

# The Orissa Gazette



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### LABOUR & EMPLOYMENT DEPARTMENT

#### NOTIFICATION

The 29th October 2011

No. 9719—IR-(ID)-24/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th April 2011 in I. D. Case No. 12/2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Orissa Power Transmission Corporation Ltd., Electrical E.H.T. (O. & M.) Division, Choudwar, Cuttack and their Workman Shri Bikram Behera was referred to for adjudication is hereby published as in the Schedule below :

#### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 12 OF 2010

Dated the 5th April 2011

#### *Present :*

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

#### *Between :*

The Managements of . . . First-party—Management  
the Assistant General Manager,  
Orissa Power Transmission Corporation  
Ltd., Electrical E.H.T. (O. & M.) Division,  
Choudwar, Cuttack.

And

Shri Bikram Behera, . . . Second-party—Workman  
Junior Artisan "A", Electrical E.H.T.  
(O. & M.) Division, Choudwar, Cuttack  
represented by the General Secretary/  
President, Orissa Rajya Shramik  
Karmachari Sangha, E.H.T. (O. & M.)  
Division, At/P.O. Kapaleswar,  
Choudwar, Cuttack.

*Appearances :*

Shri Umesh Prasad Das, . . . For the First-party—Management  
 Authorised Representative.

Shri Sarat Chandra Mohanty, . . . For the Second-party—Workman  
 General Secretary, Orissa Rajya  
 Karmachari Sangha.

## AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them by sub-section (5) of Section 12 read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 2526—I.D.-24/2010-L.E., dated the 27th March 2010. The Schedule of reference runs as follows :—

"Whether the denial of promotion to Shri Bikram Behera, Junior Artisan 'A' to the post of Operator 'C' by the management of Orissa Power Transmission Corporation Ltd. and the Electrical E.H.T. (O. & M.) Division, Choudwar, Cuttack is legal and/or justified ? If not, what relief Shri Behera is entitled to ?"

2. The second-party/Union has raised the dispute under reference. According to the claim statement, the workman Shri Bikram Behera was initially appointed to work as a Helper in the establishment of the first-party. On 20-7-1988 the workman joined the post and successfully completed the period of probation. On 4-2-2005 he was promoted to the post of Junior Artisan-A. While continuing as Junior Artisan-A he was assigned with the duty of an Operator. So, he had acquired the practical experience of carrying out the duties of an Operator. On 25-9-2007 the Divisional Selection Committee Meeting was held to consider promotion of departmental candidates to the post of Operator-C. The workman was one of the candidates and he appeared before the said Committee on 25-9-2007. The Committee submitted its report showing the workman to have not qualified for promotion. It is contended by the second-party that the prescribed procedure to conduct the test for such promotion was not duly followed by the Committee. As per the prescribed procedure the departmental candidates are required to appear in a trade test which consists of practical test of 50 marks and *viva voce* test consisting of 20 marks and to be qualified for promotion a candidate must secure a total mark of 35 in both the tests. According to the second-party, the Committee did not conduct any trade test which vitiates the Selection Proceeding. It is claimed that had the management through the said Committee conducted the practical test the workman would have secured the qualifying marks and being the second senior most employee amongst all the departmental candidates who had faced the Selection Committee for promotion to the post of Operator-C, the workman would have been selected for promotion. It is further alleged that since the workman is an active member of the second-party/Union he suffered victimisation. It is specifically pleaded that the Head Clerk of the first-party establishment who is an office bearer of another Union, which is rival to the second-party/Union, was allowed to take part in the selection process who assisted the Selection Committee Members in conducting the interview and taking that opportunity, the Head Clerk could influence the Selection Committee Members to deny promotion to the workman.

3. In the written statement the management has taken the stand that the Departmental Promotion Committee (for short, 'D.P.C. '), which is the final authority in promotion matters did not find the workman qualified for promotion to the post of Operator-C after duly conducting practical

as well as *viva voce* test held on 25-9-2007. The allegation of victimisation has been denied by the first-party. Admitting that the Head Clerk assisted the Committee during the selection process, it is pleaded that the Head Clerk's role was limited to assisting the D.P.C. by taking the attendance of the candidates who had appeared before the D.P.C. on the said date. It is denied that the Head Clerk had influenced the members of the Committee to deprive the workman from getting promotion. The workman had appeared in the tests but could not qualify for promotion. Therefore, it is pleaded, the reference should be answered against the second-party.

4. Followings are the issues framed in this case :—

#### ISSUES

- (i) Whether the denial of promotion to Shri Bikram Behera, Junior Artisan-A to the post of Operator-C by the management of Orissa Power Transmission Corporation Ltd. and the Electrical E.H.T. (O. & M.) Division, Choudwar, Cuttack is legal and/or justified ?
- (ii) If not, what relief Shri Behera is entitled to ?

5. The second-party has examined the workman as W.W. No. 1 and another employee of the first-party as W.W. No. 2 who, like the workman, had appeared before the D.P.C. but was not recommended for promotion. The first-party has examined M.W. No. 1 who had appeared before the said D.P.C. but was recommended for promotion.

#### FINDINGS

6. *Issue No. (i)*—It is not in dispute that letter No. 12872, dated the 20th May 1988 marked Ext. 11 prescribes the procedure to be adopted for conducting trade test to select departmental candidates for promotion. It is also not disputed that though the management had issued intimation to the departmental candidates including the workman to attend a trade test on 26-9-2007, subsequently the candidates were intimated to appear for the test on 25-9-2007. It is also not in dispute that the workman as per the revised schedule had appeared before the Committee on 25-9-2007 to take part in the test. The second-party/Union challenges the selection on the ground that though the candidates were required to appear in practical test as well as the *viva voce* test, the D.P.C. did not conduct any practical test. In addition to that the Union has contended that the workman was victimised for the reason that he is a member of the second-party/Union. It is also contended that the seniority of the workman was not taken into consideration for which persons junior to him were given promotion.

Ext. 11 reflects that for promotion of departmental candidates to the next higher post, concerned candidate is required to appear in the trade test which consists of both practical test and *viva voce* test of 50 and 20 marks, respectively, and that a candidate will be considered as qualified for promotion if he secures 35 marks in both the tests taken together. It is further prescribed in the said exhibit that the performance report of the concerned candidate for preceding three years on the date of promotion will be taken for consideration. All these requirements are not in dispute. However, the contention of the second-party that practical test was never conducted by the D.P.C. for selecting the departmental candidates for promotion to the post of Operator-C is strongly denied by the management. W.W. Nos. 1 & 2 and M.W. No. 1 all had, admittedly, appeared before the D.P.C. which conducted the test on 25-9-2007. While W.W. Nos. 1 and 2 say that no practical test was conducted, M.W. No. 1 asserts that both practical test and *viva voce* test were conducted by the D.P.C. But the witnesses who have been examined by both sides are very much interested persons in as much as all of them had appeared before the D.P.C. on 25-9-2007 to face the test in

order to get selected for promotion to the higher post. W.W. Nos. 1 and 2 who were not successful for being recommended by the D.P.C. for promotion have claimed that no practical test was conducted whereas M.W. No. 1 who got promotion on the recommendation of the said D.P.C. has come forward to say that both practical and *viva voce* tests were conducted by the D.P.C. W.W. No. 2 is further interested to speak in favour of the second-party in as much as he, like the workman, is a member of the second-party/Union. The evidentiary value of each set of the witnesses stands in the same footing. Their respective oral evidence could not be demolished by way of cross-examination. Therefore, the other facts and circumstances may also be taken into consideration.

7. Ext. B is the Minutes of the D.P.C. held on 25-9-2007 and Ext. C is a chart containing the list of departmental candidates who had appeared in the trade test before the D.P.C., besides other data related to those candidates including the marks they had secured in the practical test as well as *viva voce* test. Ext. C reflects that marks for *viva voce* and practical tests were separately allotted to the candidates who had appeared in the trade test. So, it indicates that both practical and *viva voce* tests were conducted by the D.P.C. Ext. C also supports the management's contention that the workman failed to secure 35 marks in both practical and *viva voce* tests for which he was not considered for promotion. This documentary evidence supports the oral testimony of M.W. No. 1. There can also be a presumption that the members of the Committee, four in number, had conducted the test in the manner prescribed in the letter marked Ext. 11 which has been relied on by both sides. This presumption assumes enormous strength from the fact that several other unsuccessful departmental candidates did not challenge the trade test which the D.P.C. had conducted on 25-9-2007. Though W.W. Nos. 1 and 2 are members of the same Union which is arrayed as the second-party, it is not understood why the Union did not raise the dispute on behalf of all departmental candidates who are its members. Had there been such violation of the procedure laid down in Ext. 11 even the rival Union could have raised a similar dispute on behalf of its members who might have become unsuccessful in the trade test. So far the test for the post of Operator-C is concerned, there were as many as 13 departmental candidates who had appeared before the D.P.C. to be considered for promotion to fill up 7 vacancies in the cadre of Operator-C. So many other departmental candidates might have appeared before the D.P.C. for promotion to other cadres as well. It is not shown that on behalf of any other unsuccessful candidates the Labour Unions have challenged the legality of the procedure adopted by the D.P.C.

In view of the discussions made above this Tribunal is of the considered view that the D.P.C. had in fact conducted both practical test and *viva voce* test to select departmental candidates for promotion to the post of Operator-C.

8. On the plea of victimisation it may be mentioned that there is no evidence on record that the relationship between the workman and the management was strained on account of any trade union activities either of the workman or of the second-party/Union. Even it is not claimed that the concerned workman was an office bearer of the second-party/Union.

On the alleged victimisation, it is further stated that the then Head Clerk who was assisting the D.P.C. in conducting the trade test was an office bearer of another Union which is rival to the second-party/Union and being influenced by the Head Clerk the D.P.C. selected all the seven candidates belonging to the rival Union and deliberately deprived the workman from getting the promotion. This bald statement is devoid of any evidentiary value. It is admitted that the Head Clerk was assisting the D.P.C. in making arrangement for smooth conduction of the test but there is no reason to believe, without any material to support such a contention, that the Head Clerk was in a position to influence four members which constituted the D.P.C. who were all in managerial positions.

The mere fact that the Head Clerk was a member of the rival Union is not sufficient to discard the entire process of selection. Either the Head Clerk or any other staff would be needed to assist the D.P.C. Since there are more than one Unions and members of all the Unions are supposed to appear before a D.P.C. to get promotion to higher posts it would not be possible on the part of the management to find out a staff who is not a member of either of the Unions. Taking all these facts into consideration, this plea is also not found to be convincing enough.

In *Brooke Bond (India) (Private) Ltd. Vrs. their Workmen*, 1966(1) LLJ 402 (S.C.), the plea of victimisation did not find favour of the Hon'ble Supreme Court with the following observations :

"Turning now to the question of victimisation, we have already said that there is no clear finding of the Tribunal that there was victimisation. But it appears to be suggested in Para. 53 of the Award that the Tribunal felt that there was victimisation. Of the six superseded employees we find that only one was an official of the Union while the other five were merely members just like Manerikar. Dhume, it appears was not a member of the Union. But there was no evidence to show that there were any strained relations between the management and these six employees on account of their Trade Union activities. We have already said that five of them were ordinary members of the Union like Manerikar and only one, Balgi, was an official of the Union. But there is nothing to show that because of that there was any bad blood between Balgi and the management. We are, therefore, of the opinion that there is no evidence worth the name on which the Tribunal could have come to the conclusion that these two promotions were as a result of victimisation of those persons who were superseded."

Taking all these facts and circumstances into consideration this Tribunal is of the considered view that there is no iota of evidence on the plea of victimisation.

9. On the other plea that seniority of the workman was not taken into consideration while giving promotion to the post of Operator-C, it is to be stated that since the workman did not secure the qualifying mark in the trade test, his case was not considered for promotion. Therefore, even if he was the second senior most amongst departmental candidates who appeared before the D.P.C. for promotion to Operator-C post he cannot take the plea that his seniority was not given due weightage and for that the selection process got vitiated.

10. In *Brooke Bond's case (Supra)*, it is held by the Hon'ble Supreme Court that generally speaking, promotion is a management function, but there may be occasions when the Tribunal may have to interfere with the promotions made by the management where it is felt that persons superseded have been so superseded on account of *mala fides* or victimisation. In the case at hand, the second-party has failed to show that the workman was denied promotion on account of *mala fides* or victimisation. Therefore, the alleged denial of promotion to the workman cannot be said to be either illegal or unjustified.

The action of the management as against the workman is challenged on the ground that the D.P.C. did not conduct any practical test and that had there been such practical test the workman would have got selected for promotion. Ext. C reflects that as many as 17 departmental candidates had appeared in the trade test conducted by the D.P.C. on 25-9-2007. Once it is held that the D.P.C. did not conduct practical test and for that the selection process is illegal, then all the seven candidates who have got promotion will be affected. For that reason the Union ought to have impleaded atleast those 7 persons in whose presence the industrial dispute could have been decided. However, this Tribunal is not influenced by the fact that all those workmen have not been impleaded

as parties to the present proceeding. The second-party has utterly failed to establish its case for which the issue is to be answered against the second-party.

11. *Issue No. (ii)* does not require any deliberation in as much as the first issue has been answered in the negative.

12. In view of the discussions made above, it is held that the denial of promotion to Shri Bikram Behera, Junior Artisan 'A' to the post of Operator 'C' by the first-party/Management is neither illegal nor unjustified and accordingly he is found not entitled to any relief.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
5-4-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
5-4-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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By order of the Governor

T. K. PANDA

Under-Secretary to Government