instant case it is wanting and there is no reasonable explanation from the side of the management. Even if the workman has refused or declined to cross-examine the witness it should have been mentioned in the statement itself. But it is wanting. Strangely enough the M.W.1 has deposed that during the enquiry the Enquiry Officer had recorded the statement of the witnesses for the management and delinquent (workman) but the M.W.2 the Enquiry Officer is silent in this regard. So the manner of recording of the statement of the workman vide Ext.E and of witnesses for the management vide Ext.E/1 are not free from doubt. Normally the statements are to be recorded separately but not jointly. But in the instant case the statements were recorded

jointly without any specific explanation in this regard from the side of the management. In Clause 15-3 (a) of Ext.4 also discloses that at the enquiry the workman concerned shall be afforded reasonable opportunity of explaining and defending his action. But in the instant case no such opportunity was given to the workman in this regard as revealed from the materials available in the case record. According to the settled principle of law as reported in AIR 1963 Supreme Court 1914 that an enquiry cannot be said to have been properly held unless, the employee proceeded against has been informed clearly of the charges levelled against him, the witnesses are examined ordinarily in the presence of the employee in respect of the charges, the employee is given a fair opportunity to cross-examine witnesses, he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter and the enquiry officer records his findings with reasons for the same in his report. In the instant case no opportunity was given to the workman to cross-examine the witnesses of the management and regarding statement of the workman and the witnesses are also not free from doubt as mentioned earlier. Perused the documents marked as exhibits on behalf of both the parties. A criminal case has been initiated against the workman and he was acquitted from the charges vide Judgement Ext.3. According to the settled principle of law acquittal of delinquent by a criminal case will not conclude the departmental proceeding on the same charge and both the proceedings can be continued simultaneously unless prejudice is caused to the delinquent. There is no material on record to show that the workman was prejudiced by the departmental enquiry. However, the departmental proceeding and criminal proceeding are to run separately. In the instant case even if the workman has been acquitted from the criminal case, the merit of the domestic enquiry can be taken into consideration i.e. into its fairness. On careful consideration of all the materials available in the case record as discussed above, I came to the finding that the domestic enquiry conducted against the workman was not fair and proper. The issue No (iii) is answered accordingly.

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

The workman was dismissed from service vide Ext. O. It has been argued by the advocate for the workman that during pendency of the industrial dispute before the Assistant Labour Commissioner-*cum*-Conciliation Officer, Angul, the workman was dismissed from service which clearly violates the provision of Section 33 (2) (b) of the Industrial Disputes Act. But in view of Ext.R, the application for approval of the action taken in dismissing the workman before the Conciliation Officer-*cum*- Assistant Labour Commissioner, Angul and in view of Ext.R/1 the approval order of the Conciliation Officer-*cum*-Assistant Labour Commissioner, Angul, I found that the plea taken by the workman has no force at all. The management has not proved the alleged charges against the workman by other evidence on merit and no other witness has been examined in this regard. While dismissing the workman from service the provisions of Section 25-F of the Industrial Disputes Act has not been followed by the management was found to be not fair and proper and the management has also not established the charges against the workman on merit. So on careful consideration of all the materials available in the case record as discussed above, now I am of the finding that the dismissal from service of the workman with effect from 1-3-2001 by the management is neither

legal nor justified. The workman is now aged about 62 years and has already crossed the age of superannuation. So the question of reinstatement in service does not arise. It is an admitted fact that from the date of dismissal from service the workman has not worked for the management. In view of the settled principle of law and basing on the materials available in the case record, I am of the opinion that instead of directing for reinstatement and back wages a lump sum amount of Rs. 50,000 as compensation will meet the ends of justice in this case.

10. Hence ordered :

That the dismissal from service of Shri Jagabandhu Mohanty, ex-Lineman 'C' with effect from 1-3-2001 by the Executive Engineer, Dhenkanal Electrical Division, Dhenkanal is neither legal nor justified. The workman Shri Mohanty is entitled to get a lump sum amount of Rs. 50,000 (Rupees fifty thousand) only as compensation in lieu of reinstatement and back wages. The management is directed to implement this Award within a period of one month from the date of its publication in the Official Gazette failing which the amount shall carry interest at the rate of 9% (nine per cent) per annum its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. K. DASH
22-3-2011
Presiding Officer
Labour Court
Bhubaneswar

S. K. DASH
22-3-2011
Presiding Officer
Labour Court
Bhubaneswar

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