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## LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

### NOTIFICATION

The 5th July 2012

No. 5200—li-1 (B)-104/2001(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 29th May 2012 in I. D. Case No. 278 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s First Flight Couriers Ltd., A-60, Saheednagar, Bhubaneswar and its Workman Shri Brundaban Das was referred to for adjudication is hereby published as in the Schedule below :

### SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 278 OF 2008

(Previously registered as I. D. Case No. 27 of 2002 in the file of the  
Presiding Officer, Labour Court, Bhubaneswar)

Dated the 29th May 2012

*Present :*

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

*Between :*

The Management of M/s First Flight  
Couriers Ltd., A-60, Saheednagar,  
Bhubaneswar.

.. First Party—Management

And

Its workman Shri Brundaban Das,  
C/o General Secretary,  
Cuttack Commercial Workers Union,  
Gosala Road, Nayabazar, Cuttack-4.

.. Second Party—Workman

## Appearances :

Shri Manoj Kumar Mishra, .. For the First Party—Management  
Authorised Representative.

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Shri S. N. Biswal & Shri T. Lenka, .. For the Second Party—Workman  
Authorised Representative.

## 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. 2159—li-1 (B)-104/2001-LE., dated the 16th February 2001 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal vide Labour & Employment Department's Order No. 4138—li-21-32/2007-LE., dated the 4th April 2008. The Schedule of reference runs as follows :—

“Whether the termination of employment of Shri Brundaban Das by the management of M/s First Flight Couriers Ltd., with effect from the 27th March 2001 is legal and/or justified ? If not, to what relief Shri Das is entitled ?”

2. Shorn of unnecessary facts stated in the claim statement, the case of the second party workman, in nutshell, is that he had joined his employment under the first party as a Field Staff at Cuttack in 1994 and worked as such till the date of the disputed retrenchment i.e. on 27-3-2001 continuously and without any break. Prior to his retrenchment the management in the year 2000 had transferred one of its employees to its Jharsuguda Branch which triggered dissatisfaction amongst some of the employees. So, their Union raised a demand for withdrawal of that transfer order. Getting annoyed the management became vindictive towards its employees. In spite of all that the employees continued to work sincerely and peacefully up to 31-1-2001. On 1-2-2001 when the employees went to the first party's Branch Office at Cuttack they found that the Office was closed and it continued to remain closed till 26-3-2001. On 27-3-2001 the Branch Office at Cuttack opened but the second party and other agitating workmen were not allowed to enter inside to perform their work. They were asked to meet the Area Manager stationed at Bhubaneswar to get his permission to allow them to work in the Cuttack Office. On 27-3-2001 and 28-3-2001 the Area Manager compelled the second party to write a letter of apology and to give an undertaking. Accordingly, the second party submitted to such compulsion. Yet, he was not allowed to join at the Cuttack Office. Ultimately, on 24-5-2001 he was told that his services had already been terminated with effect from the 27th March 2001.

3. The first party management in its written statement has taken the stand that the second party was working in the first party's Cuttack Office as a Field Staff but he had never completed one year of continuous service throughout the span of his employment. It is the specific case of the management that the second party was transferred to its Jharsuguda Branch but he did not join there. In stead, being instigated by their Union he sat on a strike protesting his transfer. However, considering his apology the workman was allowed to join duty on 27-3-2001. Though he resumed duty, he did not attend office in time and also did not perform any duty. Ultimately, from 31-3-2001 he remained absent without any intimation to the management and thereby abandoned job voluntarily.

According to the management, the question of denial of employment to him did never arise. During conciliation proceeding the management had agreed to give him job in any of its Branch Office where vacancy was available but he did not agree. Thus, according to the management it is a case of voluntary abandonment of employment.

4. In terms of the reference the following issue has been settled :—

#### ISSUE

“(i) Whether the termination of employment of Shri Brundaban Das by the management of M/s First Flight Couriers Ltd., with effect from the 27th March 2001 is legal and/or justified ? If not, to what relief Shri Das is entitled ?”

5. The workman has examined himself as W.W. No. 1. No other witness has been examined on behalf of the workman. Similarly, the Branch Manager of the first party as the sole management's witness. Exts. 1 to 8 have been marked on behalf of the second party and Exts. A to D series have been marked from the side of the first party. All the exhibits have been marked without objection.

#### FINDINGS

6. *Issue No. (i)*—In view of the pleadings presented by both the sides the important point for consideration is as to whether it is a case of refusal of employment or a case of abandonment of employment.

According to the workman, the management closed its Cuttack Office from 1-2-2001 to 26-3-2001 and when the Office opened on 27-3-2001 he was not allowed to perform his duty even though he had submitted his written apology on 27-3-2001 and also on 28-3-2001. Exts. C and C/1 are the letters of apology submitted by the workman on 27-3-2001 and 28-3-2001 respectively. The management takes the stand that on submission of the apology letters the workman resumed duties from 27-3-2001 and attended his duties till 30-3-2001, though in an irregular manner and without maintaining the office timings, and thereafter he remained absent without any intimation to the management. In support of the contention that the workman resumed duties on 27-3-2001 and worked till 30-3-2001 the management has proved one pay slip for the month of March 2001 which is marked Ext. D. The workman's stand on the payment of wages for 27-3-2001 to 30-3-2001 is that he was not allowed to resume duties from 27-3-2001 till he raised the dispute before the District Labour Officer and yet, the management had sent an amount of Rs. 220 by way of money order towards his wages from 27-3-2001 to 30-3-2001 purportedly on the verbal request and advise of the Assistant Labour Officer, Cuttack.

7. Since the workman vehemently objects to the management's plea that on 27-3-2001 he resumed duties and after 30-3-2001 he absented from duties, the relevant materials require careful consideration.

Admittedly, the employees of the first party who were posted in its Cuttack Branch Office raised a protest against the transfer of one Shri Rajiv Das. It is admitted by M.W. No. 1 that when the employees stopped their work the management closed its Cuttack Branch Office from 1-2-2001 to 26-3-2001. He has further stated that on submission of written apology by those employees with their undertakings to the management that they would work in any of the management's branch

office, the Cuttack Branch started functioning its business smoothly from 27-3-2001 and all the employees who participated in the strike resumed duties from 27-3-2001. But, the workman claims that from 27-3-2001 till 24-5-2001 he and few other employees used to report for duty daily at the Cuttack Branch but the management did not allow them to work. According to him, it was only on 24-5-2001 he was told that his services had already been terminated with effect from the 27th March 2001.

The only material to support the management's stand is the pay slip marked Ext. D. Ext. 4 appears to be the forwarding letter with regard to the remittance of salary in respect of which the pay slip Ext. D has been issued. Ext. 4 is a letter sent to the workman by the Area Manager of the first party which was issued on 10-9-2001. So it transpires that the salary for the period from 27-3-2001 to 30-3-2001 was not paid till 10-9-2001. The management has no explanation as to why the salary for the said period was not paid or remitted to the workman soon after the end of the month of March 2001. On the other hand, it is stated in Ext. 4 that due to the workman's late arrival in office he was not allowed to mark his attendance from 27-3-2001 to 30-3-2001. Thus, the management indirectly admits that from 27-3-2001 onwards the workman was not allowed to attend duties, may be on the ground of his late arrival.

Another aspect that needs consideration is that while the workman says that he used to report at the Cuttack Branch Office daily from 27-3-2001 onwards the management claims that with effect from the 27th March 2001 the workman was supposed to work in its Branch at Bhubaneswar. Here it is worth mentioning that prior to the agitation in protest against the order of transfer of Shri Rajiv Das, a co-employee of Cuttack Branch, the workman had been working in Cuttack Branch since 1994. As already stated, the Cuttack Branch, because of the said agitation, remained closed from 1-2-2001 to 26-3-2001. Admittedly, on 27-3-2001 and 28-3-2001 the management obtained apology letters from each of the employees who participated in the agitation. Exts. C and C/1 are the apology letters submitted by the workman. In submitting Ext. C/1 the workman gave an undertaking that he was ready and willing to work at any place. Though the management claims that from 27-3-2001 the workman was asked to work in Bhubaneswar Branch it is not claimed that any written order was issued to that effect. The workman claims that from 27-3-2001 till 24-5-2001 he used to report for duty in Cuttack Branch Office but he was not allowed to perform duty. The management does not claim to have issued any letter to the workman asking him to explain as to why he either did not report for duty at Bhubaneswar Branch or he used to arrive late in the Bhubaneswar Office everyday from 27-3-2001 to 30-3-2001. Under such circumstances, it is difficult to believe that the workman was permitted to resume duties with effect from 27th March 2001 and accordingly he performed his duties in Bhubaneswar Branch till 30-3-2001.

Ext. A creates further doubt over the veracity of the management's stand. As stated by M.W. No. 1 all the employees, who had stopped work from 1-2-2001, personally submitted written apology on 27-3-2001 and a written undertaking on 28-3-2001 agreeing to work in any of the first party's Branch Office and thereafter those employees resumed duties from 27-3-2001. If that is true then there was no necessity on the part of those employees to again submit a joint written apology in the shape of Ext. A which has been signed by eight employees on 6-4-2001. It appears, despite of individual written apology/undertaking submitted by the agitating employees on

27-3-2001 and 28-3-2001 the management did not give them employment for which they were compelled to execute another undertaking in the shape of Ext. A about more than one week after the individual written apology/undertaking they had submitted.

8. The facts and circumstances narrated above make the stand taken by the workman more probable. That apart, the plea of abandonment of employment, in the absence of convincing materials, cannot be readily accepted. In this case the employer has not claimed to have issued any notice to the workman calling upon him to resume duties. The burden lies on the employer to establish and prove that the employee has abandoned service. In the absence of any communication like a notice calling upon the workman to resume duties, it is difficult to believe the management's plea of abandonment of service. Admittedly, the workman had been working with the first party since 1994. On the point of transfer of one of the co-employees there was an agitation which led to closure of their work place for about two months. Though it is claimed that after the agitation was over the workman was posted to work in Bhubaneswar Branch Office, there is no written order to that effect. The workman claims that he waited till 24-5-2001 expecting that he would be allowed to resume duties. Thereafter, he seems to have raised the dispute by filing a petition on 26-5-2001. This reflected in the conciliation failure report annexed to the Schedule of Reference. Under such circumstances, the only presumption is that the workman had no intention to abandon his job. If at all the workman was transferred to Bhubaneswar Branch and was asked to work there from 27-3-2001 which he did not comply then the management ought to have taken disciplinary action against him instead of maintaining silence for a long period only to take a bald plea when the dispute was raised that the workman by refusing to report for duty at the new place of posting had abandoned his job. Thus, it is ultimately held that this is a case of retrenchment by way of refusal of employment with effect from the 27th March 2001. The retrenchment being not in accordance with the provisions of Section 25-F of the Act, it is neither legal nor justified.

9. Coming to the question of relief the workman is entitled to, the relevant factors ought to be taken into consideration. The workman had been working with the first party since 1994. In December 2000 one of his co-employee was transferred from Cuttack Branch to Jharsuguda Branch. Therefore, the employees working in Cuttack Branch went on agitation which compelled the management to close its Cuttack Branch from 1-2-2001 to 26-3-2001. Ultimately, the agitating employees submitted written apology with an undertaking that they were ready to work in any of the branch offices of the first party. The conciliation failure report, Dt. 21-9-2001 reflects that in course of conciliation proceeding the management expressed its willingness to take the workman back in employment provided he would be adjusted in any of the Branches where vacancy was available but the Union that espoused the workman's cause did not agree insisting that the workman should be posted in Cuttack Branch. It cannot be completely ruled out that the management asked the workman to work in its Bhubaneswar Branch from 27-3-2001 but the workman used to report for duty at its Cuttack Branch thereby impliedly challenging the management's right to transfer him from one Branch Office to another. That apart, he has not pleaded in the claim statement that after his retrenchment he has all along remained out of gainful employment. It is only in his affidavit evidence he has stated that since the date of termination he has been without any gainful employment. The

workman having refused to accept reinstatement offered by the management during the conciliation proceeding it is not just and proper to award him the relief of back wages. However, he is entitled to be reinstated with a compensation of Rs. 20,000 (Rupees twenty thousand) only for he having been dragged to raise the industrial dispute.

10. Accordingly, the issue is answered in favour of the workman. The management is called upon to reinstate the workman and to pay him the amount of compensation i.e. Rs. 20,000 (Rupees twenty thousand) only within a period of two months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

RAGHUBIR DASH  
29-5-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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29-5-2012  
Presiding Officer  
Industrial Tribunal  
Bhubaneswar

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