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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 30th November 2011

No. 10780–li/1(BH)-54/1997(Pt.)-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. 196 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial dispute between the Management of Ispat Alloys Ltd., Balasore and its Workman Shri G. S. Rout was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 196 OF 2008  
(Previously registered as I. D. Case No. 87 of 1999  
in the file of the P.O., Labour Court, Bhubaneswar.)

Dated the 30th August 2011

*Present :*

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Management of M/s Ispat Alloys Ltd., . . . First Party–Management  
At Balgopalpur, P.O. Rasulpur, Dist. Balasore.

And

Its Workman Shri Golak Sekhar Rout, . . . Second Party–Workman  
S/o. Bauri Charan Rout,  
At/P.O. Sahada, Dist Balasore.

*Appearances :*

Shri P. P. Mohanty, Advocate . . . For the First Party–Management  
Shri S. K. Das, Advocate . . . For the Second Party–Workman

## AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, the 'Act') made by the Government of Orissa in the Labour & Employment Department vide their Order No.13731-li/1(BH)-54/1997(Pt.)-LE., Dt. 23-10-1999 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 04-04-2008. The schedule of reference runs as follows:—

“ Whether the action of Ispat Alloys Ltd., Balgopalpur in terminating the services of Shri Golak Sekhar Rout, Jr. Engineer w. e. f. the 20th September 1996 is legal and /or justified ? If not, what relief Shri Rout is entitled to ? ”

2. This being a case of dismissal of the workman preceded by domestic enquiry and the management having pleaded in its written statement that if the enquiry is found by this Tribunal to be not fair and proper, then the management would adduce evidence on merit of the case, this Tribunal has taken up the issue on the fairness of the domestic enquiry as a preliminary issue and has passed orders on 13-05-2011 recording the pleadings of the parties, the issues settled on their pleadings and the findings on the preliminary issue. The preliminary issue has been answered in favour of the workman and the domestic enquiry is held to be unfair and improper. Therefore, findings on the remaining issues, i.e. Issue Nos. 1 & 2 are recorded hereunder.

## FINDINGS

3. *Issue Nos. 1 & 2* : Consequent upon this Tribunal's finding that the domestic enquiry was not found to have been conducted fairly and properly. Opportunity was given to the management to prove the charges by adducing evidence before this Tribunal. Though the management took adjournment on three dates but ultimately it did not take any step on 27-07-2011 and thereafter. Thus, the management has failed to adduce evidence on the charges framed against the workman. Therefore, it is held that the charges could not be proved by the management. Consequently, the termination of service by way of dismissal of the workman w.e.f. the 20th April 1996 is neither legal nor justified and the workman is entitled to be reinstated in service with full back wages and other service benefits. In case the workman has reached the age of superannuation as per the standing orders applicable to the parties, then he shall be entitled to get back wages till the date of his superannuation.

4. The order, dated 13--5-2011 (comprising of ten pages) containing findings on Issue No. 3 related to the fairness of the domestic enquiry do form part of this Award.

The reference is answered accordingly and the management to implement the Award within a period of two months of the date of its publication in the *Official Gazette*.

Dictated and corrected by me.

RAGHUBIR DASH  
30-08-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
30-08-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR  
INDUSTRIAL DISPUTE CASE No. 196 OF 2008  
(Previously registered as I. D. Case No. 87 of 1999  
in the file of the P.O., Labour Court Bhubaneswar)

Dated the 13th May 2011

*Present :*

Shri Raghubir Dash, O.S.J.S. (Sr. Branch),  
Presiding Officer, Industrial Tribunal,  
Bhubaneswar.

*Between :*

The Management of M/s Ispat Alloys Ltd., . . . . . First Party–Management  
Balasore.

And

Shri Golak Sekhar Rout, . . . . . Second Party–Workman  
S/o. Bauri Charan Rout,  
At/P.O. Sahada, Dist Balasore.

*Appearances :*

Shri P. P. Mohanty, Advocate . . . . .	For the First Party–Management
Shri S. K. Das, Advocate. . . . .	For the Second Party–Workman

ORDER

This is a reference under Section 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.13731-li/1(BH)-54/1997(Pt.)-LE., Dt. 23-10-1999 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 04-04-2008. The Schedule of reference runs as follows:–

“ Whether the action of Ispat Alloys Ltd., Balgopalpur in terminating the services of Shri Golak Sekhar Rout, Jr. Engineer w. e. f. 20th September 1996 is legal and /or justified ? If not, what relief Shri Rout is entitled to ?”

2. There is no dispute that the second party first joined to work as a Junior Engineer (Trainee) under the first party on 18th March 1994. Subsequently, he was appointed on probation basis for a period of six months w.e.f. 18th March 1995 and on completion of the probation period he was confirmed on 18-9-1995 as Junior Engineer.

3. It is pleaded in the claim statement that on 14-12-1995, the second party workman was falsely implicated by the first party in a case of theft of a 'T' Handle a tool worth Rs. 50.00 only. On the allegation of theft he was asked to show cause and was put under suspension pending disciplinary proceeding. The Management appointed a person of their own choice as the Enquiry Officer (For short, the 'E.O.')

in a biased manner. In course of the enquiry, the workman was not given a fair chance of hearing. On conclusion of the enquiry, the E.O. submitted his report recording a finding that the charges were proved. However, a copy of the report was never served on the workman. The disciplinary authority, without following the provisions contained in the certified standing orders (For short. 'C.S.O.') of the first party, out-rightly passed order dismissing the workman from his service w.e.f. 20th September 1996. The second party thus takes the stand that the disciplinary proceeding being unfair and ill-intended and the punishment being disproportionate, the impugned order be set aside and the workman be reinstated in service with back wages and other service benefits.

4. In the written statement the management, has taken the stand that the disciplinary action taken against the workman was fair, proper and in accordance with its C. S. O. According to the management, one Shri S.K. Nair, an Advocate, was appointed as the E.O. who conducted the enquiry in presence of the workman as well as his co-employee. The workman fully participated in the enquiry. On completion of the enquiry, the E.O. submitted his report on 30-8-1996 holding the workman guilty of all the charges. After careful examination of the enquiry report and the charges found proved being serious in nature, the disciplinary authority passed the impugned order dismissing the workman from service.

In the written statement, the management has pleaded that it relies on the outcome of the domestic enquiry and in case it is held by this Tribunal that the enquiry is not fair and proper, the management would reserve its right to adduce evidence on merit of the case.

5. Since the management relies on the domestic enquiry and reserves its right to adduce evidence on merit, if the enquiry is held to be unfair, this Tribunal following the principle laid down in Cooper Engineering Ltd., Vrs. P.P. Mundhe, 1975 (31) FLR 188(S.C.) has taken up the issue on the fairness of the domestic enquiry as a preliminary issue.

6. Basing on the pleadings of the parties, the following issues have been setted:-

#### ISSUES

- (1) Whether the action of the management of Ispat Alloys Ltd., Balgopalpur in terminating the services of Shri Golak Sekhar Rout, Junior Engineer w. e. f. 20th April 1996 is legal and/or justified ?
- (2) If not, what relief Shri Rout is entitled to ?
- (3) Whether the domestic enquiry has been conducted fairly ?

7. To adduce evidence on the preliminary issue, the management has examined the Enquiry Officer as M.W. No. 1. After cross-examining, the witness the workman took adjournments to adduce evidence on the preliminary issue but subsequently, he abstained from taking part in the proceeding of this case. Therefore, argument on the preliminary issue has been heard in the absence of the workman.

Findings on Issue No. 3 which is taken up as a preliminary issue:

8. In the claim statement, there are general allegations that the E.O. while conducting the enquiry acted at the will of the management and conducted the enquiry in a biased manner without giving the workman a fair opportunity of being heard. The specific allegation contained in the claim

statement is that a copy of the enquiry report was not served on him and the disciplinary authority passed the order of dismissal in a mechanical manner without following the provisions contained in the C.S.O. During cross-examination of the E.O. it is brought on record that even though the management had not raised any objection against the workman's prayer for permission to engage an advocate to defend him in the enquiry proceeding, the E.O. rejected his prayer. It is suggested to but denied by the E.O. that the workman's prayer for supply of the entire of the C.S.O. and one Instrument Issue Register was refused by him and that without proper appreciation of materials which were favourable to the workman, E.O. prepared the enquiry report and being influenced by the management the E.O. recorded the charges to have been proved even though there were no supporting materials. The order sheets of the enquiry proceeding containing the day-to-day proceeding, the deposition of witnesses recorded during the enquiry and the enquiry report have been exhibited by the management through the E. O. The order passed by the E.O. on 29-1-1996 reflect that the Workmen's petition to allow him to engage a lawyer was rejected by the E.O. on the ground that no lawyer was engaged by the first party and that the delinquent-employee is a well educated person. The order sheet does not reflect that the management had ever raised any objection against the workman's prayer to engage an advocate. Since a serious charge of commission of theft of the company's property had been made against the workman, the E.O. ought to have allowed the workman to engage an advocate, more so when there was no objection from the side of the management.

9. The order dated 23-4-1996 passed by the E. O. reflects that the workman had made a prayer to the E.O. to direct the management to supply him a copy of the Tools Issue Register but it was rejected by the E.O. with an observation that the workman might peruse the register if the same be produced and proved by the management. Here also the order sheet does not reflect that the management had ever raised any objection against the workman's prayer to supply him the copy of the said Register. At a latter stage it will be discussed as to how the register seems to be an important piece of evidence. But, at this stage this much can be said that the E.O. without assigning any reason rejected the workman's prayer for supply of copy of the Tool Issue Register.

10. The same order, dated 23-4-1996 further reflects that the workman had made a request to supply him the complete C.S.O. of the first party which was rejected by the E.O. with an observation that the relevant portions of the C.S.O. having already been supplied to the workman, the prayer to supply the complete C.S.O. was not tenable. It is not possible on the part of this Tribunal to know as to whether all the relevant portions of the C. S.O. were supplied to the workman. It also does not appear from the order sheets maintained by the E.O. that he was satisfied after due enquiry that all the relevant portions of the C.S.O. were supplied to the workman. When the management had no objection the E. O. ought to have allowed the workman's prayer. However, it is neither pleaded nor found from the materials available on record that for non-supply of the entire C.S.O. the workman was prejudiced. That apart, the workman being an employee of the first party is presumed to be aware of the contents of the entire C.S.O. which stands in the footing of a Statute. But the refusal of the E.O. to supply a copy of the complete set of the C.S.O. to the workman without sufficient reason is kind of a tendency to reflect on his conduct as an E.O.

11. Now I shall proceed to consider the effect of refusal of the E.O. to supply a copy of the Tool Issue Register. Neither the inquiry report nor the order sheets maintained by the E.O. reflect that the Register was produced by the management and it was exhibited. Therefore, the workman did not get an opportunity to refer to the entries made in the register and could not take advantage of favourable entry, if any, made therein. On a perusal of the statements of the witness recorded during the enquiry along with the enquiry report it is found that the workman's plea was that the tool called 'T' Handle which is said to be the stolen property was received by the workman on being issued to him by one Shri B.K. Sahoo, a Junior Engineer of the first party. Said B.K. Sahoo was examined before the E.O. as management witness No. 5. He has stated before the E.O. that on the date of the alleged incident he had issued one 'T' Handle to the workman at the time he relieved the workman from 'C' shift duty. He has also stated that he had made necessary entry in the Tool Issue Register. So, it is quite clear that a Tool Issue Register used to be maintained and one of the management witnesses supported the workman's plea that the tool was issued to him after being entered in the Tool Issue Register. Therefore, the Tool Issue Register is a material piece of evidence which could not be brought to the notice of the E.O. and for that the workman could not substantiate his plea. For this reason this Tribunal is of the considered view that the refusal on the part of the E.O. has caused prejudice to the workman.

12. Now, I shall proceed to consider the specific plea taken by the second party on non-supply of a copy of the enquiry report. This specific plea taken in para-10 of the claim statement has not been specifically denied by the first party. There is no claim from the side of the first party that a copy of the enquiry report was served on the workman. In *Sarv U. P. Gramin Bank Vrs. Manoj Kumar Sinha*, AIR 2010(S.C.) 2491, Hon'ble Supreme Court have held that non-supply of a copy of the enquiry report will not vitiate the enquiry if no prejudice has been caused to the workman. So, it is to be examined as to whether prejudice has been caused to the workman. Ext. 4 is the copy of the enquiry report. On a perusal of the report it is found that though the workman had examined two witnesses the E.O. has hardly dealt with their evidence and has not assigned any reason as to why their evidence was ignored by him. That apart, at page-5 of the enquiry report it is mentioned that one of the two witnesses examined by the workman had stated that the delinquent-workman handed over the 'T' Handle to Mr. B.K. Sahoo but the latter refused to take it. As a matter of fact none of the two witnesses examined by the delinquent has stated so.

The management has examined B. K. Sahoo as M.W.No. 5. According to the workman, said B. K. Sahoo had issued the 'T' Handle to the workman. Said B. K. Sahoo has stated before the E. O. that he had issued the 'T' Handle to the workman. About the time of entry in the Tool Issue Register he has stated that since the Register was not readily available and he was to attend to one troubled engine at the relevant time he could not make entry in the Register till 8.50 A.M. even though he had issued it to the workman at about 6.10 a.m. in spite of such favourable statement made by M. W. No. 5 the E. O. has not given any weightage to such statement merely observing that at the pre-domestic enquiry stage M. W. No.5 had submitted a written statement (made Ext. 2 during the enquiry) wherein he had stated that to save the delinquent-workman he had made entry in the Tool Register. This document is submitted before this Tribunal by the first party. On a bare perusal of the document it can be found that said B. K. Sahoo has never stated that he did not

issue the tool to the workman. Rather, in the document it is mentioned that he had issued the tool to the workman but he made the entry in the Register at about 8.15 A.M.

Had a copy of the enquiry report been served on the workman the could have pointed out all these aspects to the disciplinary authority. In . G. R. Venkateswar Reddy Vrs. Karnatak State Road Transport Corporation, 1995 LLR 338, Hon'ble Karnatak High Court have observed that where the enquiry authority is different from the disciplinary authority the employee shall be furnished with a copy of the enquiry report and be permitted to make a representation to the disciplinary authority against the findings recorded in the enquiry report. In the facts and on the circumstances of the case on hand, this Tribunal is of the considered view that non-supply of a copy of the enquiry report has caused prejudice to the workman.

13. The workman's plea that after receipt of the Enquiry Officer's report the disciplinary authority out-rightly passed order of dismissal implies that a second show-cause notice was not served on him. The management has not pleaded specifically that as a matter of fact a second show-cause notice was served on the workman. This is also in violation of the principles of natural justice .

14 Thus, it is found that the E.O. arbitrarily did not allow the workman to engage an Advocate, refused to ask the management to produce the Tool Issue Register and to supply the complete set of its C. S.O. to the workman and he was blind to that part of the evidence placed before him which was very much favourable to the workman. That apart, a copy of the enquiry report was not served on the workman, besides failure on the part of the disciplinary authority to serve a second show-cause on the proposed punishment. For all these reasons this Tribunal arrives at the conclusion that the enquiry was conducted in an unfair and improper manner causing prejudice to the workman

Issue No. 3 is therefore answered in favour of the workman.

Dictated and corrected by me.

RAGHUBIR DASH  
13-05-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

RAGHUBIR DASH  
13-05-2011  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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