

The Odisha Gazette

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

No. 2254 CUTTACK, TUESDAY, DECEMBER 11, 2012/MARGASIRA 20, 1934

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 1st December 2012

No. 9863—IR(M)-17/2012-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 24th August 2011 in I. D. Misc. Case No. 3/2005 (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, Bhubaneswar and its workman Shri Surendra Kumar Das, ex-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. 3 OF 2005

Dated the 24th August 2011

Present :

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

Between :

Shri Surendra Kumar Das, . . . Complainant—Workman
Ex Conductor, O.S.R.T.C.,
At/P.O. Kandia, Via Singhpur,
Dist. Jajpur.

And

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

Appearances :

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

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

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 (1) (b) and, in the alternative, Section 33 (2) (b) of the Act by the opposite party management.

2. The parties are not in dispute to the extent that the complainant was a Conductor under the Odisha State Road Transport Corporation (O.S.R.T.C.) and he was a member of the local Trade Union which is affiliated to the Odisha State Transport Employees' Federation (for short, Employees' Federation). Another transport Company namely, Odisha Road Transport Company (O.R.T.C.) got merged with the O.S.R.T.C. in 1990 and consequent upon the merger all the employees of the O.R.T.C. became employees of the O.S.R.T.C. After merger the Union of the employees of O.R.T.C. namely, O.R.T.C. Staff Federation had raised an industrial dispute claiming payment of D.A. at par with the State Government employees. On a reference of the dispute to this Tribunal it was registered as I. D. Case No. 40 of 1996.

3. It is the case of the complainant that while he was working as a Conductor his service was dismissed with effect from the 21st February 2005 preceded by a Departmental Proceeding on the charges of carrying 21 passengers without ticket. On the date fixed for enquiry the complainant could not appear before the Enquiry Officer due to a strike at Baramunda. Therefore, the Enquiry Officer conducted the enquiry in his absence. The Department had failed to examine material witnesses to prove the charges. The findings of the Enquiry Officer are perverse inasmuch as those are not based on materials on record. The complainant was not given an opportunity to defend his case. The disciplinary authority passed order of dismissal without considering all the facts and circumstances and the punishment so awarded is harsh and disproportionate to the alleged misconduct. Also, the authority unnecessarily considered the past conduct of the complainant. Above all, the Departmental Enquiry was not permissible in law inasmuch as the offence related to ticketless passengers had already been compounded as per the provisions of Section 200 of the Motor Vehicles Act.

It is further asserted that when the order of dismissal was passed the proceeding in I. D. Case No. 40 of 1996 was pending before this Tribunal. The dispute in I. D. Case No. 40 of 1996 had been raised by the O.R.T.C. Staff Federation claiming D.A. as admissible to the Odisha State Government employees. However, the O.S.R.T.C. Employees' Federation was also a party to I.D. Case No. 40 of 1996. The complainant being a member of the local Union which is affiliated to the Employees' Federation, he is a concerned employee in respect of the pending proceeding. Yet, the management did not make an application under Section 33 (1) (b) of the Act seeking express permission, nor *post facto* approval was obtained by the management under Section 33 (2) (b) of the Act.

4. According to the opposite party management, the departmental enquiry was held fairly and properly and reasonable opportunity was given to the complainant. The complainant had received notice in the Departmental Proceeding but he did not submit his explanation. He did not appear

before the Enquiry Officer despite of repeated notice. The punishment is also just and appropriate. Prior to the said Departmental Proceeding the complainant had been proceeded against for seven times and awarded punishment on each occasion. However, if the domestic enquiry is found to be unfair, opportunity should be given to the management to lead evidence to prove the charges before this Tribunal.

With regard to the alleged contravention of Section 33 of the Act, it is contended that the complainant is not a concerned workman so far I. D. Case No. 40 of 1996 is concerned.

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. On behalf of the complainant two witnesses have been examined. C. W. No. 1 is the complainant himself and C.W. No. 2 is the Vice-President of the State Transport Employees' Federation. Exts. 1 to 6/2 have been marked on behalf of the complainant. On behalf of the opposite party, four witnesses have been examined. O.P.W. No. 1 is a retired A.T.M., O.S.R.T.C., Bhubaneswar, who on the relevant date had checked the vehicle conducted by the complainant, O.P.W. No. 2 is the D.T.M., O.S.R.T.C., Bhubaneswar who being the disciplinary authority had passed the order of dismissal of the complainant, O.P.W. No. 3 is the A.T.M., O.S.R.T.C., Puri who was appointed as the Enquiry Officer in the Departmental enquiry conducted against the complainant and O.P.W. No. 4 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 W have been marked on behalf of the opposite party.

7. As per the procedure laid down in Punjab Beverages (P) Ltd. *Vrs.* Jagdish Singh & another, 1978 (II) LLJ (S.C.)-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 complaint would be rejected. So, Issue No. (i) is taken up as a preliminary issue.

8. Decision on *Issue No. (i)*—At the outset, it may be stated here that though it is not specifically denied by the opposite party that the Employees' Federation was a party in I. D. Case No. 40 of 1996, in course of argument the opposite party has submitted to that effect. The complainant has not exhibited the pleadings of the parties or the cause title in the said I. D. Case. Therefore, this Tribunal has verified the case record in I. D. Case No. 40 of 1996 and it is found that though a petition was filed on behalf of the Employees' Federation on 23-3-1999 no order was passed by the Tribunal thereon and the Employees' Federation was never impleaded as a party to that proceeding. Therefore, on the alleged ground that the Employees' Federation was a party in I. D. Case No. 40 of 1996 and the complainant being a member of the local Trade Union which is affiliated to the Employees' Federation is a concerned employee is not acceptable.

9. In this case the complainant has been dismissed from service during pendency of the proceeding in I. D. Case No. 40 of 1996 before this Tribunal. The effect of pendency of such proceeding on the order of dismissal of the complainant may be taken up.

Admittedly, in I. D. Case No. 40 of 1996 the dispute was raised by the O.R.T.C. Staff Federation. It is also not disputed that only the employees of the O.R.T.C. are members of the O.R.T.C. Staff Federation. Admittedly, the complainant is not an employee of the O.R.T.C. The dispute in the I. D. Case is with regard to revision of D.A. of the employees of O.R.T.C. It is not shown by the complainant that he, or, the Union of which he is a member, or, the Federation of Unions of which the complainant's Union is a constituent is a party to the said I. D. Case. The complainant being not a party to the I. D. Case the Award to be passed in the said case is not directly binding on him.

According to the complainant, after merger of the O.R.T.C. with the O.S.R.T.C. with effect from the 14th August 1990 both the establishments have become one establishment and the employees of O.R.T.C. have become the employees of the O.S.R.T.C. Therefore, it is claimed, the demand of revision of D.A. raised by the O.R.T.C. Staff Federation being a common demand the Award to be passed in the I. D. Case would be applicable to all the employees of the O.S.R.T.C. On the other hand, it is contended by the opposite party management that even after the acquisition of O.R.T.C. the service conditions of the employees of O.R.T.C. are still governed under the Standing Orders of the O.R.T.C., whereas the service conditions of the employees of the O.S.R.T.C. are governed under the O.S.R.T.C. Employees (C.R. & C.S.) Regulations, 1978. It is further contended that the O.R.T.C. Staff Federation raised the dispute on the basis of the terms and conditions of a Memorandum of Understanding signed between the O.S.R.T.C. and O.R.T.C. immediately before the acquisition of O.R.T.C. It is submitted on behalf of the Corporation that the O.R.T.C. Staff Federation espoused the causes of O.R.T.C. employees only and that the Federation has no relation with the State Transport Employees' Federation which espouses the causes of the O.S.R.T.C. employees only. It is further submitted that the O.R.T.C. employees are still getting benefits which are totally different from that of the benefits enjoyed by the O.S.R.T.C. employees. On all such grounds, it is contended, the complainant is not concerned workman in respect of I. D. Case No. 40 of 1996.

10. The burden is on the complainant to show that he is a concerned workman with regard to the dispute in I. D. Case No. 40 of 1996. The complainant has not adduced any documentary evidence rebutting the afore-stated contentions raised on behalf of the Corporation. It is not proved that after the merger the employees of O.R.T.C., whose services stood transferred to the O.S.R.T.C., have been subjected to the same service conditions as that of the employees of the O.S.R.T.C. On the other hand, it is not disputed that the employees of O.R.T.C. are governed by the Standing Orders of the O.R.T.C., whereas the employees of O.S.R.T.C. are governed by the O.S.R.T.C. Employees' (C.R. & C.S.) Regulations, 1978. Vide Clause 15(b) of the Memorandum of Understanding, dated the 23rd June 1990 (Ext. O) it was agreed that the terms and conditions of service of the employees of the O.R.T.C. existing as on 30-6-1990 should continue to exist even after the merger and the employees of O.R.T.C. would continue to enjoy all the benefits which they used to enjoy under O.R.T.C. before the acquisition. This implies that the terms and conditions of service of the employees of the O.R.T.C. are not the same as that of the employees of the O.S.R.T.C. It is not shown by the complainant that consequent upon the merger of O.R.T.C. the *inter se* seniority of the employees of both the Undertakings have been determined and the service conditions of the O.R.T.C. employees have been put at par with that of the O.S.R.T.C. employees. It is also not

proved that after the merger the employees of both the Undertakings are getting the same allowances and other service benefits. It appears, the Corporation has not yet framed a uniform set of Rules to govern the conditions of service of the employees of both the Undertakings. It is also not shown that the O.R.T.C. Staff Federation has ever espoused the cause of any of the employees of the O.S.R.T.C. and *vice versa*. It is also not proved that any benefit extended to the employees of one Undertaking is automatically extended to the employees of the other Undertaking. Under such facts and circumstances, this Tribunal is of the considered view that after the merger the employees of both the establishments are not considered to be the employees of one establishment even though consequent upon the merger the employees of O.R.T.C. are considered to be employees of O.S.R.T.C. Therefore, in my considered view, the dispute in I. D. Case No. 40 of 1996 was not raised on behalf of employees of the O.S.R.T.C. and for that the Award that may be made in the said dispute cannot be said to be binding on the employees of the O.S.R.T.C.

11. In *M/s New India Motors (P) Ltd., New Delhi Vrs. K. T. Morris*, AIR 1960 (S.C.) 875, it is observed that the expression "workmen concerned in such dispute" cannot be limited only to such of the workmen who are directly concerned with the dispute in question, but should include all the workmen on whose behalf the dispute has been raised as well as those who would be bound by the Award which may be made in the said dispute. In the foregoing paragraphs I have already observed as to how the complainant is not directly concerned with the dispute in I. D. Case No. 40 of 1996. Further more, the dispute cannot be said to have been raised on his behalf nor would he be bound by the Award which may be made in the said dispute.

12. The complainant having failed to establish contravention of Section 33 of the Act by the opposite party management, the present complaint is liable to be rejected. Accordingly, an Award is passed holding that the complainant is not entitled to any relief in the present complaint.

Dictated and corrected by me.

RAGHUBIR DASH
24-8-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

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24-8-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor

J. DALANAYAK

Under-Secretary to Government
