

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 503 CUTTACK, WEDNESDAY, MARCH 12, 2014 / FALGUNA 21, 1935

LABOUR & EMPLOYEES STATE INSURANCE DEPARTMENT

NOTIFICATION

The 28th February 2014

No. 1922—li-I (B)-124/2008 (Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th December 2013 in I. D. Case No. 5 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s O.S.R.T.C., Bhubaneswar and its workman Shri Jagannath Pattnaik, ex Driver was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 5 OF 2009

Dated the 12th December 2013

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 O.S.R.T.C.
Bhubaneswar.

And

Their Workman .. Second Party—Workman
Shri Jagannath Pattnaik,
P.O. Banpur,
Dist. Khurda,
At Banpur College Road.

Appearances :

Shri P. C. Das, Advocate .. For the First Party—Management

Shri B. N. Das, Advocate .. For the Second Party—Workman

AWARD

This case has been instituted under Section 10 (l) (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. 2852—li (B)-124/2008-LE., dated the 18th March 2009 with the following Schedule :—

“Whether the termination of services of Shri Jagannath Pattnaik, Driver by the management of M/s Odisha State Road Transport Corporation, Bhubaneswar with effect from the 18th June 2006 is legal and/or justified ? If not, what relief Shri Pattnaik is entitled to ?”

2. The case of the second party workman is that he served under the Odisha State Road Transport Corporation, Bhubaneswar from 28-5-1986 as a Driver. Following an accident of the bus which he was driving he was placed under suspension with effect from the 30th November 2004 for no fault of his own. The management recovered a sum of Rs. 53,800 from him towards the repair of the vehicle and effected compulsory retirement with effect from the 19th June 2006 vide its Office Order No. 4746, dated the 9th June 2006 consequent upon the findings in the departmental enquiry conducted against him without giving any second show cause notice. So, in toto he lost Rs. 1,08,000. Moreover, during the process in attending the enquiry he sustained a loss of Rs. 20,000. But the G. R. Case No. 3966 of 2004 initiated on such accident under Section 279/337 of IPC was ended in acquittal. The second party having the date of birth on 21-6-1951 was given compulsory retirement consequent upon the findings in the departmental enquiry at the age of 55 when he was drawing a Salary of Rs. 3000 per month. Hence, he has prayed to set aside the order of compulsory retirement dated the 19th June 2006 and for realization of the amount which was recovered from him.

3. The first party management in its written statement admitting the appointment of the second party workman as a Driver since 28-5-1986 till 30-11-2004 has stated that while he was driving Vehicle No. OR 02 R 8117 in Paralakhemundi, Bhubaneswar route on 30-11-2004 he caused an accident causing serious loss to the Corporation which was assessed at Rs. 53,800. On a departmental proceeding initiated against him by the D.T.M. (A), O.S.R.T.C., Bhubaneswar he was imposed with the punishment of compulsory retirement with effect from the 19th June 2006. Against the said punishment the second party workman filed an Appeal and the same was rejected by the appropriate authority. It is further stated that the accident was so serious the principle of 'Res Ipsa Loquitur' is applicable and therefore, he was given compulsory retirement as a punishment in the departmental proceeding. Therefore, the second party workman is not entitled to any relief claimed in this proceeding.

4. In the aforesaid premises the issues framed in this case are as follows :—

ISSUES

- (i) Whether the termination of services of Shri Jagannath Pattnaik, Driver by the management of M/s Odisha State Road Transport Corporation, Bhubaneswar with effect from the 18th June 2006 is as a measure of punishment ?
- (ii) If yes, whether it was preceded by a fair and proper departmental enquiry ?

- (iii) Whether the order of compulsory retirement with other punitive terms vide Memo. No. 4747, dated the 19-6-2006 is legal and/or justified ?
- (iv) What relief (s) ?

5. The issue No. ii has been decided preliminarily to the effect that the enquiry is fair and proper. Therefore, this case has been left for adjudication on the rest of the issues.

6. In order to substantiate their respective case on the remaining issues while the second party workman has examined himself, the first party management examined one witness but both the parties did not adduce any documentary evidence.

FINDINGS

7. *Issue Nos. (i) & (iii)*—Admittedly, the second party workman was imposed with the punishment of compulsory retirement with effect from the 19th June 2006 consequent upon the departmental proceeding initiated on the accident of the vehicle on 30-11-2004 which he was driving besides realization of a sum of Rs. 53,800 which was spent for repair of the vehicle. Regulation No. 138 (viii) of the O.S.R.T.C. Employees (Classification, Recruitment and Condition of Service) Regulations, 1978 prescribes 'compulsory retirement' as a penalty. In the case of *State of M.P. Vrs. Ram Ratan*, reported in AIR 1980 (SC) 1650, the Hon'ble Supreme Court has held that punishment of compulsory retirement imposed consequent upon a departmental proceeding is a major punishment and it requires second show cause notice giving an opportunity to the delinquent to explain his case. Though the O.S.R.T.C. Regulation No. 141 (12) prescribes for a second show cause notice, the same was deleted vide notification, dated the 19th September 1986. There is no reflection that such modification has been made after following the due procedure as prescribed under Section 9-A of the Industrial Disputes Act, 1947. The aforesaid modification being a change in the terms and conditions of service as prescribed under Section 9-A of the Industrial Disputes Act, it requires compliance of Section 9-A of the Industrial Disputes Act. Since there is no material on record in respect of the said compliance, the modification is a violation of the provisions of law and deserves no importance. On the other hand, the specific clarification of the Hon'ble Supreme Court in the case of *State of M.P. (Supra)* is that a second show cause notice is mandatory and there is violation of the said provision in the case in hand. Hence, the termination of service of the second party workman in violation of the said provision is bad in law and is liable to be set aside.

8. *Issue No. (iv)*—In the case in hand on the issue of fairness of domestic enquiry this Tribunal has held that it is fair and proper. Consequent upon the enquiry report the second party workman was imposed with the punishment of compulsory retirement which due to lack of a second show cause notice has been held to be bad in law and is illegal. In the aforesaid circumstances, it would have been proper to serve second show cause notice to the second party workman and to take a decision after consideration of the same. The materials on record reveal that the second party workman who was imposed with the punishment of compulsory retirement at the age of 55 years has crossed the age of superannuation i.e. 58 years in the meantime. Therefore, the second show

cause notice on any punishment would not serve any purpose. Therefore, taking into consideration of the aforesaid facts the first party management is directed to release 50% of his salary as back wages for the period from the date of compulsory retirement till his normal superannuation within a period of three months of the date of publication of the Award in the Official Gazette.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY
12-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

P. K. RAY
12-12-2013
Presiding Officer
Industrial Tribunal
Bhubaneswar

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