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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 14th May 2012

No. 3781—li/1-(B)-76/2002-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 6th January, 2012 in Industrial Dispute Case No. 109 of 2002 of the Presiding Officer, Labour Court, Bhubaneswar to whom the Industrial Dispute between the Management of District Transport Manager(A), O.S.R.T.C., Cuttack and their workman Shri Kangali Ch. Mohanty, Driver was referred to for adjudication is hereby published in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 109 OF 2002

Dated the 6th January 2012

Present :

Shri S. A. K. Z. Ahmed,
Presiding Officer, Labour Court,
Bhubaneswar.

Between :

The Management of District Transport Manager (A), OSRTC, Cuttack. . . First Party—Management

And

Their Workman Shri Kangali Ch. Mohanty, Driver. . . Second Party—Workman

Appearances :

Shri B. K. Panda, Jr. Clerk . . . For the First Party—Management
Shri T. Lenka, Advocate . . . For the Second Party—Workman

AWARD

The Government of Odisha in exercise of powers 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 have referred the matter in dispute to this Court vide Order No. 12526—li/1-(B)-76/2002/LE., Dated the 10th October 2002 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :—

“Whether the termination of services of Shri Kangali Charan Mohanty by way of compulsory retirement by the management of District Transport Manager (Admn.), O.S.R.T.C., Cuttack with effect from 31-5-2001 is legal and/or justified ? If not, what relief he is entitled to ?”

3. The case of the workman, in brief, as set out in his statement of claim is that he was working as a regular Driver under the management since 3-3-1976. While he was on duty, on 31-8-1999, as per the Office Order vide Memo. No. 4883, Dt. 31-8-1999 he was placed under suspension for his misconduct and his headquarter was fixed at Cuttack. On 16-9-2000 he was charge-sheeted and after receipt of the charge-sheet, he submitted his show cause denying the charges levelled against him. He has further stated that charge was framed against him for causing accident while driving the Management's vehicle bearing registration No. OR 05 4571 on the way to Cuttack-Kashipur route on 28-8-1999. He admitted the accident but he denied his negligence. For the said enquiry, the then Assistant Transport Manager (A), O.S.R.T.C., Cuttack was appointed as Enquiry Officer and during enquiry he was released from the suspension vide Office Order No. 485, Dt. 24-1-2001 and was directed to report before the A.T.M.(A), Narasinghpur to join in his duty. While he was working at Narasinghpur, he received a letter to attend the enquiry at Cuttack at his own cost on 17-3-2001. On the said date, he attended the enquiry but the Enquiry Officer recorded the statement of one Shri Surendra Kumar Hota, Assistant Foreman-*cum*-R.O., O.S.R.T.C., Bhubaneswar and no statement was recorded on his behalf. Further he received a letter bearing No. 2114, Dt. 21-4-2001 from the management to file show cause as he was found guilty by the Enquiry Officer. On 7-5-2001 he submitted his representation before the management praying time for filing his show cause due to want of certain documents and subsequently he submitted his show cause on 14-5-2001 claiming his innocence. He has further stated that a criminal case was initiated against him vide G. R. Case No. 258/1999. He has further stated that the Management as per the Office Order No. 465 (c), Dt. 31-5-2001 directing him to obtain stay order pending the final result and ultimately on 31-5-2001 he was relieved from duties. He has taken the plea that on 27-8-1999 he reported the matter relating to the defect of the Vehicle No. OR 05 4571 in the Driver's report book before plying the vehicle on the road and the said matter has not been taken into consideration during the enquiry proceeding and prayed that the enquiry was conducted violating the principles of natural justice and no sufficient opportunities were given to him to cross-examine the witness examined by the management. He has further stated that he was acquitted from the Criminal case pending against him. In view of the above averments, the workman has prayed for reinstatement in service with full back wages.

4. The Management appeared and filed written statement partly admitting and partly denying the plea of the workman. The management has stated that due to negligence on the part of the workman, an accident took place in the dead of night as a result for which seven persons died on the spot and the management has sustained heavy loss due to the negligence driving by the workman on the alleged date. The management has further stated that the enquiry conducted against the workman was fair and proper and sufficient opportunities were given to the workman to defend his case properly. The management has punished the workman after going through the enquiry report passed by the Enquiry Officer wherein the workman was found guilty of the charges levelled against him. The management has duly followed the principles of natural justice before inflicting the punishment. In this background, the management has prayed that the workman is not entitled to get any relief as prayed for.

5. In view of the above pleadings of the parties, the following issues are settled—

ISSUES

- (i) Whether the termination of services of Shri Kangali Charan Mohanty by way of compulsory retirement by the management of District Transport Manager (Admn.), O.S.R.T.C., Cuttack with effect from 31-5-2001 is legal and/or justified ?
- (ii) If not, what relief he is entitled to ?

6. In order to substantiate his plea, the workman has examined himself as W.W. 1 and proved the documents under the cover of Exts. 1 to 29. Similarly, the management has examined two witnesses, namely Shri Ramesh Kumar Chotray, D.T.M.(A), O.S.R.T.C., Bhubaneswar as M.W. 1 and one Shri Dillip Kumar Das, Junior Clerk in the office of the D.T.M.(A). O.S.R.T.C., Cuttack as M.W. 2 and proved documents under the cover of Exts. A to R and R/1.

FINDINGS

7. *Issue Nos. (i) and (ii)*—Both the issues are taken up together for the sake of convenience.

Before going to discuss the evidence in detail, it is pertinent to mention here that neither the Enquiry Officer nor Shri Surendra Kumar Hota, Assistant Foreman-*cum*-R.O., O.S.R.T.C., Bhubaneswar were examined in this case. Besides the above, it is an admitted fact that the workman was acquitted in G.R. Case No. 258/1999 under Sections 279, 337/304 'A' I.P.C. by the learned Judicial Magistrate of First Class, Khallikote under the cover of Ext. 1.

8. On perusal of the evidence adduced on behalf of both the parties, it appears that no such separate issue has been framed relating to the question of fairness of domestic enquiry in the facts and circumstances of this case. On the above score, the witness examined on behalf of the management stated that due to negligence on the part of the workman, the accident took place for which the management suffered heavy financial loss and a departmental proceeding was initiated after explanation submitted by the workman. He has further stated that the Enquiry Officer after giving sufficient opportunities to the workman closed the enquiry holding guilty of the charges. During cross-examination, he has stated that basing upon the enquiry report, the final report was passed and has admitted that he had no direct knowledge about the facts of the case and also he could not able to say that if the workman was present during the spot enquiry by the technical staff. Almost to the same fact is the evidence of M. W. 2 Shri Dillip Kumar Das. During cross-examination, M. W. 2 has stated that as per the official record the affidavit evidence was prepared and he had no direct knowledge relating to the enquiry conducted by the Enquiry Officer. On perusal of the enquiry report under the cover of Ext. K submitted by the Enquiry Officer, it appears that the management has examined only Shri Surendra Kumar Hota who was a post occurrence witness to the accident and basing upon his statement the workman was found guilty. Except filing of the statement of witness and the workman, the enquiry report remain silent about the date of posting of the enquiry by the Enquiry Officer and there is no material on record to suggest that the documents were furnished to the workman during the proceeding in presence of the Enquiry Officer. There is also no material to suggest that the charges were read over and explained to the workman nor any liberty was given to the workman for filing of any additional explanation. Law is well settled that :—

“An enquiry cannot be said to have been properly held unless, (i) the employee proceeded against has been informed clearly of the charges levelled against him, (ii) the witnesses are examined—ordinarily in the presence of the employees—in respect of the charges, (iii) the employee is given a fair opportunity to cross-examine witnesses, (iv) he is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter; and (v) the Enquiry Officer records his findings with reasons for the same in his report.”

On perusal of the case record and enquiry report submitted by the Enquiry Officer and after going through the evidence of both the parties, the procedure as adopted by the Enquiry Officer

appears to be not fair and proper and the Enquiry Officer has not adopted the principles of natural justice while conducting the enquiry. So on careful consideration of all the materials available in the case record as discussed above, in my opinion the termination of service of the workman by way of compulsory retirement by the management with effect from 31-5-2001 is neither legal or justified.

9. Regarding arrear wages, it is an admitted fact that the workman has not worked under the management after his termination by way of compulsory retirement. In view of the settled principle of law when the workman has not worked for the management during the period in question and he had not proved by cogent evidence that he was not gainfully employed elsewhere, payment of back wages is not justified. Similarly, in view of the settled principle of law, the relief of reinstatement with full back wages would not be granted automatically only because it would be lawful to do so. For the said purpose, several factors are required to be taken into consideration. So in the present case, on careful consideration of all the materials available in the case record, I am of the opinion that instead of granting full back wages, the management is directed to pay 40% of the back wages from the date of compulsory retirement till the date of his actual retirement on superannuation.

10. Hence it is Ordered.

That the termination of service of Shri Kangali Charan Mohanty by way of compulsory retirement by the management of District Transport Manager (Admn.), O.S.R.T.C., Cuttack with effect from 31-5-2001 is illegal and unjustified. The workman Shri Mohanty is entitled to get 40% of the back wages from the date of compulsory retirement till the date of his actual retirement on superannuation. The Management is directed to implement this Award within a period of two months from the date of its publication, failing the amount shall carry interest at the rate of 10 % per annum till its realisation.

Dictated and corrected by me.

S. A. K. Z. AHAMED
6-1-2012
Presiding Officer
Labour Court
Bhubaneswar

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6-1-2012
Presiding Officer
Labour Court
Bhubaneswar

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