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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 26th March 2011

No. 3085-II/1(SS)-45/2006(pt.)-LE.-In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th December, 2010 in I. D. Case No. 38 of 2006 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Rourkela Steel Plant, Rourkela and its workman Shri S. Panda, Operator-cum-Technician 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. 38 OF 2006

The 18th December 2010

Present :

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

Between :

The Management of Rourkela Steel Plant . . . First-party-Management
represented by the Deputy General Manager,
Water Resources Department, SAIL,
Rourkela Steel Plant, Rourkela.

And

Their workman Shri S. Panda, Operator-cum- . . . Second-party-Workman
Technician of Water Management Department
represented through the Deputy General Secretary,
Rourkela Mazdoor Sabha, Bisra Road, Rourkela.

Appearances :

1. Shri L. K. Nayak, Deputy Manager (Law) . . . For the First-party-Management
2. Shri J. K. Dash, Sr. Manager (Law).

Shri B. B. Sahoo, . . . For the Second-party-Workman
Authorised Representative.

AWARD

This case 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. 11211(6) dated the 18th December 2006 for adjudication of the Schedule questions :-

“Whether the action of the management of Rourkela Steel Plant by inflicting the punishment on Shri Sadasiva Panda, PI. No. 940440 Operator-*cum*-Technician of Water Management Department of Rourkela Steel Plant by way of reducing his basic pay by two stages i.e. from Rs. 5,605 to Rs. 5,409 is legal and/or justified ? If not, to what relief Shri Panda is entitled ?”

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

The second-party workman denied the charges formed against him by the first-party management with the allegation for occupation of the Company's land unauthorisedly and running a coaching centre at the Club House for commercial purposes illegally, violating the standing order of the company which amounts to be a misconduct under Clause 28 (a) of the Standing Order of the Company. The second-party workman made an appeal as per the Standing Order 33 which was not taken into consideration by the appellate authority. So, the second-party workman made a prayer for an order quashing the order dated 3rd December 2004 passed by the Deputy General Manager, Water Management Department and for any other relief.

3. The case of the first-party management stated as follows :-

The Deputy General Secretary of Rourkela Mazdoor Sabha has no *locus standi* to raise the dispute although the dispute relates to an individual workman. As the dispute raised by the Union is not supported by substantial number of workman of the first-party management, the same is not an Industrial Dispute as defined under Section 2 (k) of the I. D. Act, 1947 and it is not maintainable. There are thousands of quarters under the occupation of R. S. P. employees within its Township constructed by the R.S.P. over the landed property acquiring from the Government. In the said Township some unused lands are still existing in vacant position including the land adjacent to some quarters. So, used of company's vacant land for any other purpose without permission of the authority amounts to unauthorised occupation of Company's land. If any employee is in occupation of Company's land without obtaining any permission from the authority or unauthorisedly liable to be proceeded against departmentally for misconduct under the Standing Order of the Company in addition to eviction there from under the House Allotment Rules. When the staff of the Land Section of the first-party management inspected the spot found that the second-party workman unauthorisedly occupied some portions of Company's land nearer to his allotted quarters and the second-party raised construction unauthorisedly. When the concerned wings of the first-party management tried to demolish the said construction, the second-party obstructed then with the help of other. So, charge-sheet was issued on 17-10-2002 against the second-party workman for such unauthorised construction over the Company's land. Thereafter, when the first-party management was dissatisfied in the reply of the second-party workman formed an enquiry committee and provided all the opportunities to the second-party workman to defend his case. The charge was established against

the second-party workman. Accordingly the Disciplinary authority imposed punishment as a Disciplinary measure by reducing the basic pay of the second-party workman from Rs. 5,605 to Rs. 5,409 in accordance with the Certified Standing Orders of the Company. Rejoinder filed by the second-party workman denying his unauthorised occupation of the company's land.

4. Out of the rival pleadings of the parties, the following issues have been framed for adjudication:—

ISSUES

- (i) "Whether the reference is maintainable ?
- (ii) Whether the domestic enquiry conducted by the management is fair and proper ?
- (iii) Whether the action of the management of Rourkela Steel Plant by inflicting punishment on Shri Sadasiva Panda, Pl. No. 940440, Operator-cum-Technician of Water Management Department of Rourkela Steel Plant by way of reducing his basic pay by two stages i.e. from Rs. 5,605 to Rs.5,409 is legal and/or justified ?
- (iv) If not, to what relief Shri Panda is entitled ?

5. Both the parties have filed their documents in support of their respective cases.

On behalf of the second-party workman, two witnesses including the second-party workman were examined. W. W. 1 Shri Sadasiva Panda, the second-party workman, W.W. 2 Shri Antaryami Maharana.

None examined on behalf of the first-party management.

FINDINGS

6. *Issue No. ii*—"Whether the domestic enquiry conducted by the first-party management is fair and proper. This issue has already been decided as per the order Dt. 17-3-2010 and it was held that the domestic enquiry conducted by the first-party management is proper and fair.

7. *Issue No. iii*—The second-party workman Shri Sadasiva Panda is a R.S.P. employee. A chargesheet Dt. 17-10-2002 was served to him alleging to have committed misconduct of unauthorised occupation of Company's land at Sector-15 under the Standing Order 28(xix) (a). W.W. 1 Shri Sadasiva Panda stated in his evidence that after receiving the order of punishment Ext. M-7 Dt. 3-12-2004, he made an appeal Dt. 22-12-2004. Ext. W. 2 as per the Standing Order 33 to the General Manager which was also not considered at all. The so called Appellate Authority has not disposed of the appeal but one Shri P. K. Sahu, Junior Manager (PL), S & I communicated to him vide Ext. M.8, Dt. 3-1-2005 that his appeal was considered by the Appellate Authority and was rejected as it was found to be devoid of merit. There is no order as such given to him by the Appellate Authority. Further it is alleged from his evidence that Ext. M-8 cannot be said as an order passed by the Appellate Authority. He admitted in his evidence that on 30-3-1994 he joined in R.S.P. in S-1 grade. Subsequently, he got his promotion i.e. S-1 to S-2, S-2 to S-3, He further admitted in his evidence that he has received the letter Ext. M-8 regarding the result of his appeal. Moreover, W.W. 1 admitted in his evidence that he has not conformed about the case of the other employees against whom he has filed the documents Ext. W. 11 to Ex. W. 13 and he heard a little bit about the

case. So, as the second-party workman has no knowledge about the said document, the documents Ext. W.11 to Ext. 13 are not relevant to the case of the second-party workman which are not proved.

8. W.W. 2 Antaryami Moharana stated in his evidence that he was the General Secretary of the Golden Eagle Club. The office of the Club was functioning in a temporary house constructed by the members of the Club which was situated at H. Block of Sector 15 of Rourkela Steel Plant. This house was constructed during the year 1999 and he has involved personally in construction of the house of the Club. During the year 2001 they constructed the boundary wall of the Club for plantation in the vacant land of R.S.P. In the year 2001 the estate land guards demolished a portion of the above boundary wall. As per his evidence the second-party workman was not a member of their Club. However, in support of his case this witness has failed to file any document. It is apparent from the evidence of W.W.1 that he is residing in H. Block, Basti, Sector 15, Rourkela along with his family members without taking any permission from R.S.P. authority. He admitted that he is unauthorisedly occupying one shop room at Sector 17, Laxmi Market. There is no existence of the Golden Eagle Club which had been constructed by him and his associates. Shiv Sankar Malla and Pradip Kumar Nanda were two Joint Secretaries of the said Golden Eagle Club but they are not examined by the second-party workman in this case. There is no incriminating materials elicited from the evidence of W.W. 2 supporting the case of the first-party management. However, he has filed Ext. W. 14 the xerox copy of the proceeding of enquiry held on 29-7-2003 without any objection. The second-party relied on the documents which are marked Ext. W-1 to Ext. W-14. The learned representative on behalf of the second-party workman submitted that the Enquiry Committee's finding is motivated and perverse and the first-party management has imposed the punishment on the delinquent/workman without verifying his past records and who inflicted punishment is not authorised person to pass such an order as per the delegation of power. The learned representative of the first-party management submitted that after verifying all the documents, the Enquiry Committee has submitted the findings against the second-party workman which is not perverse nor motivated. In this respect, the first-party management has filed the relevant documents such Ext. M-4 to Ext. M-8 which are filed on admission and the second-party workman has raised no objection to these above documents. So, the submission led by the representative of the workman has no force at all. On admission Ext. M-9 to Ext. M-11 are filed. The authority who initiated the punishment is an authorised person to pass such an order as per the delegation of power. The Disciplinary Authority duly scrutinised the representation Dt. 15-10-2004 made by the second-party workman. The Disciplinary Authority accepted the findings of the Enquiry Committee after verifying all the documents. It was found that the second-party workman unauthorisedly occupied the Company's land which is serious acts of misconduct in terms of the Standing Order of the Company.

9. As per Ext. M-7, the D.G.M., Water Management Department intimated to the second-party workman that after going through the proceedings and findings of the Enquiry Committee as well other relevant papers in connection with this case, they came into conclusion that the charge of unauthorised occupation of Company's land is established against the second-party workman. Thereafter, taking all these facts into consideration he has taken a lenient view and decided to impose a lesser punishment with reduction of the basic pay by two stages in his existing pay and scale of pay as a disciplinary measure. Accordingly, the basic pay is reduced from Rs. 5,605 to Rs. 5,409. All the documents filed by the first-party management have been exhibited on admission by the second-party workman. Ext. M-9 is the Personal Policy Circular No.654–Delegation of Disciplinary powers in respect of employees covered under the Standing Orders. Ext. M-10 is the Circular No. 104–Debar period for promotion in case of disciplinary action. Ext. M-11 is the Circular No. 110–promotion in case of disciplinary proceedings.

10. Admittedly, the first-party management has a Certified Standing Order in accordance with the provisions of the Industrial Employment (Standing Order) which includes enumeration of misconduct under the Standing Orders 29(1) and 29 (2). When the alleged misconduct is/are proved which need to be dealt with as per the provisions made under the Standing Orders 30-35. The second-party workman relied on the decisions reported in 1883 (48) L.R.P. 508-521 of *M/s Glaxo Laboratories (I) Ltd., Vrs. Presiding Officer, Labour Court, Meerut and Other*—"Having examined the matter both on principle and precedent, it would clearly emerge that Clause-10 of S.O. 22 which collects various heads of misconduct must be strictly construed, being a penal provision in the sense that on the proof of misconduct therein enumerated, penalty up to and inclusive of dismissal from service can be imposed". The learned representative for the second-party workman submitted that this Court can take a decision to wipe out the punishment imposed by the first-party management even if the domestic enquiry was found to be fair and proper. He further submitted that while inflicting the punishment the unblemished record of service for 10 years of the second-party workman have not been taken into consideration at all and the order of the punishment Ext. M-7 is totally silent about this case. So, he relied on the reported decision in 1974 (II LLJ at page 184). The Hon'ble High Court of Bombay held that "The Industrial Tribunal, therefore, has to give careful consideration on the findings on which the order of discharge or dismissal or any other punishment is meted out and there should be sufficient materials to show that the punishment authority had applied mind to the various allegations and what kind of punishment could ultimately be meted out to him". As per the Standing Order 30 (e) (f)-if, after enquiry, an employee is adjudged guilty of the misconduct alleged against him or some other misconduct brought out in the course of the enquiry and punishment is awarded, the employee shall not be entitled to any remuneration for such period other than the subsistence allowance already paid to him.

No order of removal or dismissal from service shall be made by an authority lower than the appointing authority of the employee. In awarding the punishment the management shall take into account the gravity of the misconduct, the previous record of the workman and any extenuating or aggravating circumstances that may exist. A copy each of the orders passed by the management shall be supplied to the workman concerned. In the case in hand, the management has taken steps as per the norms of the Standing Order. The management has verified all the documents. Ext. M-7 disclosed all these facts. The documents filed by the first-party management discloses that the Disciplinary Authority has imposed punishment on the workman keeping in view all the provisions of the Standing Order. The representative of the second-party workman submitted that the allegation mentioned in the Chargesheet Ext. M-1 are not in accordance with the Rules enumerated the misconduct under Clause 28 (xix) (a) and the chargesheet Ext. M-1 is not maintainable in the eyes of law as per the settled position in the case of *M/s Glaxo Laboratories Vrs. Labour Court* (earlier mentioned). After going through the evidence on record as well as documents it was found that as per Ext. M-1 the second-party workman was charged with having committed the act of misconduct, i.e. "Unauthorised occupation of Company's Land". It amounts to an act of misconduct in accordance with the Clause 28 (xix) (a) of the Standing Orders of the Company. So, Ext. M-1 is the relevant document which has been filed by the first-party management on admission. When Ext. M-1 to Ext. M-9 are marked on admission there is no question to raise dispute by the second-party workman regarding these documents at this stage. The learned representative of the second-party workman further placed another point alleging that non of the exhibits, i.e. Ext. M-1 to Ext. M-5 reveals that the second-party workman encroached the house is used as commercial purposes. Admittedly, it reveals in these documents that the second-party workman is unauthorisedly occupying the company's land near his quarters and the reason of unauthorised occupation is best known to the workman. Many points beyond the pleadings raised

by the learned representative of the second-party workman which are not relevant for this case. The learned representative for the first-party management also vehemently objected on the points raised by the second-party workman beyond pleading.

11. The first-party management relied on the reported decisions-2009-IV-LLJ-191 (Orissa)-Mangalam Timber Products Ltd. and Shri Sailesh Kumar Gantayat. In yet another decision in the case of Divisional Controller, N.E.K.R.T.C. Vrs. H. Amaresh, 2006-III-LLJ-232, the Supreme Court held that once a domestic Tribunal based on evidence comes to a particular conclusion, normally it is not open to the Tribunal and Courts to substitute their subjective opinion in place of the one arrived at the domestic Tribunal. The first-party management has relied on the decision-(2005) 7 Supreme Court cases 764-Administrative Law-Natural Justice-*Mala fides*/colourable exercise of power-proof/burden of proof-Held, said burden is very heavy-Allegations of *mala fides* are often more easily made than made out and very seriousness of such allegations demands proof of high degree of credibility. The burden of proving *mala fides* is on the person making the allegations and the burden is "very heavy". There is every presumption in favour of the administration that the power has been exercised *bona fide* and in good faith. It is to be remembered that the allegations of *mala fides* are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility.

12. In the instant case, although the second-party workman made allegation against the first-party management that the management with some *mala fide* intention inflicted punishment against him in this case, but he has failed to prove regarding the *mala fide* intention of the first-party management. The first-party management relied on the reported decision-2000 (85) F.L.R. 381-"The promotion to a post and more so, to selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employee and his case is to be treated differently. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. While considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified". The first-party management relied on the reported decision-2006(5) Supreme Court Cases-201-if the enquiry is fair and proper then in the absence of any allegations of victimisation or unfair labour practice the Labour Court has no power to interfere with the punishment imposed. Section 11A of the Industrial Disputes Act, 1947 gives ample power to the Labour Court to re-appraise the evidence adduced in the enquiry and also sit in appeal over the decision of the employer in imposing punishment. But that Section is applicable only in the case of dismissal or discharge of a workman. Since Section 11A was not applicable, the Labour Court had no power to re-appraise the evidence to find out whether the findings of the Enquiry Officer were corrected or not or whether the punishment imposed was adequate or not.

The power of the Labour Court in absence of Section 11A are illustrated by this Court in Workman Vrs. Firestone Tyre & Rubber Co. of India (P) Ltd. When enquiry was conducted fairly and properly in absence of any allegations of victimisation or *mala fides* or unfair labour practice, the Labour Court has no power to interfere with the punishment imposed by the management. Since Section 11A is not applicable the Labour Court has no power to re appraise the evidence to find out whether the findings of the Enquiry Officer are corrected or not or whether the punishment imposed is adequate or not. So in view of such fact this Court has no power to interfere on the punishment imposed by the first-party management when the domestic enquiry was fair and proper.

13. In view of such facts and circumstances, the management has taken the proper steps by reducing the basic pay of the second-party workman by two stages, i.e. from Rs. 5605 to Rs.5409. Accordingly this issue is answered.

14. *Issue No.i*—In view of such facts and circumstances, the reference is not maintainable and the workman is not entitled to get any relief in this case. Hence the award.

AWARD

The reference is answered on contest but without any cost. The action of the management of Rourkela Steel Plant by inflicting the punishment on Shri Sadasiva Panda, PI. No.940440 Operator-*cum*-Technician of Water Management Department of Rourkela Steel Plant by way of reducing his basic pay by two stages, i.e. Rs. 5605 to Rs. 5409 is legal and justified and the second-party workman is not entitled to get any relief in this case.

Dictated and corrected by me.

S. MAHAPATRA
18-12-2010
Presiding Officer
Labour Court
Sambalpur

S. MAHAPATRA
18-12-2010
Presiding Officer
Labour Court
Sambalpur

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