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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 17th April 2012

No. 2994—li-1(BH)-55/1995(Pt.)-L & ESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th December 2011 in I. D. Case No.105 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of Urban Co-operative Bank Ltd., Dhenkanal and its workman Shri Benudhar Rath was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 105 OF 2008

(Previously registered as I. D. Case No. 470 of 1995 in the file of the Presiding Officer Labour Court, Bhubaneswar)

The 17th September 2011/The 5th December 2011

Present :

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

Between :

The Managements of —

- (1) Urban Co-operative Bank Limited, .. First Party—Managements
Dhenkanal.
- (2) The Deputy Registrar, Co-operative
Societies, Dhenkanal.

And

Shri Benudhar Rath, .. Second Party—Workman
At Balabhadrapur Sasan,
P.O. Korian, Dist. Dhenkanal.

Appearances :

None	..	For the First Party—No. 1
Shri B. C. Sethi, D.R.C.S., Dhenkanal	..	For the First Party—No. 2
Shri Benudhar Rath	..	The Second Party—Workman himself

AWARD

This is a reference under Section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act') made by the Government of Odisha in the Labour & Employment Department vide their Order No. 18417—li-1 (BH)-55/1995-LE., dated the 19th December 1995 which was originally referred to the Presiding Officer, Labour Court, Bhubaneswar for adjudication but subsequently transferred to this Tribunal for adjudication vide Labour & Employment Department's Order No. 4138—li-21-32/2007-L.E., dated the 4th April 2008. The schedule of reference runs as follows :

“Whether the dismissal of Shri Benudhar Rath from services with effect from the 20th May 1994 by the management of Urban Co-operative Bank Limited, Dhenkanal is legal and/or justified ? If not, what relief he is entitled to ?”

2. The case of the second party workman is that he had been working in the establishment of the first party since 2-4-1987. Having initially served in different posts he was ultimately appointed as Assistant Secretary with effect from the 5th September 1991. On 20-12-1993 he was reverted to the post of Collection Assistant and from the said date he was also placed under suspension. 74 days thereafter he was served with a charge sheet containing 40 charges alleging commission of misconducts from 1990 onwards. The workman requested for supply of photo copy of documents and records related to the charges to enable himself to submit his explanation to the charges but the management did not allow his prayer. Though he was asked to verify the records and documents from the office during office hours, the officials did not fully co-operate for which he could not inspect all the relevant documents. Being unable to verify all the papers he could not submit his explanation within the short period which was allowed by the management. The management appointed an Enquiry Officer (E.O.). The workman put forth his grievance before the E.O. and requested him to supply copy of documents and records but the E.O. rejected his prayer observing that there is no rule to supply the records. The E.O. fixed the final date of enquiry to 29-4-1994 but the workman received the notice thereof on 30-4-1994. So, he could not appear before the E.O. The enquiry was conducted in his absence. Thereafter, he was served with a notice for his personal appearance on 13-5-1994 before the President of the first party Bank. He put forth his grievance as to how due opportunity was not given to him but the President did not consider the same. Thereafter, order of dismissal of the second party with effect from the 20th May 1994 was passed. That dismissal order is under challenge in the present reference.

It is further alleged that the management has not paid subsistence allowance for the period of suspension and that the E.O. conducted the enquiry in an unfair and biased manner.

3. In the written statement the first party has contended that the second party is not a workman. The post of Assistant Secretary is a Supervisory and Executive post. On the alleged non-supply of copy of documents and non-co-operation of the officials in the matter of verification of documents, it is contended that though the second party was not supplied with copy of relevant documents, he

was asked to come to the office to verify the documents and he, in fact, verified the records and documents. But, he adopted dilatory tactics by taking long time to complete the verification of documents. Reasonable opportunity was given to him to verify the records. Yet, the second party did not submit his explanation to the charges in time. In stead, he used to make allegation of non-supply of documents by adding a number of new items from time to time. Not only he failed to submit his explanation but also he did not make his appearance before the E.O. for which the enquiry was conducted in his absence. On completion of enquiry the E.O. submitted his report finding most of the charges proved. Then the second party was given opportunity to appear before the President to explain as to why his service would not be terminated for gross misconducts and irregularities committed by him. The second party did not given any explanation except the plea that he was not given chance to verify the documents. So, his dismissal is justified and his claim is devoid of merit.

4. The following issues have been settled :—

ISSUES

1. Whether the dismissal of the second party workman from services with effect from the 20th May 1994 by the first party management is legal and/or justified ?
2. If not, what relief the workman is entitled to ?

5. Initially the management was asked to adduce evidence first and accordingly the management examined two witnesses. M.W. No. 1 is the E.O. and M.W. No. 2 is the then Secretary of the first party. After closure of evidence from the side of the management the workman was asked to adduce evidence. He filed his affidavit evidence on 6-8-2009. Subsequently, on 7-6-2011 order has been passed by this Tribunal, keeping in view the observations of the Hon'ble Supreme Court in *Cooper Engineering Ltd. Vrs. P. P. Mundhe*, AIR 1975 (S.C.) 1990, to take up fairness of the domestic enquiry as a preliminary issue. Since the management has already adduced evidence on all the issues, the workman was called upon to adduce evidence on the preliminary issue. But, thereafter, the workman has not appeared. As a result, the documents relied on by him have not been marked as exhibits and his affidavit evidence is not subjected to cross-examination. Because of his non-appearance his evidence has been closed. After closure of his evidence neither side has appeared to advance argument on the preliminary issue. Under such facts and circumstances, the affidavit evidence of the workman and the documents relied on by him cannot be taken into consideration. However, findings on the preliminary issue can be recorded basing on the evidence adduced by the management.

Findings on the fairness of the domestic enquiry

6. The evidence of M.W. No. 2 is not helpful to either side so far the issue relating to fairness of domestic enquiry is concerned. M.W. No. 1 is an Advocate. He was also a Director of the first party Bank by the time he was appointed and acted as the Enquiry Officer. From his evidence it transpires that on 25-4-1994 when the workman did not appear before him he adjourned the enquiry

to 29-4-1994 and accordingly issued a letter to the workman on the same date i.e. 25-4-1994. He further says that the letter was sent to the workman through Office Peon who reported on the next day that the workman refused to accept it. He has further stated that besides the letter sent through the Office Peon another letter was sent to the workman by Registered Post with A.D. The workman has pleaded that this letter was received by him on 30-4-1994. The management has not proved as to when the registered letter was delivered to the workman. If at all the E.O. intended to serve a notice on the workman by Registered Post then he should have adjourned the case to such a date keeping ample time in hand for due service of the registered letter on the workman. On 25-4-1994 he adjourned the case to 29-4-1994 and it is quite imaginable that within this short period the registered letter would not have been delivered to the workman. So, there is no convincing evidence that the workman was duly served with the notice well in advance so as to make him ready to appear on 29-4-1994.

On 29-4-1994 the workman did not turn-up. Therefore, the E.O. proceeded *ex parte*. On 30-4-1994 on the request of the President of the Bank to record oral evidence of the witnesses regarding the past conduct and the activities of the workman the E.O. recorded evidence of the witnesses namely, Sukanti Satpathy, Manmohan Dehury, Leena Mohanty, Loknath Kar, B. K. Das, Asima Das and Dhanurdhar Biswal. Besides examining the witnesses the E.O. himself verified different documents placed before him and was satisfied that the workman was found guilty of misconducts such as disobedience of orders, gross negligence in duty, tampering of office records, etc. Accordingly he submitted his report marked Ext. 8. All these are there in his Examination-in-Chief. In his cross examination he has stated that he cannot say as to whether copy of the relevant documents related to the draft charges framed against the workman had been supplied to him. The management does not claim that copy of the relevant documents were supplied to the workman. Though it is pleaded that the workman was given sufficient opportunity to verify the documents and records in the office of the Bank, it should have been fair on the part of the management to supply him copy of the relevant documents more so, when the workman was chargesheeted on 40 different counts on alleged misconducts covering a period of about four years. The E.O. should have ensured supply of copy of all the relevant documents to the workman before entering into recording evidence so that the workman could have defended himself in an effective manner.

7. Ext. 8 is the enquiry report submitted by the E.O. On a careful perusal of the report it is found that the E.O. himself has verified the records placed before him and was satisfied on the basis of such records that different charges were duly established. For the sake of examples few of the charges and the corresponding findings recorded by the E.O. are reproduced hereunder.

Charge No. 2—Vide this Office Order No. 1, Dt. 1-1-1991 of the Secretary you were directed to remain in charge of the Accounts Section and maintain accounts with the help of Shri L. D. Roul (part time Accountant) to make the accounts up-to-date and put up before the Secretary for checking which you have not carried out the order and for such act of negligence thereby has been misappropriation of Rs. 80,610.40 of the Bank during the year 1990-91 for which you are responsible.

Findings of the E.O.—As per Office Order No. 1, Dt. 1-1-1991 Shri Rath has not attended his legitimate duty as Accountant for which a sum of Rs. 80,610.40 (rupees eighty thousand six hundred

ten & paise forty) only has been found misappropriation in the year 1990-1991 for which Shri Rath is responsible for such occurrence and the charge is established.

(From the above it is quite clear that the E.O. simply referred to the Office Order No. 1, Dt. 1-1-1991 and recorded his findings that a sum of Rs. 80,610.40 has been misappropriated in the year 1990-91 for which the workman is responsible).

Charge No. 3—In this Office Order No. 3, Dt. 11-1-1991 you were directed to prepare the budget estimate and comparative statement of the expenditure register and also prepare the comparative statement of the prices on quotations placed by the different Presses for printing of forms of the Bank which you have not attended to and this shows that you had disobeyed the orders of the authority.

Findings of the E.O.—As per Order No. 3, Dt. 11-1-1991 it is seen that Shri Rath has not attended the works entrusted to him and has deviated the same for which charge is established on him.

(Here also it is found that the E.O. simply referred to the Office Order No. 3, Dt. 11-1-1991 and recorded his satisfaction that the workman did not attend the work entrusted to him).

Charge No. 6—Vide Office Order No. 39, Dt. 23-8-1991 you were asked to submit all the Loan files after making survey before the Board Meeting, Dt. 2-9-1991 which you have not attended to and intentionally avoided the direction issued by the Authority.

Findings of the E.O.—As per Office Order No. 39, Dt. 23-8-1991, Shri Rath was asked to complete the Survey files after surveying in the field before, Dt. 2-9-1991. On this, it is seen that he had deliberately caused delay without feeling the gravity of the order and the same could not be placed in the Board Meeting for which the specific purpose was defeated and cause dislocation in the investment programme of the Bank for which the charge is established.

(Here also the E.O. referred to the Office Order and observed that the workman had deliberately caused delay. He has not assigned the reason as to how he was satisfied that the workman deliberately caused the delay).

Charge No. 27—Further on Dt. 16-9-1992 the Secretary of this Bank had directed you to frame draft charges against B. L. Das, which you had not attended and deliberately you have avoided to carry-out the orders of the authority as you were custodian and entrusted the duties to deal with personal files of the staffs.

Findings of the E.O.—It is seen from the records and statements submitted by the Secretary Shri D. M. Pati that Rath has actually not carried-out the orders for which the charge is accepted as he has not intimated any difficulty to carry-out the order. So, it is established.

(It transpires that the E.O. had considered the statement submitted by the Secretary, D. M. Pati but in his Examination-in-Chief he has not stated that he had recorded the statement of any witness in the name of D. M. Pati).

Charge No. 33—On the allegation petition filed by Kumari B. L. Das, the A.R.C.S., Dhenkanal Circle, Dhenkanal has remarked in his enquiry report that you are responsible to a great extent for the incident made on Dt. 23-7-1992. It shows your high handedness & non-co-operation amongst the staff of this Bank.

Findings of the E.O.—Examined and verified the A.R.C.S. enquiry report in connection with the allegation petition of Kumari Birajulaxmi Das on the incident, Dt. 23-7-1992 with reference to the verbal statement submitted by other staff to the undersigned that Shri Rath has created unfair situation in the Bank and he is actually responsible for such type of incident for which charge is established.

(It appears, the E.O. referred to an enquiry report submitted by the A.R.C.S. in connection with some allegation made by Kumari B. L. Das on an incident, Dt. 23-7-1992 but the concerned A.R.C.S. was not examined as a witness. It further reflects that the E.O. referred to some verbal statement of other staff submitted before the E.O. He has not mentioned as to who had made what statement on the alleged incident).

8. The E.O. has dealt with each of the charges in the same manner as exemplified above. It is found that basing on facts mentioned in different Office Orders and other official correspondence the E.O. has recorded his findings. The persons who had the direct knowledge about the alleged misconducts have not been examined during the enquiry. The kind of misconducts alleged against the workman cannot be said to have been established unless and until the acts and omissions alleged against the workman are proved through persons having direct knowledge thereon. It is just like relying on statement of persons made behind the back of the second party but they have not been produced before the E.O. to prove the statements. It is not a case where the workman has admitted the charges. It is not disputed that the documents referred to in the charges were not supplied to the workman even though he had been demanding for supply of the same time and again.

Under such circumstances, the findings of the E.O. can be said to be perverse. It is also to be held that the management did not give a fair opportunity to the workman to defend himself. Therefore, the issue on the fairness of the domestic enquiry is answered against the management and it is held that there was no fair and proper domestic enquiry conducted against the workman.

Dictated and corrected by me.

RAGHUBIR DASH
17-9-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
17-9-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

Findings on issue No. 1
The 5th December 2011

9. While dealing with the question as to whether the management had conducted a fair and proper domestic enquiry as a preliminary issue, this Tribunal has answered it in the negative. After such finding this Tribunal gave opportunity to the parties to adduce evidence on other issues. But

the management did not turn-up to make a prayer that it should be given opportunity to prove the charges by adducing evidence before this Tribunal. There is no such prayer in the written statement. In view of the observations of the Hon'ble Supreme Court in Karnataka State Road Transport Corporation Vrs. Laxmidevamma, AIR 2001 (SC) 2010 the management, in the absence of such pleading or prayer could not have been permitted to adduce evidence on the charges.

10. Once it is held that the domestic enquiry is not fair and proper the evidence, if any, collected during the domestic enquiry becomes non-existent. When the management has not adduced any evidence on merits it is to be held that the charges are not proved. Consequently, the impugned order of dismissal is held to be illegal.

Findings on issue No. 2

11. The order of dismissal being found to be illegal, it is no nest in the eye of law. Therefore, the second party is entitled to be reinstated with full back wages besides other service benefits.

The reference is answered accordingly. The management is to implement the Award within a period of two months of the date of its publication in the Official Gazette.

Dictated and corrected by me.

RAGHUBIR DASH
5-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
5-12-2011
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
T. K. PANDA
Under-Secretary to Government