The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 1304 CUTTACK SATURDAY, JULY 7, 2012/ASADHA 16, 1934

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 26th June 2012

No. 4911—li/1(B)-83/2007 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 31st May 2012 in Industrial Dispute Case No. 25 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Magnum Polymers Pvt. Ltd. (Net Unit), Bhubaneswar and its Workman Shri Jadumani Behera represented through the Magnum Polymers Fibers Industries Employees Union, Bhubaneswar was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 25 OF 2008

Dated the 23rd September 2011/

The 31st May 2012

Present :

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

Between :

The Management of
M/s Magnum Polymers
Pvt. Ltd. (Net Unit),
Bhubaneswar. . . First Party—Management

And

Its Workman . . For the Second Party—Workman
Shri Jadumani Behera,
represented through
the Magnum
Polymers Fibres
Industries Employees'
Union, Bhubaneswar.

Appearances :

Shri M. R. Mohanty, . . For the First Party—Management
Advocate
and his Associates.

Shri Subrat Mishra,
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. 4378—Ii/1 (B)-83/2007-LE., dated the 9h April 2008. The Schedule of reference runs as follows :—

> "Whether the dismissal of Shri Jadumani Behera, Machine Operator by the management of Magnum Polymers Pvt. Ltd., Bhubaneswar with effect from the 17th October 2005 is legal and/or justified ? If not, what relief Shri Behera is entitled to ?"

2. The plea taken by the second party workman in his claim statement is that he had been working under the first party management as an Operator since 1-1-2002. He had completed more than three years of continuous service by the time he was dismissed from service with effect from the 17th October 2005. Since the management did not fulfil the genunie demands of its workmen a Trade Union was formed by them. The second party was elected as the Treasurer of the Union.The management became vindictive and took disciplinary action against all the office bearers of the Union including the second party. A charge -sheet was issued to the second party on 17 -5- 2005 on alleged frequent absence from duty without leave or permission. Before the workman could submit his explanation to the charge-sheet the management appointed one Advocate as the Enquiry Officer (E.O.) . Being a pet-man of the management the Advocate conducted the enquiry in a biased manner. During the entire proceeding the Marshalling Officer did not participate in the enquiry proceeding. The management had not proved the documents wich were relied on by the E.O. The E.O. has not disclosed as to the source which he got the documents.The E.O. has also failed to evaluate appreciate the statement of the workman made in his defence during the enquiry. Thus, the enquiry was whimsical, unfair and against the principle of natural justice. That apart, in the charge-sheet the management did not mention the specific provision of any standing orders or

any rules under which the charges were framed. The management has got no standing orders of its own. The model standing orders is not yet made applicable to the workman of the first party in as much as it is never displayed on the Noticeboard of the Company, nor copy thereof ever sent to the Union. One bi-partite settlement, signed on 20-1-2005 in which there is a stipulation that absence from duty for more than a specific number of days shall be treated as serious misconduct, has been signed by the Union Office bearers under undue pressure of the management. Further more, though the Managing Director is the appointing authority in respect of the employees of the establishment of the first party, the enquiry was not ordered by the Managing Director, the E.O. was not appointed by the Managing Director and the order of dismissal was also not made by the Managing Director. It is also asserted that the punishment awarded is disproportionate to the misconduct alleged against the workman.

Raising the above-mentioned grounds the workman has challenged the legality as well as justifiability of the order of dismissal.

3. According to the first party, the workman was frequently remaining absent from duties without submitting leave application or obtaining permission from the authority which resulted in frequent interruption in the production schedule causing financial loss to the management. So, the management was compelled to charge-sheet the second party. The workman did not submit his reply to the charge-sheet within the stipulated period, nor did he request for extension of time. So, the management was left with no other option but to appoint an E.O. to conduct an enquiry. The Advocate who was appointed as the E.O. is an independent Advocate. He conducted the enquiry in a fair and proper manner. On the applicability of the standing orders, the managements stand is that the model standing orders is applicable to its employees. It is false to say that the model standing orders was not displayed on the Noticeboard of the Company. On the memo. of settlement Dt. 20-1-2005, it is pleaded that the signatories to the settlement were empowered by the Union to negotiate with the management and they have signed on the settlement after an understanding was arrived at. Even the workman is a signatory to the said settlement, further contention of the management is that the punishment awarded to the workman is justified as it was necessary to maintain discipline in the industry.

4. Basing on the pleadings the following issue was initially framed :—

ISSUE

(i) "Whether the dismissal of Shri Jadumani Behera, Machine Operator by the management of Magnum Polymers Pvt. Ltd., Bhubaneswar with effect from the 17th October 2005 is legal and/or justified ? If not, what relief Shri Behera is entitled to ?"

Subsequently, relying on the Judgement of the Hon'ble Supreme Court in Cooper Engineering Ltd. *Vrs.* P.P. Mundhe, AIR 1975 (SC) 1990 order has been passed on 16-9-2010 that the fairness of the domestic enquiry should be taken up as a preliminary issue and, accordingly, an additional issue be framed. On the said order the following additional issue has been framed :—

ADDITIONAL ISSUE

(ii) "Whether the enquiry has been conducted fairly and properly ?"

5. The parties have been called upon to adduce evidence on the preliminary issue. The first party has examined its Director as M.W. No.1 and on its behalf Exts.1 to 15 have been marked. The second party has examined himself as W.W. No.1 and he has exhibited one document marked Ext. A.

FINDINGS ON THE PRELIMINARY Issue, i.e., Issue No. 2

6. To show that the workman was not given sufficient opportunity and that the enquiry was not conducted in a fair and proper manner the workman has raised several objections in his claim statement and I shall take up them one after another.

It is pleaded that the Advocate who was engaged as the Enquiry Officer being a pet-man of the management is not a fair officer to be appointed as such. This bald statement is not sufficient to prove that the E.O. was not impartial to the workman. It is not explained as to how the E.O. is a pet-man of management.

It is pleaded that the biased attitude of the E.O. is exhibited in his enquiry report in which the E.O. has incorporated some false information in support of the charges. Even though the management witness had admitted during the enquiry that the workman had submitted leave applications to him and the same were recommended by him, the E.O. did not reflect such admission in his enquiry report. While adducing evidence the workman has not stated anything about this allegation. He has not adduced evidence to show that as a matter of fact he had submitted leave applications for the alleged charges of absence reflected in the charge-sheet but the management did not pass any order either rejecting or granting the leave.

It is pleaded that the management had not appointed anyone as the Marshalling Officer and the documents exhibited on behalf of the management and relied on by the E.O. having not been proved through the Marshalling Officer, the E.O. should not have relied upon them. It is also pleaded that since there was no Marshalling Officer the E.O. himself conducted the enquiry on behalf of the management and hence it creates doubt over the impartiality of the E.O. The management denies this allegation and contends that a Marshalling Officer was appointed who had taken part in the enquiry proceeding. In addition to such denial it is also pleaded that there is no law which impairs the legality of an enquiry because of the absence of the Marshalling Officer. The enquiry report marked Ext.9 does not reflect that the Marshalling Officer had taken part in the proceeding. Evidence is not adduce by the management to prove that a Marshalling Officer was in fact appointed by the management. However, it is not shown as to whether the workman was prejudiced due to non-engagement of a Marshalling Officer. No authority is cited on the effect of absence of a Marshalling Officer to assist the E.O. in a domestic enquiry.

It is further pleaded that the E.O. did not evaluate and appreciate the statement of the workman made during the enquiry. The enquiry report reflects that the workman had stated before the E.O. that he had submitted leave applications but the E.O. did not accept such claim as the

workman failed to adduce any evidence in support of such claim. Therefore, this plea is not correct. The E.O. is found to have considered the statement made by the wlorkman during the enquiry.

It is pleaded that before he could submit his reply to the charge-sheet the management appointed an Advocate to conduct the domestic enquiry. It implies that the workman has alleged that the management did not give him sufficient opportunity to submit his explanation.This plea is not taken in workman's affidavit evidence. In this regard the management's plea is that the workman had never prayed for extension of time to enable him to submit his explanation. The workman has also not shown that even though he had applied for more time the management did not give him sufficient opportunity to submit his explanation. Rather, it is shown by the management that the charge-sheet sent to the workman by registered post was returned undelivered with the postal remark 'the addressee remained always absent'. Thereafter, the management had to publish a notice in an Odia Newspaper (Ext.6). When the workman did not submit his explanation the management appointed an enquiry officer and intimated that fact to the workman vide Ext.7. In that letter he was asked to attend the enquiry. The workman has received this letter. Even after receipt of this letter the workman has not prayed for a chance to furnish his explanation. On the other hand, it is found from the pleadings of the workman and also the documents relied on by him (Ext.A) that having received the charge-sheet he had requested the management to supply a copy of the leave rules of the Company and a copy of the rules regulating the disciplinary proceedings in the respect of the Company's workmen. Thus, it is found that having knowledge about the charges framed against him the workman had never asked for an opportunity to file his explanation. So, it is not a case where the delinquent workman was not given sufficient opportunity to submit his explanation before the proceeding in the enquiry commenced.

It is pleaded that in the charge-sheet the management did not mention the specific conduct rules that constituted the alleged misconduct. It is not in dispute that the management has got no certified standing orders of its own. So, the model standing order is applicable to the employees of the first party establishment. This is the statutory provision contained in the Industrial Employment (Standing Orders) Act, 1946. Therefore, omission of mentioning the specific conduct rules in the charge-sheet is not a ground to presume that the workman was prejudiced.

It is contended that the management had never informed the employees of its establishment about the application of model standing orders to the establishment. It is argued that the management has failed to show that the copy of the model standing order was sent to the Union or pasted in the Noticeboard of the management. The management in its written statement has taken the stand that it is under no obligation to send a copy of the model standing order to the Union. However, it aasserts that copy of the model standing order was displayed in the Noticeboard of the Company. But, while adducing evidence the workman has not stated in his affidavit that a copy of the model standing order was never displayed in the Noticeboard. The workman has simply stated that the employees were never informed about the application of the model standing order to the establishment. The management has also not adduced evidence to show that it has been displayed in its Noticeboard. While deciding the issue on the fairness of the domestic enquiry it is considered to be not relevant to thrash out as to whether the model standing order was displayed in the Noticeboard. The management, if so advised, may adduce evidence to that effect only after the preliminary issue is decided by this Tribunal.

While adducing evidence the workman has claimed that copy of the day- to -day proceedings of the enquiry was not supplied to him. This plea is not there in the claim statement. That apart, it is to be found from the enquiry report that in a single sitting on 29-6-2005 the E.O. recorded evidence from both the sides. It is also not shown that the workman had asked for the copy of the proceeding. Therefore, on this ground the enquiry proceeding cannot be said to be unfair or improper.

In the affidavit evidence it is also stated that the E.O. prepared the enquiry report at the instance of the management. This is not pleaded in the claim statement and there is also no evidence to record a finding that the E.O. prepared this report at the instance of the management.

It is further stated in the affidavit evidence of the workman that statements of the witnesses were not recorded in presence of the workman and the statement made by the workman was not recorded by the E.O. This is also not pleaded in the claim statement. In this case the management first adduced evidence and thereafter the workman filed his affidavit evidence. Taking advantage of the fact that the enquiry proceedings along with the statements of witnesses and the documents exhibited during the enquiry have not been produced before this Tribunal the workman appeares to have taken such a plea at a belated stage. Since the workman has taken such a belated plea which is not pleaded by him, he could have substantiated the plea by calling upon the management to produce all the documents related to the enquiry proceeding so that, if the management had failed to produce them, an adverse inference could have been taken against the management. In Sur Enamel and Stamping Works, Ltd. *Vrs.* Workmen, AIR 1963 (SC) 1914, it is held as follows :—

> "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."

In the case at hand the workman was charge-sheeted for having frequently remained absent on specific dates without leave or permission. In the charge-sheet the fact of such absence has been described in details. In the charge-sheet the charges levelled against the workman have been clearly narrated. Though several grounds have been raised, it is not claimed by the workman in clear terms that the workman was not informed clearly of the charges levelled against him. The only plea in this connection is that the specific rules were not mentioned in charge-sheet which is held to be inconsequential. I find that the workman was informed clearly of the charges levelled against him.

7. As already stated, the recording of evidence took place in a single sitting and as found from the enquiry report it was done in the presence of the workman. The enquiry report reflects that on 29-6-2005 the workman appeared before the E.O., he was permitted to take part in the proceeding, , he cross-examined the management's witness, and, he gave his own statement. Therefore, it is found that the management's witness was examined in his presence and he was given opportunity to cross-examine the management's witness. It is not claimed by the workman that on 29-6-2005

he was denied any opportunity in the matter of examination of witnesses and production of documents. It is not pleaded that on that date the workman made any prayer to adduce further evidence but it was denied by the E.O. Therefore, it is held that he was given a fair chance to examine witnesses in his defence.

It is also found from the enquiry report that the E.O. recorded his findings supported by reasons. It is found from the enquiry report that from the materials placed before the E.O. the misconduct under Rule 14 (3) (e) of the Odisha Industrial Employment (Standing Orders) Rules, 1946 was made out.

8. In this case the workman was charge-sheeted for remaining absent from duty frequently on specific dates as narrated in the charge-sheet. The workman has not taken the stand that he had not remained absent on any of the specified dates. He took the plea before the E.O. that on each of the occasion he had submitted his leave applications but the management did not dispose of his applications in either way. The E.O. has observed that the workman did not substantiate this claim by adducing evidence. Therefore, he has concluded that the workman was guilty of misconduct of habitual absence from duty. Thus, the E.O. has recorded his findings with reasons for the same in his report.

In the facts and circumstances, it cannot be said that the enquiry was not properly held and, accordingly, the issue under consideration is answered in favour of the management.

Dictated and corrected by me.

RAGHUBIR DASH
23-9-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
23-9-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

FINDINGS ON ISSUE NO.1
Dated the 31st May 2012

9. Consequent upon findings recorded on issue No.2 to the effect that the enquiry was conducted fairly and properly, the parties were called upon to adduce evidence on the remaining issue. The second party workman adduced further evidence by filing affidavit evidence on which he was also cross-examined by the other side. Thereafter, the management re-examined M.W.No.1 to adduce further evidence and thereafter examined its Executive Director as M.W. No.2. While adducing further evidence the management has exhibited documents which are marked as Exts.16 to 19. On the other hand, the workman has proved another document which is marked Ext.B.

10. It is already held that the enquiry is fair and proper. Now it is to be considered as to whether the punishment of dismissal imposed on the second party is legal and/or justified.

The legality of the order of dismissal is challenged on the ground that the Executive Director of the first party who inflicted the punishment is not the Competent Authority to do so. The justifiability of the punishment is challenge on the ground that the proved facts do not constitute any misconduct

and that even if any misconduct is held to have been proved it is not sufficient to justify the order of dismissal.

According to the management, its Executive Director is the competent disciplinary authority to pass the order of dismissal. In this regard, M.W. No.1, who has passed the order of dismissal, has deposed in his affidavit evidence that he is the competent authority to take disciplinary action against all the officers and workers of the company being duly authorised by the Board's Resolution Dt. 11-5-2004 in accordance with the power vested on the Board of Directors vide Aritcle 36 A of the Memorandum and Articles of Association of the first party Company. Ext.19 is the said Memorandum and Articles of Association. Article 36A thereof runs as follows :—

> "The Board of Directors from time time to through a Board Resolution may delegate, entrust to and confer upon the officials of the Company, such of the powers which are required for smooth operation of the Comapany except the borrowing powers and such powers shall be valid until it is revoked by the Board of Directors."

Ext.18 is said to be an extract of the resolution of the Board of Directors passed in its meeting held on 11-5-2004. It reflects that the Board of Directors vested in M.W. No.1 with the powers to deal with all personal matters of the Company covering all employees including their appointment and dismissal. Thus, Ext.18, *prima facie*, reflects that M.W. No.1 is the competent authority to pass order of dismissal against an employee. But, according to the workman, the Managing Director of the Company being the occupier and employer of the factory is the competent appointing authority as well as disciplinary authority. It is denied by the first party that the Managing Director is the occupier and employer of the factory. It is not proved by the workman that the Managing Director of the Company being the occupier and employer of the factory is the competent disciplinary authority. In para. 24 of his cross-examination M.W. No.1 has stated that Mr. Ramesh Mohapatra is the occupier and employer of the factory. But, he has denied the suggestion that Shri Mohapatra is the appointing/disciplinary authority of the workman. Shri Mohapatra may be the occupier and employer of the factory for the purposes of the Factories Act but that does not mean that he is the appointing/disciplinary authority of the employees of the first party. The workman has tried to fortify his stand by exhibiting a portion of the deposition of M.W. No.1 in I.D. Case No. 37 of 2007 of the Court of the Presiding Officer, Labour Court, Bhubaneswar. There is no dispute that the workman in that I.D.Case before the Presiding Officer, Labour Court, Bhubaneswar belongs to same category as the second party workman of the case in hand. The certified copy of the depostion marked Ext.B reflects that the witness who is the General Manager of the first party has admitted that he can appoint a workman on behalf of the management and also can take action for dismissal. However, he has further added that he can take such action subject to the approval of the higher authority. To a subsequent suggestion put to the witness he has denied that Mr. C.V. Padmarajan (the then Executive Director) has no authority to take action against the workman of I.D. Case No. 37 of 2007. Rather, he has clarified that Mr. Padmarajan has the power to take decision and action against a workman independently without approval of any other authority. M.W. No.1 of the case in hand is said C.V. Padmarajan who has faced cross-examination at length but nothing could be elicited from him discard his claim that by virtue of Board's Resolution vide Ext.10 he is the appointing/ disciplinary authority of the second party.

11. On behalf of the second party it is argued that no reliance can be placed on Ext.18 inasmuch as being not a signed document, it may have been created by the management, subsequent to the disciplinary action taken against the workman. Ext.18 is said to be an extract of the Board's Resolution Dt. 11-5-2004. In the additional written statement filed by the management on 11-2-2011 in reply to the amended claim statement filed by the workman it is clearly stated that as per the Board's resolution the Executive Director is the appointing/disciplinary authority. About one year after filing of the additional written statement M.W. No.1 adduced his evidence before this Tribunal. Though there was clear indication in the additional written statement as to who, according to the management, is the disciplinary authority the workman, though represented by an advocate, did not take any step to rebut this assertion, nor did he make any prayer for a direction to the management to cause production of the Board of Director's resolution Dt. 11-5-2004. Merely because an extract of the resolution has been produced before this Trbunal there cannot be a presumption that Ext.18 is a document subsequently created for the purpose of this case. Considering the materials available on record, it is held that M.W. No.1 is the disciplinary authority of the workman.

12. It is the first party's clear stand that it has not yet framed its own certified standing orders. Therefore, under the provisions of the Industrial Employment (Standing Orders) Act, 1946 the model standing orders for workmen contained in Schedule-I of the Odisha Industrial Employment (Standing Orders) Rules, 1946 are applicable to the employees of the first party. It is true that in the charge-sheet marked Ext.4 there is no mention of the specific standing order of the model standing order under which the workman has been charged. But there is clear mention that he has been charged for habitual absence without leave or absence without leave for more than ten days. This is a misconduct as per the standing order No. 14 (3)(e) of the model standing orders. Ext.15 read with Ext.A reflects that on the querry made by the workman as to the rules regulating disciplinary proceeding, the management had intimated vide letter Dt. 25-6-2005 (Ext.15) that the disciplinary proceeding is governed by the model standing orders. The correspondence vide Ext.A and Ext.15 was made between the parties some days prior to the commencement of the domestic enquiry. Thus, it is clear that the workman was proceeded against on the alleged misconduct of habitual absence without leave or absence without leave for more than ten days. According to the charge-sheet the workman remained absent on the following days without leave or prior permission from the management.

> 28-1-2005 to 5-2-2005, 7-2-2005 to 13-2-2005, 20-2-2005 to 24-2-2005, 26-2-2005, an illegible Dt. 20-3-2005, 21-3-2005, 27-3-2005, 15-4-2005 to 17-4-2005, 2-5-2005, 6-5-2005, 8-5-2005 & 9-5-2005.

Though the workman was asked to show cause vide Exts.1, 2 and 3 (issued prior to framing of the charges) he does not appear to have submitted any show-cause even though he was duly served with the notices. The workman has not claimed that he did not remain absent on those days. During the enquiry proceeding he simply pleaded that for the alleged period of unauthorised absence he had submitted leave applications and was under impression that his applications were allowed by the authority. The E.O. has observed in his report that the workman failed to bring on record any materials in support of that claim. Be that as it may, it is held by the E.O. that the workman had remained absent on the above mentioned dates without leave. It is true that on no

occasion the workman remained absent without leave for more than ten days but it is found that within a span of about four months he had remained absent without leave on about twelve occasions. So, it is a clear case of habitual absence without leave, a misconduct under the Model Standing Order No. 14 (3) (e).

13. The E.O. held the workman guilty of the misconduct under Model Standing Order No. 14(3) (e). Basing on that report and also putting emphasis on Clause No.4 of the terms of settlement contained in the memorandum of settlement Dt. 21-1-2005 (Ext.10) signed between the management and the representatives of the workmen, the disciplinary authority decided to impose the punishment of dismissal and, accordingly, a second show-cause notice (Ext.11) was served on the workman. The workman in turn filed his show-cause vide Ext.12. Challenging the fairness of the domestic enquiry the workman, besides taking the plea that the proposed punishment was disproportionate to the misconduct alleged against him, made a prayer that a fresh enquiry into the charges should be conducted. The disciplinary authority finding no extenuating circumstances finally imposed the punishment of dismissal.

On behalf of the workman it is argued that the memorandum of settlement marked Ext.10 being not a valid settlement the management should not have held the workman to have violated the terms of the settlement contained in Clause-4 of the said settlement. The workman in his affidavit evidence has stated that settlement marked Ext.10 is not valid and that a copy thereof was never communicated to the concerned D.L.O. In his cross-examination he admits that he is a signatory to the settlement. He has not explained as to how the settlement is invalid. A perusal of Ext.10 reflects that as many as seven representatives of the workman of the first party's factory including the second party workmen of this case have signed the memorandum of settlement. In the background that the workmen of the factory resorting to a strike without any notice and the management imposing a lock-out, the memorandum of settlement was signed between the management and the workmen with the intervention of the D.L.O., Khurda. In Clause-4 of the terms of the settlement both sides agreed that absentism for more than 25 days by a workman in a year over and above the eligible leave/holidays and weekly off shall be treated as serious misconduct and the workmen guilty of such misconduct shall be liable for stringent disciplinary action. In the case at hand, the workman remained absent unauthorisedly for about 33 days within a span of around four months. Therefore, the disciplinary authority while considering as to what punishment should be imposed on the workman considered the terms of settlement vide Clause-4 of the memorandum of settlement and opined that the workman having remained absent for more than 25 days had no extenuating circumstances to be considered leniently. The workman is guilty of a misconduct as per the Standing Order No.14(3) (e) of the model standing orders. In addition to that he is also found to have contravened one of the terms of the memorandum of settlement (Ext.10). There is no reason why the memorandum should be treated as invalid. The settlement was valid for a period of three years from the date of its signing. Soon after the memorandum of settlement came into force the workman who is a signatory to the settllement, repeatedly remained absent unauthorisedly. Even he did not care to submit any explanation even though the management served him notices vide Exts.1, 2 and 3. Though he participated in the enquiry he simply took the plea that he had applied for leave and was under the impression that his leave applications were

granted which is found to be false inasmuch as, in the notices marked Exts. 1, 2 and 3 there was clear allegation that the workman has remained absent without any leave application which is not shown to have been ever controverted. The workman did not try to defend himself by adducing evidence that under compelling circumstances which were beyond his control, he could not attend duties on the days specified in the charge sheet. Under such circumstances, the punishment cannot be said to be disproportionate to the proved misconduct.

14. On behalf of the workman two case laws have been cited. In citing the case law in Krishna Kumar *Vrs.* Divisional Assistant Electrical Engineers & Others, 1980 SCC (L&S)-1 the observation made in Para. 5 have been relied on. But, those observations are not applicable to the facts of the case in hand. Relying on the other case law reported in 2009(I) OLR 989 (P. Satyanarayan Patro *Vrs.* Odisha Power Transmission Corporation Ltd., Bhubaneswar) it is argued that since no Marshalling Officer/Presenting Officer was appointed to represent the management before the E.O., the enquiry vitiated. It is pertinent to mention that the same point has already been dealt with while answering the preliminary issue. That part, no where in the reported case it is observed by our Hon'ble High Court that non-appointment of a Presenting Officer *per se* makes the enquiry illegal. Therefore, this decision is also not applicable to the case in hand.

15. In view of the discussions made above, the action of the management is held to be legal and justified and, consequently, the workman is not entitled to any relief.

The reference is answered in favour of the management and against the workman.

Dictated and corrected by me.

RAGHUBIR DASH
31-5-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
31-5-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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

Printed and published by the Director, Printing, Stationery and Publication, Odisha, Cuttack-10
Ex. Gaz. 751—193+11