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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 19th July 2012

No. 5637—IR-ID-26/2010-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd July 2012 in I. D. Case No. 15 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Odisha Engineering College, Bhubaneswar and their Workman Shri Girija Sankar Mohanty, Mangalabag, Cuttack was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 15 OF 2010

Dated the 3rd July 2012

Present :

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

Between :

The Administrative Officer—*cum*—Registrar,
Odisha Engineering College,
36-A, Sahidnagar, Bhubaneswar.

.. For the First Party—Management

And

Shri Girija Sankar Mohanty,
S/o Late Atul Bihari Mohanty,
Behind Cuttack Nursing Home,
Mangalabag, Cuttack.

.. For the Second Party—Workman

Appearances :

Shri Sanjay Kumar Das, .. For the First Party—Management Advocate.

Shri T. K. Pattnaik, .. For the Second Party—Workman Advocate.

AWARD

The Government of Odisha in their Labour & E.S.I. Department, exercising power conferred upon them by Section 12 (5), read with Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the Act.) have referred the following dispute to this Tribunal for adjudication vide their Order No. 2813—ID-26/2010-LE., dated the 8th April 2010.

“Whether the action of the management of Odisha Engineering College, Bhubaneswar in removing Shri Girija Sankar Mohanty, Ex-Accountant from services with effect from the 19th October 2000 is legal and/or justified ? If not, what relief Shri Mohanty is entitled to ?”

2. The facts not in dispute are that the second party had been working as an Accountant in the establishment of the first party since 30-3-1991/1-4-1991 and that vide order, dated 3-7-1993 departmental proceeding was initiated against him on different charges (the charges have been extracted in Para. 3 of the findings on Issue No. 1 recorded on 19-11-2011 which is made part of this Award). It is also not disputed that one Shri Pinaki Mohapatra, an Advocate was appointed as the Enquiry Officer and that the Enquiry Officer having found the second party guilty of all the misconducts alleged in the charge sheet, the management served a second show-cause notice on the second party and ultimately passed the order, Dt. 19-10-2000 removing him from service.

3. The case of the second party is that the enquiry was conducted in an unfair manner without giving sufficient opportunity to him to defend himself. It is also claimed that not only the charges were vague and unspecific, those were false and fabricated. The workman could not submit his explanation to the charge sheet as it was never served on him. The Enquiry Officer conducted the enquiry in his absence and without taking any evidence, submitted a report which is perverse. The management without application of mind accepted the report in a mechanical manner and asked the second party to submit his reply to the second show-cause notice. Though he submitted his show-cause, the management did not consider the same and the order of removal from service was passed.

4. In the written statement, the first party management asserts that the charges are neither vague nor fabricated, that charge sheet was served on the workman requiring him to submit his explanation but he did not respond, that the workman had appeared before the Enquiry Officer but did not co-operate in the enquiry proceeding and that considering the case of the second party from all angles, the management decided to terminate his service.

5. Basing on the pleadings of the parties, the following issues have been settled :—

ISSUES

- “(i) Whether the domestic enquiry conducted against the workman is fair and proper?
- (ii) Whether the second party is a workman ?
- (iii) Whether the action of the management of Odisha Engineering College, Bhubaneswar in removing Shri Girija Sankar Mohanty, Ex-Accountant from service with effect from the 19th October 2000 is legal and/or justified ?
- (iv) If not, what relief Shri Mohanty is entitled to ?”

6. The workman examined himself as W.W. No. 1 and proved documents which are marked Exts. 1 to 7. On the other hand, the management examined three witnesses and marked documents as Exts. A to W/1. M.W. 1 is the Enquiry Officer and M.W. Nos. 2 and 3 are two employees of the first party.

7. Since fairness of the domestic enquiry was under challenge, issue No. (i) on the fairness of the domestic enquiry was taken up as a preliminary issue. Such a procedure has been followed in accordance with the observation of the Hon’ble Supreme Court in Cooper Engineering Ltd. Vrs. P. P. Mundhe, AIR 1975 (SC) 1990. (The findings on issue No. (i) recorded in separate sheets, which forms part of the Award is annexed to this Award).

The domestic enquiry being found to be unfair and improper, the management has been given an opportunity to adduce evidence on the merits of the charges as well as on the remaining issues. The management has adduced evidence to prove the charges and the workman has also adduced rebuttal evidence. Now, it is to be examined as to whether the charges have been successfully established by the management.

FINDINGS ON THE CHARGES

8. Ext. 1 is the charge sheet. The facts constituting the alleged misconducts have been stated therein under five paragraphs. In Paras. 1 to 3 of the charge-sheet, it is alleged that the second party was directed to join at the first party’s Cuttack Office on 24-6-1996 to participate in the Audit and Accounts work, but the second party without joining there remained absent unauthorisedly till 7-2-1997 without any intimation to the Authority. In Para. 4 of the charge-sheet, it is alleged that the second party unauthorisedly signed in the Attendance Register maintained at the Administrative Office of the first party at Saheednagar, Bhubaneswar during the aforesated period though during that period he was directed to work at the Cuttack Office but had remained absent unauthorisedly. In Para. 5 of the charge-sheet, the second party is charged to have failed to hand over the Cash Book, Ledger and Vouchers and other relevant Accounts Records kept in his custody to any other staff before remaining absent unauthorisedly, as a result of which the Records and Registers could not be maintained during the said period and for that matter the management was put in trouble. It is further alleged that the second party had failed to maintain the Cash Book, Ledger and other important Record of Accounts up-to-date.

With regard to the charges framed in the charge-sheet, the second party in his claim statement has simply stated that those are false and fabricated. There is no specific denial of the facts stated

in the charge sheet. However, in his affidavit evidence, he has denied those facts. With regard to the charge of unauthorised absence from 24-6-1996 to 7-2-1997, the second party has stated in his affidavit evidence that this is factually incorrect inasmuch as the management has paid him salary for the said period. To support this contention, he relies on the Contribution Slip in Form No. 3A issued by the management under the Employees' Pension Scheme, 1995 for the period from April 1996 to March 1997 which is marked as Ext. 5. This document reflects that deposit of workers share as well as the management's contribution to the Pension Fund under the E.P.F. Scheme for the period from April 1996 to March 1997 in the second party's E.P.F. Account has been certified by the management. Basing on this document, there may be a presumption that the management has remitted a sum of Rs. 6200 as contribution to the E.P.F. Account of the second party for the period from April 1996 to March 1997. But, there cannot be a presumption without further materials that the second party had received his salary for the period from 24-6-1996 to 7-2-1997 during which period he was said to be absent from duty unauthorisedly. The fact that the second party had not received his salary for the said period till June 2000 is very much evident from the second party's own representation, dated the 28th June 2000 (Ext. W/1) in which he has admitted that though his E.P.F. contribution was credited to his E.P.F. Account, but his salary for the said period had been held up without any justification. Therefore, merely on the basis of the E.P.F. contribution slip (Ext.5), there cannot be a presumption that he had received his salary for the disputed period.

9. The second party has not offered any other explanation to Charge No. 1 so far it relates to his unauthorised absence at Cuttack Office from 24-6-1996 to 7-2-1997. However, with regard to some other charges, he has taken the stand that there was no Office of the first party at Cuttack and he was never served with any order for his posting at Cuttack Office. But, the materials available on record falsify this stand of the second party. Ext. N is a notice, Dt. 13-12-1996 issued by the management calling upon the second party to explain as to why he should be paid his salary for the period he had not worked at Cuttack Office. Ext. 7 is claimed to be an explanation to the said notice submitted by the second party on 18-12-1996. The contents of Ext. 7 transpires that while furnishing his explanation to, Ext. 7 the workman took the stand that the employees of the first party had observed 'cease work' which was withdrawn on 21-11-1996 and after withdrawal of the 'cease work', no official instruction having been issued to the second party, he had been working at Bhubaneswar Office (without reporting for duty at the Cuttack Office). It is further stated in the explanation that though all the employees and teaching staff of the first party College were on "process of movement" only the second party and two other employees were not allowed to draw their salary from July 1996. Thus, it is found that in December 1996, the second party while submitting his explanation, Ext. 7 did not take the stand that as because there was no Office at Cuttack, he could not have been directed to perform his duty at Cuttack Office. Ext. V is admittedly in the hand writing of the second party. It is his joining report, Dt. 7-2-1997 wherein he has stated that he joined at the Cuttack Office on 7-2-1997 in compliance with the Management's letter, Dt. 6-2-1997. Thus, Ext. V also gives rise to an inference that the first party had its Office also at Cuttack.

Ext. P is a copy of the second party's reply to the Management's show-cause notice, Dt. 1-7-1996 alleging that the first party has interpolated the date below the second party's signature in Ext.P. The latter has produced his personal copy of the original of Ext. P and it has been marked X/1 for identification. On a comparison of both Ext. P and Mark X/1, it is found that both are copies of the same original. From the contents of Ext. P and Mark X/1, it can be found that while

submitting his explanation, the second party admitted that he and some other employees were working at the residence of the President of the first party situate in Tulsipur, Cuttack. It further reflects that a meeting of the Employees' Union was held on 24-4-1996 and a Resolution was passed to the effect that no employee of the first party should work in the residence of the President at Cuttack and that the staff working at the President's residence should perform their duties at Bhubaneswar Office. In his explanation, the second party has further stated that in view of such Resolution, he and his colleagues who were working at the residence of the President reported for duty at Bhubaneswar Office with effect from the 25th April 1996.

Thus, basing on Ext. P, it can be concluded that prior to 24-4-1996, the second party and some other employees used to work in the residence of the President of the first party Institution and one office of the first party used to function in the premises of the President's residence at Cuttack. Thus, the second party's plea that no office of the first party was there at Cuttack at any point of time is false.

Basing on Ext. P, it can further be concluded that during the relevant period, i.e. 24-6-1996 to 7-2-1997, the second party did not report for duty at Cuttack Office. In his explanation marked Ext. P the second party assigns the reasons of his absence from Cuttack Office to be a Resolution of the Employees' Union not to allow any of the employees of the first party to work in the President's residence. But, in this case such a stand is not taken by the second party. Also no evidence has been adduced by the second party to justify his absence in Cuttack Office from 24-6-1996 to 7-2-1997. Had he taken such a stand and had adduced evidence to establish the same, the Tribunal could have considered as to whether there was sufficient cause that prevented him from attending Cuttack Office during the relevant period.

Thus, the management is found to have established the charge of unauthorised absence to the extent that though the second party was required to attend Cuttack Office, he did not report there for duty from 24-6-1996 to 7-2-1997 without any justification and without any Authority. Therefore, his absence during the said period amounts to unauthorised absence.

10. The other charge is on alleged marking of attendance by the second party in the Attendance Register maintained in Bhubaneswar Office without any Authority. It is not denied by the second party that he used to mark his attendance in the Bhubaneswar Office during the aforesaid period, i.e. 24-6-1996 to 7-2-1997. Even in his explanation marked Ext. P, he has admitted that instead of reporting for duty at Cuttack he used to report at Bhubaneswar Office. Thus, it is an admitted case that during the relevant period, the second party had signed the Attendance Register maintained in the Administrative Office at Bhubaneswar. Relying on Ext. P, it is already held that prior to 24-6-1996, the second party used to attend office at Cuttack. He has not assigned any reason as to why he signed the Attendance Register maintained in the Administrative Office at Bhubaneswar. That apart, the second party has not tried to show that during the disputed period the management had, either expressly or impliedly, permitted him to perform his duty at Bhubaneswar Office.

Thus, it is to be concluded that the second party's signing the Attendance Register in Bhubaneswar Office is an unauthorised act. According to the management, an explanation was called for from the second party on such unauthorised act of the second party. The copy of the showcause notice is Ext. R. It was issued on 21-1-1997. The second party does not claim to have

submitted any explanation to this showcause notice. Though in his affidavit evidence, he has denied to have received the notice, Dt. 21-1-1997, in his cross-examination he admits to have received it. It appears without submitting any explanation the second party resumed duty at Cuttack Office on 7-2-1997 (vide Ext. V). Therefore, it is found that at the earliest opportunity offered to him, the second party could not justify his putting signature in the Attendance Register at the Head Office. Therefore, this charge of misconduct is also found established.

11. The other charge is on non-handing over of Records and Registers in the custody of the second party to any other employees before he remained absent unauthorisedly. On this count, the management has not adduced reliable evidence to prove that any Records/Registers were in the exclusive custody of the second party. It is also not proved that in the past there was any incident in which the second party had handed over any such Records/Registers to some other staff in the event of his remaining absent from duty. Those records are also not produced before this Tribunal to support the management's contention that during the relevant period those were not maintained by any one and also to substantiate the accusation against the second party that he did not maintain the Cash Book, Ledger and other important Records of Accounts up-to-date. Therefore, the charges contained in Para. 5 of the charge sheet are found to be not proved.

12. Thus, the management can be said to have proved that from 24-6-1996 to 7-2-1997 the second party without obtaining permission did not report for duty at Cuttack Office whereas during the said period, he unauthorisedly marked his attendance at Bhubaneswar Office. Since it is admitted that the second party used to mark his attendance at Bhubaneswar Office during the disputed period, the workman cannot be deemed to have abandoned his service.

FINDINGS ON OTHER ISSUES

13. *Issue Nos. (iii) & (iv)*—Ext. L is a Booklet containing the service conditions for the employees of the first party. Chapter VII thereof contains the Rules of Conduct of the employees. In the facts and circumstances of the case at hand, Clauses 2, 3, 17 and 21 (a) of Ext. L are found to be relevant and applicable. Those are reproduced hereunder :—

2. Every employee shall at all times maintain absolute integrity, decorum of conduct and devotion to duty.
3. Every employee shall at all times carry out the order and act according to the instruction of his superior authorities so far as his official duties are concerned.
17. Each staff has to mark himself present and sign in the Attendance Register prescribed on each day he attends to duty.
- 21 (a). Misbehaviour/unruly conduct inside the campus/premises by any employee, teaching staff (both technical and non-technical) will be treated as gross misconduct.

The proved misconduct on the part of the second party amounts to contravention in either whole or part of the aforestated Conduct Rules. On a perusal of the contents of Chapter VII of Ext. L, it transpires that the Rules of Conduct laid down in Clauses 4 and 10 (a) are treated as gross misconducts. In the absence of any other express or implied terms, contravention of the

other Rules of Conduct should not be treated as gross misconduct. In that view of the matter, the second party cannot be said to be guilty of any gross misconduct. That apart, the management has not shown the previous conduct of the second party to be deplorable. Even while imposing the punishment of removal from service (vide Ext. 2) the management did not cite the previous bad conduct as a ground to support the punishment of removal from service. Therefore, the punishment of dismissal from service seems to be highly disproportionate to the proved misconducts. Considering all these facts and circumstances, the action of the management in removing the second party from service is found to be neither legal nor justified.

However, the second party is found to have shown utter disregard to rules of conduct such as maintaining decorum of conduct and devotion to duty besides showing unruly behaviour by not following the instruction of his authorities. However, the workman is not alleged to have committed any such misconduct so that the management can be said to have lost confidence in him. There is some indication that during the relevant period some trade union activities were in process and there were resentment against employees attending to the President's residence office at Cuttack. It may be a fact that such trade union activities were not in accordance with the provisions of law governing the trade unions and their activities but that is not very much relevant to this dispute. However, this circumstance can also be taken into consideration while deciding the propriety of the punishment to be awarded. Since the second party has shown unruly behaviour he must not be let off with a light punishment lest it should send a wrong signal to the other employees of the establishment. The punishment must be deterrent as well as corrective in nature. The second party should be given a chance to correct himself.

Chapter IV of the Service Conditions (Ext. L) prescribes penalties of different nature. The penalty of termination/dismissal is found to be highly disproportions to the proved misconducts. The penalties categorised under Clauses 1(a) to (d) of Chapter IV appear to be lenient. Clause 1(e) of the same Chapter prescribes 'suspension' as a punishment. Since the rules governing the Service Conditions of the second party permits to impose 'suspension' as a penalty, the Tribunal can impose such a penalty.

14. In this case neither side claims that the second party was put under suspension during pendency of the disciplinary proceeding. Since the Service Conditions (Ext. L) does not provide that an employee can be suspended during the pendency of a disciplinary proceeding there may be a presumption that the second party was not put under suspension till he was removed from service. Admittedly, the termination of service was made effective from 19-10-2000. In the meanwhile more than eleven and a half years have elapsed. From the conciliation failure report it transpires that the second party raised the dispute by filing a complaint, Dt. 13-7-2007 before the local Labour Authority. This unreasonable delay has not been properly explained. Though the second party claims that he is not in any gainful employment, it is difficult to believe that an account-knowing person would remain out of gainful employment for such a long period. Therefore, a relief permitting the second party to get back wages for even a part of the period he has remained out of employment so far will give a wrong signal to the staff working in the first party Institution, besides causing prejudice to the first party. Therefore, the said period should be treated as suspension as a measure

of punishment for the proved misconducts. In that view of the matter, the second party be deemed to have been placed under suspension from 19-10-2000 till the date of this Award, i.e. 3-7-2012 as a measure of punishment for the proved misconducts.

15. *Issue No. (ii)*—Though the first party contends that the second party is not a ‘workman’, there is no evidence that the second party was employed in a supervisory capacity. He was working as an Accountant which implies that his work was clerical in nature. It is submitted that as an Accountant he used to supervise the work of Account Assistants, Accounts Executives and other junior staff. But, it is not shown as to what kind of supervision the second party used to exercise over those staff. Therefore, this issue is answered in the affirmative.

16. In the result, the reference is answered in favour of the second party. In view of the observations made above, the second party be reinstated in service. So far backwages is concerned, he shall not be entitled to any back wages for the period from 19-10-2000 to 3-7-2012, i.e. the date of this Award. But, he shall be entitled to get his salary from 4-7-2012 till the date of his actual reinstatement.

Dictated and corrected by me.

RAGHUBIR DASH
3-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
3-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 15 OF 2010

Management of M/s Odisha Engineering College, Bhubaneswar. .. For the First Party—Management

And

Shri Girija Sankar Mohanty .. For the Second Party—Workman

FINDINGS ON ISSUE No. 1

Dated the 19th November 2011

This being a case of removal of the second party from service as a punitive measure claimed to have been preceded by a domestic enquiry, the issue on the fairness of the domestic enquiry has been taken up as a preliminary issue on which both the sides have adduced evidence.

The workman has examined himself as W.W. No. 1 and exhibited documents vide Exts. 1 to 3. On the other hand, the management has examined the Enquiry Officer (for short, ‘the E.O.’) as M.W. No. 1 and the Marshalling Officer as M.W. No. 2. On behalf of the management, Exts. A to K have been marked.

2. In his claim statement the workman has challenged the fairness of the domestic enquiry by raising the following grounds :—

- (1) the charges framed against him were not clear, definite and specific ;
- (2) a copy of the charge sheet was never served on him ;
- (3) he was not intimated about the appointment of the E.O. ;
- (4) the E.O. conducted the enquiry without giving any notice to the workman for which the workman could not participate in the enquiry proceeding ;
- (5) the E.O. without recording any evidence submitted his report holding that all the charges were established which, without based on any materials, is perverse ; and
- (6) the management accepted the enquiry report mechanically without any application of mind.

The grounds so raised by the workman will be dealt with one after another to findout whether the domestic enquiry is fair and proper.

3. Ground No. 1 : Ext. 1 is said to have contained the charges. For ready reference the charges are reproduced hereunder :—

“1. Initially you were appointed on 1-4-1991 on probation but subsequently your services were terminated on 7-11-1991 as your work was found unsatisfactory. On your undertaking to improve your efficiency, you were allowed to work on *ad hoc* basis. When you were continuing in your service and working at Cuttack Office on 4-11-1992 direction was issued to attend the Administrative Office, Bhubaneswar to supervise the accounts and attend audit work as you were in charge of the accounts section but you did not attend the audit for which the proper audit could not be conducted. Then you were directed to join at Cuttack Office on 24-6-1996 to participate the audit and accounts work but without joining at Cuttack Office, you remained absent unauthorisedly and without any intimation to the authority you absented continuously thereafter till 7-2-1997.

On 1-7-1996 an explanation was called for your above irregularities with instructions to submit the explanations on or before 7-7-1996 but you did not care to it.

On 8-7-1996 you submitted an application indicating that you were obstructed by some of your co-employees to attend Office, but on enquiry it has been ascertained that your statements are false.

2. On 9-7-1996 again you were directed to attend the Cuttack Office to finish the accounts work but you deliverately avoided to attend the Cuttack Office. Thereafter letters were sent to you repeatedly on 14-11-1996 and 13-12-1996 to submit explanation but you did not submit any explanation for your unauthorised absence from duty on different periods and disobedience of orders.

3. On 18-12-1996, you submitted an application with request to allow you to draw the salary expressing your regret for disobedience of order, with undertaking that you will not repeat the same in future.

4. On enquiry it has been detected that you have signed the Attendance Register at the Administrative Office at 36-A, Saheed Nagar though your place of posting is at Cuttack Office. In this respect, another explanation was called for on 21-1-1997 but you did not submit any reply and joined at the Cuttack Office on 7-2-1997 and submitted a joining report.

5. You are the accountant of the organisation having charge of accounts including cash book, ledger and vouchers and other relevant records. All the records are important and essential and required to be maintained day to day for the smooth management. These records are essentially required for inspection of different statutory authorities as Income Tax, EPF, AICTE and Audit time to time. When you remained absent unauthorisedly for a period of more than 6 months, the records which were in your custody could not be available for maintenance as same were not handed over to the other staff. On enquiry, it has been ascertained that you were kept records with you deliberately and did not hand over to other before remaining absent unauthorisedly to put the management in trouble. On further enquiry, it has been ascertained that you have not maintained the cash book, ledger and other important records of Accounts up to date with view to put the management in trouble. In this respect, you were asked to submit show-cause and appear personally before the authority on 14-11-1996 but you did not appear or submit any explanation.

In view of your above facts, you are charged with—

1. Gross official misconduct
2. Negligence in duty
3. Disobedience in orders of the Authority
4. Deliberate attempt to cause damage to the Institution and to sabotage the Organisation.
5. Loss of confidence
6. Unauthorised absence
7. Habitual indiscipline
8. Submission of false statements
9. Participation in cease work with other employees which has been declared as strike in disguise”.

At this stage it is noteworthy that the management has not exhibited any Certified Standing Order or Service Rules of its own. It is also not specified in the charge-sheet as to whether the charges have been framed in accordance with the provisions of its own Standing Orders/Service Rules. When pointed out by the Tribunal, the learned counsel for the management has submitted that the management does not have its own Standing Orders/Service Rules. But, in Ext. J, the order appointing Shri Pinaki Misra, Advocate as the E.O., the management requested the E.O. to enquire into the charges by following the principles of natural justice and “Service Rules of the Establishment” which gives rise an inference that the management has got its Service Rules. In the absence of such Service Rules it is not possible to ascertain whether the charges containing

various misconducts alleged against the workman are in consonance with the Service Rules. Be that as it may, on a perusal of Ext. 1 it transpires that the workman had disobeyed various orders passed by the management, remained unauthorisedly absent from 24-6-1996 to 7-2-1997 but had signed the Attendance Register maintained in the Bhubaneswar Office of the first party though the workman was posted to work in its Cuttack Office, and, while so remaining absent for a long period which were being maintained by him, to any other employees of the first party. The facts narrated in Ext. 1 do not make out any other misconducts. It is not understood as to how the management has charged the workman with deliberate attempt to cause damage to the Institution and to sabotage the Organisation and submission of false statements and participation in cease work with other employees which was nothing but a strike in disguise. Thus, it is found that though the facts narrated in Ext. 1 make some of the charges specific, clear and definite, some other charges are found quite vague.

4. Ground No. 2 : Though the workman alleges that he was not served with a copy of the charge-sheet, the management has failed to adduce evidence to negative that allegation. The E.O. has deposed in his evidence and also stated in his report that when the workman appeared before him and denied to have received the copy of the charge-sheet, another copy of the charge-sheet was handed over to the workman to allow him to prepare his defence. Ext. 1 is a copy of the charge-sheet which is produced by the workman himself. Therefore, there may be a presumption that during the enquiry proceeding a copy of the charge-sheet was handed over to the workman. But the management has failed to prove that before a decision was taken to initiate a departmental proceeding against the workman the charge sheet was served on the workman and he was given an opportunity to explain the charges.

5. Ground No. 3 : The allegation that the workman was never intimated about the fact of appointment the E.O. is found to be incorrect because Exts. A to E are the series of communications between the workman and the E.O. during the pendency of the enquiry proceeding. Further, the workman has not shown to have ever registered any protest before the management that he was not intimated about the appointment of the E.O.

6. Ground No. 4 : Exts. A to E throw some light on this point. These are a series of communications between the workman and the E.O., the last being Ext. E which was issued by the E.O. on 3-5-1999 and received by the workman on 5-5-1999. Ext. E reflects that on 31-3-1999 the workman had appeared before the E.O. and on his request time was allowed till 10-4-1999 to prepare his defence but the workman did not appear on the date fixed and yet the E.O. adjourned the proceeding to 7-5-1999 to enable the workman to submit his show-cause. The management has not produced any document showing that after 7-5-1999 the E.O. had caused any notice served on the workman intimating him the date he had fixed for hearing in the enquiry. So, there is no evidence to show that the workman, on his failure to submit his show-cause/defence, was noticed by the E.O. to appear before him on a particular date to take part in the hearing of the enquiry proceeding. When the E.O. was satisfied that sufficient opportunity was given to the workman to file show-cause and no further time should be granted for that purpose he ought to have fixed a date for recording of the evidence and the workman should have been asked to take part in the proceeding on that particular date. The enquiry report (Ext. G) reflects that the E.O. had fixed a number of dates to facilitate the workman to submit his defence and ultimately on 14-5-1999

the E.O. decided to conduct the hearing basing my findings on official record. From this it can be inferred that when the workman failed to submit his defence despite of several adjournments, the E.O. decided on 14-5-1999 to proceed for the hearing. Ext. G further reflects that the enquiry report was submitted on 16-5-2000, i.e., one year after the E.O.'s decision to conduct the hearing. So, it is clear that the workman did not get any notice about the date on which the E.O. was to conduct the hearing. Even without submitting his show-cause/defence the workman could have taken part in the hearing and since the workman was not intimated about the date of hearing he failed to appear before the E.O. to participate in the hearing.

7. Ground No. 5 : Here it is pertinent to mention that the management has not produced the records and all documents pertaining to the domestic enquiry taking the plea that those were destroyed during an agitation raised by the employees during the period between 2000 and 2003. Therefore, there is no direct evidence as to whether the E.O. had recorded any evidence on the charges. The enquiry report (first page, last sentence) reflects that the E.O. decided to conduct the hearing basing his finding on official record which gives rise to a presumption that no evidence was recorded by him. But, in his affidavit evidence the E.O. has stated that after going through the documentary as well as oral evidence he found the workman guilty of all the charges. In the second page of the enquiry report the E.O. has stated to have relied on the oral statement of one Charan Das. But, it is not clear as to whether the oral statement of Charan Das was recorded by the E.O. Here it is to be mentioned that in the charge-sheet (Ext. 1) the management had mentioned the list of documents and the name of witnesses who were to prove the charges but the name of Charan Das does not appear therein. So, it is quite doubtful as to whether Charan Das was produced by the Marshalling Officer before the E.O., to get his evidence recorded or in course of his enquiry the E.O. himself had ascertained some facts from the oral statement of Charan Das even though he was not offered as a management witness.

On a perusal of the enquiry report it transpires that the E.O. himself perused some letters which were reflected in the list of documents annexed to the charge-sheet and merely on such perusal he found the charges fully established. No one seems to have proved the facts contained in those letters.

The letters the E.O. has perused are letters, Dt. 1-7-1996, 9-7-1996, 21-1-1997 and 14-11-1996. Those letters are not exhibited in this case. However, from the narration made in the enquiry report it is found that the letter, Dt. 1-7-1996 is a notice served by the management on the delinquent asking him to submit his show-cause in respect of his absence from duty from 24-6-1996, the letter, Dt. 9-7-1996 is written by the workman rebutting some allegations made against him regarding the workman's participation in a Union meeting the letter, Dt. 14-11-1996 is a notice to the workman asking him to explain on the non-maintenance of cash book and Ledger and letter, Dt. 21-1-1997 is another notice served on the workman asking him to explain as to why he did not report for duties at Cuttack Office (where he was posted) but joined in Bhubaneswar Office (without being posted there). The enquiry report makes it clear that merely basing on these letters the E.O. has found all the charges proved. Facts narrated in notices served on a workman making some allegations against him and asking explanation thereto cannot be taken into consideration unless those are proved by adducing evidence and therefore, the findings recorded by the E.O.

holding the workman guilty of all the charges are without supported by any evidence. As a result, the findings of the E.O. are perverse.

8. Ground No. 6 : Ext. 2 is the order, Dt. 19-10-2000 removing the workman from service with immediate effect which is based on the enquiry report. It does not reflect the Authority to have applied his mind to the enquiry report. The Authority has mechanically accepted the enquiry report which is perverse.

9. Thus, it is found that some of the charges framed against the workman are vague ; that copy of the charge-sheet was not served on the workman before initiation of the departmental proceeding that notice was not duly served on the workman giving him prior intimation about the date fixed by the E.O. for hearing in the enquiry ; that the E.O. did not record any evidence on the charges ; that the findings recorded by the E.O. being not based on any evidence is perverse ; and that the management has accepted the enquiry report in a mechanical way. Therefore, the enquiry cannot be said to have been conducted fairly and properly.

The Issue No. 1 is therefore answered against the management.

Dictated and corrected by me.

RAGHUBIR DASH
19-11-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
19-11-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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