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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 23rd May 2012

No. 4103—li-1(BH)-107/1995(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 19th November 2011 in I. D. Case No.04 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Orissa Air Products Ltd., Dhenkanal and its Workman Shri Kanhu Charan Jena was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 4 OF 1996

The 19th November 2011

Present :

S. A. K. Z. Ahamed,
Presiding Officer,
Labour Court,
Bhubaneswar.

Between :

The Management of .. First Party—Management
M/s Orissa Air Products Ltd.,
Dhenkanal.

And

Its Workman .. Second Party—Workman
Shri Kanhu Charan Jena.

Appearances :

Shri P. K. Chand, Advocate .. For First Party— Management
Shri D. Satpathy, Advocate

Shri R. Acharya, Advocate .. For Second Party— Workman
Shri B. Barik, Advocate

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. 436—li-(BH)-1-107/1995-LE., Dt. 8-1-1996 of the Labour & Employment Department, Bhubaneswar for adjudication.

2. The terms of reference is as follows :

“Whether the action of the management of M/s Orissa Air Products Ltd., Gundichapada, Dhenkanal in dismissing Shri Kanhu Charan Jena from services with effect from the 21st January 1995 is legal and/or justified ? If not, to what relief he is entitled ?”

3. The case of the workman, in brief, as set out in his statement of claim is that he was working as Khalasi under the management since 2-2-1987. Due to non-fulfilment of certain demands, the Union went on resorting a general strike from 17-3-1994 which continued till 30-6-1994. Thereafter, as per mutual unofficial discussion, the management allowed all the workers in service on 1-7-1994 after obtaining a conditional undertaking from each of the workers and accordingly the workman had also submitted such an undertaking and allowed him to continue in work. On 11-7-1994 the management placed the workman under suspension vide letter, Dt. 11-7-1994 enclosing a charge sheet Dt. 7-5-1994. On receipt of the charge sheet, the workman requested the management on 15-7-1994 to supply the relevant documents on which basis the management had framed charges against him for his defence statement. But the management without supplying the relevant documents compelled the workman to submit his explanation vide letter, Dt. 25-7-1994. According the workman submitted his explanation on 29-7-1994 denying the charges levelled against him. On being dis-satisfied with the explanation of the workman, the management had initiated a domestic enquiry. In spite of repeated request of the workman, neither the management nor the Enquiry Officer had supplied the required documents to him for his defence. However on 22-10-1994, the Enquiry Officer had supplied some documents. On 17-11-1994 the workman requested the Enquiry Officer to allow him at least 10 days time to produce his witnesses but without extending him any time to produce his witnesses the Enquiry Officer had closed the enquiry and submitted the enquiry report. The witnesses of the workman had never been examined. Thereafter, the management directed the workman to show cause as to why he should not be inflicted with the punishment of dismissal but he was not allowed to enter into the Branch Manager's Chamber for personal hearing. According to the workman, the management had issued a false and fabricated charges on him only for his Trade Union activities. Though he was not present at the factory on 21-4-1994 and he had been to the office of the Assistant Labour Commissioner, Angul for discussion with him, the management had framed charges on some incidents on 21-4-1994. According to the workman, the Enquiry Officer had not conducted a fair enquiry, rather he had been pressurised by the management, submitted a vague enquiry report only to satisfy the management. In view of the above averments, the workman has prayed for his 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. According to the management, the workman had taken an active part in the illegal and unjustified strike from 17-3-1994. On 21-4-1994 the workman along with other workers

forcibly entered into the factory, created violence, followed by physical assault to the officers of the management and loyal workers with lethal weapons like, bhujali, iron rods, lathis etc. Thereafter, the matter was informed to the police who after proper investigation chargesheeted the workman and others. The management has charge-sheeted the workman and on being dis-satisfied with the explanation of the workman against the charges levelled against him, started a domestic enquiry through an outside person namely, Shri Diptish Patnaik who conducted the enquiry by giving reasonable opportunities to the workman to defend his case as per law. Therefore, according to the management, the enquiry conducted by the management against the workman was fair and proper. The management had punished the workman after going through the enquiry report of the Enquiry Officer wherein the workman was found guilty of the charges levelled against him. The management had 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 domestic enquiry conducted against the workman was just and proper ?
- (ii) Whether the action of the management of M/s Orissa Air Products Ltd., Gundichapada, Dhenkanal in dismissing Shri Kanhu Charan Jena from services with effect from the 21st January 1995 is legal and/or justified ?
- (iii) If not, to what relief he is entitled ?"

6. In order to substantiate his plea, the workman has examined two witnesses altogether, out of whom, W.W. 1 was the co-worker and the W.W. 2 is the workman himself and proved documents under the cover of Exts. 1 to 26. Similarly the management has examined two witnesses altogether out of whom, M.W. 1 is the Enquiry Officer and M.W. 2 is the Officer Manager of the management and proved documents under the cover of Exts. A to N.

FINDINGS

7. *Issue No. (i)*—In order to prove the question of fairness of domestic enquiry in the facts and circumstances of this case, the management has examined one Shri Diptish Prasad Pattnaik as M.W. 1 who stated that he conducted the enquiry after observing all the formalities and proved the order of appointment as Enquiry Officer under the cover of Ext. A and proved the order sheet of the enquiry file under the cover of Ext. B, deposition of witnesses under the cover of Ext. C, documents exhibited during the enquiry and the enquiry report under the cover of Exts. E and D respectively. Further he has stated that the workman was participated in the domestic enquiry along with his representative, Shri Nityananda Pattnaik, the Union Secretary. Though sufficient opportunity was given to the workman, but he did not adduce any evidence. As the workman did not adduce any evidence, the enquiry was closed. The workman who examined as W.W. 2 has stated that the Enquiry Officer did not allow him to give evidence and no scope was given to him by the Enquiry Officer for adducing evidence. But at the same time in his cross-examination he has admitted that he was examined as witness before the Enquiry Officer. On perusal of the enquiry report submitted

by the Enquiry Officer, it appears that the management examined six witnesses in support of the charges and the workman was given reasonable opportunity to cross-examine them. Further the report reveals that one Nityananda Pattnaik, Secretary of the Union, a suspended employee was the representative of the workman was present in the enquiry from 11-10-1994 till 17-11-1994, but remained absent on 22-11-1994 in spite of the notice. The enquiry was posted to 7-10-1994 and on 7-4-1994 the workman was present before the Enquiry Officer and thereafter the documents and the list of witnesses was furnished to the workman during the proceeding in presence of the Enquiry Officer. Further it appears that the charges were read over and explained to them in Oriya language. The relevant copy of the papers was received from the management and liberty was given to the workman for filing of additional explanation and as per the direction of the Enquiry Officer, subsistence allowance was paid to the workman and witnesses were examined on behalf of the management, cross-examined by the workman and in spite of adjournment taken by the workman, he remained absent. After giving reasonable opportunity to the workman to adduce evidence, ultimately closed the proceeding and submitted his finding under the cover of Ext. D. The plea taken by the workman that he was not given any opportunity to adduce evidence gains no corroboration from any other independent source. But at the same time the evidence of M.W. 1 gains ample corroboration from his enquiry report submitted by him under the cover of Ext. D. M.W. 2, the Office Manager of the management examined on behalf of the management has stated that there was a registered Trade Union and the Union has submitted a charter of demand to the management in the year 1993 and there was a series of discussion, a conciliation settlement was effected on 5-6-1992 between the Union and the management and the same was valid till 30-6-1996 and was bidding upon the Union. He has further stated that in the settlement it was clearly mentioned that during the period of validity of settlement, neither the Union will putforth any demand nor it will resort to any kind of strike, or violence for any reason whatsoever. But in spite of that, the present workman along with others armed with weapons on 21-4-1994 forcibly trespassed into the factory and physically assaulted the workers on duty causing serious injuries to them. He has stated that the present workman along with others also caused damage to the property of the management for which a F.I.R. was registered, criminal case was initiated, investigation was taken up and charge-sheet was filed against the present workman along with others and ultimately the criminal case was ended with conviction. In view of the unhealthy atmosphere and due to criminal activities of the employees of the management, a disciplinary proceeding was initiated against the present workman along with others and they were punished by the order of dismissal. The workman during the course of his examination has not uttered a single word on the above score. The allegations of *mala fide* intention of the management by the workman is heavily burden on him to prove the same in the facts and circumstances of this case, but the workman has totally failed to do so.

8. 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 employee-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 case record and the enquiry report submitted by the Enquiry Officer, M.W. 1 and after going through the evidence of both the parties, the procedure as adopted by the Enquiry Officer, M.W. 1 appears to be fair and proper and the Enquiry Officer has adopted the rules of natural justice while conducting the enquiry. The Issue No. (i) is answered accordingly.

9. *Issue Nos. (ii) and (iii)*—On careful consideration of all the materials available in the case record, as discussed above, in my opinion that the action taken by the management in dismissing the workman from service with effect from the 21st January 1995 is legal and justified. The workman is not entitled to any relief. Hence both the issues are answered accordingly.

10. Hence it is ordered :

That the action of the management of M/s Orissa Air Products Ltd., Gundichapada, Dhenkanal in dismissing Shri Kanhu Charan Jena from services with effect from the 21st January 1995 is legal and justified. The workman Shri Jena is not entitled to get any relief as prayed for.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
19-11-2011
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
19-11-2011
Presiding Officer
Labour Court
Bhubaneswar

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