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LABOUR & E. S. I. DEPARTMENT

NOTIFICATION

The 28th February 2014

No. 1917—IR (ID)-100/2011-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th January 2014 in Industrial Dispute Case No. 54 of 2011 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Neelachal Ispat Nigam Ltd., Kalinganagar, Jajpur and their workman Shri Biswajit Kumar Samantaray represented through General Secretary, Kalinganagar Shramik Sangha (KNSS), Jajpur Road, Jajpur was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 54 OF 2011
Dated the 10th January 2014

Present :

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

Between :

The Management of . . . First Party—Management
M/s Neelachal Ispat Nigam Ltd.,
Kalinganagar, Jajpur.

And

Their workman . . . Second Party—Workman
Shri Biswajit Kumar Samantaray,
Represented through General
Secretary, Kalinganagar Shramik
Sangha, Jajpur Road, Jajpur.

Appearances :

Shri A. K. Satpathy, Auth. Rept. . . For the First Party—Management

Shri S. K. Das Advocate . . For the Second Party—Workman

AWARD

This case has been instituted under Section 10 (1) (d) of the Industrial Disputes Act, 1947 (for short, the "Act:") on a reference made by the Labour & Employment Department of the Government of Odisha under Section 12 (5) of the Act vide its letter No. 11139—IR (ID)-100/2011-LE., dated the 9th December 2011 with the following schedule :—

“Whether the action of the Management of M/s Neelachal Ispat Nigam Ltd., Kalinganagar, Jajpur in inflicting punishment of reduction to lower grade (S-4) on Shri B.K. Samantaray, OCT vide Order dated the 22nd May 2010 is legal and/or justified ? If not, what relief Shri Samantaray is entitled to ?”

2. This case of the second party Union is that the workman having education and technical experience was appointed by the first party management on 5-6-2001 in due process of selection. After his election as the office bearer of Kalinganagar Shramik Sangha when he had taken different steps for fulfilment of demands of the employees, the first party management being annoyed with his activities prosecuted him on some fake grounds and basing upon the bias and perverse report of the Enquiry Officer degraded him from S-5 to S-4 Grade. On the basis of complaint before the labour machinery ultimately this reference has been made for adjudication of the dispute.

3. The first party management in its written statement challenging the *locus standi* of Shri P. K Jena to be the General Secretary of Kalinganagar Shramik Sangha who had filed this case *inter alia* has stated that the enquiry has been conducted against the workman strictly adhering to the principles of natural justice in which he had participated and considering the report of the Enquiry Officer, the first party management with all liberality degraded him. Hence, it is stated that this Tribunal can not sit over the punishment imposed by the employer and accordingly, the case is not maintainable.

4. On the basis of the aforesaid pleadings, the issues framed in this case are as follows :

ISSUES

- (i) “Whether the the domestic enquiry against Shri Biswajit Kumar Samantaray is fair and proper ?
- (ii) Whether the action of the Management of M/s Neelachal Ispat Nigam Ltd., Kalinganagar, Jajpur in inflicting punishment of reduction to lower Grade (S-4) on Shri B. K. Samantaray, OCT vide order dated the 22nd May 2010 is legal and/or justified ?
- (ii) If not, what relief Shri Samantaray is entitled to ?
- (iv) Is the reference maintainable ?”

5. On the basis of the principle decided in the case of Cooper Engineering Ltd. Vrs. P.P. Mundhe, reported in AIR 1975 SC 1900, Issue No. i relating to fairness of the domestic enquiry and issue No. iv regarding maintainability of the reference were taken up for hearing as preliminary issues and disposed of vide order No. 35, dated the 16th September 2013. In the preliminary hearing on issue Nos. i & iv while the second party workman examined two witnesses and filed documents marked Exts.A to D, the first party management examined two witnesses and filed documents marked Exts.1 to 16. After issue Nos.i and iv have been answered in favour of the second party workman though it was obligatory on the part of the first party management to substantiate the allegation with fresh evidence, the first party management without adducing any fresh evidence relied upon the evidence adduced earlier during the preliminary hearing on issue

Nos. i and iv. The second party workman however adduced evidence on the remaining issues by examining himself again and filing a document marked Ext.E.

On scrutiny of the evidence adduced on behalf of the first party management in respect of the allegation against the second party workman it is found that the witness concerned has got no personal knowledge about the incident and his statement is a hearsay one. On the other hand, the second party workman in his evidence in affidavit refuted the allegations made against him on the basis of which he was degraded from S-5 to S-4 grade. He specifically stated that he never remained unauthorisedly absence from his work place and the allegations of non-recording his attendance in the Biometric Attendance Recording Machine or damage of the same are not correct as the Biometric Machine was not working properly on 21-1-2009 for which he brought it to the notice of the management nor he disobeyed the order of his superior authority. Though the second party workman has been cross-examined by the management, nothing has been elicited to discard his statement.

6. In the aforesaid background it would not be proper to accord concurrence to the action of the first party management penalising the second party workman by demoting him from S-5 to S-4 grade. Hence, the said demotion of the second party workman is illegal and as such is set aside. He is entitled to all the service benefits of S-5 grade from the date of his demotion till the date of his normal promotion to the higher Grade, if any, effected in the meantime

The reference is answered accordingly.

Dictated and corrected by me

P. K. RAY
10-1-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
10-1-2014
Presiding Officer
Industrial Tribunal
Bhubaneswar

By order of the Governor
N. BEHERA
Under-Secretary to Government