

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No.198 CUTTACK, WEDNESDAY, JANUARY 30, 2013 / MAGHA 10, 1934

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 17th January 2013

No. 488—IR-(ID)-48/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 18th December 2012 in I. D. Case No. 48 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Guamal Service Co-operative Society Ltd., At/P.O. Guamal, Bhadrak and its Workman Shri Jagannath Tripathy was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 48 OF 2011

Dated the 18th December 2012

Present :

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

Between :

The Secretary,
M/s Guamal Service Co-operative Society Ltd.,
At/P.O. Guamal, Bhadrak.

.. First Party—Management

And

Shri Jagannath Tripathy,
S/o Late Sridhar Tripathy,
At Sadanandapur, P.O. Bhuyanuash,
P.S. Tihidi, Dist. Bhadrak.

.. Second Party—Workman

Appearances :

Shri S. Sastry, Advocate	.. For the First Party—Management
Shri B. Sahoo, Advocate	.. For the Second Party—Workman

AWARD

The Government of Odisha in their Labour & E.S.I. Department, exercising power conferred upon them by Section 12 (5), read with Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the Act) have referred the following dispute to this Tribunal for adjudication vide their Order No. 7802—ID-48/2011-LE., dated the 25th August 2011.

“Whether the dismissal of Shri Jagannath Tripathy, ex-Assistant Secretary from service with effect from the 31st October 2005 by the management of M/s Guamal Service Co-operative Society Ltd., At/P.O. Guamal, Bhadrak is legal and/or justified ? If not, what benefit Shri Tripathy is entitled to get ?”

2. There is no dispute between the parties that the second party workman was the Assistant Secretary of the first party Service Co-operative Society. He had held the post since 1-7-1978. He was placed under suspension with effect from 8-11-2004 and after a domestic enquiry, he was dismissed from service with effect from the 31st October 2005.

3. The workman’s plea as stated in his claim statement is that he had been discharging his duties properly. In course of performing his duty, he had collected money from the Society’s depositors to the tune of Rs. 28,882.00 but due to the sudden illness of his wife who had to be hospitalised, he could not deposit the said amount in time. However, he deposited the amount on Dt. 8-11-2004. But, in order to harass him, the management framed vague and baseless charges and placed him under suspension. Though an enquiry was conducted, it was neither fair nor proper. Thus, the workman has challenged the fairness of the domestic enquiry on the following grounds :—

- (i) that subsistence allowance was not paid to him ;
- (ii) that the charges are vague ;
- (iii) that the management was pre-determined to dismiss him ;
- (iv) that opportunity was not given to him to adduce evidence, verify documents and cross-examine the management witnesses ;
- (v) that copy of the enquiry report was not supplied to him ;
- (vi) that the second show-cause notice was not served on him before imposition of the punishment ; and
- (vii) that the provisions contained in the Staff Service Rules for the staff of the Service Co-operative Societies framed under the O.C.S. Act, 1962 (for short, Service Rules) were not followed :

It is further contended that even the order of punishment was not communicated to him. When he came to know it from reliable source that he had been dismissed from service, he presented an application before the District Labour Officer, Bhadrak which gives rise to the present reference.

4. The management in its written statement has contended that on 2-11-2004, the workman had collected Rs. 28,482.00 from different depositors vide Society's Money Receipt Nos. 051644 to 051661. He was duty bound to deposit the amount at the end of the day's transaction. Instead of depositing the amount, the workman went on leave without any sanction. Though he was asked to deposit the amount vide Letter No. 36, Dt. 3-11-2004, the workman failed to do so. Therefore, the Society decided to put him under suspension. After the order of suspension was passed, the workman's wife deposited the amount on 8-11-2004, 14-12-2004 and 21-12-2004 in different instalments. The workman had also committed misconducts in the past. Therefore, charges were framed against him and a domestic enquiry was conducted into the charges. An Enquiry Officer (for short, E.O.) was appointed by the A.R.C.S., Bhadrak Circle, Bhadrak. The E.O. conducted the enquiry fairly and properly giving sufficient opportunity to the workman to defend himself. On conclusion of the enquiry, the E.O. submitted his report finding all the charges proved against the workman. Therefore, the management of the Society decided to dismiss the workman from service. Accordingly, an order of dismissal was passed making it effective from 31-10-2005.

5. Basing on the pleadings of the parties, the following issues have been settled :—

ISSUES

- (i) "Whether the domestic enquiry conducted against the workman is fair and proper ?
- (ii) Whether the dismissal of Shri Jagannath Tripathy, ex-Assistant Secretary from service with effect from the 31st October 2005 by the management of M/s Guamal Service Co-operative Society Ltd. At/P.O. Guamal, Bhadrak is legal and/or justified ?
- (iii) If not, what benefit Shri Tripathy is entitled to get ?"

6. Since it is a case of dismissal preceded by a domestic enquiry, this Tribunal took-up issue No. 1 as a preliminary issue. This procedure has been adopted in accordance with the principle laid down in M/s Cooper Engineering Ltd. Vrs. P. P. Mundhe, AIR 1975 (SC) 1900 and many other decisions of the Hon'ble Supreme Court. The parties were permitted to adduce evidence on the preliminary issue and on 5-12-2012, order has been passed recording the findings on the said preliminary issue. The findings are extracted hereunder for ready reference and to make them part of this Award :—

xxx

xxx

xxx

Admittedly, the second party workman while working as Assistant Secretary in the first party Service Co-operative Society (for short, the Society) was dismissed from service with effect from

the 31st October 2005 on the ground of misconduct. It is also not in dispute that before the order of dismissal was passed by the Authority, charges were framed against the second party and a domestic enquiry was conducted.

The workman challenges the fairness of the domestic enquiry on the following grounds :—

- (i) that subsistence allowance was not paid to him ;
- (ii) that the charges are vague ;
- (iii) that the management was pre-determined to dismiss him ;
- (iv) that opportunity was not given to him to adduce evidence, verify documents and cross-examine the management witnesses ;
- (v) that copy of the enquiry report was not supplied to him ;
- (vi) that the second show-cause notice was not served on him before imposition of the punishment ; and
- (vii) that provisions contained in the Staff Service Rules for the Staff of Service Co-operative Societies framed under the O.C.S. Act, 1962 (for short, Service Rules) were not followed.

The management, on the other hand, has contended that the workman attended the enquiry proceeding and stated his case before the E.O. and that after the enquiry report was placed before the Committee of the management of the Society, a Resolution was passed by the Committee on 29-10-2005 to dismiss the workman.

The management has not denied in its written statement that subsistence allowance was not paid to the workman, that charges are vague, that opportunity was not given to the workman to cross-examine the management witnesses, verify documents and adduce evidence in his defence ; that copy of the enquiry report was not supplied to the workman ; and that second show-cause notice was not served on him before imposing the punishment.

A copy of the Service Rules is marked as Ext. 1. The Service Rules lays down that an employee placed under suspension from service shall be entitled to subsistence allowance at different rates depending on the duration of his suspension. It is not shown by the management that suspension allowance was paid to the workman who was kept under suspension from 8-11-2004 which continued till 31-10-2005. There is no positive evidence as to whether the workman suffered prejudice due to non-payment of subsistence allowance. But, the fact that the suspension period was for about one year gives rise to a presumption that the workman suffered prejudice on account of non-payment of subsistence allowance, more so when the Service Rules provides that all efforts shall be made by the Disciplinary Authority to complete the enquiry within 90 days from the date of service of the draft charges. In this case, the draft charges marked Ext. C appears to have been served on the workman on or about 21-12-2004. The management has not explained as to why subsistence

allowance was not paid to the workman. Therefore, non-payment of subsistence allowance reflects on the fairness of the domestic enquiry.

On the allegation of vagueness of the charges it is found that many of the charges, for example, charge Nos. 1 to 4 are vague inasmuch as specific instances of the alleged misconducts are not reflected in the charges. These charges are quite general in nature such as the workman always attended to the office in late ; the workman created hurdles against the Secretary in discharging his day-to-day duties and he disobeyed the orders of the Secretary ; the workman always attended to the office by taking liquor ; and the workman in a state of intoxication used to misbehave the outsiders and loanee members. Therefore, the plea of vagueness of charge is quite sustainable.

As to the denial of opportunity to cross-examine the witnesses and verify documents, it is found from Ext. D, the enquiry report, that as a matter of fact the workman was not given opportunity to cross-examine the witnesses namely, P. K. Sutar and P. K. Senapati. Ext. E is a written statement filed by P. K. Sutar which has been relied on by the E.O. But, the workman was not given opportunity to cross-examine on that statement of P. K. Sutar who had allegedly appeared before the E.O. in person. It is also not shown that the workman was given chance to adduce evidence in his defence.

It is neither claimed nor shown by the management that a copy of the enquiry report was supplied to the workman and he was asked to submit his show-cause on the report.

The Service Rules lays down that before imposing any penalty the employee concerned shall be given an opportunity of being heard. But, the discussions made above clearly show that fair opportunity was not given to the workman to be heard before he was dismissed from service. Ultimately, it is held that the enquiry is neither fair nor proper.

xxx

xxx

xxx

Thus, the issue on the fairness of the domestic enquiry has been answered against the management.

7. Now, it is pertinent to mention here that neither in the written statement nor in any separate petition till today the management has reserved its right to adduce evidence on the merit of the charges to justify the order of dismissal in case the domestic enquiry is held to be unfair and improper. In *Karnataka State Road Transport Corporation Vrs. Laxmidevamma*, AIR 2001 (SC) 2090, the Hon'ble Supreme Court have held that the right of a management to lead evidence before the Labour Court or the Industrial Tribunal in justification of its decision under consideration by such Tribunal/Court is not a statutory right but a procedure laid down by the Hon'ble Court to avoid delay and multiplicity of proceedings. Their Lordships have further observed that in order to avoid unnecessary delay and multiplicity of proceedings the management has to seek leave of the Court/Tribunal in the written statement itself to lead additional evidence to support its action in the alternative and without prejudice to its rights and contentions. Some of the Hon'ble Judges of the Constitutional Bench have further observed that the Court/Tribunal, however, has got power to require or direct

parties to lead additional evidence including production of documents at any stage of the proceedings before they are concluded, if, on facts and circumstances of the case, it is deemed just and necessary in the interest of justice. Hon'ble Justice Y. K. Sabharwal have further observed that the employer's request, when made before close of proceedings deserves to be examined by the Labour Court/ Tribunal on its own merits and it goes without saying that the Court/Tribunal will exercise discretion on well settled judicial principle and would examine the *bona fides* of the employer in making such an application.

Since the management has not made any prayer seeking leave of the Tribunal to adduce evidence on merit of the charges, this Tribunal is not in a position to call upon the management to adduce such evidence to justify its action. This is the observation of the Hon'ble Supreme Court in *Shankar Chakravarti Vrs. Britannia Biscuit Co. Ltd. and Another* reported in AIR 1979 (SC) 1652.

FINDINGS

8. *Issue Nos. (ii) & (iii)*—The domestic enquiry is held to be unfair and improper. The management has not adduced any evidence on the merit of the charges. Therefore, the impugned order of dismissal is illegal/not justified. Therefore, the workman is entitled to be reinstated in service with full back wages including the wages covered by the period of his suspension.

The reference is answered accordingly. The management shall reinstate the second party/ workman in service with full back wages from the date of his suspension. Because, it is not denied by the management that subsistence allowance was not paid to the workman throughout the period of his suspension. If any amount has actually been paid towards subsistence allowance, then the same may be deducted from the workman's back wages payable under this Award. The management is, however, at liberty to initiate disciplinary proceeding against the workman in a fair and proper manner observing the principles of natural justice.

Dictated and corrected by me.

RAGHUBIR DASH
18-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

RAGHUBIR DASH
18-12-2012
Presiding Officer
Industrial Tribunal
Bhubaneswar

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