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LABOUR & EMPLOYMENT DEPARTMENT  
NOTIFICATION

The 29th October 2011

No. 9714—li/1(Pt.)-431/90-L.E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th August 2011 in I. D. Case No. 169/1991 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial Dispute between the Management of President, Regional Co-operative Marketing Society, Balasore and its workman Shri Umesh Chandra Behera was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 169 of 1991  
The 30th August 2011

Present :

Shri S. A. K. Z. Ahamed,  
Presiding Officer,  
Labour Court, Bhubaneswar.

Between :

The President, Regional Co-operative . . . First-party Management  
Marketing Society, Balasore.

And

Shri Umesh Chandra Behera, . . . Second-party Workman  
At/P. O. Dwarika, Via. Gopalpur,  
Dist. Balasore.

Appearances :

Shri B. D. Choudhury . . . For the First-party Management  
Shri U. C. Behera . . . Second-party Workman himself

## 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. 10950—li/1-431/1990-L.E., dated the 7th August 1991 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

"Whether the discharge of Shri Umesh Chandra Behera, Ex-Sales Assistant from service by the management of Balasore Regional Co-operative Marketing Society, Balasore with effect from the 18th April 1989 is legal and/or justified ? If not, to what relief is the workman entitled ?"

3. The case of the workman in brief as set out in his statement of claim is that he was working as Sales Assistant under the management from the 8th March 1983. He served under the management till the 12th March 1988. Thereafter certain misconducts were alleged against him and charges were framed against him. He filed show cause to the charges and a Government Officer was appointed as Enquiry Officer. The workman attended the enquiry and he was also placed under suspension on the 12th August 1988 before the initiation of such domestic enquiry. The Enquiry Officer submitted his report *ex parte* against the workman and the management basing upon the enquiry report discharged the workman from service with effect from the 18th April 1989. Therefore the workman claims that the enquiry in question was conducted in violation of principle of natural justice and his discharge from service is not legal and justified. In this background, he has prayed for his reinstatement in service with full back wages.

4. The management appeared and filed written statement. According to it, the workman was appointed as Storing Agent and being an employee, was required to function as Sales Assistant of distribution depots at Basta and Baliapal. He was officially receiving the stocks supplied by the Civil Supply Corporation. He was responsible for its custody and proper distribution to dealers. He was incharge of stocks from the 1st April 1987 to 31st March 1988. There was shortage of 17 quintals of sugar at Bampada depot and Civil Supply Corporation imposed fine of Rs. 1,700 on the management. The management called for an explanation from the workman and initiated a departmental enquiry. During the enquiry it came to the notice of the management that the workman misappropriated the sugar, wheat and rice from the stocks. Civil Supply Corporation also charged penalty to the management. Thereafter the management framed additional charge against the workman. The workman was also charged for negligence in duty . The Enquiry Officer served notice on the workman and gave him full opportunity to defend his case properly. The workman did not attend the enquiry by receiving notices from the Enquiry Officer. Hence *ex parte* enquiry was conducted. The enquiry report was also submitted before the management and personal hearing was allowed to the workman. His enquiry was mostly based on the documents. The management has already lost the confidence on the workman and it is not possible to retain the workman in the service any further. On these above pleadings, the management has prayed for dismissal of the present case.

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

## ISSUES

- (i) Is the domestic enquiry conducted against the workman was fair and proper ?
- (ii) Whether the punishment of discharge with effect from the 18th April 1989 was proportionate ? If not to what relief ?

6. Before going to discuss the evidence in detail, it is pertinent to mention here that basing upon the evidence this Court has passed Award on the 20th December 1994 and the said Award was set aside on the 5th January 2005 by the Hon'ble High Court of Odisha, Cuttack in O. J. C. No 1345/1995 and remanded the present case for fresh disposal after giving opportunity of hearing to all the parties once again. After the order of the Hon'ble High Court of Odisha, Cuttack, one witness i. e. the workman himself was examined as W. W. 1 and the management has examined two witnesses on its behalf and both the parties have filed relevant documents in support of their pleas.

7. The workman examined as W. W. 1 has stated that on the 8th March 1983 he joined as Salesman and he worked up to 12th August 1988 when he was placed under suspension. He has further stated that during the pendency of the present case, he was re-engaged by the management vide Order No. 88, dated the 16th June 1994 under the cover of Ext. 3 and he was again dismissed from service vide Order No. 1680, dated the 13th December 2000 under the cover of Ext. 4. The question for determination of the present case is that whether the discharge of the workman from service by the management with effect from the 13th April 1989 is legal or justified. So the evidence adduced by the W. W. 1 after the period of the 18th April 1989 is of no help. On the other hand, charges were framed against him vide Ext. B. Shri R. K. Dey, a Government Officer was appointed as Enquiry Officer and he attended the enquiry and also the management has proved the appointment letter as Ext. A. Subsistence allowance was not paid to him. The Enquiry Officer submitted his report *ex parte*. He has received the copy of such report. Ext. D. is the xerox copy of discharge order passed by the management. M. W. 1 has stated that on 2nd February 2005 he took the charge of the Secretary and he has no direct knowledge about the details of the case. M. W. 2 has stated that W. W. 1 was placed under suspension on the allegation of misappropriation of a sum of Rs. 43,846.43 and was placed under suspension by the management with effect from the 12th August 1988 and a domestic enquiry was also held against him.

8. It is an admitted fact that the chargesheet was filed for misconduct of misappropriation. Some shortage in the stock of sugar, rice and wheat were noticed and Civil Supply Corporation imposed penalty on the management. Therefore the management treating this workman to be the custodian of the stock initiated a departmental proceeding and lastly discharged him from service. No doubt, the enquiry report was submitted as *ex parte*. The workman never participated in that enquiry. He was not paid subsistence allowance. At the same time he was fully aware of the charges and received notices from the Enquiry Officer in due time and he has also filed an explanation to that effect. Therefore, the management has complied the principles of natural justice by giving him sufficient opportunity to defend his case. Since the workman has not participated in the enquiry and not availed the opportunity to contest the enquiry, it cannot be said that the principles of natural justice was not available to the workman. Though an *ex parte* enquiry was conducted by the Enquiry Officer, in my opinion the same is valid and proper. An employee has right to get the subsistence allowance during the period of suspension for survival of his family members. The management has not paid it to the workman and he could have brought a claim proceeding against the employer under Section 33-C (2) of the Industrial Disputes Act. Such non-payment of subsistence allowance

cannot make an *ex parte* enquiry invalid and inoperative. In this view of the matter, the management has fulfilled the requirement of principles of natural justice and the domestic enquiry conducted against the workman by the management is found to be fair and proper. The Issue No. (i) is answered accordingly.

9. *Issue No (ii)*—The management has categorically taken a plea of loss of confidence. The management sustained heavy loss on account of shortage of stocks of sugar, rice and wheat. The workman may not be responsible for such destruction or loss, but the enquiry report points out the guilty of the workman. The findings of the Enquiry Officer does not appear to be vague and perverse, and the reinstatement of the workman is not possible and the management cannot trust on him to discharge the responsibility. On perusal of the evidence adduced by the management as well as the workman it appears that after the dismissal and during pendency of the present case, the workman was reinstated in service vide Order No. 88, dated the 16th June 1994 and proved the order under the cover of Ext. 3. He has further stated that after reinstatement, he was again dismissed from the service vide Order No. 1680, dated the 13th December 2000 under the cover of Ext. 4. Even if assuming that the workman was reinstated after the case was referred to this Court for his misconduct, but this Court has no jurisdiction to entertain the same on the facts and circumstances of this case. Now reinstatement of the workman is not possible and the management cannot trust on him to discharge the responsibility. This Court has power under Section 11-A of the Industrial Disputes Act to alter the extreme penalty imposed on the workman, but no such circumstances are available before this Court to alter this punishment. No doubt, the loss already caused to the management was not an affair of one day and it must have taken some days or months for the loss or shortage. The workman being the custodian of the commodities could have brought it to the notice of the management in time. He has not taken an attempt to point out the same. Certain quintals of rice, sugar and wheat were found to be shortage and penalty was imposed on the management. So the additional charges were also framed against the workman. As the workman has not performed his duties and responsibilities to the satisfaction of the management, he is not entitled to any relief. The Issue No. (ii) is answered accordingly against the workman and in favour of the management.

10. Hence it is ordered :

That the discharge of Shri Umesh Chandra Behera, Ex-Sales Assistant from service by the management of Balasore Regional Co-operative Marketing Society, Balasore with effect from the 18th April 1989 is legal and justified. The workman is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED  
30-8-2011  
Presiding Officer  
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED  
30-8-2011  
Presiding Officer  
Labour Court, Bhubaneswar

By order of the Governor

T. K. PANDA

Under-Secretary to Government

