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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 27th November 2012

No. 9683—IR-(ID)-76/2010-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th August 2012 in I. D. Case No. 46 of 2010 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Executive Engineer (R. & B.) Division, Khurda and its workman Shri Dilip Kumar Singh, was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 46 OF 2010

Dated the 10th August 2012

Present :

Shri Raghubir Dash, o.s.j.s., (Senior Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of Executive Engineer, .. First Party—Management
(R & B) Division, Khurda.

And

Their workman .. Second Party—Workman
Shri Dilip Kumar Singh,
S/o Dasarathi Singh,
Vill/P.O. Dasapalla, Dist. Nayagarh.

Appearances :

Shri A. K. Mohanty, Asst. Engineer .. For the First Party—Management

Shri D. K. Singh .. For the Second Party Workman—himself

AWARD

The Government of Odisha in their Labour and E.S.I. Department, exercising power conferred upon them by Section 12 (5) read with Section 10 (1) (d) of the Industrial Dispute Act, 1947 (for short, the Act) have referred the following dispute to this Tribunal for adjudication vide their Order No. 6781—ID-76/2010-LE, dated the 16th August 2010 :—

“Whether the action of the Executive Engineer (R. & B.) Division, Khurda by upgrading the status of two junior unskilled workers Shri Susanta Kumar Sahoo and Shri Bikram Keshari Biswal to the semi-skilled category by denying the same upgradation to the senior worker Shri Dilip Kumar Singh is legal and/or justified ? If not, to what relief the workman Shri D. K. Singh is entitled ?”

2. The case of the second party/workman is that on Dt. 1-12-1983 he joined in the Office of the Assistant Engineer (R. & B.), P.W.D., Nayagarh (which is under the Executive Engineer (R. & B.), Khurda) as a Field Mulia and has been working continuously till date. He used to get the wages fixed for “unskilled” category of workmen. Having served for a long period in unskilled category he had made representations to the management for his upgradation, but citing a Circular Order issued by the Engineer-in-Chief (Civil), Odisha vide Letter No. 53162, Dt. 10-10-2001 containing instructions to all the Divisions of the R & B of the State not to upgrade the category of D.L.R. workers the management refused to accept his prayer. However, two of his juniors, namely, Susanta Kumar Sahoo and Bikram Keshari Biswal, who had joined as unskilled workers on Dt. 1-1-1987 and 1-8-1991, respectively, were upgraded to semi-skilled category, with effect from the 9th February 2004. While doing so the case of the second party who was senior to them was ignored. Therefore, Nikhila Odisha Works Department Casual/D.L.R. Karmachari Association, Bhubaneswar (for short, ‘Association’) raised a dispute before the District Labour Officer, Nayagarh. Conciliation having failed and on consideration of the failure report the present reference has been made.

3. The first party management in its written statement does not dispute the respective date of entry into service by the second party as well as the two named workmen who are claimed to be juniors to the second party. It is also not disputed that the two named juniors were upgraded with effect from the 9th February 2004. But, it is claimed to be justified on the ground that in a joint meeting between the members of the Association and Officers of the management their upgradation was recommended unanimously after verification of relevant records and then only the management accepted the recommendation and revised the upgradation list.

4. Basing on the terms of the reference the following issues have been settled :

ISSUES

- (i) “Whether the action of the Executive Engineer (R & B) Division, Khurda by upgrading the status of two junior unskilled workers Shri Susanta Kumar Sahoo and Shri Bikram Keshari Biswal to the semi-skilled category by denying the same upgradation to the senior worker Shri Dilip Kumar Singh is legal and/or justified ?
- (ii) To what relief the workman Shri Singh is entitled ?”

5. The workman has examined himself as W.W. No. 1 and has exhibited documents marked Exts. 1 and 2. The management, on the other hand, has examined a Junior Clerk (M.W. No. 1) working in the Office of the first party and has exhibited documents marked Exts. A and B.

FINDINGS

6. *Issue No. (i)*—From the pleadings of the parties it is ascertained that the second party so also the two named persons junior to him were initially put in “unskilled” category of workers. But, in the year 2004 the two junior workmen were brought to the “semi-skilled” category. According to the management, the case of the two juniors were taken up by the Association whereas the Association did not take up the case of the second party. The management further takes the stand that there was a joint meeting between the members of the Association and some Officers of the Department and an unanimous decision was taken to recommend the names of the two juniors for their upgradation. Though such a plea has been taken to justify its action, the management has not cited any Rules, Regulations or Circulars that make such joint meeting to recommend names of D.L.R. workers for their upgradation as a prerequisite for upgradation of any D.L.R. In his affidavit M.W. No.1 has stated that on 9-2-2004 a joint meeting was held and in the meeting there was discussion on finalisation of the gradation list as per the Department’s instructions vide Memo. No. 869, Dt. 13-1-2004. But, no such Circular has been placed before this Tribunal for perusal. Ext. B is a copy of the proceeding of the joint meeting held on 9-2-2004. It reflects that in the said meeting several matters with regard to the problem of the Association were taken up for consideration and it was recommended, *inter alia*, that said Bikram Keshari Biswal be identified with effect from the 1st January 2004 under the category of semi-skilled worker on the ground that he had been working continuously from August 1991 getting his wages through an Agency and that the said Susanta Kumar Sahoo be identified as “Mate” under the category of semi-skilled from 1-1-2004 on the ground that though he was working as a Mate but was being paid as an unskilled Mulia.

Thus, it is found that Shri Bikram Keshari Biswal was identified as a semi-skilled worker merely on the ground that he had been working continuously from August 1991 and Shri Susanta Kumar Sahoo was identified as a semi-skilled worker on the ground that he had been working as a Mate but being paid wages of an unskilled Mulia. So far the second party is concerned, there is no dispute that he had been working continuously since 1-12-1983 and by the standard which was applied in the case of Shri Bikram Keshari Biswal he should have also been identified as a worker under the semi-skilled category. The reason for which Shri Susanta Kumar Sahoo was identified as a semi-skilled worker is also found to be quite ambiguous. As already stated, his case was recommended only because he had been working as a Mate but being paid as an unskilled Mulia. It implies that a person working as a Mate is kept under the category of semi-skilled worker but by mistake he used to be paid the wages of an unskilled worker. But, the approved gradation list of D.L.Rs. marked Ext. A on behalf of the management reflects at several places that ‘Mates’ are not only placed in “semi-skilled” category, they are also found placed in “unskilled” as well as “skilled” category. For example, ‘Mate’ vide Sl. Nos. 1, 11, 13 etc. are shown to be in skilled category whereas Mate vide Sl. No. 14 is in unskilled category. Therefore, it cannot be believed that a D.L.R. working as a Mate is invariably brought under the semi-skilled category.

7. In case of the second party, he was admittedly working as a "Road Mulia" and was kept in unskilled category. The Gradation List marked Ext. A reflects that Road Mulias are found kept in either "unskilled" or "semi-skilled" category. Therefore, there cannot be a valid presumption that as because the second party was working as a Road Mulia he could not have been brought under the semi-skilled category. The specific case of the first party is that since the case of the second party was not taken up by the Association the matter of his upgradation was not taken into consideration. It is submitted on behalf of the second party that since no Officer of Nayagarh Subdivision, nor any Association Representative from Nayagarh attended the meeting the case of the second party, who was then working in Nayagarh subdivision, was not taken up. The second party in his cross-examination has stated that at the relevant time there was a rival Association in the same name of the Association of which one Kapileswar Barik was the General Secretary and that since the workers of Dasapalla and Nayagarh Subdivisions were supporting said Kapileswar Barik the case of the D.L.Rs. working in Dasapalla and Nayagarh Subdivisions were not taken into consideration in the meeting held on 9-2-2004. He has further stated that finding that his matter was ignored in the meeting held on 9-2-2004 he had made a representation and on his representation another meeting was held on 18-7-2006 in which his name was recommended for upgradation. Ext. 2 is a copy of the proceeding of the meeting held on 18-7-2006 which reflects that names of six D.L.Rs. including that of the second party were recommended for upgradation from unskilled category to semi-skilled category on the ground that having worked in the division for a long period they had gained experience in work. However, it is not shown as to whether the recommendation vide Ext. 2 has been accepted by the Authority and the second party has been brought to the semi-skilled category and, if so, with effect from which date. However, Ext. 2 supports the second party's stand that since his case was unduly ignored for upgradation the first party took up his matter in another meeting held on 18-7-2006. The workman's plea that Officers from Dasapalla, Khandapara and Nayagarh Sections did not attend the meeting held on 9-2-2004 finds support from the testimony of M.W. No. 1 who was one of the persons who had attended that meeting. M.W. No. 1 has further admitted that as there was no representation to the Association by the concerned subdivisional units of the Association, Officers from Khandapara, Dasapalla and Nayagarh Sections were not invited to attend the meeting held on 9-2-2004. It is not shown by the management that there was any intimation to the subdivisional units of the Association so also the Section Officers of Khandapara, Dasapalla and Nayagarh Sections to recommend names of the D.L.Rs. working in those Sections who deserved upgradation. Therefore, it is to be held that the second party's case was ignored without any valid reason.

8. The management has not proved that the second party's upgradation matter was considered at the time similar matter in respect of Bikram Keshari Biswal and Susanta Kumar Sahoo was taken into consideration. Admittedly, the second party is senior to those two named persons. Initially the two named persons were in unskilled category but they were brought to semi-skilled category with effect from the 1st January 2004 (as deposed to by M.W. No. 1) merely on the ground that they had rendered continuous service from the date of their respective initial engagement. It is not in dispute that the second party had also rendered continuous service with effect from the 1st December 1983. Therefore, if his matter had been taken-up in the meeting held on 9-2-2004 his name would have been recommended for upgradation and he would definitely have been upgraded with effect

from the 1st January 2004. Since his matter is found to have been ignored without any justification, the action of the first party by denying upgradation of the second party to semi-skilled category with effect from the 1st January 2004 is neither legal nor justified.

9. *Issue No. (ii)*—It is claimed by the workman that in the mean while he alongwith other two named junior workmen have been regularised in service with effect from the 14th January 2011. He also claims that from the date of the upgradation of the two juniors till their regularisation in service he was being paid the minimum wages prescribed for unskilled category of workers whereas the two named juniors were getting minimum wages of semi-skilled category of workers during the said period.

In view of the findings on Issue No. (i), the second party is found entitled to be upgraded from unskilled category to semi-skilled category with effect from the 1st January 2004 and to get the differential wages till 13-1-2011 i.e. the date of his regularisation in service. Accordingly, the management to pay the differential wages for the said period to the second party within a period of two months of the date of publication of the Award in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH
10-8-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
10-8-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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