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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 11th May 2012

No. 3753—li-1(B)-8/2000(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 28th March 2012 in I. D. Case No. 246 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s East Coast Breweries and Distilleries Ltd., Paradeep (Sales Office, Cuttack) and its Workman Shri Netrananda Rout was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 246 OF 2008

(Previously registered as I. D. Case No. 12 of 2001 in the file of the Presiding Officer,
Labour Court, Bhubaneswar)

The 23rd December 2011

The 28th March 2012

Present :

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

Between :

The Management of M/s East Coast Breweries and Distilleries Ltd.,
Paradeep (Sales Office, Cuttack). .. First Party—Management

And

Their Workman Shri Netrananda Rout,
C/o Shri N. K. Mohanty, Rajendranagar,
(Mohanty Lane), P.O. Madhupatna,
Cuttack. .. Second Party—Workman

Appearances :

Shri N. K. Mishra, Advocate	.. For the First Party— Management
Shri S. Dash, 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 Odisha in the Labour & Employment Department vide their Order No. 5056—li-1 (B)-8/2000-LE., Dt. 4-4-2001 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., Dt. 4-4-2008. The Schedule of reference runs as follows :

“Whether the termination of employment of Shri Netrananda Rout, Peon with effect from the 7th June 2000 by the management of M/s East Coast Breweries & Distilleries Ltd., Paradeep is legal and/or justified ? If not, what relief Shri Rout is entitled to ?”

2. It is not in dispute that the second party workman was a Peon in the establishment of the first party. He was in service since 27-10-1987 and removed from service with effect from the 7th June 2000 on charge of committing theft of the first party's property, i.e. one 'Kodak' Camera, after the charge found established in a domestic enquiry.

According to the second party, he faced the domestic enquiry on false allegation of commission of theft of Company's property. At the relevant time, he was attached to the D.G.M. who was in charge of the Company's Sales Office at Cuttack. He was often asked to do duty in the office as well as at the residence of the D.G.M. Shri Bhaskar Rath, the then D.G.M. used to harass him whenever he could not attend to the private work of the D.G.M. Due to the super cyclone of the year 1999, the Sales Office remained closed from 29-10-1999 to 4-11-1999. On 5-11-1999, the office was opened and the D.G.M. asked the workman to verify the condition of the Godown and to find out whether there was leakage of water. While the workman was verifying the Godown, the D.G.M. came and falsely accused him of having committed theft of some gift materials. Next day, the workman was asked not to come to the office. On 12-11-1999, the workman was served with a charge sheet containing the following charges :—

“It is reported against you that on 5-11-1999 while you are in duty at about 2-30 P.M. you took the Gift Godown Key from Mr. Bhaskar Rath, D.G.M. with the pretext to check the water leakage inside the Gift Godown. At that moment, you have been seen taking out one Kodak Camera from inside the Gift Godown and suddenly kept the same in the wooden box, kept outside where you are preparing tea for office staff. When you were caught red-handed by the D.G.M., you apologised for committing the offence.

The above act committed by you amounts to major misconduct i.e., theft of Company's property, gross negligence in duty as per the Certified Standing Order of the Company.”

The workman submitted his explanation. The management decided to conduct an enquiry. One advocate was appointed as the Enquiry Officer (for short, 'E.O.'). The E.O. conducted the enquiry in a partial manner. Though nothing had come out against the workman, the E.O. submitted his report holding the workman guilty of committing theft of the Company's property. The Chief Executive of the first party called the workman to show cause as to why he should not be dismissed from service. A copy of the E.O.'s report was served on the workman. The workman submitted his show cause. The authority did not consider his show cause and passed order removing him from

service with effect from the 7th June 2000. It is claimed that there was no proper enquiry in terms of the Rules and Regulations and that the punishment awarded to the workman is shockingly disproportionate.

3. The management's stand is that on 5-11-1999, the workman took the key of the Gift Godown from the D.G.M. on the pretext of checking the Godown to find out, if there was leakage of water. Sometime thereafter the workman was seen taking out one Kodak Camera from the Godown and then keeping it in a wooden box kept outside where the workman used to prepare tea for the office staff. The D.G.M. caught him red-handed. The workman apologised. However, the D.G.M. reported the incident and on that basis, the management charge-sheeted the workman as per the Certified Standing Orders of the Company. The workman was placed under suspension with effect from the 5th November 1999 afternoon. An independent enquiry was conducted. The enquiry was conducted fairly and properly. Being satisfied that the workman had committed a major misconduct order was passed by the Chief Executive removing the workman from service.

4. The following issues have been settled :—

ISSUES

- (i) Whether the termination of employment of Shri Netrananda Rout, Peon with effect from the 7th June 2000 by the management of M/s East Coast Breweries & Distilleries Ltd., Paradeep is legal and/or justified ?
- (ii) If not, to what relief Shri Rout is entitled ?
- (iii) Whether the domestic enquiry conducted against the workman is fair and proper ?

5. Since it is a case of dismissal and the fairness of the domestic enquiry is under challenge, the issue on the fairness of the domestic enquiry is taken up as a preliminary issue and the parties having been asked to adduce evidence on the preliminary issue, the workman has examined himself as W.W. No. 1 and the management has examined the E.O. as M.W. No. 1. On behalf of the workman Exts. 1 to 10 and on behalf of the management Exts. A to H have been marked.

FINDINGS ON THE PRELIMINARY ISSUE,

i.e. Issue No. (iii)

6. In the claim statement, the workman has not mentioned the specific grounds on which he claims the proceeding in the domestic enquiry to be not fair and proper. But, in his affidavit evidence, he has enumerated various grounds in an attempt to prove that the domestic enquiry is unfair. The grounds so taken in the affidavit evidence shall be hereinafter dealt with in details.

7. It is stated by the workman (W.W. No. 1) that the person who charge-sheeted him namely, Shri M. K. Rajguru was subsequently appointed as the Management's Representative to present the management's case before the E.O. It is further alleged that Shri Rajguru had personal bias against the workman. Ext. A is the charge-sheet which is signed by the Personnel Manager of the Company. Ext. A further reflects that the charges were framed "by order of the Chief Executive." Therefore, it cannot be said that the Personnel Manager had charge-sheeted the workman. It is not disputed that the person who signed the charge-sheet was appointed as the Management's

Representative for the purpose of the enquiry. But, there is no evidence showing that the Management's Representative had any personal bias against the workman and the appointment of the Management's Representative, who had signed the charge-sheet had caused any prejudice to the workman. Therefore, this contention is not considered to be material for the purpose of the issue under consideration.

Further contention is that copy of documents and list of management's witnesses were not supplied to the workman prior to holding of the enquiry. However, the workman admits that on the first date of enquiry, i.e. 28-12-1999, he submitted a representation to furnish the documents and list of witnesses and on 4-2-2000, the same were furnished to him in course of the enquiry proceeding. The copy of the order sheets of the enquiry proceeding marked Ext. D reflects that on 4-2-2000, the workman was allowed to be represented by an Advocate and copy of the documents relied on by the management were supplied to him and the enquiry proceeding was adjourned to 19-2-2000. On 19-2-2000 and subsequent dates, the E.O. recorded evidence in the enquiry. The workman does not claim that because of non-supply of copy of documents and list of witnesses prior to 4-2-2000, he was prejudiced in any manner. It is found that before the E.O. proceeded to record evidence the workman was served with copy of the documents and list of witnesses.

The aforesaid plea that before commencement of enquiry copy of documents and list of management's witnesses were not furnished to the workman for which he had to make representation on 28-12-1999, has been taken in the affidavit evidence for some other purpose. It is alleged that even though the workman was present on 28-12-1999 and submitted a representation alleging non-supply of documents, the E.O. did not accept his representation, refused to reflect his petition in the order sheet and falsely mentioned in the order sheet that the workman refused to sign the order sheet. For that kind of conduct on the part of the E.O., it is alleged, the workman found that the E.O. was biased and for that he made a representation to the Chief Executive to change the E.O. which was not accepted. The order sheets of the proceeding maintained by the E.O. reflect that on 28-12-1999, the first date of enquiry, the Management's Representative offered the copy of list of documents along with list of witnesses but the workman refused to receive the same and that at the end of the day's proceeding, the workman refused to sign the order sheet. It is also not disputed that on 29-12-1999, the workman made a representation to change the E.O. on the allegation that the E.O. was completely biased and partial. Admittedly, the management did not change the E.O. After rejection of the workman's prayer to change the E.O., the same E.O. conducted the enquiry through several sittings. The workman was allowed to be represented by an Advocate. Save and except the imputation made against the E.O. in respect of the proceeding dated the 28th December 1999, the workman had never made any other allegation on the E.O.'s impartiality. Even in the affidavit evidence, W.W. No. 1 has not alleged any partial or bias conduct as against the E.O. The workman's grievance that copy of documents and list of witnesses were not supplied to him has been mitigated in time. After that, there is no allegation of any instances reflecting on the impartiality of the E.O. Therefore, this point is also not relevant for the purpose of the preliminary issue.

8. The most important ground raised by the workman is that even though he wanted to examine Shri A. K. Singh, Chief Executive of the Company who, according to the management, is an eye

witness to the alleged incident the E.O. did not allow him to do so merely on baseless objections raised by the Management's Representative. The enquiry proceeding exhibited in this case reflects that the management examined three witnesses on the charges framed against the workman. Thereafter the workman filed a petition before the E.O. to allow him to examine Shri A. K. Singh, the Chief Executive. The Management's Representative objected to the petition taking the stand that Shri A. K. Singh was not an eye witness to the incident. The E.O. disposed of the petition observing that no specific permission of the E.O. is necessary to enable the workman to examine any witness from his side. Therefore, after closure of evidence from the side of the management the workman filed a petition requesting the E.O. to summon Shri Singh as a witness. When the Management's Representative reiterated the same objection, the E.O. declined to summon Shri Singh observing that the witnesses who had already been examined had stated that Shri Singh was not an eye witness.

In order to prove the charges the management has examined three witnesses before the E.O. All of them claim to be eye witnesses. While adducing evidence before the E.O. they have stated that Shri A. K. Singh, the Chief Executive is not an eye witness. On behalf of the workman it is submitted that in the report of the D.G.M., Dt. 5-11-1999 on the basis of which the workman was charge-sheeted, it is clearly mentioned that the Chief Executive is also an eye witness. That report is marked Ext. H at the time of argument. In Ext. H it is mentioned that on 5-11-1999 at 2-30 P.M. while the D.G.M., the Chief Executive and two other persons were present in the office the workman came to the D.G.M. and took the Gift Godown key telling that he would check the water leakage inside the Godown. It is further mentioned that sometime thereafter the D.G.M. himself noticed that the workman took out one Kodak Camera from the Godown and kept it inside a wooden box. Subsequently, it is also mentioned in Ext. H that all the personnels who were present in the office were eye witnesses to the incident.

As per the report marked Ext. H four persons were present in the office when the workman took the key and that all of them are eye witnesses to the incident. Out of the four officials three have been examined by the management to establish the charge. The fourth one is the Chief Executive. When the management did not examine the Chief Executive as a witness the workman wanted to examine him as a defence witness but it is not clarified as to how non-examination of the Chief Executive would have caused prejudice to the workman. Save and except Ext. H there is no other material wherefrom it can be said that the Chief Executive was actually an eye witness. Even from the contents of Ext. H it is not very clear that the Chief Executive had actually witnessed the alleged removal of the Camera. The workman could not bring any material on record in course of the enquiry proceeding wherefrom the E.O. could have satisfied himself that non-examination of the Chief Executive would be prejudicial to the workman. Therefore, refusal on the part of the E.O. to issue summons to the Chief Executive does not reflect on the fairness of the domestic enquiry.

9. Another ground challenging the fairness of the domestic enquiry is that the E.O. was not an independent and impartial person inasmuch as he was a paid retainer of the management and an associate of Shri N. K. Mishra, Advocate who is conducting the present proceeding on behalf of the management. There is no material on record to support the claim that the E.O. was a paid retainer of the management. In *Bienco Lawrie Ltd. & Another Vrs. State of West Bengal*, 2009 LLR-1057 the Hon'ble Supreme Court have observed that the mere fact that the Enquiry Officer is the Company

Lawyer cannot be considered to be sufficient to treat him as a biased and partisan person and that he is partial to the management. Though the E.O. is examined as M.W. No. 1 before this Tribunal, no question has been put to him on the allegation that he is/was a retainer of the management.

Another contention is that during the period of suspension the management was not making timely payment of subsistence allowance to the workman. This could have been proved by adducing documentary evidence but the workman has not brought any such evidence on record. It is not the case of the workman that he was not paid subsistence allowance during the period of suspension. It is also not shown as to how the delay, if any, in the payment of subsistence allowance had caused prejudice to the workman so far the enquiry proceeding was concerned.

It is also alleged that the enquiry was conducted behind the back of the workman but this is not correct. The enquiry proceeding which is placed before this Tribunal gives clear indication that the enquiry proceeding was conducted in the presence of the workman who was permitted to be assisted by an Advocate.

On a perusal of the enquiry report marked Ext. F it is found that the E.O. has recorded the findings with reasons for the same in his report. The findings recorded by the E.O. cannot be said to be perverse being not supported by evidence on record. Because the three witnesses examined on behalf of the management before the E.O. have clearly implicated the workman. It is argued that there are contradictions in the evidence of the management's witnesses and that the property which was allegedly removed from the Godown was not produced before the E.O. But it is a domestic enquiry and not a criminal trial. Proof of the alleged misconduct beyond reasonable doubt is not required in a departmental proceeding.

10. In the result, the domestic enquiry is found to be fair and proper.

Dictated and corrected by me.

RAGHUBIR DASH
23-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
23-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

FINDINGS ON THE REMAINING ISSUES
i.e. Issue Nos. (i) & (ii) recorded on 28-3-2012

11. It has already been held that the domestic enquiry is fair and proper. While answering issue No. (iii) it is also held that the findings recorded by the E.O. cannot be said to be perverse. The act of misconduct which is found proved is that on 5-11-1999 at about 2-30 P.M. while the workman was on duty he removed one "Kodak" Camera from inside the Gift Godown within the office premises of the first party and brought it to the place where he (the workman) was preparing tea for the office staff and kept the Camera in a wooden box near his work place. It is alleged that the workman committed theft of the Company's property. Ext. G is the Certified Standing Orders of the first party. As per the Standing Orders, theft committed within the office of the first party in connection with the Company's property is one of the major misconducts. The relevant entry appears

at Item No. 5 under the heading 'Major Misdemeanours' contained in Appendix-A of the Standing Orders which runs as follows :—

“Fraud or dishonesty or theft within the Brewery or office in connection with the Brewery's business or property or reasonable suspicion of theft of Brewery's goods/properties.”

It is not disputed that the office premises of the first party has a Gift Godown kept under lock and key and that the 'Kodak' Camera being a gift item was kept inside the Godown. It is also not disputed that the 'Kodak' Camera as a gift item was not the property of the first party. It is proved that the workman removed the Camera from the Godown and brought it to another place to be kept in hide in a wooden box. From the circumstances it can be presumed that intending to take dishonestly the workman removed the Camera from the Godown without the consent of his Authority. Therefore, the offence of theft can be said to have been committed the moment the Camera was removed from the Godown. Therefore, so far the commission of theft is concerned it makes no difference even if the Camera was not taken outside the premises of the party's office.

12. No doubt, the Standing Orders prescribes the punishment of dismissal for proved misconduct of theft of property. But, that is the extreme form of punishment. Therefore, it is to be examined as to whether the punishment is commensurate with the act of misconduct committed by the workman. For that the relevant factors are to be taken into consideration.

In the order of discharge (Ext. M) it is stated that the past records of the workman was taken into consideration and it was found that there was no extenuating circumstance to award lesser punishment. But, the past records of the workman are not brought before this Tribunal. It is also not explained in the order of discharge as to why the Authority considered that there was no extenuating circumstance. It is not proved by the management that in the past the workman was found guilty of any other misconduct. It is simply pleaded in the written statement that the workman was in the habit of stealing Company's gift articles and that due to his unsatisfactory performance he was transferred from the Factory to the Sales Office of the first party. It is also stated in the written statement that in the past the workman had been warned on several occasions, both verbally and in writing. It is also pleaded that the workman was never punctual in opening the office and was not obeying the orders of his superiors. But, no evidence has been adduced to prove all these general allegations. Therefore, there is no material to hold that the workman's past record was not satisfactory and therefore, the Authority while deciding to impose the punishment did not find any extenuating circumstance for awarding a lesser punishment. Rather, absence of unsatisfactory past record, in a given case, may be an extenuating circumstance. In this case the workman had been working under the first party since 27-11-1987 till he was discharged from service with effect from the 7th June 2000. For about twelve and a half years he had been working as a Peon, first in the factory and subsequently in the office of the first party, without any bad record. As already stated, the second party was working as a Peon. So, it cannot be said that he was holding a responsible position in the establishment of the first party. The price of the 'Kodak' Camera which was removed by the workman from the Gift Godown is not disclosed by the first party. The socio-economic condition of the second party should also be taken into consideration. The incident had occurred soon after the devastating Super Cyclone of 1999. It appears, the workman under a peculiar set of circumstances was tempted to remove the Camera. Considering all the above facts

and circumstances this Tribunal is of the considered view that imposition of the extreme punishment on the workman is not commensurate with the proved misconduct. For a single act of theft of property like a 'Kodak' Camera the punishment of discharge does not appear to be justified.

13. On behalf of the management two decisions have been cited. In Panchmahal Vadodra Gramin Bank & others *Vrs.* D. M. Parmar, reported in 2011 (131) FLR 1019 (S.C.), the delinquent was a Bank Manager and was found guilty of misconduct reflecting on his integrity and honesty and lack of probity. In Karnataka Bank Ltd. *Vrs.* A. L. Mohan Rao, reported in 2006 LLR 252 (S.C.), the delinquent was a bank employee and was found to have had committed gross misconduct of colluding with a Branch Manager in the matter of grant of a fictitious loan. In both the cases the misconducts were of very serious nature affecting the honesty and integrity of the bank employees. In the case at hand the second party was working as a Peon who was not even shown to be in-charge of the Gift Godown. Rather, it is on record that he was mostly doing odd jobs like attending to the officers and preparing tea for them. Therefore, the cited decisions are not applicable to the case in hand.

14. The workman is now aged about 46-47. He is found to have committed a major misconduct. However, the punishment of discharge is found to be disproportionate to the misconduct committed by the workman. It would be difficult for the workman to secure a job. The workman must be having his family members to maintain. He had been in regular service under the management more than twelve years. Under such circumstances, the relief of reinstatement subject to other suitable terms and conditions appears to be the appropriate relief. In the facts and circumstances of the case the workman should be reinstated in service but he should not be allowed to get any back wages from the date of his discharge till the date of this Award.

The issues are answered accordingly.

15. In view of the observations made above, the management to reinstate the workman and to pay back wages till his reinstatement in terms of the Award.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
28-3-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
28-3-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
M. R. CHOUDHURY
Under-Secretary to Government