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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 1st November 2011

No. 9800—IR(ID)-34/10-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th June, 2011 in Industrial Dispute Case No. 12 of 2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of M/s Sambalpur District Co-operative Central Bank Ltd., Bargarh and its workman Shri Sachidananda Barik was referred to for adjudication is hereby published as in the Schedule below :—

### SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER

LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 12 OF 2010

Dated the 29th June 2011

*Present :*

Miss Sarojini Mahapatra, M. A., LL. B.,  
Presiding Officer,  
Labour Court, Sambalpur.

*Between :*

The Management of .. First Party—Management  
M/s Sambalpur District  
Co-operative Central Bank Ltd.,  
Bargarh, At/P.O./Dist Bargarh.

And

Its Workman Shri Sachidananda Barik, .. Second Party—Workman  
At/P.O. Sohela, Dist. Bargarh.

*Appearances :*

For the First Party—Management .. Shri Gangadhar Barik  
A. I. (Legal) SDCC Bank Ltd.

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For the Second Party—Workman himself .. Self

## AWARD

This award arises out of the reference made by the Government of Orissa, Labour & Employment Department conferred by sub-section (5) of Section 12, read with Clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) in Memo. No. 7213 (5), Dtd. 27-8-2010 for adjudication the schedule question :

“Whether the action of the management of M/s Sambalpur District Co-operative Central Bank Ltd., Bargarh in dismissing Shri Sachidananda Barik, Accountant from services vide their Order No. 3528, Dt. 13-9-2007 is legal and/or justified ? If not, to what relief is Shri Barik entitled ?”

2. The case of the second party workman stated as follows :

Sambalpur District Co-operative Central Bank Ltd., Bargarh is an Industry and Shri Sachidananda Barik is a workman under the provision of Industrial Disputes Act, 1947. The workman started his service career under the Management with effect from 10-6-1975 having been appointed vide Management's Order No. 1806, Dt. 10-6-1975. In view of his sincerity, suitability and efficiency the Management promoted him to the post of Accountant and he was posted as Accountant at Sohela Branch Bank from 29-8-2003 to 18-7-2004 and from 11-3-2005 till date he was dismissed from service vide Management's Order No. 3528, Dt. 13-9-2007. During the service period at Sohela Branch Bank, the management framed charges against him and suspended him vide Order No. 12025, Dt. 28-3-2005. The following charges framed against him, such as (a) Criminal breach of trust for causing loss of Rs. 10.08 Lacs to Bank, (b) Negligence in duty, (c) Acting in a manner prejudicial to the interest of the Bank, (d) Unauthorised absence in duty, (e) Unauthorised handing over and taking over of keys and cash charges and handing of case balance of the Branch Bank, (f) Non-maintenance and non-signing of relevant registers of Branch Bank and (g) Acting in combination to cause loss of the Bank. The workman for the second time was posted as Accountant at Sohela Branch Bank on 11-3-2005 and his predecessor Shri Ananta Budek who had not given him/the charges of relevant records of the Bank till the date of incident and the alleged shortage amount of Rs. 10.08 lacs on 28-3-2005. So he was not able to maintain the relevant registers of the Bank. Since he was not taken the charge of the register of the office, he was unable to maintain the same. Further it is alleged that so far as the charge of unauthorised absence in duty is concerned, the workman has attended his duty on 28-3-2005 to 2-4-2005 and he has put his signature on the attendance register of the Sohela Branch Bank particularly meant for the employees of the Bank to establish their presence in duty. At the time of enquiry, the attendance register of the Bank was not verified by the Enquiry Officer. On 2-4-2005 all of the sudden the workman fall sick and was on leave. The management illegally dismissed him from his job without verifying the records and documents. So, the workman made a prayer for an order that the dismissal order of the workman passed by the management is illegal and unjustified.

3. The first party-management filed written statement alleging that the present case is not maintainable as the second party is not a 'workman' as per the definition of Section 2(a) of the Industrial Dispute Act, 1947. The Sambalpur District Co-operative Central Bank Ltd, Bargarh is a Co-operative Society registered under O. C. S. Act and the second party is not covered under the provisions of I. D. Act, 1947. The second party started his service with effect from 10-6-1975 and

later he was posted as Accountant at Sohela Branch from 20-8-2003 to 28-3-2005. The second party was suspended vide Order No. 11026, Dt. 28-3-2005 and dismissed vide Order No. 3528, Dt. 13-9-2007 with effect from the date of suspended.

4. Further, it is alleged in the Written Statement that during his incumbency as Accountant in Sohela Branch, the second party committed serious irregularities and misconduct for which he was suspended. Charges were framed against him along with the other employees. The charge sheeted employees submitted their explanation and being not satisfied with the explanation the management conducted enquiry by the Enquiry Officer. The Enquiry Officer conducted enquiry after giving all reasonable opportunities to the charge sheeted employees. The second party was charge sheeted along with other employees of the Bank for criminal breach of trust for an amount of Rs. 10.08 lacs and on the alleged day of occurrence the key of the cash safe was with the second party. It was the duty of the Accountant to maintain the registers of the Branch Bank but the registers were not properly maintained. For the negligence of the second party-workman, the management sustained heavy loss, lost public confidence and defamed in the locality. Considering the gravity of the incident and culpability the management (appellate authority) considered the appeal petition of other employees and reinstated in service. But the gravity of occurrence solely rest on the second party as the key of the iron safe was with the second party on the alleged day of occurrence. The second party is not a workman and his nature of duty was managerial in nature, hence this case is not maintainable under the Industrial Disputes Act, 1947 and the management made a prayer to dismiss this case.

5. The second party workman filed rejoinder stating that the second party is a workman of the first party-management as contemplated under Section 2(s) of the Industrial Disputes Act, 1947. His duty as Accountant is to attend the services of the customers of the Bank and to issue the Banks Drafts to the customers for the work of the Accountant is totally clerical in nature. The second party-workman denied all such allegations made against him by the first party-management.

6. Out of the pleadings of the parties the following issues have been framed for adjudication.

#### ISSUES

- (i) "Whether the domestic enquiry conducted by the first party-management is fair and proper ?
- (ii) Whether the action of the management of M/s Sambalpur District Co-operative Central Bank Ltd., Bargarh in dismissing Shri Sachidananda Barik, Accountant from services vide their Order No. 3528, Dt. 13-9-2007 is legal and/or justified ?
- (iii) If not, to what relief is Shri Barik entitled to ?".

7. Both the parties have filed their documents in support of their case. On behalf of the second party-workman Shri Sachidananda Barik the second party himself is examined as W. W. 1 on other issues whereas the first party-management has not adduced any evidence on other issue.

## FINDINGS

8. *Issue No. (i)* — This issue has already taken up for consideration as preliminary issue and as per Order Dt. 27-5-2011 passed by this Court, the domestic enquiry conducted by the management is fair and proper.

9. *Issue Nos. (i) and (iii)* — It is an admitted fact that the workman joined in the service on 10-6-1975. The second party-workman was working as Accountant at Sohela Branch from 29-8-2003 to 18-7-2004 and from 11-3-2005 to 29-3-2005. He was working as Administrative Inspector of Sohela Branch from 19-7-2004 to 10-3-2005. As per the case of the first party management the second party-workman Shri Sachidananda Barik as the Accountant failed to supervise the accounts of Sohela Branch. As a result the day book, double lock register, denomination register, Subsidiary Register, etc. were neither being maintained properly nor signed by the concerned persons. The second party-workman being the Accountant failed to check the accounts of the Branch from time to time during his incumbency. He has failed to submit any monthly confidential report on the work of each staff of the Bank functioning under his control. So, Shri Sachidananda Barik neglected in his duty. The second party-workman placed under suspension on 28-3-2005. After suspension the second party-workman was absent from Headquarters without prior permission from any authority unauthorisedly till 3-6-2005. So, the charges framed against him such as negligence in duty. Unauthorised absence from headquarters, Acted prejudicial to the interest of the Bank. In this respect the first-party management has filed documents which is marked as Ext. M2. Moreover it is apparent from Ext. M1 that the charges framed against the second party-workman along with others and the charges are—(i) Criminal Breach of trust for causing loss of Rs. 10.08 lacs to the Bank, (ii) Negligence in duty (iii) Acting in a manner prejudicial to the interest of the Bank (iv) Unauthorised absence from duties and headquarters, (v) Unauthorised handing over and taking over of keys and cash charges and handling of cash balance of the Branch Bank, (vi) Non-maintenance/non-signing of the relevant registers of Branch Bank and (vii) Acting in combination to cause loss to the Bank. As alleged from the case of the management, the second party-workman was involved in misappropriation of Rs. 10,08,000 (Rupees ten lakh eight thousand) in Sohela Branch without employees. The Accountant post is a managerial in nature and being Accountant, he is the head of the Branch. At the alleged date, the key of the defender self was with the second party-workman during that period the occurrence took place which was established in the enquiry proceedings. As per Ext. M 8 the order of the management, Dt. 13-9-2007 in pursuance of the decision of the Appt. Sub-Committee Meeting of the Bank held on 4-9-2007 Shri Sachidananda Barik, Accountant (second party-workman) u/s. Hqrs. with at H. C., Bargarh dismissed him from service of the Bank with effect from date of suspension.

10. The second party-workman stated in his evidence that during his incumbency of Accountant at Sohela Branch, he never been delivered with any physical charges of Account Section by Branch Manager of the Bank despite of approach by him. He was never in charge of physical possession of any key of the Bank at Sohela Branch. The second party-workman relied on some documents which are marked as Ext. W 1 to Ext. W 12. Ext. W 1 is the xerox copy of Order, Dt. 13-9-2007. Ext. W 2 is the xerox copy of Order. Dt. 28-3-2005. Ext. W 3 is the xerox copy of Order. Dt. 15-3-2005.

Ext. W 4 is the xerox copy of ticket for outdoor patient. Ext. W 5 is the xerox copy of C. I. application. Ext. W 6 is the xerox copy of extension of leave application. Ext. W 7 is the xerox copy of leave application. Ext. W 8 is the xerox copy of postal receipt, Ext. W 9 is the xerox copy of extension of leave application. Ext. W 10 is the xerox copy of receipt. Ext. W 11 is the xerox copy of extension of leave application. Ext. W 12 is the xerox copy of A. I. I. M. Hospital Outdoor patient Department. It is clear from the cross examination of the second party workman (W. W. 1) when he pointed out some fraud accounts and misappropriation of heavy amount he placed all the documents before the Branch Manager of the concerned Branch and subsequently all amounts deposited in the Bank Account. But he has not filed any written information before the concerned Branch Manager. The second party workman shows his ignorance regarding the misappropriation of cash of Rs. 10,08,000 from Sohela Branch while he was working as Accountant. He admitted that a G. R. case bearing No. 79 of 2005 is pending in the Court of learned J. M. F. C., Sohela against him and other employees alleging the misappropriation of cash of Rs. 10,08,000. The second party workman admittedly was working as Accountant at Sohela Branch and during the period of incumbency at Sohela Branch, a cash of Rs. 10,08,000 was misappropriated. Admittedly, he was working at Sohela Branch since 20-8-2003 to 18-7-2004 and 11-3-2005 to 28-3-2005 as Accountant at Sohela Branch. He admitted that he deposed of all the accounts matter and paper work. The second party workman failed to recollect whether he was bandling the cash previously without verifying the records. The second party workman submitted that he has not involved any misappropriation of Rs. 10,08,000 of Sohela Branch Bank. The Accountant is not the head of the Branch Bank, Sohela. Further he submitted that the key of the defender self was not with the second party workman at the alleged date.

11. On the otherhand, the representative of the first party management submitted that the Accountant post in a branch is managerial in nature and being the Accountant, he is the head of the branch. He further submitted that during his incumbency the key of the defender self was with the second party workman. The first party management relied on some documents which are marked as Ext. M 1 to Ext. M 13. Ext. 1 is the copy of chargesheet of D. P. No. 4233, Dt. 14-9-2005. Ext. M 2 is the copy of Additional Charge No. 4387, Dt. 20-9-2005. Ext. M 3 is the written statement of the workman. Ext. M 14 is the Enquiry Report in D. P. No. 4233, Dt. 14-9-2005. Ext. M is the Enquiry Report in D. P. No. 4381, Dt. 20-9-2005 Ext. M 6 is the show cause notice. Ext. M 7 is the reply of the second party workman. Ext. M 8, the first party management dismissed the second party workman from his service with effect from the date of suspension and as per Ext. M 8 the loss of the Bank of Rs. 10,08,000 alongwith interest up to date 14. 5% shall be recovered from his claims receivable from the Bank by dividing it equally amongst Shri M. D. Barik, B. M. (Retired), Shri A. K. Matari, sup.u/s(Retired), Shri D. N. Barik, A/S u/s and Shri Kirati Pradhan, Jr. Asst.u/s. Ext. M 9 is the party particular of the workman of March, 2005. Ext. M 10 is the certified copy of F. I. R. Ext. M 11 is the copy of job chart. Ext. M 12 is the copy of the order of the Hon'ble Court in W. P. (C) No. 127 of 2010. Ext. M 13 is the copy of Review petition.

12. As per the case of the first party management during the incumbency as Accountant at Sohela branch the second party workman committed serious irregularities and misconduct for which he was suspended and charges were framed against him alongwith other employees. The first party management being not satisfied with the written statement of the second party workman

appointed an Enquiry Officer to enquire about this matter. The Bank authority being not satisfied with the show cause in its sub-committee Dt. 4-9-2007 dismissed the second party workman from his service with effect from the date of suspension and communicated him vide Order No. 3528, Dt. 13-9-2007. The key of the iron safe was with the second party workman during the occurrence period and he was in charge of the iron safe. So, the plea taken by the second party workman that he was absent on leave application appears to be false. In this respect, besides the xerox copies of some applications there is no other documents filed by the second party workman nor the first party management. On perusal of the evidence on xerox as well as the documents filed by the parties it is clear that on the alleged date, the second party workman was the custodian of the key of the iron safe. On the next date on verification it was found that Rs. 10,08,000 was misappropriated, on the subsequent date the second party workman became absent in his Office and he has taken such plea that he was absent for the above period and has not misappropriated such amount from the iron safe. However the domestic enquiry conducted by the first party management was fair and proper. The first party management relied on the reported decision AISL-J-I-2007 (1) p. 50- Once charges are proved Court cannot interfere in penalty. The first party management also relied on another reported decision - AISLJ 2006(1) p. 78- Court shall not normally interfere in penalty. Court may interfere in cases of illegality, procedural irregularity or shocking penalty.

13. From the above facts and circumstances it can be satisfied that the first party management has proved the charge of misappropriation against the second party workman which is a serious misconduct. This type of incident now is rampant in society and increased like cancer. In case of misappropriation of huge quantity of money no relief should be extended to an employee. So, there is no thing to interfere on the decision held by the first party management so far as the punishment is concerned. In view of such facts and circumstances the second party-workman is not entitled to get any relief.

14. Admittedly the post of Accountant is a managerial in nature and the Accountant has the right to control his subordinates of the Accounts section of the office. Admittedly, the Accountant is an Officer hold double lock of the defender self and maintains cash of the alleged Bank. The Assistance Supervisors and other employees of the Accounts section generally are under the control of the Accountant. So taking all these facts into consideration it can be held that this case is not maintainable as the post of Accountant is managerial in nature. Accordingly the second party - workman is not entitled to get any relief in this case. Hence issue Nos. (ii) and (iii) are answered. Hence the award.

## AWARD

The reference is answered on contest but without cost. The action of the management of M/s Sambalpur District Co-operative Central Bank Ltd. Bargarh in dismissing Shri Sachidananda Barik, Accountant from services vide their Order No. 3528 dt. 13-9-2007 is legal and justified and he is not entitled to get any relief.

Dictated and corrected by me.

SAROJINI MAHAPATRA  
29-6-2011  
Presiding Officer  
Labour Court, Sambalpur

SAROJINI MAHAPATRA  
29-6-2011  
Presiding Officer  
Labour Court, Sambalpur

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