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LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 1st July 2013

No. 6022—li-1 (SS)-1/2009 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 30th March 2013 in I. D. Case No. 12 of 2009 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of SAIL, Rourkela Steel Plant, Rourkela and their workman Shri Bada Ram, Sr. Operator, T & RM Department represented through Steel Employees Association, Rourkela was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER
LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE NO. 12 OF 2009

Dated the 30th March 2013

Present :

Shri Srikanta Mishra, LL.M.,
Presiding Officer, Labour Court,
Sambalpur.

Between :

The Management of SAIL,
Rourkela Steel Plant, Rourkela.

.. First Party—Management

And

Their workman,
Shri Bada Ram, Sr. Operator,
T. & R.M. Department,
represented through Steel Employees
Association, Rourkela.

.. Second Party—Workman

Appearances :

Shri L. K. Nayak, Dy. Manager (Law).	.. For the First Party—Management
Shri R. K. Mohanty, Advocate	.. For the Second Party—Workman

AWARD

The facts leading to this case are as follows :—

The second party, here in after referred to as “workman”, employed as a Senior Operator working in the Raw Materials Department of the Steel Authority of India Limited, located at Rourkela in the District of Sundergarh, Odisha, having called upon to submit explanation to a Charge-sheet dated the 4th Feb, 2003 on the allegation that though he was previously prosecuted and punished for misconduct, viz. unauthorised construction over an area of 300 sq. feet with dimension 20 feet by 15 feet, in front of Quarter No. C/39 appertaining to plot No. 50 under Khata No. 1 in Sector 8, Rourkela, the Company’s land, vide Charge-sheet No. 9909—PL-49-MJ-697/2006, dated the 24th March 1999, and Order No. 03099—PL-T & RM-PM/2000, dated the 23rd October 2000, has not vacated the said land which amounts to an act of misconduct according to the Clause No. 28 (XIX)(a) of the Company’s Standing Order, replied in writing that he is not in occupation the said land of the Company particularly when he, on the basis of seniority has been allotted Qtrs. No. E/30 in Sector 9, Rourkela and residing there with his family members since 18-9-2001 and in the meantime handed over vacant possession of the Qtrs. No. C/39 to the authority concerned in due time ; not satisfied with the explanation, the management thought it proper to again punish the workman and to perpetrate such intention initiated a departmental proceeding initially appointing one Shri G.D. Mishra, Manager (PL-T & RM) but subsequently on serious allegation by the workman regarding biasness of the said officer, appointed Shri A. K. Bose, Manager (PL-Enquiry) who despite objection of the workman as to the maintainability of the proceeding, conducted the enquiry in his absence and on the basis of the unchallenged oral evidence of Shri P. K. Mahakud, Junior Manager, Town Services Department, along with several documents including some inspection reports submitted by Shri K. K. Mohapatra and Shri D. Mohapatra (Land inspector & Senior land inspector respectively, of the Company) regarding existence of the structure unauthorisedly constructed by the workman, arrived at a finding that the charge was established as the workman was still in unauthorised occupation of the above mentioned Company’s Land and ultimately submitted his report of enquiry on dated the 30th June 2004 before the management, who in turn communicated the copy of enquiry proceedings & findings to the workman by their letter, dated the 8th September 2004 and since the workman did not submit any representation, a letter, dated the 15th February 2005 was issued to him intimating reduction of his basic pay by two stages in his existing time scale of pay i.e. from Rs. 8008 to Rs. 7696 and further warning that recurrence of similar misconduct on his part would be viewed seriously in future, as punishment, which enraged the workman to ventilate his grievance before the labour machinery of the State through “Rourkela Majdoor Sabha”,

an association of the workmen of the Rourkela Steel Plant, but the attempt for mutual settlement by the Conciliation Officer-*cum*-Assistant Labour Officer, Rourkela being unproductive, he submitted a “Failure Report” which after due consideration by the erstwhile Government of Odisha in Labour and Employment Department found to be a genuine ‘Industrial Dispute’ and in exercise of their powers conferred by sub-section (5) of Section 12 read with Clause 2 of sub-section (1) of Section 10 of the Industrial Disputes Act 1947 (Act No. 14 of 1947) referred the dispute to this Court, constituted by the said Department of the Government for adjudication as to **“Whether the reduction of pay of Shri Bada Ram, Senior Operator, P. L. No. 43218, Traffic and Raw Material Department of Rourkela Steel Plant, Rourkela from Rs. 8008 to Rs. 7696, with effect from the 15th February 2005 vide Order No. 539—TRM-PM/2005, dated the 15th February 2005 of the Management of SAIL, Rourkela Steel Plant, Rourkela is legal and/or justified and if not what relief Shri Bada Ram is entitled to ?”** (Underlined is the Schedule of the Reference)

2. It is the claim of the workman that the subsequent chargesheet framed by the management against him was illegal and consequently the punishment imposed upon him is also illegal. On the contrary it is the stand of the management that since the workman was punished for unauthorised occupation of Company’s land and he did not hand over the possession of the same, his action amounts to a continuous breach of the standing order and therefore, the departmental proceeding and the punishment imposed upon the workman is just and proper.

3. On the basis of the pleadings of the parties, the following issues have been framed for adjudication.

ISSUES

- (i) “Whether the domestic enquiry conducted by the management is fair and proper ?
- (ii) “Whether the reduction of pay of Shri Bada Ram, Senior Operator, PI. No. 43218, Traffic & Raw Materials Department of Rourkela Steel Plant, Rourkela from Rs. 8,008 to Rs. 7,696 with effect from the 15th February 2005 vide Order No. 539—TRM-PM/2005, dated the 15th February 2005 of the Management of SAIL, Rourkela Steel Plant, Rourkela is legal and/or justified ?”
- (iii) If not, what relief Shri Bada Ram is entitled to ?”

4. The second party workman examined himself as the sole witness and he proved documents which are marked Ext. W-1 to Ext. W-5. The first party management examined one of its manager as sole witness. The management also relied upon several documents which are marked Ext. M-1 to Ext. M-20.

FINDINGS

5. *Issue No. (i)*—This issue was earlier taken up as preliminary issue and was answered in the negative vide Order, dated the 9th November 2012. Neither party have challenged the said Order in any higher forum and therefore no further discussion is necessary on this issue.

6. *Issue No. (ii)*—At though the domestic enquiry conducted by the management against the workman was not fair and proper as per the discussion vide Order, dated the 9th November 2012, it is open to the management to prove by sufficient evidence that the punishment imposed upon him was legal and justified. There is no dispute that the workman faced departmental proceeding on the basis of chargesheet No. 9909—697/2006-PL-49-MJ., dated the 24th March 1999 on the allegation that he unauthorisedly occupied a piece of land of the Company measuring about 300 sq. feet (20 feet x 15 feet) located in front of Qrs. No. C/39 vide Plot No. 50 under Khata No. 1 of Sector 8, Rourkela. There was allegation that he made unauthorized structure for dwelling purposes for himself and his family members. After thorough departmental enquiry and proper departmental proceeding the allegations were found to be genuine and accordingly he was punished for the said misconduct vide Order No.03099—PL-T & RM-PM/2000, dated the 23rd October 2000 of the Company. It reveals from the record that by the said Order the AGM, TRM, imposed punishment upon the workman by reducing his basic pay by two stages i.e. from Rs. 3857 to Rs. 3677 with immediate effect as a disciplinary measure. The copy of the said order as annexed to Ext. M-10 reveals that along with the order of punishment, the following warning was given :—

“Any recurrence of same or similar nature of misconduct on your part shall be viewed seriously in future.”

7. In the present dispute, the management framed a charge-sheet No.—697-PL-49-MJ-11/2006, dated the 4th February 2003 against the workman for the same cause and misconduct i.e. “Unauthorised Occupation of Company’s land” and after enquiry, he, being found guilty, was imposed punishment by reducing his basic pay by two stages in his existing time scale from Rs. 8008 to Rs. 7696 per month with immediate effect as per Order No. 539—PL-TRM-PM/2005, dated the 15th February 2005. The copy of the charge-sheet, dated the 4th February 2003 marked Ext. M-1 reveals that vide Order, dated the 23rd October 2000, the workman was punished for the act of misconduct of unauthorised construction on Company’s aforesaid land and the present charge is for unauthorised occupation of the said land. In the charge sheet, dated the 4th February 2003, it has been mentioned that inspite of punishment on previous occasion, he has not vacated the land which amounts to an act of misconduct in accordance with Clause 28 (XIX) (a) of the Standing Orders of the Company. As per the aforesaid Standing Order of the Company, any unauthorised use or occupation of Company’s land, Quarters or Properties is an act of misconduct, for which the delinquent employee is liable to major penalties including stoppage of increment. In the Standing Order of the Company under paragraph 28, there is no provision for separate penalty for another misconduct of similar nature. However, the management relies upon a copy of circular, dated the 30th October 1973 of the Company marked Ext. M-20 in which there is a guideline that for the first offence of unauthorised use of Company’s land, an employee can be punished by withholding of increment for one year and for second offence or when the cause of action was not removed the employee can be terminated from service. In the present case though it is the Company’s plea that the workman committed the second offence by not removing the structure and giving vacant possession of the said land, they have not thought it proper to terminate the service of the workman and therefore, it appears that the Circular (Ext. M-20) relied upon by the management is not strictly followed.

8. Now, the core question to be determined is whether the workman committed any act amounting to misconduct after he was imposed the punishment under Order, dated the 23rd October 2000. Admittedly, the workman was previously allotted the Qrs. No. C/39 in Sector 8, Rourkela and while he was in occupation of the same with his family members, there was some unauthorised construction in front of the quarters and after thorough enquiry, it was proved that the workman with assistance of his family members raised unauthorised construction for which he was punished by reducing his salary as per Order, dated the 23rd October 2000. In the said Order though it was indicated that any recurrence of same or similar nature of misconduct on the part of the workman shall be viewed seriously in future, there was no specific direction to him to demolish the structure or give vacant possession of the land in front of the Qrs. No. C/39. It is the specific case of the workman that he is residing with his family members in Qrs. No. E/30 at Sector 9 which has been allotted to him by the Company.

9. Soon after the receipt of the charge sheet, the workman submitted a reply on, dated the 17th February 2003 (a copy of which has been marked Ext. M-2) and he specifically intimated that he occupied the Quarters No. E/30 and is residing there with his family members since 18-9-2001. Such fact is not disputed by the management. In the written statement vide paragraph 17 the statement mentioned "residing in another Qrs. No. E/30, Sector 9 allotted to the second party could not establish innocence of the second party or his non-involvement in occupying possessing the alleged piece of Company's land and construction thereon particularly when he has not demolished the structure and offered for taking possession of the land in question after completion of enquiry." Therefore, the first party admits that Qrs. No. E/30 in Sector 9 was duly allotted to the second party and he took possession of the said quarters prior to the framing of charge-sheet impugned in the present dispute. It is not the case of the management that the workman occupied two quarters at the same time or that he was physically residing in the unauthorised construction in front of the Qrs. No. C/39 in Sector 8 while residing with his family members in Qrs. No. E/30 in Sector 9. The unauthorised construction, according to the management, was raised sometimes prior to the year 1999 but there is no allegation that the workman after being allotted a new quarters in a different place made any further construction over the same piece of land. It reveals from the proceedings of the enquiry (as per annexure 2 vide Ext. M-10) and the findings of the Enquiry Officer marked Ext. M-11 that the enquiry was conducted *ex parte* and the Enquiry Officer was satisfied regarding existence of unauthorised constructed structure over the Company's land in front of Qrs. No. C/39. The Enquiry Officer relied upon the oral evidence of Shri P. K. Mohakud that the workman Shri Bada Ram, made brick built structure on the above land for dwelling purposes but the said witness did not depose before the Enquiry Officer that the workman was residing in the unauthorised structure or physically possessed the same. The Enquiry Officer found that the land was inspected on 10-5-2002 by Shri K. K. Mohanty, Senior Land Inspector who found the existence of the unauthorised structure. The Enquiry Officer further found that on 14-2-2003 when the inspection was made by Shri D. Mohapatra, Senior Land Supervisor, the structure made by the workman was still in existence. Even the structure was in existence on 29-5-2003 when the land was again inspected by Shri D. Mohapatra, Senior Land Supervisor. Nowhere, in his report the Enquiry Officer found physical possession of the workman Shri Bada Ram over the unauthorised structure. While deposing evidence in this Court, the management witness stated that only on 7-5-1996 he made a spot inspection of the encroached land and by then, the workman Shri Bada Ram was residing in Qrs. No. C/39. He has fairly admitted that he did not go to the spot for the second time. When it is the positive case of the workman that he is residing in Qrs. No. E/30 at Sector 9, Rourkela since 18-9-2001, it was incumbent upon the management to establish the fact

by cogent and convincing evidence that by the time, the second charge sheet was made, the workman was in physical possession of the encroached land or building raised thereon. It is true that after being punished for unauthorised construction and occupation over the Company's land, the workman did not take any step for demolition of the structure in front of the Qrs. No. C/39 in Sector 8 but he was not specifically directed to do so, as per the Order in the earlier disciplinary proceeding. In absence of any positive evidence regarding physical possession of the unauthorised construction over the Company's land, the workman can not be punished merely on the basis of the fact that he previously encroached the Company's land and raised some structure thereon. It is not reasonably expected that the Company would allot another quarters in favour of the workman when he is allegedly in unauthorised occupation of the Company's land. The management during cross-examination of the workman, has brought on record that he along with 6 brothers and one sister were jointly, residing with their father who was allotted a cheap type (may be 'E' type) quarters consisting of one room and the said quarters was regularised in his name when he joined in the service under the establishment of the first party. It appears to me that due to shortage of space and inconvenience in the dwelling of the joint family members of the workman, he made some encroachment over the land in front of the quarters and raised some structure unauthorisedly. Such act was illegal and for that reason, the Company initiated the departmental proceeding and punished him in the year 2000. Subsequently, the workman was allotted a better quarters at a different place and he shifted there with his family members. In absence of specific evidence, it cannot be said that the workman continued to remain in possession of the land previously encroached by him. It reveals from the finding of the Enquiry Committee that during inspection of the alleged land, it was found that Shri Mohan Bade and Shri Murali Bade S/o. Naina Bade are staying in the unauthorised structure. It further reveals from the findings of the Committee that the Committee relied upon a clarification statement of the witness appearing before them, who stated that so long unauthorised structure/building in the Company's land by the CSE (Chargesheeted Employee, workman) is not demolished and handed over the vacant possession of the land to the Land Section of the Town Services Department is not done by him it would be treated that he is in possession of the land irrespective of the fact whosever is residing there. The representative for the workman submitted that Shri Mohan Bada and Shri Murali Bade are the brothers of the workman who has admitted such fact during cross-examination and therefore, the possession of the brothers of the workman should be presumed to be the possession of the workman himself. It is crystal clear that in absence of direct evidence regarding physical possession of the unauthorised structure by the workman after he was punished and shifted to different quarters, the Enquiry Committee finding, his brothers to be in possession of the Company's land, charge-sheeted the workman and punished him. The law is well settled that conjectures and surmises cannot take the place of legal proof. Even if, it is believed that the brothers of the workman are in possession of the unauthorised construction over the Company's land, it cannot be presumed that the workman is in possession of the same. In such view of the matter, I am constrained to hold that the management has failed to establish its allegation that the workman is in unauthorised possession of the Company's land and as such the punishment imposed upon him is not tenable.

10. During course of argument, the representative of the management submitted that during the continuance of disciplinary proceeding, the workman lodged a report before the Police at Sector 7, P.S. Rourkela, against his brother Shri Mohan Bada and with the intervention of the Police, the said man demolished the unauthorised construction in front of Quarters No. C/39 at Sector 8. Such fact is proved from the copy of the letter, dated the 23rd September 2004 of the workman addressed to the senior Manager, Town Services, SAIL, Rourkela Steel Plant marked

Ext. M-13. It is contended by the representative of the management that filing of FIR and causing demolition of unauthorised structure at the instance of the workman amounts to his admission and proves his misconduct and therefore, the charge was genuinely framed against him. On a close scrutiny of Ext. M-13 I find the workman has nowhere admitted in this letter that he was in unauthorised occupation of the structure over the Company's land. It might be a fact that to save his service, the workman took step for removal of unauthorised construction as was required by the Company but such act cannot amount to an admission on his part regarding unauthorised occupation.

11. In view of the discussion made above, I am constrained to hold that the punishment imposed upon the workman vide Order, dated the 15th February 2005 of the management of SAIL, Rourkela Steel Plant, reducing his pay from Rs. 8,008 to 7,696 is illegal and unjustified. The issue is accordingly answered in favour of the workman.

12. *Issue No. (iii)*—While discussing *issue No. (ii)*, I have already held that punishment was imposed upon the workman in an illegal and unjustified manner and the charge was not proved against him. The reduction of pay of the workman with effect from the 15th February 2005 being illegal and unjustified, he is entitled to regular pay and the Order No. 539—TRM-PM/2005, dated the 15th February 2005 of the management of SAIL, Rourkela Steel Plant, Rourkela shall not be effective. The workman Shri Bada Ram should be given his regular increments unaffected by the said order and his arrear dues should be paid to him within a reasonable period.

13. In view of the determination of the issues in the manner aforesaid the following award is passed.

AWARD

The reference is answered on contest against the first party management without any cost. The reduction of pay of Shri Bada Ram, Senior Operator, PL. No. 43218, Traffic and Raw Material Department of Rourkela Steel Plant, Rourkela from Rs. 8,008 to Rs. 7,696 with effect from the 15th February 2005, vide Order No. 539—TRM-PM/2005, dated the 15th February 2005 of the management of SAIL, Rourkela Steel Plant, Rourkela is held illegal and unjustified. The management is directed to make payment of usual pay, increment and other benefits to the workman unaffected by the aforesaid Order, dated the 15th February 2005. The arrears of dues of the workman shall be paid to him within a period of two months of the publication of Award, failing which the same shall carry interest @ 10% per annum till realisation of the whole arrear amount.

Dictated and corrected by me.

SRIKANTA MISHRA
30-3-2013
Presiding Officer
Labour Court
Sambalpur

SRIKANTA MISHRA
30-3-2013
Presiding Officer
Labour Court
Sambalpur

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