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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 14th February 2013

No. 1041—li/1-(S)-9/2009-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 16th November 2012 in Industrial Dispute Case No. 10 of 2009 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Tata Sponge Iron Ltd., Bileipada, Keonjhar and its workman Shri Rajendra Kumar Sahu, ex-Senior Weigh Bridge Clerk 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. 10 OF 2009

Dated the 16th November 2012

Present :

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

Between :

The Management of
Tata Sponge Iron Ltd.,
Bileipada, Via Joda,
Dist. Keonjhar.

.. First Party —Management

And

Their Workman,
Shri Rajendra Kumar Sahu,
Ex-Senior Weigh Bridge Clerk,
C/o Bholanath Sahu,
At Jail Road, Keonjhar,
P.O./Dist. Keonjhar.

.. Second Party —Workman

Appearances :

Shri Dinabandhu Sahu, . . . For the First Party —Management
Asst. Div. Manager.

Self . . . For the Second Party —Workman

A W A R D

The award arises out of a reference under Section 10(1) (d) of the I.D. Act, made by the Government of Odisha, Labour & ESI Department, vide their Notification No.5931—li/1-9/2009-L.E. dated the 6th July 2009 for adjudication. The schedule of teference is as follows :—

“Whether the termination of services of Shri Rajendra Kumar Sahu, ex-Ssenior Weigh Bridge Clerk by way of discharge with effect from 19-1-2008 by gthe management of M/s Tata Sponge Idron Ltd., Bileipada is legal and justified ? If not, what relief he is entitled to ?”

2. The case of the second party workman as deicted from his statement of claim is that he was employed by the management since 15th January 1986 as a Time-Keeper and subsequently promoted to the post of senior weigh Bridge clerk and continued as such for a period of about 22 years. On 27-4-2007 while on duty in ‘B’ shift, he left the factory premises on half day day leave by submitting a gate pass issued by his departmental authority. The management however framed a charge sheet against him alleging that he left the work place by submitting a forged gate pass on that day at 6.55 P.M. The workman thenrequested the management to supply him the copies of documents on the basis of which charge has been framed against him but the management vide their letter Dt. 7-5-2007 indicated that the documents will be produced during course of enquiry and he was insisted to submit explanation within 40 hours. The workman then gave in writing on 10-5-2007 that unless the copies of documents afre made available to him, it is not position his part to submit explanation. Thereafter an enquiry was gtaken up and completed unilaterally finding him guilty of misconduct. On 26-1-2008 the fact of discharge of second party from service was published in the daily newspaper “SAMAJ”. According to the workman he was not given any chance of perzsonal hearing and he was discharged with ill intension under a in proper domestic enquiry in violation of the principles of natural justice. The workman prayed to st aside the order of discharge passed against him on 19-1-2008, reinstate him in service and grant all consequential benefits.

3. The first party management submitted written stateemnt wherein it is narrated that on the relevent date i.e. 27-4-2007 the workman reported himself in ‘B’ shift duty around 1.07 P.M. On that day around 5.00 P.M. he left his place of work for his own business by obtaining a permit to leave the work. At about 6.55 P.M. he left the works Gate No.3 by submitting a permit. On scrutiny of said permit the security personal found the signature initial of that permit did not match with any of the signatures of his superiors and the management reasonably believed that the workman had managed to leave the works by producing a forged/fake works permit. According to the first party, the above act ocf the second party amounts to serious act of misconduct under orders 19 of the certified standing order of the company and accordingly charge sheet Dt. 30-4-2007 was issued

against him directing him to submit explanation within 48 hours of receipt of the charge sheet. It is admitted by the first party that the second party submitted his explanation on 10-5-2007 and on perusal of the they found that the workman is insidting for documents and since he was intimated that all reasonable opportunities to defend himself in accordance with the principles of natural justice and documents will be supplied to him in due course, it was finally decided to hold enquiry into the charge levelled against him. One Shri B. P. Tripathy, Asst. Divisional Manager (Safety) conducted the enquiry and ultimately submitted reort vide letter Dt. 12-10-2007 to the management holding that the charge leveled against the workman was was established. On the basis of the report the management called for the views from the views from the second party within 48 hours but the workman in his Fax Message Dt. 8-12-2007 requested for apply of show cause notice while physically present in his quarters the workman refused to accept the notice and therefore, the same was sent to him on the next date by Regd. post in his local as well as permanent address. The notice retruned back, and he was again supplied with a copy of enquiry report with show cause seeking reply from him by 15-10-2007. The workman refused to receive the same and the second show cause notice was displayed in the Company's notice board. As the workman did not furnish any explanation, the management discharged him from service with immediate effect and he was advised to collect his full and final dues from the Accounts Department vide letter Dt. 19-1-2008. As this letter could not be served upon the workman it was published in the newspapers "SAMAJ" on 26-1-2008. According to the management the enquiry was conducted observing the principles of naturaljustice, which was within the complete knowledge of the workman who avoided to face the management because of his gross misconduct in manipulatingg the records. The first party alleged that it lost faith and confidence of the second party due to his lack of intigrity, honesty and trustworthy. With such averments the management pray for answering the reference in their favour.

4. The workman submitted a rejoinder submitting that the management adopted unfair labour practice for the purpose of victimising him. According to him, the allegations are very minor whereas the management on false pretext removed his ffrom service with promconived motive

5. On the basis of the pleadings of the parties, the following issue have been sttled.

ISSUES

- (i) "Whether the domestic enquiry conducted by the management is fair and proper?"
- (ii) "Whether the termination of services of Shri Rajendra Kumar Sahu, ex-Senior Weigh Bridge Clerk by way of discharge with effect from 19-1-2008 by the management of M/s Tata Sponge Iron Ltd., Bileipada is legal and justified?"
- (iii) If not, what relief he is entitled to?

6. The workman examined himself as sole witness and he proved several documents which were marked Ext. No.1 to Ext. No.13. On the contrary the management examined 5 witnesses and proveddocuments which were marked Ext. M. 1 to Ext. M. 5.

7. On the contested hearing over issue No.1 this Court vide order Dt. 18-10-2011 held that the departmental enquiry held against the workman was neither fair nor proper and hence the issue was answered in favour of the workman and against the management. Such finding was not challenged by the management and therefore the court has to proceed to consider the materials on record for adjudication upon issue No. 2 and 3 only.

8. *Issue No. (ii)*—It is the claim of the workman that he joined in service under the management on 15-1-1986 initially as a Time-keeper and was subsequently promoted to the post of Senior Weigh Bridge Clerk. Such fact is not disputed by the management. The workman further claimed that he worked for the company for a period of 22 years discharging his duties most satisfactorily. On the contrary the management alleged that his service records with the management was not good for his his indiscipline and obstinate behaviour. He was time and again charge sheeted for his misconduct and was punished taking into consideration the gravity of the allegations made against him. (paragraph 6 of the written statement). The management wanted to prove certain documents regarding the past conduct of the workman but the same is not necessary for adjudication of the present dispute. It might be a fact that the workman committed some acts of misconduct and was imposed minor penalty but the same is not sufficient to indicate that he was not desirable to work under the company particularly because he was given due promotion during the tenure of his service. The present industrial dispute relates to an alleged misconduct that occurred on 27-4-2007. Admittedly, on that day the second party joined in his duty in 'B' shift. It is deposed by the management witness No.1 that on that relevant day the second party reported himself in 'B' shift duty i.e. 1.00 P.M. to 5.00 P.M. He further deposed that on that day around 5.00 P.M. the workman left the place of work for his own business by obtaining a permit to leave the works. At about 6.55 P.M. he left the works gate No.3 by submitting a permit and on scrutiny of the said permit it came to the light that the signature/initial of that permit did not match with any of the signatures of his superiors and the management reasonably believed that he had managed to leave the works by producing forged/fake works permit. This witness in an enthusiastic manner deposed that the workman produced the forged/fake works permit because he had known fully that he would not be allowed to go out at about 6.55 P.M. submitting the works permit which had been signed by the competent authority at about 5.00 P.M. on 17-4-2007. Therefore it is well proved that the workman was allowed to leave the work place by his authorities. The only allegation against him is that he passed works Gate No.3 at about 6.55 P.M. though he would have immediately left the place of work around 5.00 P.M. There is no allegation from the management that by standing in the work place for an excess period of 1 to 2 hours the workman committed any mischief in the company premises. There is absolutely no reason assigned by the company as to for what proximate reason the workman remained in the work place for a longer period after being validly permitted to take leave, such alleged fault of the workman according to the management amounted to misconduct and accordingly a charge sheet was issued against him. The copy of the charge sheet Dt. 30-4-2007 has been marked as Ext. W.2. As per this charge sheet the workman left his place of work by obtaining a permit to leave at around 5.00 P.M., but he submitted a forged/fake works permit at Gate No.3 at about 6.55 P.M. As per the charge sheet production of fake permit amounts to an act of

misconduct vide order 19 of the company's standing order. The Ext. No.2 discloses that the workman was directed to explain within 48 hours to why disciplinary action should not be initiated against him. It reveals from the evidence of the workman and the documents marked Ext. No.3 that he replied on 2-5-2007 to the charge sheet stating therein that he obtained permission from his department to leave the place of work on half day leave 'B' shift duty but unfortunately a charge sheet was issued to him. In the letter of reply he requested his authority to supply the copy of documents basing upon which the charge sheet was framed against him. He also requested for supply of his original leave application duly sanctioned by Mr. B. M. Mishra (HRD) and D. Sahu, Manager (HRD) to enable himself to submit the reply. It is admitted by the management that the copy of the documents requested by the workman was not supplied to him and rather he was intimated that the documents will be produced before him during the course of enquiry. The management's letter Dt. 7-5-2007 marked Ext. W.4 established such fact. In this letter the management advised the workman to submit his explanation in response to the charge sheet failing which it will be compelled to initiate necessary action as per the company's rule. There was no reason for the management to withhold the relevant documents and did not supply the copy of the relevant document to the workman. It further reveals from the record that the management was very much interested to receive the reply from the workman without complying his genuine request for supply of copy of documents on the basis of which he could have prepared his reply to the charge sheet.

9. The evidence on record discloses that the management in a hurried manner proceeded to enquiry upon the allegations levelled against the workman vide letter Dt 24-5-2007 (Ext.W.5). The management appointed one Mr. Nirmal Kumar Tripathy, Manager Internal Audit as an enquiry officer to conduct the enquiry. The said officer examined as M.W. 5 deposed that he conducted domestic enquiry by issuing notice to the workman and the management and ultimately submitted the enquiry report. The entire proceedings and the report submitted by the M.W.5 has been marked as Ext. M.1. On perusal of this documents I find though several dates were posted for enquiry, the same was postponed time to time. On 18-9-2007 the enquiry officer passed the order that though the charge sheeted employee came to the place of enquiry, he refused to attend the enquiry. On that day itself, an order was passed to hold enquiry *ex parte*. The management's witnesses (4 in numbers) were examined *ex parte* on the same day and the enquiry was closed that day itself. It appears that the officer who conducted enquiry was biased in favour of the management and taking opportunity of absence of the workman, examined all the witnesses of the management, passing an order setting the workman *ex parte*. In such view of the matter I am inclined to hold that the departmental enquiry was not at all fair and the enquiry officer nominated by the management being an employee of the management company gave all favour to the management. The ultimate report of the enquiry officer finding the charge levelled against the workman was established is therefore, tainted with infirmity and blemish.

10. Coming to the question whether the alleged act of the workman on the relevant date was act of misconduct, the court has to examine the standing order No. 19 (Acts of Misconduct). It is

alleged that the workman submitted a forged or fake gate pass while leaving the work place on 27-4-2007. Admittedly, a genuine gate pass was issued in favour of the workman by his authorities. According to the management, the workman withhold the said gate pass and produced a fake gate pass at about 6. 55 A.M. at Gate No.3. During the course of heraring the management has not specifically proved the original gate pass allegedly submitted by the workman. It is submitted by the representative of the management that the copy of the said gate pass is available in the bunch of documents diled with the enquiry report marked Ext. M.1. On perusal of the documents I find one xerox copy of a permit issued on 27-4-2007 in favour of the workman performing 'B' shift' duty was produced before the enquiry officer which he marked Ext. II. The workman does not admit to have produced the said document before the Gate Keeper. The workman in his reply to the show cause (ext. W.3) in formed the management that Mr. B. M. Mishra and Mr. D. Sahu sanctioned leave on his original application. The management for no reason has not produced the original leave application of the workman. Had this document been produced the signatures of the sanctioning authorities could have been confronted to the management's witness. For non-production of this vital document I am inclined to drew adverse inference against the management.

13. According to the management the workman has comitted an act of misconduct as per order No. 19. The said order prescribes a list of 31 types of misconduct. The charge sheet does not specify regarding violation of any particular clause of misconduct under order 19 that the workman violated. During course of argument. It is submitted by the representative of the management that the act of production of forged/fake gate pass amounts to misconduct under Clause XXV. The standing order of the company has not been marked in this case but since a copy of the same was produced during the course of argument I have carefully gone through the same. On close scrutiny of the provision of order 19 I find the acts of giving false information or production of false certificate for the purpose of obtaining provident funf loan or for the purpose of securing privileges amount to misconduct. The production of a forged gate pass after obtaining valid permission by the authorities is no where described to be an act of misconduct under the order 19. Besides the workman has not been proved to have taken any advantage by not producing the genuine gate pass and producing a fake gate pass as alleged by the management. In such view of the matter I am constrained to hold that the allegations of the management against the workman under charge sheet Dt. 27-4-2007 even if accepted to be true then also the same does not amount to any misconduct so as to intiate a disciplinary proceeding and remove him from service. The officer who conducted enquiry did not examine the above impact and therefore his report can not be accepted. Consquently the decisionb of management to remove the workmanf from service is found to be unjust and improper. The issue No.2 is accordingly answered in favour of the workman and against the management.

14. *Issue No. (iii)*—In view of my discusuiions made above i.e. on issue No.1 and 2 and in the facts and circumstances of the case. I am construed to hold the workman should be entitled to reinstatement service with full back wages. Hence the following award.

AWARD

The reference is answered contest without any cost. The termination of services of Shri Rajendra Kumar Sahu, ex Senior Weigh Bridge Clerk by way of discharge with effect from 19-1-2008 by management of M/s Tata Sponge Iron Ltd., Bileipada is held illegal and unjustified.

Hence the workman is entitled to reinstatement in service with all consequential benefits. The management is directed to reinstate the workman in service within two months and pay him back wages during with all consequential benefits within 3 months from the date publication of the award.

The reference is disposed of accordingly.

Dictated and corrected by me.

SRIKANTAMISHRA
11-10-2012
Labour Court
Sambalpur

SRIKANTAMISHRA
19-12-2012
Labour Court
Sambalpur

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