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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th October 2011

No. 9745—IR-(M)-29/2011-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 25th May 2011 in Industrial Dispute Misc. Case No. 1 of 2007 (U/S 33-A) of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Chairman & Managing Director, N.T.P.C. Ltd., Scope Complex, 7, Institutional Area, Lodhi Road, P.S. Lodhi Road, New Delhi-110 003/The General Manager, N.T.P.C. Ltd., Talcher Thermal Power Station, At/P.O. Talcher Thermal-759 101, P.S. Colliery, P.S., Dist. Angul and their workmen (50) represented through Secretary, N.T.P.C. Power Workers Union, Talcher Thermal, Dist. Angul was referred to for adjudication is hereby published as in the schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC. CASE NO. 1 OF 2007

Dated the 25th May 2011

Present :

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

Between :

1. Shri Bijay Kumar Nayak, .. First Party—Managements
Emp. No. 094685
2. Shri Umesh Chandra Pradhan,
Emp. No. 095463
3. Shri Ganeswar Behera,
Emp. No. 094978
4. Shri Bhagaban Behera,
Emp. No. 095195

5. Shri Lingaraj Sahoo,
Emp. No. 095190.
6. Shri Sambhunath Mishra,
Emp. No. 095191.
7. Shri Balabhadra Behera,
Emp. No. 095193.
8. Shri Narendra Kumar Nayak,
Emp. No. 095273.
9. Shri Akshya Kumar Sethi,
Emp. No. 095462.
10. Shri Rabi Narayan Prusti,
Emp. No. 094830.
11. Shri Satyabadi Sahoo,
Emp. No. 094937.
12. Shri Bipin Kumar Mohanty,
Emp. No. 095005.
13. Shri Muralidhar Sahoo,
Emp. No. 094412.
14. Shri Duryodhan Behra,
Emp. No. 094436.
15. Shri Kshiranjana Kabi,
Emp. No. 094615.
16. Shri Srinibas Sahoo,
Emp. No. 094764.
17. Shri Prafulla Kumar Pal,
Emp. No. 094828.
18. Shri Pranabandhu Sethi,
Emp. No. 094865.
19. Shri Mahammad Sidique Khan,
Emp. No. 094884.
20. Shri Ananta Charan Behera,
Emp. No. 094913.
21. Shri Naba Kishore Ojha,
Emp. No. 094950.
22. Shri Bidyadhar Swain,
Emp. No. 094952.
23. Shri Kandarpa Sahoo,
Emp. No. 094954.
24. Shri Gadadhar Samal,
Emp. No. 095000.
25. Shri Debasish Ash,
Emp. No. 095001.
26. Shri Banshidhar Mandal,
Emp. No. 095095.

27. Shri Mayadhar Sahoo,
Emp. No. 095117.
28. Shri Purna Chandra Das,
Emp. No. 095127.
29. Shri Ranjit Sahoo,
Emp. No. 095157.
30. Shri Pratap Chandra Dalai,
Emp. No. 095192.
31. Shri Madhuri Behera,
Emp. No. 095198.
32. Shri Tripura Biswal,
Emp. No. 094048.
33. Shri Nirod Chandra Pal,
Emp. No. 094234.
34. Shri Lalit Mohan Mohanty,
Emp. No. 094322.
35. Shri Golak Bihari Jena,
Emp. No. 094402.
36. Shri Karunakar Thumba,
Emp. No. 094603.
37. Shri Baishnab Charan Mohanty,
Emp. No. 094621.
38. Shri Aparti Charan Sahoo,
Emp. No. 094739.
39. Shri Rasananda Debata,
Emp. No. 094751.
40. Shri Laxman Prasad Saila,
Emp. No. 094753.
41. Shri Gobinda Chandra Patra,
Emp. No. 094754.
42. Shri Janak Sahoo,
Emp. No. 094792.
43. Shri Baburam Bhanja,
Emp. No. 094882.
44. Shri Shirish Chandra Panda,
Emp. No. 094895.
45. Shri Dhuleswar Sahoo,
Emp. No. 095105.
46. Shri Gurudayal Singh,
Emp. No. 095109.
47. Shri Rabinarayan Senapati,
Emp. No. 095122.
48. Md. Ishak Hossain Khan,
Emp. No. 095148.

49. Shri Srinibas Sahoo,
Emp. No. 095156.
50. Shri Artatrana Panda,
Emp. No. 094308.
Represented through
Shri Samar Keshari Sahoo, Secretary,
N.T.P.C. Power Workers Union,
Qtr. No. 2RA-68 (Sec-2), P.O. Talcher
Thermal, P.S. Colliery P.S.,
Dist. Angul (Orissa)-759 101. . . Complainants—Workmen

And

1. The Chairman and Managing Director,
N.T.P.C. Ltd., Scope Complex,
7, Institutional Area, Lodhi Road,
P.S. Lodhi Road, New Delhi-110 003
2. The General Manager,
N.T.P.C. Ltd., Talcher Thermal Power Station,
At/P.O. Talcher Thermal-759 101
P.S. Colliery, P.S., Dist. Angul.
3. The Manager (HR-EB), N.T.P.C. Ltd.,
Talcher Thermal Power Station,
At/ Post Talcher Thermal-759 101
P.S. Colliery, P.S., Dist. Angul. . . Opposite Party—Managements

Appearances :

For the Complainants—Workmen	. .	Shri S. K. Sahoo, Authorised representative.
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For the Opposite Parties—Managements	. .	Shri A. K. Das, Authorised representative.

AWARD

On a complaint under Section 33-A of the Industrial Disputes Act, 1947 (for short, 'the I.D. Act') jointly filed by the above named 50 workmen this Misc. case has been registered.

2. Some relevant facts not disputed by either side are that the Talcher Thermal Power Station (for short, TTPS) was initially owned and managed by the erstwhile Orissa State Electricity Board (for short, O.S.E.B.). In the year 1994 TTPS was acquired by the State Government of Orissa and then it was transferred to the National Thermal Power Corporation Ltd., (for short, N.T.P.C.). The said acquisition and transferred was made under the provisions of the Talcher Thermal Power Station (Acquisition & Transfer) Act, 1994 (for short, the Acquisition Act). All the regular employees of TTPS including the complaints of this case have been absorbed in the N.T.P.C. Thus, TTPS has become a unit of N.T.P.C. which has another unit called "Talcher Super Thermal Power Project", Kaniha (for short, TSTPP).

Prior to registration of this Misc. case N.T.P.C. had transferred 126 workman from T.T.P.S. to T.S.T.P.P. Demanding that such transfer has caused reduction of work-force the Workers' Union

called “N.T.P.C. Power Workers Union, T.T.P.S.” raised a dispute before the District Labour Officer who took-up conciliation proceeding. The conciliation having failed the dispute has been referred to this Tribunal for adjudication. The reference runs as follows :—

“Whether the reduction of the the work force of the Talcher Thermal Power Station, Talcher by the Management of M/s N.T.P.C. Ltd., Talcher Thermal Power Station is legal, proper and/or justified ? If not, what should be the strength of work force and what should be the details ?”

The above mentioned reference has been registered as I.D. Case No. 2 of 2007 and it is still pending before this Tribunal. During pendency of the I.D. case the Management has transferred 50 more employees (the complainants herein) from T.T.P.S. to T.S.T.P.P. But, the Management has not obtained prior permission of this Tribunal u/S 33 of the I.D. Act.

3. According to the complaint petition, the transfer of the complainants from T.T.P.S. to T.S.T.P.S. being intended to bring about reduction of work force in T.T.P.S. the same amounts to change of service conditions which are prejudicial to them and the complainants being workmen concerned in the said industrial dispute the Management should have obtained prior permission of this Tribunal to effect reduction of work force by way of such transfer. It is further asserted that the authorities of N.T.P.C. have admitted during the conciliation proceeding that the Management wants to reduce the work force in T.T.P.S. from 2107 to 388. According to the complainants, such reduction is to the disadvantage of all the workmen of T.T.P.S. Their contention is that the Management in the grab of transfer has reduced the work force which results in change of service conditions to the disadvantage of the workmen.

In the complaint petition there is no specific mention as to how the impugned transfer is prejudicial to the complainants but in their rejoinder they have stated that because of their transfer to the other unit the complainants are getting less amount of generation incentive. That apart, if they were not transferred they would have availed the benefit of the scheme of voluntary retirement which is not available to the workmen of the other unit i.e., T.S.T.P.P. It is further contended that prior to their transfer they were subjected to the certified Standing Orders of the O.S.E.B. But, now they are being subjected to the provisions of the Certified Standing Orders of the N.T.P.C. which are less favourable to them, particularly with regard to leave and disciplinary matters.

4. In reply to the averments in the complaint petition, the O.Ps. have stated in their joint show cause that the transfer being not a condition of service the impugned action of the Management does not attract Section 33 of the I.D. Act. That apart, no prejudice has been caused to any of the employees in so far their service conditions are concerned. It is further contended that prior to the acquisition of T.T.P.S. there was surplus manpower in T.T.P.S. After acquisition the Management of N.T.P.C. instead of terminating the services of the surplus workmen, has decided to redeploy them in other units of N.T.P.C. within the provisions of the Acquisition Act, 1994. Since the requirement of work force in T.T.P.S. as per the guidelines issued by the Ministry of Power, Government of India is 388 N.T.P.C. has been redeploying the surplus manpower in a phased manner. In that process the complainants of this Misc. case have been transferred from T.T.P.S. to T.S.T.P.P. which does not result in reduction of work force, much less to the detriment of the service conditions of the workmen.

5. The following issues have been settled :—

ISSUES

- (i) “Whether the transfer of the 50 Nos. of workmen from Talcher Thermal Power Station, Talcher to Talcher Super Thermal Power Project, Kaniha amounts to alteration of conditions of service which were applicable to the complainants immediately before the commencement of the proceeding in I.D. Case No. 2 of 2007 ?
- (ii) Whether the alteration is in regard to any matter connected with the dispute under reference in I.D. Case No. 2 of 2007 ?
- (iii) Whether the alteration in the conditions of service is to the prejudice of the complainants/workmen ?
- (iv) To what relief, if any, the complainants are entitled ?”

6. It may be stated at the outset that the O.Ps./Managements do not dispute (i) that a proceeding in respect of an industrial dispute is pending before this Tribunal which is registered as I.D. Case No. 2 of 2007 and (ii) that the complainants are the workmen concerned in the pending dispute. Therefore, no issues have been framed on these two preconditions to the protection provided u/s 33 (1)(a) of the I.D. Act.

FINDINGS ON ISSUES SETTLED

7. *Issue Nos. (i) and (ii)*—On these issues it is to be thrashed out as to whether the transfer of the employees from one unit to another amounts to alteration of conditions of service which were applicable to them immediately before the commencement of the proceeding in I.D. Case No. 2 of 2007. and whether such alteration is in regard to any matter connected with the dispute under reference in I.D. Case No. 2 of 2007.

In the complaint petition it is not specifically stated as to what are the changes of conditions of service. But, in their rejoinder the complainants have specified as to what are the changes of conditions of service and those are narrated in Para. 3 of this Award.

8. The complainants have adduced evidence both oral and documentary. C.W. No. 1 has stated that the reduction of workmen’s strength occasioned by transfer of the complainants is disadvantageous to T.T.P.S. and its workmen. There is no other evidence to support this bald statement made by C.W. No. 1. C.W. No. 2 has stated in his deposition that because of the transfer of the complainants from one unit to the other the complainants have suffered reduction in the amount of “generation incentive”. He has further stated that consequent upon such transfer the complainants, who prior to their transfer, were governed by the Certified Standing Orders of the O.S.E.B., have now been subjected to the Certified Standing Orders of the N.T.P.C. He has further stated that the Certified Standing Orders of the O.S.E.B. is more favourable to the workmen so far it relates to the matter of leave, *ex gratia*, pension, besides disciplinary matters. He has further stated that some of the complainants, consequent upon their transfer, will be deprived of the benefit of Civil Service Pension Rules as well as Voluntary Retirement Scheme which were available to them in T.T.P.S. He has further stated that the reduction of work force consequent upon transfer of the complainants has enhanced the work burden on the existing work force. To support the claim that the complainants have suffered reduction in the amount of “generation incentive” they have exhibited the pay slips marked Ext. 7 series. The O.Ps. do not dispute that the complainants after their transfer to T.S.T.P.P. have been receiving “generation incentive” which is less than what they

used to receive while they were in T.T.P.S. But, it is not disputed by both the sides that the amount payable to the workmen as generation incentive varies from time to time depending on the extent of generation of power in the Power Plant. C.W. No. 2 has admitted in his cross-examination that consequent upon their transfer there is no reduction of pay, D.A. and other emoluments except in the matter of generation incentive and house rent allowance. It is suggested to C.W. No. 2 that those complainants who are not getting house rent allowance from T.S.T.P.P. are not eligible to get the same as they have retained their old quarters in T.T.P.S. Though the suggestion is denied by the witness, there is no positive evidence to show that consequent upon their transfer to T.S.T.P.P. the complainants are denied house rent allowance for reasons other than retention of old quarters in T.T.P.S.

Thus, it is proved that after their transfer to T.S.T.P.P. the complainants/workmen have been getting less amount of "generation incentive" than what they used to get while in T.T.P.S. It is admitted that the amount of incentive allowance fluctuates depending on the extent of power generation in the concerned power generation plant. In National Carbon Co. (India) Ltd. And Muktinath Singh & six others, reported in 1957 (II) LLJ 567 (I.a. Tribunal), the transferred workmen did not suffer any reduction in their basic wages and dearness allowances although there was fluctuation in the matter of their receipts in the shape of incentives. Hon'ble Labour Appellate Tribunal of India at Calcutta have observed that transfer of a workmen receiving, besides the normal wages, fluctuating amount by way of incentive to a job with lesser chances of earning such incentive but without prejudice to their normal wages could not be considered to be an adverse change in the conditions of service of the transferred workman. Therefore, even though the complainants herein get less amount of generation incentive consequent upon their transfer to T.S.T.P.P., it cannot be said that there has been any reduction of basic emoluments of the complainants effecting an adverse change in the conditions of their services.

9. The plea that the Certified Standing Orders of the O.S.E.B. were more favourable and beneficial to the complainants regarding leave and disciplinary matters is not found to be proved by the complainants by adducing evidence in support thereof. The bald statement of C.W. No. 2 that because of transfer of the workmen from T.T.P.S. to T.S.T.P.P. they are no more entitled to *ex gratia*, pension and the benefit of Voluntary Retirement Scheme is also not supported by any documentary evidence. Such allegation could have been proved by documentary evidence.

That apart, the same plea is not to be accepted when there is clear mention in Section 11 (1) of the Acquisition Act that every employee of T.T.P.S. absorbed in N.T.P.C. shall hold office or render service under the corporation on the same terms and conditions and with the same rights and privileges as to Pension, Gratuity, Leave and other matters as would have been applicable to him immediately before the vesting of T.T.P.S. in the State Government till his employment under the N.T.P.C. is duly terminated or until his remuneration and other conditions of service as a package are duly altered by the N.T.P.C. to his advantage. (Ext. A is a copy of the Acquisition Act).

O.P. W. No. 1 has stated that the Certified Standing Orders of O.S.E.B. are still made applicable to the workmen who have been transferred to T.S. T. P.P. This claim is supported by Ext. C/1, a copy of the letter, dated the 18th April 2002, which reflects that O.S.E.B. Certified Standing Orders

will continue to be applicable to T.T. P.S. employees till the same are modified. There is no evidence to counter this letter marked Ext. C/1. So, the plea that the complainants after their transfer have been subjected to be governed by the Certified Standing Orders of N.T.P.C. does not appear to be true.

10. The alleged changes of service conditions with regard to generation incentive, applicability of the Certified Standing Orders and denial of benefits under the Voluntary Retirement Scheme are all related to transfer of the workmen from one unit to the other. In *Cipla Ltd., Vrs. Jay Kumar & another*, reported in 2000 (84) FLR 80 (S.C.), it has been observed that transfer of an employee, when the employer has got the power to transfer would not amount to altering the conditions of service and therefore, Section 33 is not attracted. Under Section 10 (2) (a) of the Acquisition Act (Ext. A), the Management of N.T.P.C. has power to redeploy the absorbed employees of T.T.P.S. in T.S.T.P.P. or in any other project or Power Stations belonging to the N.T.P.C. Since the management has the power to redeploy the absorbed employees of T.T.P.S. in other Projects or Power Stations including T.S.T.P.P., the transfer of the complainants from T.T.P.S. to T.S.T.P.P. does not amount to altering their conditions of service.

11. However, the complainants takes the stand that in the grab of transfer the Management has caused reduction in the number of persons employed in T.T. P.S which amounts to a change in the conditions of service. It is fairly admitted by the O.Ps. that though at the relevant time 940 workers were working in T.T.P.S. only 388 workers are required and the surplus workers are to be redeployed in other units. It is also admitted that though a large number of workmen were transferred from T.T.P.S. to T.S.T.P.P. no substitute was posted for any of the transferred workman. Thus, the transfer of the complainants numbering 50 from T.T.P.S. to T.S.T.P.P. results in reduction in the number of workmen employed in T.T.P.S. Such reduction is one of the conditions of service enumerated in the Fourth Schedule of the I.D. Act.

Prior to the transfer of the complainants herein, the management of N.T.P.C. had transferred as many as 126 workmen from T.T.P.S. to T.S.T.P.P. Challenging such transfer on the ground that in the guise of transfer of workmen the management had reduced the work force, the N.T.P.C. Power Worker's Union has raised the pending industrial dispute. The dispute referred to this Tribunal is on the legality, justifiability and/or propriety of the reduction of work force of T.T.P.S. Subsequent to that reference N.T.P.C. has transferred the complainants herein which results in further reduction in the number of employees in T.T.P.S. This reduction which amounts to change of service conditions of the employees of T.T.P.S. is undoubtedly in regard to the matter connected with the dispute which is the subject matter of the pending reference. The subsequent reduction in the number of employees employed in T.T.P.S. amounts to alteration of the conditions of service which were applicable to the workmen of T.T.P.S. immediately before commencement of the proceeding in the pending reference. Since the complainants were the workmen of T.T.P.S. immediately before the commencement of the proceeding of the pending reference it amounts to alteration of conditions of service which were then applicable to them.

Thus, both the issues are answered in favour of the complainants.

12. Now, it is to be considered as to whether the alteration is to the prejudice of the workmen concerned in the pending dispute (I.D. Case No. 2 of 2007). Mere alteration in the conditions of service is not sufficient to attract the provisions of Section 33 (1) (a) of the I.D. Act. It must be prejudicial to the concerned workmen. The concerned workmen are all the workmen employed in T.T.P.S. as on the date the pending dispute was raised by the N.T.P.C. Power Workers Union. In my considered view, even if any prejudice has been caused to the complainants, it is because of their transfer from T.T.P.S. to T.S.T.P.P. and not on account of reduction in the number of employees employed. Therefore, the alteration in conditions of service of the complainants on account of the transfer will not be a relevant factor for the purpose of Section 33(1) (a) of the I.D. Act. Prejudice caused to the workmen, if any, must arise out of the reduction of manpower in T.T.P.S. There is absolutely neither any pleading nor any evidence as to how the concerned workmen have been prejudicially affected due to reduction of manpower. It is rightly argued on behalf of the O.Ps. that there is no allegation that the reduction in the number of employees has caused the concerned workmen to suffer over work. There is no iota of evidence showing that the reduction in the number of employees employed in T.T.P.S. has adversely affected the concerned workmen. It is not shown how it is prejudicial to the complainants, so also the other employees who are retained in T.T.P.S.

It is rightly argued on behalf of the O.Ps. that the reduction in the number of employees employed in T.T.P.S. in no way affects the complainants who have already been transferred to T.S.T.P.P. It may, it is submitted, adversely affect the workmen who have not been transferred from T.T.P.S., but no complaint has been filed by them or on their behalf. Though N.T.P.C. Power Worker's Union is arrayed as complainant No. 51, the petition does not appear to have been filed by the Union on behalf of all the concerned workmen. The complaint petition has been signed by all the 50 workmen who have suffered transfer and the verification has been made on behalf of the transferred workmen and not on behalf of the Workers' Union. The Secretary of the Union has put his signature on the body of the complaint petition but nothing is forthcoming from the complaint that it is made by the Workers' Union on behalf of all the employees who are still continuing in T.T.P.S. A trade union is not competent to make an application u/s 33-A of the I.D. Act unless it has been authorised to do so by the aggrieved employee(s). The authorisation to represent the complainants which is submitted in Form-G has been signed by the 50 workmen who have been transferred to T.S.T.P.P. They have authorised one of them to represent them. Therefore, even from the authorisation letter it is not found that the complaint has been filed on behalf of the employees who have not yet suffered transfer from T.T.P.S. The complainants are the 50 workmen who have already been transferred to T.S.T.P.P. Even if any change in the service conditions has occurred due to reduction of work force in T.T.P.S. it affects those who are still continued in T.T.P.S. and not those who have been transferred from T.T.P.S.

13. In view of the aforesaid discussions it cannot be said that the alteration, if any, in the conditions of service is prejudicial to the complainants.

Thus, the complainants have failed to prove that there has been a contravention by the employer of the provisions of Section 33 (1) (a) of the I.D. Act. Since such contravention has not been

established this Tribunal is not in a position to embark upon an adjudication of the dispute as to whether the orders passed by the employer to transfer the complainants are valid or not. [1968(II) LLJ 470, High Court of Kerala].

14. *Issue No. (iv)*— In view of my findings on Issue No. (iii), the complainants are not entitled to any relief. The Misc. case is answered against the Complainants/Workmen and disposed of accordingly.

Dictated and corrected by me.

RGHUBIR DASH
25-05-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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RAGHUBIR DASH
25-05-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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