

The Orissa Gazette



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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 6th April 2011

No. 3614—li/1 (B)-140/1998-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th January 2011 in Industrial Dispute Case No. 178/2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the management of M/s. O. T. Mills Ltd., Choudwar, Cuttack and their workman Shri Bijay Kumar Jena was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 178 OF 2008

(Previously registered as I. D. Case No. 201 of 1998 in the file of
the P. O., Labour Court, Bhubaneswar)

The 18th January 2011

Present :

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

Between :

The Management of . . . First-party Management
M/s. O. T. Mills Ltd.,
Choudwar, Cuttack.

And

Shri Bijay Kumar Jena, . . . Second-party Workman
T. No. 5930, Processing Department,
O. T. M. Labour Colony,
Qrs. No. E-13/4, Choudwar, Cuttack.

Appearances :

| | | |
|-----------------------|-----|----------------------------------|
| NONE | . . | For the First-party Management |
| Shri Bijay Kumar Jena | . . | The Second-party Workman-himself |

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. 13843-li/1(B)-140/1998-L.E., dated the 2nd December 1998 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/1-21-32/2007-L.E., dated the 4th April 2008. The Schedule of reference runs as follows :—

"Whether the dismissal of Shri Bijay Kumar Jena, T. No. 5930 of Processing Department by the management of O. T. Mills Ltd., Choudwar with effect from the 29th September 1997 is legal and/or justified ? If not, what relief Shri Jena is entitled to ?"

2. In the claim statement the workman has taken the stand which runs as follows :

In the year 1977, the workman had joined to work under the first-party management. On the 15th March 1997 he was suspended on the ground of misconduct in course of employment. On the 19th March 1997 he was served with a charge sheet wherein it was falsely stated that while he was stealing 24 Mtrs. of cloth the Security Guards caught him red handed inside the Factory premises. The workman submitted his explanation denying the charge. Being not satisfied the management initiated a disciplinary proceeding against him. Shri A. Acharya, Manager (Personnel) who had issued the charge sheet was appointed as the Enquiry Officer (for short, the 'E. O.'). When the workman received notice from the E. O., he submitted a letter to the E. O. seeking for an adjournment of the enquiry proceeding on the ground that at the relevant time his wife was suffering from Tumour and was undergoing treatment. But, the E. O. did not allow time and proceeded with the enquiry in the absence of the workman. The enquiry conducted by the E. O. was not fair and principles of natural justice were not followed. Vide letter dated the 20th September 1997 the workman was asked to submit show-cause on the finding that he was found guilty of the charge. Though he was asked to meet the Managing Director in person on the 23rd September 1997, he was not allowed to meet the Managing Director. The workman submitted his reply to the second show-cause dated the 20th September 1997. He was dismissed from service with effect from the 29th September 1997. Though the workman was kept under suspension for a period of six months, the management did not pay him subsistence allowance for the whole period of suspension. Though the allegation in the charge sheet was that the workman had committed theft of property worth Rs. 528.00, he was awarded with the harshest punishment. The workman has challenged the fairness of the disciplinary proceeding on the grounds that the authority who had issued and signed the charge sheet was also appointed as the E. O., that the E. O. did not adjourn the enquiry proceeding and proceeded *ex parte* even though the workman had prayed for an adjournment on the ground of illness of his wife, that subsistence allowance was not paid to the workman for the entire period of his suspension;

that even though the workman was asked to meet the Managing Director in person on the 23rd September 1997, he was not allowed to meet the Managing Director and that the punishment of dismissal on the alleged theft of property worth Rs. 528.00 is highly disproportionate.

3. Despite of due service of notice on the Management on more than one occasion the Management has neither appeared nor filed its Written Statement to defend the Order of dismissal. Therefore, the first-party has been set *ex parte*.

4. The workman has adduced evidence by examining himself as W. W. No. 1. The order of dismissal has been marked as Ext. 1

5. The legality and/or justifiability of the Order of dismissal of the workman with effect from the 29th September 1997 is to be decided by this Tribunal.

6. It is admitted by the workman that a domestic enquiry was conducted by the management before the impugned order of dismissal was passed. Therefore, the question of fairness of the domestic enquiry is to be decided first. As already stated, the workman has challenged the fairness of the domestic enquiry on the following grounds :—

- (1) The authority who had issued and signed the charge sheet was also appointed as the E. O. ;
- (2) The E. O. did not adjourn the enquiry proceeding and proceeded *ex parte* even though the workman had prayed for an adjournment on the ground of illness of his wife ;
- (3) Subsistence allowance was not paid to the workman for the entire period of his suspension ; and
- (4) Even though the workman was asked to meet the Managing Director in person on the 23rd September 1997, he was not allowed to meet the Managing Director.

7. No authority has been cited to support the stand that the authority who has issued and signed the charge sheet ought not to be appointed as the E. O. to enquire into the charges contained in the charge sheet. So, on that ground the *bona fide* of the management and the fairness of the domestic enquiry cannot be doubted.

Though in the claim statement the workman has asserted that though he had sought for an adjournment on the ground of illness of his wife, the E. O. did not entertain the application and in a hasty manner proceeded with the enquiry setting him *ex parte*, the management has not filed any counter to defend its action. In absence of any evidence from the side of the management and basing on the sworn testimony of W. W. No. 1, the contention raised by the workman and supported by his sworn testimony is to be accepted as true. It is claimed by the workman that at the relevant time his wife was seriously ill for which she was undergoing treatment and the workman was attending to her. Therefore, he had valid ground in support of his prayer for an adjournment which the E. O. ought to have taken into consideration. It is not on record as to whether the E. O. had given an opportunity to the workman by adjourning the enquiry proceeding. It is also not on record as to whether the workman repeatedly took adjournment on the self-same ground in order to avoid taking part in the disciplinary proceeding. Therefore, basing on the sworn testimony of the workman this Tribunal takes the view that the workman was not given sufficient opportunity to defend his case.

Though it is pleaded that the workman was not paid subsistence allowance it is not shown as to how he was prejudiced for non-payment of subsistence allowance. In *U. P. State Textile Corporation Ltd. Vrs. P. C. Chaturvedi and others*, reported in 2006 (109) FLR 411 (S.C.), it is observed by their Lordships that unless prejudice is shown and established, mere non-payment of subsistence allowance can not *ipso facto* be a ground to vitiate the proceedings in every case. It is further observed that it has to be specifically pleaded and established as to in what way the affected employee is handicapped because of non-receipt of subsistence allowance.

Though it is alleged that the workman was directed to meet the Managing Director in person but he was not allowed to meet him, there is no documentary evidence to prove that he was actually directed to meet the Managing Director. It is also not clarified as to who did not allow the workman to meet the Managing Director. It is also not clarified as to for what purpose he was required to meet the Managing Director and whether his failure to meet the Managing Director had caused any prejudice to him. So, this ground is also not taken into consideration while dealing with the question on the fairness of the domestic enquiry.

8. Since it is held that the workman was not given sufficient opportunity to enable himself to take part in the enquiry proceeding, it is to be presumed that the enquiry was not conducted in a fair manner. As a consequence, it is to be presumed that no disciplinary proceeding was taken up against the workman before the order of dismissal was passed against him and for that reason the order of dismissal is illegal.

9. In the result, the workman is entitled to be reinstated with full back wages and other service benefits. The management to comply with the direction within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
18-1-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

RAGHUBIR DASH
18-1-2011
Presiding Officer
Industrial Tribunal, Bhubaneswar

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