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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 3rd July 2012

No. 5092—li-(BH)-90/1995(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 4th February 2012 in I. D. Case No. 42 of 1996 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Odisha Air Products Ltd., Gundichapada, Dhenkanal and its Workman Shri Dibakar Sahoo was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No.42 OF 1996

Dated the 4th February 2012

Present :

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

Between :

The Management of
M/s Odisha Air Products Ltd.,
Gundichapada, Dhenkanal.

.. First Party—Management

And

Its Workman
Shri Dibakar Sahoo.

.. Second Party—Workman

Appearances :

Shri P. K. Chand, Advocate	}	.. For the First Party—Management
Shri D. Satapathy, Advocate		
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Shri R. Acharya, Advocate	}	.. For the 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. 116—li-1 (BH)-90/1995-LE., dated the 2nd January 1996 of the Labour & Employment Department for adjudication.

2. The terms of reference is as follows :—

“Whether the action of the management of M/s Odisha Air Products Ltd., Gundichapada, Dhenkanal in dismissing Shri Dibakar Sahoo 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 Electrician-cum-Fitter-cum-Welder under the management since 1-4-1986. 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 14-7-1994 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. Accordingly the workman submitted his explanation on 30-7-1994 denying the charges levelled against him. On being dissatisfied 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 the fact finding report of the management enclosing some copies of complaint petitions. 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. Thereafter the management issued a show cause for personal hearing. But on the appointed time and date even though he had gone to factory, but he was not allowed to contact the Branch Manager for personal hearing. Thereafter he was served with the order of dismissal. 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 charge-sheeted the workman and others. The management had charge-sheeted the workman and on being dissatisfied 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 backgrounds, the managements 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 second party workman is fair and proper ?
- (ii) Whether the action of the management in dismissing Shri Dibakar Sahoo from service with effect from the 21st January 1995 is legal and/or justified ?
- (ii) To what relief, the workman is entitled ?”

6. In order to substantiate his plea, the workman has examined three witnesses altogether out of whom, W.W. 1 was the President of the Odisha Air Products Employees Union, W.W. 2 is the workman himself and W.W. 3 was the Vice-President of the management Employees Union and proved documents under the cover of Exts. A to K. On the other hand, the management has examined its Enquiry Officer as M. W. 1 and proved the documents under the cover of Exts. 1 to 4/a.

FINDINGS

7. *Issue No. (i)*—It is worthless to mention here that this Court vide Order No. 43, Dt. 5-11-2002 passed necessary orders on the question of fairness on administrative action dealing with the issue whether the domestic enquiry is fair and proper and the same has not violated the principles of natural justice has already been decided in favour of the management.

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

The plea taken by the workman that he was not given any opportunity to adduce evidence during enquiry gains no corroboration from any other independent source. The workman during the course of hearing on merit has not uttered a single word to that effect. On the other hand, the management has categorically stated that there was a registered Trade Union namely, Odisha Air Product Employees Union and the Union has submitted a charter of demand to the management in the year 1993 and there was series of discussion, a settlement was effected on 5-6-1992 between the Union and the management and the same was valid till 30-6-1996 and was binding 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, and also caused damages 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 against some of the workman. No doubt, the present workman was acquitted but at the same time in view of the unhealthy atmosphere and due to criminal activities of the employees including the present workman of the management, a disciplinary proceeding was initiated against the present workman along with others and ended with fair and proper. 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. So on perusal of the case record and the enquiry report submitted by the Enquiry Officer and after going through the evidence of both the parties and on careful consideration of all the materials available in the case record, as discussed above, in my opinion, 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 other relief. Hence, both the issues are answered accordingly.

9. Hence, it is Ordered :

That the action of the management of M/s Odisha Air Products Ltd., Gundichapada, Dhenkanal in dismissing Shri Dibakr Sahoo from services with effect from the 21st January 1995 is legal and justified. The workman Shri Sahoo 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
4-2-2012
Presiding Officer
Labour Court
Bhubaneswar

S. A. K. Z. AHAMED
4-2-2012
Presiding Officer
Labour Court
Bhubaneswar

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