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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 8th November 2012

No. 9223—IR-(ID)-28/2011-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th July 2012 in I. D. Case No. 32 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s NESCO, Bhadrak and their workman Shri Sudhir Kumar Jena was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 32 OF 2011

Dated the 30th July 2012

Present :

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

Between :

The Management of Superintending Engineer, Electrical Circle, NESCO, Bhadrak. .. First Party—Management

And

Shri Sudhir Kumar Jena, .. Second Party—Workman
C/o Kalinga Bidyut Karmachari Sangha,
Power House, Bhadrak.

Appearances :

Shri Mrutyunjay Dey, .. For the First Party—Management
Asst. Manager (Legal).

Shri K. K. Nayak, Authorised .. For the Second Party—Workman
Representative.

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. 3928—ID-28/2011-LE., dated the 21st April 2011.

“Whether the dismissal of the workman Shri Sudhir Kumar Jena, Ex-N.M.R. from service by the Superintending Engineer, Electrical Circle, Bhadrak with effect from the 1st May 2009 is legal and/or justified? If not, to what relief Shri Jena is entitled to get?”

2. At the outset the facts over which the parties have no dispute may be narrated in brief. On most parts of the factual aspect the parties are not in dispute. It is found from their pleadings that the second party workman while working under the first party management as an N.M.R. got trapped in a vigilance case on Dt. 2-3-1993 for accepting bribe. Consequently, he was disengaged from such employment. Again he was engaged on N.M.R. basis with effect from the 1st February 1994 and subsequently got promoted to higher posts from time to time. When he had become a Clerk-A and was working as such the trial in the Vigilance case culminated in the conviction of the second party vide Judgment, dated the 28th January 2009 passed by the Special Judge (Vigilance), Balasore in T.R. Case No. 88 of 2007. The second party was sentenced to R.I. for one year and fine of Rs. 200 in default, to undergo R.I. for one month. Challenging the Judgment of the Trial Court the second party has preferred Criminal Appeal No. 61 of 2009 before the Hon'ble High Court. The Hon'ble High Court while granting bail to the second party have stayed realisation of fine till disposal of the Criminal Appeal. Thereafter, on the instruction/advise of the Vigilance Department the management has dismissed the second party from service with effect from the 1st May 2009. It is this dismissal which is the subject matter of the reference.

3. Challenging the legality and/or justifiability of the order of dismissal the second party has contended that the management has imposed the punishment without conducting any domestic enquiry.

4. Justifying its action the first party takes the stand that the action is protected under Rule 18 of the Odisha Civil Services (Classification, Control & Appeal) Rules, 1962 (for short, CCA Rules) read with proviso (a) to Sub-Article (2) of Article 311 of the Constitution of India.

5. As per the terms of the Schedule of reference, the following issues have been settled :—

ISSUES

- (1) Whether the dismissal of the second party/workman from service with effect from the 1st May 2009 without giving him reasonable opportunity and natural justice by way of a fair and proper domestic enquiry is legal and/or justified?
- (2) If not, what relief?

6. The workman has examined himself as W.W. No. 1 and exhibited documents marked Exts. 1 to 8. Similarly, on behalf of the management, the Executive Engineer (Electrical), Bhadrak South Electrical Division is examined as M.W. No. 1 and documents Exts. A to G have been proved.

FINDINGS

7. *Issue Nos. 1 and 2*—Ext. 1 is a copy of the dismissal order which reflects that the Appointing Authority has passed the order under the CCA Rules, admittedly, without any domestic enquiry. Exts. 5 is a copy of the Judgment passed by the Special Judge (Vigilance), Balasore holding the second party to be a 'Public Servant' and finding that as such public servant he had committed the offence punishable under Section 7 and Section 13 (2) of the Prevention of Corruption Act. It is not in dispute that the Hon'ble High Court have not suspended the order of conviction. In *Deputy Director of Collegiate Education (Administration), Madras Vrs. S. Nagoor Meera*, reported in AIR 1995 (SC) 1364 their Lordships have observed as follows :

“The Tribunal seems to be of the opinion that until the appeal against the conviction is disposed of, action under Clause (a) of the second proviso to Article 311 (2) is not permissible. We see no basis or justification for the said view. The more appropriate course in all such cases is to take action under Clause (a) of the second proviso to Article 311 (2) once a Government servant is convicted of a criminal charge and not to wait for the appeal or revision, as the case may be. If, however, the Government servant accused is acquitted on appeal or other proceeding, the order can always be revised and if the Government servant is reinstated, he will be entitled to all the benefits to which he would have been entitled to had he continued in service. The other course suggested viz., to wait till the appeal, revision and other remedies are over, would not be advisable since it would mean continuing in service a person who has been convicted of a serious offence by a Criminal Court. It should be remembered that the action under Clause (a) of the second proviso to Article 311 (2) will be taken only where the conduct which has led to his conviction is such that it deserves any of the three major punishments mentioned in Article 311 (2).

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What is really relevant thus is the conduct of the Government servant which has led to his conviction on a criminal charge. Now, in this case, the respondent has been found guilty of corruption by a Criminal Court. Until the said conviction is set aside by the Appellate or other higher Court, it may not be advisable to retain such person in service. As stated above, if he succeeds in appeal or other proceeding, the matter can always be reviewed in such a manner that he suffers no prejudice.”

There is no doubt that in the case at hand the conduct of the second party has led to his conviction in the criminal case and it is of such nature that it deserves any of the three of the major punishments mentioned in Article 311 (2) of the Constitution. Under Rule 18 (i) of the CCA Rules, the Disciplinary Authority, even without conducting domestic enquiry, can impose a minor/major penalty if on the ground of conduct of the Government servant he has been convicted on a criminal charge. Therefore, on the ground of absence of a domestic enquiry the impugned order of dismissal cannot be said to be either illegal or unjustified.

8. The second party has contended that no sanction for prosecution of the second party was accorded by his Appointing Authority as the second party was already disengaged from service and, therefore, it is submitted, after the second party was reappointed and was given promotions from time to time, he, under such circumstances, could not have been removed from service merely on the ground that the criminal proceeding ended in his conviction. The question as to

whether sanction was accorded or not, and, if such sanction was necessary or not, it is to be decided in the criminal proceeding.

It is not in dispute that on Dt. 2-3-1993 the alleged incident giving rise to the Vigilance case had taken place and on that ground the second party who was an N.M.R. was disengaged with effect from 11th April 1993. It is also not denied by the first party that subsequent to that disengagement the second party was again engaged on N.M.R. basis with effect from the 1st February 1994 and was given promotion from time to time and at the time he was dismissed from service he was working as a Clerk-A. It is argued that the alleged conduct that resulted in conviction of the second party was during the period when he was working as an N.M.R. and he had since been removed from service on the ground of that conduct. Therefore, it is argued, on the basis of the Judgment of the Special Judge (Vigilance), Balasore the removal from service of the second party while he was holding the post of Clerk-A subsequent to his reappointment could not have been ordered by the Authority. Ext. 6 is the order of disengagement of the second party with effect from the 11th April 1993 on the ground that he was caught red-handed while receiving illegal gratification on Dt. 2-3-1993. There is no material on record showing the circumstances under which the second party was given appointment with effect from the 1st February 1994. It is admitted by the second party that his subsequent engagement was also on N.M.R. basis and in course of that engagement he got promotion from time to time and by the time the order of conviction was passed he was holding the post of Clerk-A. In the absence of materials showing the circumstances under which he was given re-engagement, it is difficult to appreciate the aforesaid contention of the second party. During the pendency of the proceeding he was given re-engagement and was continued till the criminal proceeding ended in his conviction. Be that as it may, his brief disengagement from 11-4-1993 to 1-2-1994 cannot give him any immunity from disciplinary action contemplated under the CCA Rules.

As it has been observed by the Hon'ble Supreme Court, until the order of conviction is set aside by the higher Court(s). It is not advisable to retain the second party in service. If he succeeds in appeal or other proceeding the first party will be under obligation to review his case in such a manner that he does not suffer any prejudice.

Therefore, the second party is not entitled to any relief.

The reference is, therefore, answered against the second party.

Dictated and corrected by me.

RAGHUBIR DASH
30-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
30-7-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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