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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 25th November 2011

No. 10601—li-1(B)-39/1999-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th May 2011 in Industrial Dispute Case No. 199 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s O.T. Mills Ltd., Choudwar, District Cuttack and its workman Shri Bhubananda Jali was referred to for adjudication is hereby published as in the schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 199 OF 2008

(PREVIOUSLY REGISTERED AS I.D. CASE No. 19 OF 2000 IN THE
FILE OF THE P.O., LABOUR COURT, BHUBANESWAR).

Dated the 4th May 2011

Present :

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

Between :

The Management of M/s O.T. Mills Ltd., . . . First Party—Management
Choudwar, Dist. Cuttack.

And

Their Workman Shri Bhubananda Jali, . . . Second Party—Workman
S/o Raghunath Jali, Vill. Santal,
P.O. Kanak Rambha, Dist. Ganjam.

Appearances :

For the First Party—Management . . . None

For the Second Party—Workman himself . . . Shri B. N. Jali

AWARD

This is a reference u/s 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 922—li-1(B)-39/1999-LE., dated the 3rd February 2000 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., dated the 4th April 2008. The Schedule of reference runs as follows:—

“Whether the dismissal of Shri Bhubananda Jali, T.No. 5777 of Processing Department of O.T. Mills Ltd., Choudwar with effect from the 6th November 1996 was legal and/or justified ? If not, to what relief Shri Jali is entitled ?”

2. The claim statement stroy in short is that the second party/workman was a regular employee of the first party. On the 12th October 1994 he was not allowed to perform duty and his attendance card was seized. About ten months thereafter the first party framed charge sheet against him alleging his involvement in a theft case. His denial of the charge was not considered and one Advocate was appointed as the Enquiry Officer (for short, 'the E.O. ') to conduct domestic enquiry. The E.O. after conducting an enquiry submitted his report on the 10th October 1996. In that report the second party was exonerated from the charges. The Management being vindictive did not accept the report and directed for a fresh enquiry by appointing Shri P.K. Sahoo, its Deputy Manager, Personnel as the E.O. On receipt of the letter of the Management intimating the second party that a fresh enquiry was directed by the Management the second party asked the authority to supply him the copy of the proceedings of the previous enquiry. But, it was not considered. The workman then requested the second E.O. to see that the copy of the previous proceedings were made available to him. His repeated request on this count was not acceded to. The E.O. proceeded to take up the enquiry *ex parte* and on conclusion of the enquiry submitted his report finding the workman guilty. On that report the workman was dismissed from service vide Letter No. 4649, dated the 6th November 1996. It is alleged by the workman that before passing the dismissal order the Management did not serve a second show cause notice on him, nor a copy of the enquiry report was supplied to him. It is further pleaded that the second enquiry was not conducted by observing the principles of natural justice.

3. The first party did not appear before this Tribunal though there was due service of notice. Therefore, the first party has been set *ex parte*.

4. The workman has examined himself as W.W. No. 1. He has also exhibited some documents marked Exts. 1 to 9.

5. Since it is a case of dismissal preceded by a domestic enquiry, this Tribunal should first consider whether the enquiry has been conducted fairly observing the principles of natural justice.

In his affidavit evidence the workman has narrated the story which is narrated in his claim statement. On the fairness of the domestic enquiry it is his contention that though he was exonerated

from the charges by the first E.O., the Management being vindictive decided to make a fresh enquiry into the charges. But, before commencement of the second enquiry he was not served with a copy of the enquiry report as well as the enquiry proceedings recorded by the first E.O. It is also stated by the second party that the second show cause as well as the copy of the enquiry report of the second E.O. was not served on him before he was dismissed from service. It is further stated that the second enquiry was not conducted following the principles of natural justice.

Ext. 7 is a letter dated the 18th June 1996 served by the Management on the second party wherein it is mentioned that the first enquiry having not been conducted as per proper procedure, the Management was not going to accept the same and that it was decided by the Management to re-enquire into the matter for which Shri P.K. Sahoo, Deputy Manager, Personnel had been appointed as the E.O. From the contents of Ext. 7 it can be presumed that after the decision of the Management that the first E.O. had not conducted the enquiry as per proper procedure and before taking a decision to start enquiry afresh, no opportunity was given to the workman to be heard on that matter. In *Punjab National Bank and others Vrs. Kunj Behari Misra*, reported in 1998 Lab I.C. 3012, it has been observed that when the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent Officer must give him an opportunity of being heard. It is also observed that it will not stand to reason that when the finding in favour of the delinquent Officer is proposed to be overturned by the disciplinary authority then no opportunity should be granted. Further observation of their Lordships is that the principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing.

6. Basing on the principles laid down in the aforesaid case, it is to be held that the Management ought to have given an opportunity to the workman to be heard on the authority's decision not to accept the report of the first E.O. and to start the enquiry afresh. The Management has not filed written Statement controverting the assertions made in the claim statement. Therefore, it is to be presumed that the averments made in the Claim Statement are correct. Since evidence of W.W. No. 1 goes unchallenged the same is also to be accepted. The workman has in clear terms deposed to the effect that the first E.O. in his report had recorded findings in his favour exonerating him from all the charges. From Ext. 7 it is deduced that the workman was not given an opportunity to be heard on the proposed initiation of a fresh enquiry. Therefore, the principle of natural justice is found to be infringed. Accordingly, this Tribunal holds that the enquiry was not held fairly and properly observing the principles of natural justice.

7. Since the Management has abstained from taking part in the proceeding of this case and it has not come forward with the plea that in case the enquiry is found to be unfair, opportunity be

given to it to prove the charges by adducing evidence before this Tribunal, this Tribunal has no other option but to hold that the order of dismissal is neither legal nor justified. Consequently, the workman is entitled to be reinstated in service with full back wages.

The reference is answered accordingly.

Dictated & corrected by me.

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

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

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