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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 1st December 2012

No. 9853—IR-(M)-17/2012-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 20th August 2011/1st December 2011 in I. D. Misc. Case No. 5 of 2001 (U/S-33A) of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of District Transport Manager (Admn.), Odisha State Road Transport Corporation, Bargarh and its workman Shri Nityananda Sahoo, Conductor was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC.CASE NO. 5 OF 2001

Dated the 20th August 2011/the 1st December 2011

Present :

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

Between :

Shri Nityananda Sahoo, .. Complainant—Workman
Conductor, Odisha State Road Transport
Corporation, Bargarh.

And

The District Transport Manager (Admn.), .. Opposite Party—Workman
Odisha State Road Transport Corporation,
Bargarh.

Appearances :

Shri K. K. Nayak, Authorised .. For the Complainant—Workman
Representative.

Shri G. P. Jena, Law Officer .. For the Opposite Party—Workman

AWARD

This is an application under Section 33-A of the Industrial Disputes Act., 1947 (for short, 'the Act'). The Complainant workman has alleged contravention of Section 33 of the Act by the Opposite Party management.

2. At the outset, the undisputed facts may be narrated as follows :—

The Odisha State Road Transport Corporation (OSRTC the Corporation) has several independent units within the Corporation. There are separate Trade Unions formed by the employees of each unit. Also there is a Federation of all these Unions called "State Transport Employees' Federation".

3. The present Complainant was an employee (Conductor) of OSRTC. On the charges of misconduct he was dismissed from service by his disciplinary authority, i.e. D.T. M. (Admn.), OSRTC, Bargarh, Sambalpur Zone, with effect from the 24th January 2001. The order of dismissal was preceded by a departmental enquiry. At the time of his dismissal, proceedings in I. D. Case No. 103 of 1995 was pending before this Tribunal. The dispute in I. D. Case No. 103 of 1995 was raised by the OSRTC Employees' Federation challenging the validity of an amendment of the OSRTC Employees (CR & CS) Regulations, 1978 introducing new rules of discipline. It was challenged on the ground that the Statutory notice under Section 9-A of the Act was not served on the workmen of OSRTC. The management has not made an application under Section 33 of the Act seeking approval of its action. The workman contends that he is a concerned workman in the pending dispute and therefore, the opposite party management having not made any application for prior approval of the action has contravened the provisions of "Section 33 (b) of the I. D. Act".

[In the complaint the workman alleges contravention of "Section 33 (b) of teh Act" which is quite ambiguous. But on reading of the pleadings in the Complaint as a whole it transpires that he challenges the action on the ground of prior approval which implies that the alleges contravention of Section 33 (1) (b) of the Act. In course of argument the representative of the Complainant alleges contravention of Section 33 (2) (b) of the Act as well.]

Challenging the disciplinary proceeding, it is contended that the Enquiry Officer did not examine any independent witnesses and the cash in the hand of the Complainant was not verified. Therefore, the finding recorded by the Enquiry Officer is perverse. The authority had not applied its mind before imposing the severest punishment on him. The authority while imposing the punishment had taken the Complainant's past conduct into consideration without giving him opportunity to explain about the same. The punishment is too harsh and disproportionate to the misconduct alleged against the Complainant. The management did not grant subsistence allowance to the Complainant despite of his repeated request.

4. The opposite party management in its show-cause has contended that the OSRTC Employees' Federation has raised the dispute in I. D. Case No. 103 of 1995 challenging incorporation of a specific class of misconduct by way of amendment of the Regulations, 1978. But, in fact no change in the conditions of service applicable to OSRTC employees was effected by way of the

amendment of the Regulations, 1978. That apart, the Complainant was dismissed for misconduct which is not connected with the pending dispute. Therefore, it is contended, Section 33 of the Act is not applicable.

So far the merit of the order of dismissal is concerned, it is contended that a fair enquiry was conducted and the charges were found established. The Complainant was served with a second show-cause notice but he did not submit his show-cause presumably because he was satisfied with the conduct of the enquiry. The disciplinary authority considered the past conduct of the Complainant to find out if there were extenuating circumstances by the Complainant was found to be a habitual offender. The punishment is proportionate to the grave misconduct committed by him.

The opposite party has specifically pleaded that the issue on fairness of the enquiry may be taken-up as a preliminary issue and if the enquiry is found to be unfair, then opportunity be given to the opposite party to lead evidence on merit.

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

ISSUES

- (i) Whether the Order of dismissal under challenge is in contravention of Section 33 of the Industrial Disputes Act, 1947 ?
- (ii) If yes, whether the Order of dismissal passed by the employer is justified ?
- (iii) What relief ?

6. The Complainant examined himself as C.W. No. 1 and proved Exts. 1 to 7. On behalf of the opposite party three witnesses have been examined. Opposite party W. No. 1 is the D.T.M. (Admn.), Bhubaneswar, opposite party W. No. 2 is the Additional Estate Officer, OSRTC, Bhubaneswar, who have deposed to about the checking to the vehicle on the relevant date and opposite party W. No. 3 is the Law Officer of the Corporation who has deposed to about the issue on the alleged contravention of Section 33 of the Act. Exts. A to BB have been marked on behalf of the opposite party.

7. As per the procedure laid down in *Punjab Beverages (P) Ltd. Vrs. Jagdish Singh and another, 1978 (II) LLJ (SC)-1*, the issue on the contravention of Section 33 of the Act (Issue No. i) is required to be decided first and if the Complainant is found to have established the alleged contravention, then the Tribunal will proceed to decide the other issues. On the other hand, if the Complainant fails to establish the contravention, then the Complain will be rejected.

8. *Issue No. (i)*—In this case the Complainant has been dismissed from service during pendency of a proceeding before this Tribunal which is registered as I. D. Case No. 103 of 1995. The effect of pendency of such proceeding on the order of dismissal may be thrashed out.

It is admitted by the parties that I. D. Case No. 103 of 1995 was registered in this Tribunal on a reference as to whether the action of the management of OSRTC in bringing changes to the Odisha State Transport Corporation Employees (CR & CS) Regulations, 1978 amounts to violation of Section 9-A of the Act. It is also not controverted that the said dispute was raised by the State Transport Employees' Federation representing all the workmen of OSRTC. It is also not in dispute that the Union of which the Complainant is a member is affiliated to the Federation. On behalf of the Corporation there is no submission that in the I. D. Case the Federation has not espoused the cause of all the workmen working in different units of the Corporation. Much has been argued on

the point that different units under the Corporation are independent of each other and the employees of different units have formed separate Unions. But, all these points are irrelevant for the purpose of this case in as much as the Federation has raised the dispute in I. D. Case No. 103 of 1995 and the Complainant being a member of the Union which is affiliated to the Federation, he is a workman on whose behalf the dispute has been raised and the Award that may be made in the said dispute would be binding on him. Therefore, so far the dispute in I. D. Case No. 103 of 1995 is concerned, the Complainant is a workman concerned in such dispute.

9. The Complainant alleges violation of the provisions contained in Section 33 (1) (b), or, in the alternative, Section 33 (2) (b) of the Act. Therefore, first I shall consider as to whether the misconduct for which he has been dismissed from service is connected with the pending dispute.

It is not in dispute that in the year 1986 the Corporation amended the Regulations, 1978 and inserted, *inter alia*, a new Clause in Regulations No. 136 (which enlists different acts or omissions as misconduct). Consequent upon the introduction of the new Clause (69) in Regulation No. 136, a new category of misconduct has been introduced. For the first time the act or omission of an employee permitting any person to board a transport vehicle of the Corporation without ticket or valid permit or pass or allowing a vehicle to move with any unauthorised person boarding the vehicle has been categorised as a misconduct by way of that amendment. It is not in dispute that the Complainant has been dismissed from service for different acts of misconduct including the newly incorporated misconduct. Therefore, I am of the considered view that the dismissal is for a matter which is connected with the pending dispute. So, the Corporation ought to have taken express permission under Section 33 (1) (b) of the Act. Even if the misconduct cannot be said to be connected with the dispute, the management of OSRTC could not escape the requirements of Section 33 (2) (b) of the Act because it is clearly established that the Complainant is concerned in the pending dispute. The management ought to have made an application under Section 33 (2) (b) of the Act for approval of the action taken against the Complainant. Thus, the workman has successfully established the contravention of Section 33 of the Act.

On behalf of the opposite party management it is argued that the amendment which was under challenge in I. D. Case No, 103 of 1995 did neither introduce a new rule of discipline nor any alteration of any existing rules and that since the amendment of the Regulations, 1978 has been published in the *Odisha Gazette* before its implementation another notice under Section 9-A of the Act was not necessary . All these points are not to be taken into consideration by this Tribunal while dealing with the Complainant's petition under Section 33-A of the Act. In a proceeding like this mere tendency of a proceeding related to an industrial dispute with which the Complainant is connected is sufficient.

Contravention of Section 33 of the Act being found established, Issue No. (i) is answered in favour of the Complainant. The other issues will be answered only after the parties are given opportunity to place their respective materials in support of their respective contentions on those issues.

Dictated and corrected by me.

RAGHUBIR DASH
20-8-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
20-8-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

FINDINGS ON ISSUE Nos. (ii) & (iii)

Dated the 1st December 2011

10. Despite of scope given to both the parties, neither side has adduced any evidence on these two issues. Since the Complainant alleges that the order of dismissal is not justified, the onus is on him to adduce evidence to prove that the dismissal order is not justified on the grounds raised in the application.

In the show-cause/written statement filed by the opposite party management it is claimed that the charges including the charge of carriage of 15 passengers without ticket in a OSRTC bus having been found established and considering the past service records of the Complainant showing that he was earlier awarded punishment for 19 times, the Disciplinary Authority has rightly passed the order of dismissal. As already stated, the Complainant was a Bus Conductor. The misconduct relating to carriage of passengers without ticket is a serious misconduct. The Complainant has not filed any rejoinder to the show-cause/written Statement denying the management's assertion that in the past he was punished for as many as 19 times. In the facts and circumstances, the order of dismissal is held to be justified.

Consequently, the Complainant is not entitled to any relief. Accordingly, the Application under Section 33-A of the Act is liable to be dismissed. This, Award is passed accordingly.

Dictated and corrected by me.

RAGHUBIR DASH
1-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
1-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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