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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 21st February, 2014

No. 1584-li-1 (BH)-44/1995-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 5th November, 2013 in I. D. Case No. 119 of 2008 of the Presiding Officer, Industrial Tribunal, Bhubaneswar where in the industrial dispute between the Management of M/s. IPISTEEL Ltd., Gundichapada, Dist. Dhenkanal and its workman Shri Hemant Kumar Rath was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE
IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 119 OF 2008

The 5th November, 2013

Present :

Shri P. K. Ray, O.S.J.S. (Sr. Branch),
Presiding Officer, Industrial Tribunal,
Bhubaneswar.

Between :

The Management of

M/s. IPISTEEL Ltd.,
Gundichapada,
Dhenkanal.

... First Party—Management

And

Their workman,
Shri Hemanta Kumar Rath,
At/P.O. Sadasivpur,
Dist. Dhenkanal.

... Second Party—Workman

Appearances :

Shri S. P. Dash, Auth. Rept.

... For the First Party—Management

Shri S. K. Das, Advocate

... For the Second Party—Workman

AWARD

This case is taken up for hearing on remand by the Hon'ble High Court of Orissa in W.P. (C) No. 13530 of 2009.

2. The case of the second party workman is that while he was working as a Cashier under the first party management he was elected as the General Secretary of the IPISTEEL Employees' Union. While continuing as such, in September, 1992 the conciliation for bonus issue was failed on the 30th September, 1992 and he went to the factory for his normal duty at 3 P.M. and left at 5 P.M. On the 1st October, 1992 when he came to the factory in general shift to do the normal work all of sudden he came to know that the factory was declared lock out at about 2 P.M. and by that time no one asked him to handover the key or cash book to any person. On the 2nd February, 1993 after the lock out was lifted when he went to join his duty he was not allowed by the security staff on the allegation that he was put under suspension. On the 23rd April, 1993 on his request he received the letter relating to his suspension and in spite of his explanation the management initiated a domestic enquiry against him. Further he also received letter No. 27, dated the 22nd April, 1993 asking him to handover the key and cash records/accounts. In response to the said letter when he requested the management to allow him to go to his seat there was no response from the management and in his absence the management broke open the cash box and reported a shortage of Rs. 3,754.48 paise. Accordingly three supplementary charges were framed against him. The Enquiry Officer after completion of the enquiry held the workman guilty of the charges basing upon which the first party management dismissed him from service. On the basis of the complaint lodged by the second party workman the State Government vide its letter No. 175—li-1-BH-44/1995-LE., dated the 3rd January, 1996 referred the matter to this Tribunal for adjudication with the following schedule :—

“Whether the suspension of Shri Hemant Kumar Rath, Cashier by the management of M/s. IPISTEEL Ltd., Gundichapada, Dhenkanal with effect from the 3rd October, 1992 and his subsequent dismissal from service with effect from the 10th February 1994 by the management were legal and/or justified ? If not, what relief he is entitled to ?”

3. On intimation to the second party workman initially he did not file any claim statement but after submission of the written statement by the first party management he filed an additional claim statement refuting the allegations made against him.

4. This Tribunal after conclusion of the hearing passed an Award on the 16th April, 2009 with the finding that the domestic enquiry conducted against the second party workman was fair and proper but set aside the termination of the workman on the ground that copy of the enquiry report was not supplied to the second party workman which amounts to denial of natural justice and held that the second party workman is entitled to reinstatement in service without any back wages.

Challenging the aforesaid award the first party management approached the Hon'ble High Court of Orissa in W. P. (C) No. 13530 of 2009 in which the Hon'ble High Court vide Judgement dated the 15th November, 2011 directed this Tribunal to direct the management to provide the

workman with a copy of the enquiry report and to give opportunity to the second party workman to file show cause as to in which manner he was prejudiced for non-supply of the said enquiry report earlier and in the event such show cause is filed this Tribunal after hearing the parties come to the conclusion that non-supply of the report would have made no difference to the ultimate finding and the punishment imposed the Presiding Officer shall not interfere with the order of punishment with a specific stipulation that the Presiding Officer is not to traverse to a point before the report of the Enquiry Officer was submitted to the disciplinary authority.

On the basis of the aforesaid direction which was communicated by this Tribunal to the parties vide its order No. 66, dated the 11th June, 2012, the first party management supplied a copy of the enquiry report to the workman to which the second party workman given his show cause and adduced evidence in support of his claim regarding the prejudice caused to him. On perusal of his show cause and the evidence adduced in support of the same it is found that his entire claim relates to the role of the Enquiry Officer and the manner he is prejudiced during the enquiry. But, the Hon'ble High Court has clearly stipulated that this Tribunal is not to traverse to a stage before the report of the enquiry submitted to the disciplinary authority. After submission of the enquiry report by the Enquiry Officer and before imposition of punishment, the supply of a copy of the enquiry report to the delinquent is to provide him opportunity to appraise the disciplinary authority about his socio-economic condition to consider the quantum of punishment to be imposed upon him. But in the case in hand considering the gravity of the offence the disciplinary authority imposed upon him the punishment of dismissal from service. Therefore, the disciplinary authority having considered the same when imposed the punishment of dismissal any reply which the delinquent could have furnished would not have changed the nature of punishment. In the aforesaid circumstances, therefore, I do not find any material that the second party workman is prejudiced due to non-supply of a copy of the enquire report. Hence, the punishment of dismissal imposed upon the second party workman by the disciplinary authority does not require any interference.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY

5-11-2013

Presiding Officer, Industrial Tribunal,
Bhubaneswar.

P. K. RAY

5-11-2013

Presiding Officer, Industrial Tribunal,
Bhubaneswar.

By order of the Governor

N. BEHERA

Under-Secretary to Government