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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 1st December 2012

No. 9878—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 Industrial Dispute Misc. Case No. 2 of 2005 (U/S-33A) of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of District Transport Manager(A) O.S.R.T.C., Bhubaneswar and its workman Shri Balabhadra Panda was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE MISC. CASE No. 2 OF 2005

Dated the 24h August 2011

Present :

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

Between :

Shri Balabhadra Panda,
Conductor, Odisha State Road Transport
Corporation, Bhubaneswar.

.. Complainant—Workman

And

The District Transport Manager (A),
Odisha State Road Transport
Corporation, Bhubaneswar.

.. Opposite Party —Management

Appearances :

Shri K. K. Nayak, Authorised . . . For the Complainant —Workman
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 facts stated in the complaint, in short, are that the complainant was serving as a Conductor under the Odisha State Road Transport Corporation (O.S.R.T.C.) and at the relevant time he was posted under the D.T.M. (A), O.S.R.T.C., Bhubaneswar. With effect from the 1st February 2005 he was dismissed from service which was preceded by a departmental proceeding. The departmental proceeding was drawn-up against him on the allegation that he had earned low income in comparison with the average income relating to the period from June 2004 to October, 2004. When the dismissal order was passed, the proceeding in I.D. Case No. 40 of 1996 was pending before this Tribunal. That dispute was raised by the Odisha Road Transport Company Staff Federation and the dispute was regarding payment of D.A. to the employees of Odisha Road Transport Company(O.R.T.C.) at par with the employees of the Odisha State Government. The Odisha State Road Transport Employees' Federation was also a party to that I.D. Case. Since the O.R.T.C. was merged with the O.S.R.T.C. in the year 1990 and after merger both the undertakings had become one Organisation controlled by one Board of Directors the same pay structure and other benefits are made applicable to the employees of both the Undertakings. The complainant is a workman concerned in the pending proceeding in I.D. Case No. 40 of 1996. Therefore, the management ought to have obtained either prior permission under Section 33 (1) (b) of the Act or *post facto* approval under Section 33 (2) (b) of the Act in respect of the order of dismissal passed against the complainant.

On the validity of the departmental proceeding, it is contended that there was not a fair and proper enquiry. While irrelevant factors were relied on by the management, relevant factors were not taken into consideration to find-out the causes of the alleged short fall in income. The punishment of dismissal was imposed in a motivated manner. The punishment is also harsh and disproportionate compared with the gravity of misconduct alleged.

3. According to the opposite party- management, the complainant is not a workman concerned in the pending proceeding in I.D. Case No. 40 of 1996. Because, the employees of both the undertakings are not subjected to the same service conditions even after the merger. The pay structure and other benefits of the employees of both the undertakings are not same. The dispute in I.D. Case No. 40 of 1996 was raised by the Odisha Road Transport Company Staff Federation which represents the employees of O.R.T.C. only whereas he complainant is an employee of the O.S.R.T.C.

On the fairness of the domestic enquiry, the opposite party -management has asserted that it was conducted fairly and properly observing the principles of natural justice. It is also claimed that all relevant factors were taken into consideration while ascertaining the short fall in income for the

specified period. There were no extenuating circumstances in favour of the complainant. In the past he was punished for ten times on different counts. Therefore, the authority has rightly dismissed him from service.

It is further pleaded that fairness of the domestic enquiry may be taken up as a preliminary issue and the opposite party be permitted to lead evidence on merit in case that issue is answered in favour of the complainant.

4. 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 ?”

5. 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 11/2 have been marked on behalf of the complainant. On behalf of the O.P. four witnesses have been examined. O.P.W.1 is the Assistant Transport Manager, O.S.R.T.C., Bhubaneswar, who had conducted enquiry in the departmental proceeding against the complainant, O.P.W. No.2 is an L.D. Assistant, O.S.R.T.C., Bhubaneswar, O.P.W. No.3 is the D.T.M., O.S.R.T.C., Bhubaneswar who has deposed to about the disciplinary proceeding 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 CC have been marked on behalf of the O.P.

6. 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 complaint would be rejected. So, issue No. (i) is taken up as a preliminary issue.

7. *Decision on Issue No (i)*—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 O.P. -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 (CR & CS) 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 espouses 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 a concerned workman in respect of I.D. Case No.40 of 1996.

8. 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 (CR & CS) Regulations, 1978. Vide Clause 15 (b) of the memorandum of understanding Dt. 23-6-1990 (Ext.S) 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 the

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.

9. In M/s New India Motors (P) Ltd., New Delhi Vrs. K. T. Morris, AIR 1960 (SC) 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.

10. The complainant having failed to establish contravention of Section 33 by the O.P. 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