

The Odisha Gazette

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 2129 CUTTACK, MONDAY, NOVEMBER 19, 2012/KARTIKA 28, 1934

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 5th November 2012

No. 9089—IR-(ID)-70/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th August 2012 in Industrial Dispute Case No. 8 of 2011 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial dispute between the Management of M/s Odisha Forest Development Corporation Ltd., Bhubaneswar and their workman Shri Dinesh Kumar Mishra represented through All Odisha Forest Corporation Karmachari Sangha was referred to for adjudication is hereby published as in the Schedule below :—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 8 OF 2011

Dated the 30th August 2012

Present :

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

Between :

The Management of
M/s Odisha Forest Development
Corporation, Ltd.,
Bhubaneswar.

.. First-Party—Management

And

Their Workman
Shri Dinesh Kumar Mishra
represented through All Odisha
Forest Corporation Karmachari
Sangha.

.. Second-Party—Workman

Appearances :

Shri Ashok Swain, Law Officer	. . For the First-Party—Management
Shri D. K. Mishra	. . Second-Party—Workman himself

AWARD

The Government of Odisha in the Labour & Employment Department in exercise of powers conferred upon them 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 following dispute to this Court for adjudication vide Order No. 7845—ID-70/2011-LE., dated the 27th August 2011.

"Whether the action of the management of Odisha Forest Development Corporation Ltd., Bhubaneswar with holding Time Bound Advancement Scale of Pay of Shri Dinesh Kumar Mishra during the period from the 1st July 2003 to 1st July 2006 is legal and/or justified ? If not, what relief Shri Mishra is entitled to ?"

2. The case of the workman, in brief, as set out in his statement of claim filed by the General Secretary, All Odisha Forest Corporation Karmachari Sangha is that he was appointed under the management as a L. D. Assistant with effect from the 1st July 1988. It is stipulated under Rule 7 (ii) of the Odisha Revised Scale of Pay Rule, 1988 that an employee who has completed 15 years continuous service in a particular post/grade is entitled to come over to Time Bound Advancement (in short T.B.A.) Scale of Pay as mentioned for different Scale of Pay. As the workman was in continuous service in his initial post of L. D. Assistant since last 15 years, i.e. from the 1st July 1988, he is entitled to get the corresponding T.B.A. Scale of Pay with effect from the 1st July 2003. Accordingly on 2-7-2003, the workman applied to the management for sanction of the T.B.A. Scale of Pay but the management did not response to it. So he time and again made several requests for consideration of his case but to no avail, rather, the management turned a deaf ear. After remaining silence for over seven years, the management *suo motu* allowed the said 15 years T.B.A. Scale of Pay benefit to the workman vide its Order, dated the 5th May 2010 retrospectively with effect from the 1st July 2006 instead from its due date, i.e. from 1-7-2003 without mentioning any reason. Being aggrieved, the workman made an appeal on 3-6-2010 before the higher authority of the management to which the management replied vide its Order, dated the 31st July 2010 rejecting the appeal/representation mechanically without any speaking or reasoned order. According to the workman, he is a sincere and hard working throughout his service career and there is no adverse remarks ever communicated to him. On these averments, the workman has stated that the action of the management in not allowing T.B.A. Scale of Pay benefit to him on due date, i.e. from 1-7-2003 is unjust, unfair and illegal. So the workman has prayed to direct the management to allow the T.B.A. Scale of Pay with effect from the 1st July 2003 instead of 1st July 2006.

3. On the other hand, the management appeared and filed written statement denying the claim of the workman. According to the management, the workman was initially appointed as Jr. Clerk with effect from the 1st July 1988. The workman had applied for T.B.A. Scale of Pay on 1-7-2003 but due to non-availability of updated C.C.Rs., his case could not be considered in

time and subsequently the management after receipt of the C.C.Rs. of the workman considered his case and allowed him T.B.A. Scale of Pay with effect from the 1st July 2006. According to the management, the T.B.A. Scale of Pay is not a matter of right and an employee just completion of 15 years is entitled to get the benefit. According to the management, the workman's performance as per C.C.R. available till 2003 was not up to the mark for which he was not sanctioned T.B.A. Scale of Pay with effect from the 1st July 2003. However, the management after considering the C.C.R. for 2004-2005 and 2005-2006 finally allowed him the T.B.A. Scale of Pay with effect from the 1st July 2006. Thereafter the workman has preferred an Appeal on 3-6-2010 before the higher authority of the management who finally considered the same and rejected as devoid of any merit and the said order was communicated to the workman on 31-7-2010. On these backgrounds, the management has prayed to answer the reference in favour of the management.

4. In view of the above pleadings of both the parties, the following issues are settled :—

ISSUES

- (i) Whether the action of the management of Odisha Forest Development Corporation Ltd., Bhubaneswar with holding Time Bound Advancement Scale of Pay of Shri Dinesh Kumar Mishra during the period from 1-7-2003 to 1-7-2006 is legal and/or justified ?
- (ii) If not, what relief Shri Mishra is entitled to ?

5. In order to substantiate his plea, the workman has examined himself as W.W.1 and proved the copy of rule of revised Scale of Pay of 1998, copy of clarification on Odisha Revised Scale of Pay Rules, copy of applications, Dt. 2-7-2003, 7-10-2004, 25-2-2005, 2-5-2005 and 12-5-2005, copy of sanction order of T.B.A. Scale of Pay, Dt. 5-5-2010, copy of rejection order of appeal, copy of C.C.Rs. for the period from 2-5-2002 to 28-2-2003 under the cover of Exts. 1 to 7 respectively. On the other hand, the management has examined its U. D. Assistant as M.W. 1 but has not proved any document in support of its case.

FINDINGS

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

W.W. 1 (workman) has deposed that he was appointed as L. D. Assistant with effect from the 1st July 1988 under the management and working as such till now. After completion of 15 years of continuous service as L. D. Assistant by 30-6-2003, the workman is entitled to come over to the T.B.A. Scale of Pay with effect from the 1st July 2003 in accordance with Rule 7(ii) of the Odisha Revised Scale of Pay Rule, 1998. But the management did not sanction the T.B.A. Scale of Pay to the workman with effect from the 1st July 2003. So he made several representations to the management, but the management turned a deaf ear. However, after lapse of three years the management *suo motu* allowed the workman the above benefit of T.B.A. with effect from the 1st July 2006 instead of 1st July 2003 for which he made an Appeal before the higher authority but the said appeal was rejected. Further the workman has deposed that during tenure of his service he was never communicated any adverse C.C.R. by the management. During cross-examination nothing has been brought out from the mouth to discard the sworn testimony of the W.W. 1. On the other hand, the M.W. 1 has deposed that the workman had applied for T.B.A. with effect from the 1st July 2003 but due to non-availability of up-to-date C.C.R., his case could not be considered in time. However, subsequently the management considered his case and allowed the workman

T.B.A. Scale of Pay with effect from the 1st July 2006 after receipt of up-to-date C.C.R. up to 2005-2006. Further the M.W. 1 has taken a subsequent plea by deposing that the workman's performance as per C.C.R. available till 2003 was not up to mark for which he was not sanctioned T.B.A. with effect from the 1st July 2003. However, the management after considering the C.C.Rs. for the years 2004-2005 and 2005-2006, i.e. for two years finally allowed him the T.B.A. Scale of Pay with effect from the 1st July 2006.

7. From the above evidence of both the parties, it is crystal clear that there is no dispute regarding the engagement of the workman and his status. But on perusal of the affidavit evidence of M.W. 1, it is seen that the management has taken two different stands regarding the sanction of T.B.A. Scale of Pay of the workman. Firstly, the management has taken a stand that due to non-availability of up-to-date C.C.R. of the workman, his T.B.A. could not be sanctioned with effect from the 1st July 2003. The second stand taken by the management is that as the workman's performance as per C.C.R. available till 2003 was not up to the mark for which he was not sanctioned T.B.A. Scale of Pay with effect from the 1st July 2003. Ext. 1, the Odisha Revised Scale of Pay Rule, 1998 clearly speaks that after completion of 15 years of service in a same post or grade, an employee is entitled to get the T.B.A. Scale of Pay. Ext. 2 is the clarification regarding T.B.A. of Odisha Revised Scale of Pay Rules, 1998 which clearly speaks as follows :—

"The intention of giving Time Bound Advancement Scale of Pay is to extend promotional benefit but not promotion. However, the sanctioning authority may take a decision with reference to C.C.R. of the concerned employees for the preceding three years."

But on perusal of the written statement filed by the management, it is seen that the management has given the entries of C.C.Rs. from the year 1998-1999 to 2004-2005. In those years, it is seen that from 1-4-2000 to 7-7-2000 it has been mentioned as "Not recorded", 8-7-2000 to 31-3-2001 "Good", 1-4-2001 to 31-12-2001 "Good", 1-1-2002 to 31-3-2002 "Not recorded", 1-4-2002 to 1-5-2002 "Not recorded", 2-5-2002 to 28-2-2003 "Average", 1-3-2003 to 31-3-2003 "Not recorded", 1-4-2003 to 31-3-2004 "Very good" and 1-4-2004 to 31-3-2005 "Average". But the management has not filed the entries of C.C.R. of the workman for the year 1-4-2005 to 31-3-2006. On perusal of above entries in C.C.Rs. it is seen that all most all the entries are same from the year 2000-2001 to 2004-2005. But at the same time, it is not understood why the management has not given the benefit of T.B.A. with effect from the 1st July 2003 to the workman and gave the same with effect from the 1st July 2006. Moreover, the management has not clarified the same in any manner. Further more, the management has not filed a single piece of paper to show that due to bad performance of the workman, he was ever communicated any adverse remark in C.C.R. So the management has miserably failed to establish the different stands taken in its written statement as well as in its affidavit evidence adduced through M.W. 1. The management has not filed any document to show that which entries in C.C.R. are up to mark and which entries are not up to the marks as, all most all the entries in C.C.R. are same and equal. So, non-sanction of T.B.A. Scale of Pay on the ground of alleged not up to the mark without giving any valid and sufficient reasons and also without communicating the same to the workman is in violation of principles of natural justice. Moreover when in Ext. 2, it has clearly been mentioned that the sanctioning authority may take a decision with reference to C.C.R. of the concerned employee for the preceding three years, how the management in the instant case has sanctioned the T.B.A. Scale of Pay of the workman with effecting 1-7-2006 considering the C.C.R. of two years only (i.e. for the year 2004-2005 and 2005-2006). Therefore, the pleas taken by the management are not tenable in the eye of law and also cannot be accepted.

8. So, on careful consideration of all the materials available in the case record, as discussed above, I am of the opinion that the action of the management with holding the Time Bound Advancement Scale of Pay of the workman during the period from 1-7-2003 to 1-7-2006 is neither legal nor justified. The workman is entitled to get his T.B.A. Scale of Pay with effect from the 1st July 2003. Both the issues are answered accordingly.

9. Hence Ordered :

That the action of the management of Odisha Forest Development Corporation Ltd., Bhubaneswar with holding Time Bound Advancement Scale of Pay of Shri Dinesh Kumar Mishra during the period from the 1st July 2003 to 1st July 2006 is illegal and unjustified. The workman Shri Mishra is entitled to get his T.B.A. Scale of Pay with effect from the 1st July 2003 but not from the 1st July 2006. The management is directed to make the pay fixation of the workman in the Time Bound Advancement Scale of Pay with effect from the 1st July 2003 and to pay the arrears of his emoluments within a period of two months from the date of its publication, failing, the amount shall carry interest at the rate of 10% (ten per cent) per annum till its realisation.

The reference is answered accordingly.

Dictated and corrected by me.

S. A. K. Z. AHAMED
30-8-2012
Presiding Officer
Labour Court, Bhubaneswar

S. A. K. Z. AHAMED
30-8-2012
Presiding Officer
Labour Court, Bhubaneswar

By order of the Governor
J. DALANAYAK
Under-Secretary to Government