The Odisha Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY

No. 2259 CUTTACK, WEDNESDAY, DECEMBER 12, 2012/MARGASIRA 21, 1934

LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 3rd December 2012

No. 9950—IR(M)-17/2012-LESI.—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. 15/2002 (U/Ss-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, Sambalpur and its workman Shri Radhakanta Mohanty, 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. 15 OF 2002

Dated the 20th August 2011 and
1st December 2011

Present :

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

Between :

Shri Radhakanta Mohanty, . . Complainant—Workman
Conductor, Odisha State Road
Transport Corporation,
Padampur.

And

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

Appearances :

Shri K. K. Nayak, Authorised Representative.	. .	For the Complainant—Workman
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. At the outset, the undisputed facts may be narrated as follows :

The Odisha State Road Transport Corporation (O.S.R.T.C./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". There was another Transport Company called "Odisha Road Transport Company" (O.R.T.C.) which has been acquired by the O.S.R.T.C. in August, 1990. The employees of O.R.T.C. who were on its rolls as on the date of acquisition have been retained by O.S.R.T.C. without interruption of their services.

3. The present complainant was an employee (Conductor) of O.S.R.T.C. On the charges of misconduct he was dismissed from service by his disciplinary authority, i.e., D.T.M. (Admn.), O.S.R.T.C., Bargarh, Sambalpur Zone with effect from the 13th December 2001. The order of dismissal was preceded by a Departmental enquiry. At the time of his dismissal, the proceedings in I. D. Case No. 40 of 1996 and I. D. Case No. 103 of 1995 were pending before this Tribunal. The dispute in I. D. Case No. 40 of 1996 was raised by the O.R.T.C. Staff Federation. The Federation had raised the dispute after the acquisition of O.R.T.C. by the O.S.R.T.C. The dispute is related to revision of D.A. of the employees of the O.R.T.C. The other dispute in I. D. Case No. 103 of 1995 was raised by the O.S.R.T.C. Employees' Federation challenging the validity of amendment of the O.S.R.T.C. Employees (C.R. & C.S.) 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 O.S.R.T.C. The management has not made an application under Section 33 of the Act seeking for either express permission for or *post facto* approval of the order of dismissal of the complainant.

In the present complaint under Section 33-A of the Act the complainant workman contends that he is a workman concerned in both the afore-stated pending disputes and, therefore, the opposite party management having not made any application for approval of the action has contravened the provisions of Section 33 (2) (b) of the Act. It is also contended that since the dismissal of the workman is for a misconduct which is connected with the dispute in I. D. Case No. 103 of 1995, the opposite party management ought to have obtained prior permission of this Tribunal under Section 33 (1) (b) of the Act.

Challenging the disciplinary proceeding, it is contended that the Enquiry Officer did not examine proper witnesses and relevant documents related to the charges. Though enquiry was over and reply to the second show-cause notice was submitted in 1997 the opposite party did not take any action till 12-12-2001. The findings recorded by the Enquiry Officer, being not based on materials available on record, are perverse. The authority had not applied its mind before imposing

the severest punishment on him. The authority while imposing the punishment had observed that the complainant was a habitual offender which is baseless. The punishment is too harsh and disproportionate to the misconduct alleged against the complainant. The fact that the complainant was acquitted in the criminal trial on the self-same charges was not taken into consideration.

4. The opposite party management in its show-cause has contended that so far I. D. Case No. 40 of 1996 is concerned the complainant is not a concerned workman inasmuch as the dispute has been raised by the O.R.T.C. Staff Federation for the employees of O.R.T.C. whereas the complainant is an employee of O.S.R.T.C. With regard to the pendency of proceedings in I.D. Case No. 103 of 1995, it is contended that no change in the conditions of service applicable to O.S.R.T.C. employees was effected by way of the amendment of the Regulations, 1978. That apart, the complainant was dismissed for a 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. Though opportunity was given for a personal hearing, the complainant did not avail of it. The disciplinary authority considered the past conduct of the complainant to find out if there was extenuating circumstances but 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. 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 8 series have been marked on behalf of the complainant. On behalf of the opposite party, three witnesses have been examined. O.P.W. No. 1 is an Auditor and O.P.W. No. 2 is the D.T.M. (Admn.), O.S.R.T.C., Bargarh who have deposed to about the disciplinary proceeding and O.P.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 Z 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 (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 complainant would be rejected.

8. Decision on *Issue No. (i)*—In this case the complainant has been dismissed from service during pendency of two proceedings before this Tribunal. One is registered as I. D. Case No. 40 of 1996 and the other is I.D. Case No. 103 of 1995. The effect of pendency of each of the proceedings on the order of dismissal may be taken up separately.

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 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 the 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 the 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.

9. 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. and 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. P) 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 be allowed 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 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.

10. 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 he would be bound by the Award which may be made in the said dispute.

11. Now I shall take up the binding effect of the Award that may be passed in I. D. Case No. 103 of 1995.

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 O.S.R.T.C. in bringing changes to the Odisha State Transport Corporation Employees (C.R. & C.S.) 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 the workmen of O.S.R.T.C. 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 inasmuch 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.

12. 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 Regulation 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 is made 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 O.S.R.T.C. 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 was published in the *Odisha Gazette* before 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 pendency 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)

The 1st December 2011

13. Despite of opportunity 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 the grounds he has raised in his application challenging the justifiability of the punishment.

In the show-cause/written statement filed by the opposite party management it is claimed that in the domestic enquiry the charge of committing grievous misconduct namely, Commission of Forgery, manipulation of the Ticket Books and misappropriation of revenue of the Corporation has been found proved. As already stated, the complainant was a bus Conductor. The proved

misconduct is very serious in nature. Therefore, the order of dismissal cannot be said to be shockingly disproportionate to the miscondut found proved.

Consequently, the order of dismissal is held to be justified. 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

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By order of the Governor

J. DALANAYAK

Under-Secretary to Government

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Printed and published by the Director, Directorate of Printing, Stationery and Publication, Odisha, Cuttack-10
Ex. Gaz. 1707–193+11