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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 5th April 2011

No. 3187—li/1(BH-II)-8/2009(Pt.)-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 12th February 2014 in Industrial Dispute Case No. 14 of 2009 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Management of M/s Polar Pharma India Ltd., Somanathpur Industrial Estate, Balasore and its workmen Shri Pradeep Kumar Behera and 11others was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 14 OF 2009

Dated the 12th February 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 Polar Pharma India Ltd.,
Plot No. 3, Somanathpur Industrial Estate,
Balasore.

And

Its workmen .. Second Party—Workmen
Shri Pradeep Kumar Behera and 11 others,
C/o P.K. Behera, S/o Late Ananta Behera,
At/P.O. Somanathpur, Via Remuna
Dist. Balasore.

Appearances :

Shri P.K. Chand, Auth Rept.	. .	For the First Party—Management
Shri B. K. Mohanty, Auth. Rept.	. .	For the Second Party—Workmen

AWARD

This case has been instituted u/s 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 u/s 12 (5) of the Act vide its Letter No. 6591—II/1(BH-II)-8/2009-LE., dated the 20th July 2009 on the following schedule :

“Whether the termination of services of S/Shri Ananta Prasad Rout, Umesh Chandra Rout, Ranjit Kumar Parida with effect from the 7th June 2008, services of S/Shri Rabindra Kumar Nayak, Subikash Jena, Satyanarayan Nayak, Parameswar Bhoi and Surendra Swain with effect from the 9th June 2008 and services of S/Shri P. K. Behera, Samaresh Mandal, Chittaranjan Swain and Biranchi Kumar Barik with effect from the 10th June 2008 by way of dismissal from services by the management of M/s Polar Pharma India Ltd., Somanathpur Industrial Estate, Balasore is legal and/or justified ? If not, what relief the workmen are entitled to ?”

2. Out of the twelve workmen whose cases have been referred for adjudication ten of them have filed their separate claim statements. The claim of the second party workman Shri P.K. Behera is that pursuant to the appointment order issued by the first party management he joined on the 13th November 1997 as a Grade-B Attendant and subsequently promoted to the post of Grade-C Operator. While working as such, all on a sudden he received a show-cause notice on the 5th August 2007 asking him to explain the charges made against him and on the 28th September 2007 he was put under suspension. After submission of his explanation the first party management issued a charge sheet against him on the 5th August 2007 alleging certain misconducts. After denial of the charge made against him the first party management being dissatisfied with the same appointed one Shri P.K. Mishra, Advocate as the Enquiry Officer to conduct the enquiry. Subsequently, though the second party workman made a representation before the first party management for supply of documents on the charges framed against him the first party management defaulted in supply of the same. Even the Enquiry Officer did not supply him the copy of the documents on which the first party management relied upon as well as petition for engagement of Lawyer to assist him in the enquiry and finally he conducted the enquiry without resorting to the principles of natural justice. Though the second party workman raised objection relating to the credibility of the Enquiry Officer and filed representation to that effect before the first party management, it did not respond to it as a result of which the entire enquiry was conducted in a perfunctory manner. Lastly after submission of the enquiry report the first party management inflicted the punishment of dismissal

recommended by the Enquiry Officer thereby violating the principles of natural justice although the proceeding till imposition of the punishment. Similarly, the rest of the nine workmen have filed their separate claim statements challenging their punishment on the basis of the recommendation of the Enquiry Officer and further asserting that the enquiry conducted against them is in complete violation of the principles of natural justice. Being aggrieved by such action the second party workmen raised dispute before the concerned Authorities with copy to the labour machinery and ultimately the State Government have referred the present dispute for adjudication.

3. The first party management in its consolidated written statement has stated that due to various misconducts and indiscipline charges were framed against the second party workmen and after being dissatisfied with the explanations submitted by them an enquiry was conducted by the Enquiry Officer Shri P.K. Mishra who adhering the principles of natural justice finally submitted his report basing on which the first party management imposed punishment on the second party workmen in accordance with law. Hence, the second party workmen do not have any claim and this reference is liable to be dismissed.

4. The issues framed in this case are as follows :—

ISSUES

- (i) “Whether the domestic enquiry conducted against the workmen is fair and proper ?
- (ii) Whether the termination of services by way of dismissal of S/Shri Ananta Prasad Rout, Umesh Chandra Rout, Ranjit Parida by way of dismissal with effect from the 7th June 2008; of S/Shri Rabindra Kumar Nayak, Subikash Jena, Satyanarayan Nayak, Parameswar Bhoi and Surendra Swain with effect from the 9th June 2008 and of S/Shri P.K. Behera, Samaresh Mandal, Chittaranjan Swain and Biranchi Kumar Barik with effect from the 10th June 2008 by the management of M/s Polar Pharma India Ltd., Somanathpur Industrial Estate, Balasore is legal and/ or justified ?
- (iii) What relief the workmen are entitled to ?”

5. In support of their respective case, while the second party workmen adduced evidence of Shri Umesh Chandra Rout at the time of hearing on the preliminary issue, i.e. on the question of fairness and propriety of the domestic enquiry and filed documents marked Exts. 1 to 20, the first party management remained absent in the said hearing. Hearing on the issue of fairness and propriety of the enquiry was taken-up preliminarily and it was held that the enquiry was not fair and proper. Accordingly, the case was posted for evidence on other issues giving a scope to the first party management to substantiate the charges before this Tribunal. During hearing on other issues both the parties defaulted in their appearance.

FINDINGS

6. *Issue Nos. (ii) & (iii)*— In this case, the domestic enquiry conducted against the second party workmen has been held to be neither fair nor proper. The first party management did not challenge the same in any higher forum. Besides, it has also not turned-up to adduce any evidence on other issues. Therefore, it fails to substantiate the allegations of misconduct against the second party workmen basing on which the first party management imposed punishment on them. This being the crux of the dispute and the first party management having failed to substantiate the charges levelled against the second party workmen, all the ten second party workmen, namely :— (1) Shri Pradeep Kumar Behera, (2) Shri Rabindra Nayak, (3) Shri Samaresh Mandal, (4) Shri Umesh Chandra Rout, (5) Shri Subikash Jena, (6) Shri Surendra Swain, (7) Shri Chitta Ranjan Swain, (8) Shri Satyanarayan Nayak, (9) Shri Biranchi Kumar Barik and (10) Shri Ananta Prasad Rout are bound to take advantage of the same. Hence, they are all held entitled to reinstatement in service forthwith. Since they have not performed any duty from the date of their removal from service, they are not entitled to any back wages.

The reference is answered accordingly.

Dictated and corrected by me.

P. K. RAY

12-02-2014

Presiding Officer

Industrial Tribunal, Bhubaneswar

P. K. RAY

12-02-2014

Presiding Officer

Industrial Tribunal, Bhubaneswar

By order of the Governor

R. K. NANDA

Under-Secretary to Government