

# The Orissa Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

---

No. 2468 CUTTACK, WEDNESDAY, NOVEMBER 9, 2011 / KARTIKA 18, 1933

---

---

## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 28th October 2011

No. 9685—li/1-(BH)-41/1998-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 8th April 2011 in I.D. Case No. 173 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Utkal Asbestos Ltd., Dhenkanal and its workman Shri Girish Chandra Nayak was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 173 OF 2008

(Previously registered as I.D. Case No. 167 of 1998 in the file of the Presiding Officer, Labour Court, Bhubaneswar)

The 8th April 2011

#### *Present :*

Shri Raghubir Dash, o.s.j.s. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

#### *Between :*

The Management of  
the General Manager,  
M/s Utkal Asbestos Limited,  
At/Post Korian, Dist. Dhenkanal.

.. First-party—Management

And

Its workman,  
Shri Girish Chandra Nayak,  
S/o. Dinabandhu Nayak,  
At/P.O. Korian, Dist. Dhenkanal.

.. Second-party—Workmen

*Appearances :*

Shri S. Mohapatra, Advocate	.. For the First-party—Management
Shri S. B. Mohanty, Advocate	.. 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. 12194—li-1-(BH)-41/1998-LE., Dt. 30-10-1998 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-LE., Dt. 4-4-2008. The Schedule of reference runs as follows :

“Whether the termination of services of Shri Girish Chandra Nayak, Operator (Token No. 106) with effect from the 2nd May 1997 by the Management of M/s Utkal Asbestos Ltd., Dhenkanal is legal and/or justified ? If not, to what relief Shri Nayak is entitled ?”

2. It is a case of termination of service by way of dismissal. In the claim statement the second party/workman has pleaded that he had been working as an Operator in the establishment of the first party since 14-10-1982. He was a sincere and honest workman. Due to his illness he was compelled to take leave for his treatment on the advice of the E.S.I. Doctor. After recovery when he reported for duty, the management did not allow him to join. Instead, a charge-sheet was served on him vide Letter No. 9867, Dt. 8-3-1996. His show-cause was not taken into consideration and a departmental enquiry was initiated. The Enquiry Officer (for short, the 'E.O.')

found him guilty of all the charges. In his explanation to the second show-cause he had taken the stand that neither a proper enquiry was conducted nor due opportunity was given to him to defend himself during the enquiry. It is also contended that without there being any evidence/material the E.O. illegally held him guilty. In his second show-cause he raised valid objections, but his objections were not taken into consideration and the management arbitrarily issued the order of dismissal on 2-5-1997. The further assertion made by the workman is that he was an active Member of a Labour Union for which the management had been waiting for an opportunity to remove him from service and the order of dismissal is an outcome of victimisation.

3. In the written statement the management has taken the stand that the workman was in the habit of remaining absent unauthorisedly. During the period January 1993 and February 1996 his attendance was very low. In some of the months he had hardly worked for a day or two. The workman was an Operator and such habitual absence on his part was causing dislocation in making arrangement in the factory to keep the machines in operation. On earlier occasion he had begged apology for his unauthorised absence from duties. Lastly, from 11-2-1996 to 18-3-1996, i.e. till charges were framed, the workman remained absent without prior sanction of leave. The workman did not mend his habit. So, the management invited explanation from the workman on such habitual absence from duties. His explanation Dt. 18-3-1996 being found unsatisfactory, the management decided to hold an enquiry. An outsider, namely, Binoyananda Mohapatra, Advocate, Dhenkanal was appointed as the Enquiry Officer. The notice about the departmental enquiry was sent to the workman by Registered Post but he did not appear before the E.O. on the appointed date. Therefore, there was publication of the notice in the newspaper and in response to the

notice the workman appeared before the E.O. on 10-7-1996. He participated in the enquiry. He was given all opportunities to defend himself. The enquiry was fairly conducted by the E.O. who submitted his report finding the workman guilty of the charges. The workman was served with a second show-cause notice and the explanation submitted by him was duly taken into consideration. After due consideration of all relevant aspects the management deemed it fit to dismiss the workman from service.

4. Basing on the pleadings of the parties, the following issues have been framed—

#### ISSUES

- (i) Whether the termination of services of Shri Girish Chandra Nayak, Operator (Token No. 106) with effect from the 2nd May 1997 by the management of M/s Utkal Asbestos Ltd., Dhenkanal is legal and/or justified ?
- (ii) If not, to what relief Shri Nayak is entitled ?
- (iii) Whether the domestic enquiry is fair and properly conducted ?

5. The management examined the Enquiry Officer as M.W. No. 1 and exhibited the enquiry proceedings. The workman examined himself as W.W. No. 1 and exhibited some documents.

6. Since it is a case of dismissal and the workman has challenged the fairness and propriety of the domestic enquiry. Issue No. (iii) has already been taken up as a preliminary issue and it has been answered against the workman vide Order No. 76, Dt. 11-2-2011. The findings on Issue No. 3 are reproduced hereunder so as to make the same as a part of this Award.

“The workman has been dismissed from service with effect from 2nd May 1997 on alleged misconduct of frequent unauthorised absence. There is no dispute that the order of dismissal was preceded by a domestic enquiry. In the Claim Statement the workman has challenged the fairness of the enquiry on the following ground :—

- (1) the workman being an active Member of their Trade Union the management was always trying to remove him from service so that other workers would be demoralised and the Union would not dare to press its charter of demands ;
- (2) the enquiry was conducted behind his back and without his knowledge ;
- (3) No opportunity was given to him by the Enquiry Officer (for short, the ‘E.O.’) to defend his case ;
- (4) the enquiry report is based on no evidence ; and
- (5) the enquiry was conducted in violation of the principles of natural justice.

Denying the aforesaid allegations, the Management has pleaded in its written statement that the workman had participated in the enquiry and was given full opportunity to defend himself. He was offered to engage any other person to defend himself but he wanted to conduct his case himself. On closure of enquiry the E.O. submitted his report finding the charges well proved. A copy of the report was served on the workman and he was asked to have his say on the report. In his reply the workman denied that he was guilty of misconduct and alleged victimisation. However,

his show-cause being found not satisfactory the impugned order of discharge was passed on 2-5-1997.

While adducing evidence in the shape of an affidavit the workman has stated as follows :—

The E.O. is an Advocate of the management who regularly conducts cases on behalf of the management. The E.O. did not give sufficient opportunity to him to defend himself. The E.O. did not take into consideration his objection that the management had not supplied him the copy of documents basing on which charges were framed. Nor was he given opportunity to verify the documents. On 20-7-1996 the management submitted list of witnesses as well as documents and on the same day the workman prayed for time, but the E.O. forced him to cross-examine the management's witnesses. The E.O. recorded wrong statements of witnesses inspite of objection raised by the workman. The E.O. used to first obtain the workman's signature on the enquiry file and latter on in his absence the E.O. used to prepare the day-to-day proceedings. The E.O. conducted the enquiry hurriedly which is evident from the fact that examination of management's witnesses and of the workman's took place on the same date. The E.O. prepared his report according to the sweet will of the management. The E.O. relied on the Standing Orders of the Company which was never shown to the workman. Though the E.O. made an observation that the charge was defective, he proceeded with the enquiry on the basis of the defective charges.

Thus, it is found that in the affidavit evidence the workman has raised so many grounds which are not there in his claim statement. Be that as it may, this Tribunal will proceed to examine each and every ground that the workman has raised both in his claim statement and his affidavit evidence.

The management examined the E.O. as M.W. No. 1. In his deposition the E.O. has stated that after being appointed as the E.O. he issued notice to the workman by Registered Post fixing the date of enquiry to 28-6-1996 but the workman did not turn up on the date fixed. However, subsequently the workman appeared on 10-7-1996 to take part in the enquiry. The witness further says that he had asked the workman if he had any objection on the E.O.'s appointment but the workman replied in the negative. Thereafter, the workman appeared on all subsequent dates to take part in the enquiry. During the enquiry all formalities and due procedure had been followed and at no point of time the workman had ever made any complaint that he was going to be prejudiced. Though the E.O. was cross-examined nothing substantial could be elicited from him. During cross-examination the E.O. has admitted that he has conducted some cases of the management during the last ten to eleven years and even prior to that. It is suggested to the E.O. that the workman's prayer to be represented by a co-worker was not allowed by the E.O. and that the workman was not allowed to be examined in the enquiry proceeding. Both the suggestions have been denied by the E.O. No question was put to the E.O. on all other aforesaid grounds taken by the workman to challenge the fairness of the domestic enquiry.

The E.O. has exhibited the enquiry report marked Ext. 1 and the day-to-day proceedings of the enquiry recorded by him which is marked Ext. 2. The workman has not cross-examined the E.O. on these two documents. On a perusal of the enquiry proceeding, Ext. 2 it is found that on the first date of the enquiry proceeding i.e. on 28-6-1996 the workman did not appear before the E.O. It further reflects that having found that there was no material showing that the workman had received the notice of the enquiry proceeding the E.O. advised the management's representative

to go for paper publication in any local daily newspaper having wide circulation and fixed the next date of enquiry to 10-7-1996. It further reflects that on 10-7-1996 and on all subsequent dates the workman appeared before the E.O. and took part in the proceeding. Though the E.O. has adduced evidence to that effect the workman has not challenged the same during the E.O.'s cross-examination. Even there is no suggestion put to the E.O. that the workman had never put his signature on the order sheets of the enquiry proceeding at the end of each day's proceeding. Therefore, the plea that the enquiry was conducted behind the back of the workman and without his knowledge is totally false.

Ext. 2 further reflects that the E.O. had asked the workman as to whether the workman had any objection against his engagement as the E.O. to which the workman replied in the negative. It further reflects that when the E.O. asked the workman as to whether he would like to be assisted by somebody to defend his case the workman had replied in the negative opting himself to conduct his own case. Therefore, the plea taken in the claim statement that no opportunity was given to the workman by the E.O. to defend his case is not correct.

In the claim statement it is stated that the enquiry was conducted in violation of the principles of natural justice. But, nothing would be elicited from the E.O. during the latter's cross-examination showing violation of any of the principles of natural justice. It is stated in the claim statement that the enquiry report is based on no evidence. But, this is also totally incorrect. A perusal of the enquiry report marked Ext. 1 gives clear indication that the findings of the E.O. are supported by evidence and reasons.

Though it is stated in the claim statement that the dismissal of the workman is an outcome of victimisation because of the workman's involvement in the Trade Union activities, there is no material to that effect.

Now I shall come to the oral evidence of the workman. At the outset let it be mentioned that after affidavit evidence of the workman was filed before this Tribunal the representative of the management did not turn up as a result of which the workman's affidavit evidence is not subjected to cross-examination. Though the workman's testimony goes unchallenged this Tribunal is to thrash out as to whether the facts contained in the affidavit evidence are to be relied on and on the basis of such evidence a finding can be recorded against the management.

The E.O. has admitted that he has appeared for the management as its Advocate in several cases. But, for that reason alone the impartiality of the Advocate appointed as E.O. cannot be doubted. In *Saran Motors (Private) Ltd. Vrs. Vishwanath* and another, reported in 1964 (II) LLJ (S.C.) 139, the Lawyer who conducted the enquiry was engaged by the employer in several industrial matters but still then their Lordships held that it is impossible to accept the contention that because a person is sometimes employed by the employer as a lawyer he becomes incompetent to hold a domestic enquiry. Hon'ble Supreme Court have further observed that generally enquiries are conducted by Officers of the employer and in the absence of any special individual bias attributable to a particular Officer it has never been held that the enquiry is bad just because it is conducted by an Officer of the employer, and, if that be so it is obviously unsound to take the view that a lawyer, who is not a paid Officer of the employer is incompetent to hold that enquiry because he is the employer's lawyer and is paid remuneration for holding the enquiry. In *Sandvik Asia Ltd. Vrs. Maruti Mahipati Jagdala*, 2002 LLR 1138 (Bombay High Court), it is held

that when there is no embargo or restriction in the Certified Standing Orders for conducting domestic enquiry by an Advocate, the act of the management appointing an Advocate for the said purpose cannot be held to be illegal and on that ground the enquiry cannot be vitiated.

In view of the authorities cited above and in the absence of any evidence that the E.O. had any bias attitude towards either side it is not possible to accept the workman's contention that the engagement of M.W. No. 1, an Advocate, as E.O. has got any reflection on the fairness of the domestic enquiry.

It is mentioned in his affidavit evidence that the workman's objection that the management had not supplied copy of documents related to the charges was never considered by the E.O. It is further alleged that the E.O. did not give the workman an opportunity to verify those documents. These assertions are not there in the claim statement. The enquiry proceeding has been exhibited without objection. No where in that exhibited document it is shown by the workman that at any point of time he had made any objection on the non-supply of copy of documents and he himself had made any request for verification of such documents. Therefore, these assertions are clearly after thought. The same can be said in respect of the workman's assertion in his affidavit evidence that the E.O. did not consider the documents which the workman had produced during the enquiry.

It is then alleged that on 20-7-1996 the management submitted list of witnesses/documents and on the same day the workman made a prayer for time which was not allowed and the workman was forced to cross-examine the management's witnesses on the same day. The enquiry proceeding dated the 20th July 1996 as recorded by the E.O. reflects that the workman had expressed his readiness for participation in the enquiry. It further reflects that the workman was advised by the E.O. *suo motu* to go through the documents filed by the management. It further reflects that the E.O. himself explained the contents of the documents and their implications and then the workman himself examined the documents on the same day and expressed his readiness to take part in the enquiry. No suggestion was put to the E.O. that on 20-7-1996 he compelled the workman to take part in the enquiry proceeding.

It is alleged that the E.O. concluded the enquiry hurriedly but after going through the entire of the recorded proceeding marked Ext. 2. I find that there was no such hurry on the part of the E.O. It is also not found that at any point of time any request made by the workman was turned-down by the E.O. It is then stated that the E.O. relied on the Standing Orders but the workman had never been supplied with a copy thereof. Judicial notice is to be taken to the effect that Certified Standing Orders of the Company have been duly displayed in the Notice Board of the Company and all the workman are very much aware of the provisions contained therein. Therefore, it is not necessary to supply a copy of the Standing Orders to a delinquent workman.

It is then stated that the E.O. having observed that the charge was defective he was not fair in proceeding with the enquiry on such defective charges. I have gone through the enquiry report. Nowhere the E.O. has observed that the charge is defective. At page 10 of the report the E.O. has observed that about the workman's absence from duty from January, 1993 to May, 1993 the authority should not have incorporated in the charge-sheet, in as much as much prior to the initiation of the disciplinary proceeding the workman had already been excused for that unauthorised absence. The E.O. has further observed that mentioning of said period of absence in the charge-sheet was not a serious lacuna in as much as it was reflected in the charge-sheet by way of past

conduct of the workman. The enquiry report further reveals that the E.O. did not take into consideration the period of absence of the workman from January, 1993 to May, 1993 while recording his findings on the alleged habitual unauthorised absence. Nowhere he has observed that the charge-sheet is defective. It is also not shown by the workman that for any defect in the charge-sheet he has been prejudiced and it reflects on the fairness of the domestic enquiry.

It is then alleged by the workman that the E.O. did not record the statement of the witnesses correctly even though the workman had raised objections. It is also alleged that the E.O. recorded the day-to-day proceeding in the absence of the workman. It is further alleged that the E.O. prepared the report according to the sweet will of the management. All such vague allegations are easy to make but difficult to establish. Merely because the witness has not been cross-examined on these allegations there cannot be a presumption that the allegations are true. The enquiry proceeding so also the enquiry report do not bear any such feature which would support the wild allegations made by the workman in his affidavit evidence which do not find place in the claim statement. So, this Tribunal is not inclined to rely on such bald allegations.

Having examined the materials placed before this Tribunal, I find that none of the grounds raised by the workman in challenging the fairness of the domestic enquiry is acceptable. Consequently, it is to be held that the domestic enquiry against the workman was conducted fairly and properly.”

#### FINDINGS ON OTHER ISSUES

7. *Issue No. (i)*—The domestic enquiry having been held to be fair and proper, the Tribunal is required to find out as to whether the action of the management in terminating the services of the workman by way of dismissal is fair and *bona fide*. For ready reference the Charge on which the departmental enquiry was conducted, which is marked Ext. C, may be reproduced hereunder :—

“It is reported against you as under :—

You are absenting yourself from duty with effect from the 11th February 1996 without prior permission/application or even intimation. In the past also you have remained absent without prior sanction of leave, details of which are given below :

Month	C. L.	E. L.	E. S. I.	Absent	Number of days worked
(1)	(2)	(3)	(4)	(5)	(6)
January 1993	2	2	..	2	20
February 1993	1	5	..	2	16
March 1993	1	..	..	8	17
April 1993	2	3	..	1	19
May 1993	..	4	4	7	11
June 1993	1	..	2	11	13
July 1993	..	2	2	9	13
August 1993	2	..	..	5	13

(1)	(2)	(3)	(4)	(5)	(6)
September 1993	..	4	..	6	15
October 1993	..	..	2	4	19
November 1993	..	..	..	3	21
December 1993	..	4	6	2	14
January 1994	..	..	4	9	13
February 1994	1	..	11	2	11
March 1994	..	..	27	..	3
April 1994	..	..	9	8	11
May 1994	..	1	3	13	9
June 1994	2	..	11	7	5
July 1994	..	..	19	7	4
August 1994	..	..	13	8	8
September 1994	..	..	11	6	10
October 1994	..	..	14	11	01
November 1994	..	..	25	3	01
December 1994	..	..	16	4	4
January 1995	5	..	18	10	4
February 1995	..	..	28	..	Nil
March 1995	1	..	2	5	16
April 1995	2	..	..	2	21
May 1995	3	..	..	2	21
June 1995	..	..	..	4	19
July 1995	..	4	7	9	8
August 1995	..	..	3	1	22
September 1995	3	..	14	4	8
October 1995	..	..	11	8	6
November 1995	..	..	30	..	Nil
December 1995	..	..	21	2	7
January 1996	..	..	8	7	11
February 1996	..	..	8	1	1

(10th)

Sudden absence dislocates the normal work of the factory, while repeated such absence, on your part, notwithstanding oral and written warning issued more particularly vide Company Letter No. 1507—DKL-93-94/PNL, Dt. 10-6-1993 have adverse effect both on output as well as on discipline.

Habitual absence from duty is a serious misconduct under standing Order No. 19.”

Ext. D is the workman’s explanation to the charge-sheet. The workman has not disputed the correctness of the contents of the charge-sheet. It is found from the charge-sheet that from January, 1993 to February, 1996 the workman was never regular in attending to his duties. In almost all the calendar months covered under the aforesaid period the workman is shown to have remained

absent without any leave, besides E.S.I. leave which is supposed to be on the ground of illness. A copy of the Certified Standing Orders of the First Party is placed before this Tribunal for reference. Order 17 (iii) thereof runs as follows :—

“No workman shall proceed on leave without obtaining in writing a permission to avail himself of the leave pending formal sanction or the sanction of leave applied for by him from the immediate superior/the competent authority as the case may. Those not doing so will be guilty of misconduct and besides, being considered as absent without leave, will render themselves liable to appropriate disciplinary action.”

Thus, from the Certified Standing Orders it is found that a workman proceeding on leave without obtaining written permission is guilty of misconduct and it renders him liable for appropriate disciplinary action. Order 19 also prescribes that absence from duty without permission shall be treated as a misconduct and dealt with accordingly. It is not the case of the workman that the charges did not amount to any misconduct. The punishment inflicted is challenged on the ground that it is a case of victimisation. On the plea of alleged victimisation it is simply stated that the workman was an active Member of Utkal Asbestos Progressive Employees' Union. No evidence has been adduced as to in what way the workman had taken active part in Trade Union activities that might have brought the management's displeasure. Merely because a workman becomes a Member of a Trade Union is not sufficient to raise any inference that if he is inflicted with the major punishment it is the outcome of victimisation. In this case there is no iota of evidence to say that the disciplinary action is a measure of victimisation or unfair labour practice. On the other hand, the workman is shown to have frequently remained absent during a period which spreads over three years and it seems the management had given the workman a long rope before deciding to take disciplinary action against him. An Operator working in a factory plays a vital role and his irregular attendance causes dislocation in the proper management of the work force and to keep the industry running. It is not a case where the workman for a singular instance of unauthorised absence has been served with the severest punishment. The charge-sheet itself speaks volume of the prolonged habitual absence on the part of the workman and it justifies the disciplinary action taken by the first party/management.

8. In the result, Issue No. (i) is answered in the affirmative

9. *Issue No. (ii)*—In view of the discussions made above, the workman is found not entitled to any relief.

Dictated and corrected by me.

RAGHUBIR DASH  
8-4-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
8-4-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

---

By order of the Governor

T. K. PANDA

Under-Secretary to Government

---