

# The Odisha Gazette

EXTRAORDINARY  
PUBLISHED BY AUTHORITY

---

---

No. 883 CUTTACK, THURSDAY, MAY 29, 2014/JAISTHA 8, 1936

---

---

## LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 21st May 2014

No. 3878—li/1-(SS)-31/2008-LESI.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 27th March 2014 in Industrial Dispute Case No. 14 of 2009 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Sahara India, Rourkela and its workman Shri Krishna Kumar Singh, ex-Assistant Junior Worker 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. 14 OF 2009

Dated the 27th March 2014

#### *Present :*

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

#### *Between :*

The Management of .. First Party—Management  
Sahara India, Rourkela

And

Their workman, .. Second Party—Workman  
Shri Krishna Kumar Singh,,  
Qrs. No.D/80, Sector-14,  
Rourkela, Dist. Sundargarh.

#### *Appearances :*

Shri P. K. Pradhan, Advocate .. For the First Party—Management

Shri B. K. Purohit, Advocate .. For the Second Party—Workman

## AWARD

This award arises out of a reference made by the Government of Odisha, Labour & Employment Department under the power conferred by sub-section (5) of Section 12, read with Clause (c) of Sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) (for short the "Act") vide Order under memo No. 8911 (4), dated the 29th September 2009. The disputes involved under the Schedule of reference is as follows :—

"Whether the termination of services of Shri Krishna Kumar Singh, ex-Asst. Junior Worker with effect from the 4th January 2000/11th January 2000 by the management of Sahara India, Rourkela is legal and/or justified ? If not, what relief Shri Singh is entitled to ?".

2. The case of the second party workman as per his statement of claim is that he was appointed as Assistant Junior Worker under the first party management and worked as such with effect from the 1st May 1991. In the year 1992, he took charge of the cash of Rourkela Branch Office of the first party from Shri Ajay Sharma, the then Assistant Branch Worker. He managed the work of Cashier till 30-7-1991 when he handed over the charge of cash to one Shri Jagannath Dhal, the Assistant Junior Worker. The Deputy Regional Worker of the first party management visited the Rourkela Branch Office on 5-7-1997 and during verification of cash, he found shortage of cash. On 7-7-1997 the second party was suspended from service and subsequently his service was terminated with effect from 4-1-2000. According to the second party he was not in charge of cash on the date of inspection i.e 5-7-1997. It is his further case that the cash was kept locked in Iron Safe having two keys. One of the Key was kept by Shri Arun Kumar Sinha, Sector Financing Officer of Rourkela Branch Office of the first party and the other Key was kept by the Cashier. During cash transaction, both the persons are required to remain present and open the iron safe. The second party claims that he was not liable for the shortage of cash on relevant date. In the claim statement, it is further narrated that the first party management filed a written report at Rourkela Plant Site Police Station on 19-2-1999 but subsequently filed a complaint case on 15-3-1999. The complaint case numbered as I.C.C. 30/1999 was trial by the learned Judicial Magistrate First Class, Panposh at Uditnagar, Rourkela in Trial No.50/2004. Ultimately, he was acquitted and found not guilty for the offence under Section 408 of I.P.C. and was acquitted under Section 248 (I) of Cr.P.C. and was set at liberty. On 24-10-2006 the second party submitted a petition before the Deputy Labour Commissioner, Rourkela for his reinstatement in service under the management of M/s Sahara India Ltd.,. The conciliation proceeding taken up by the Assistant Labour Officer, Rourkela ended in submission of failure report. Thereafter the Government of Odisha in Labour & Employment Department referred the dispute to this Court for adjudication. The workman in his statement of claim further narrated that before termination of his service the first party did not follow the due procedure of law and violated the principles of natural justice and as such their act of dismissal is illegal and therefore he is entitled to reinstatement in service with full back wages and all other service benefits with effect from the date of termination.

3. The management filed written statement wherein it admitted that the second party took charge of cash at Rourkela Branch Office in the year 1992 and performed his duties as Cashier till March 1997 when he handed over charge of cash to Shri Jagannath Dhal. It is however additionally stated by the management that the second party continued to supervise the cash work in the

capacity of Chief Cashier and was getting cash allowance. According to the management on the date of inspection i.e. 5-7-1997 Shri Dhal was working as a Cashier and the second party was supervising the cash in the capacity of Chief Cashier. The Deputy Regional Worker found the second party liable for shortage of cash to the tune of Rs. 7,69,061 and therefore he was placed under suspension. The management claims that due procedure was followed before termination of service of the second party. Chargesheet Dt. 10-9-1998 was duly served upon him. He submitted his reply on the same day. One Shri Alok Kumar Srivastava was appointed as an Enquiry Officer who conducted enquiry as per rules. The second party was given sufficient opportunity to defend himself. In the departmental enquiry the charge against the second party was duly proved. The second party was served with the enquiry report Dt. 10-11-1998 vide letter Dt. 18-11-1998. Though the second party was asked to file representation, he did not file any representation and therefore, his services were terminated vide order Dt. 4-1-2000 which was published in the newspaper when the second party refused to receive the same. According to the management, the punishment awarded to the second party was in due course of law and there was no violation of the principles of natural justice, with such averments, the first party submitted that the claim of the second party is liable to be dismissed.

4. The second party filed a rejoinder wherein he denied the averments of the first party that he was working as a Supervisor of cash. He called upon the first party to adduce evidence in support of such fact. It is the specific stand of the second party that on the date of inspection i.e. 5-7-1997 Shri Dhal was working as cashier and he was not entrusted with the cash nor any order was communicated to him to supervise the cash transaction as alleged by the first party. According to the second party there was no post of Chief Cashier and the suspension order was passed against him illegally. According to the second party, the judgment and order of acquittal passed in his favour in the criminal Court is binding upon the first party. He reiterated the fact that the disciplinary proceeding was not conducted properly, he refused to have received any order and his termination of service was without any sanction of law and as such the punishment order is liable to be *set aside*.

5. On the basis of the pleadings of the parties, the following issues have been settled—

#### ISSUES

- (i) “Whether termination of services of Shri Krishna Kumar Singh, Asst. Junior Worker with effect from the 4th January 2000 /11th January 2000 by the management of Sahara India, Rourkela is legal/or justified ?
- (ii) If not, what relief Shri Singh is entitled to ?”

#### ISSUES RECAST

- (iii) “Whether the domestic enquiry conducted by the management is fair and proper ?”.

6. The second party examined himself as sole witness and he proved several documents which were marked Ext.1 to Ext.5. The management on the contrary examined its Branch Manager as the sole witness. Several documents filed on behalf of the management were marked as Ext.A to Ext.E.

## FINDINGS

7. *Issue Nos. (i) & (iii)*—It is the admitted case of both the parties that the second party was appointed as Assistant Junior Worker under the first party management and worked as such with effect from the 1st May 1991. In the year 1992, he took charge of the cash of Rourkela Branch Office of the first party. There is also no dispute that the second party handed over the charge of cash to one Shri Jagannath Dhal in the month of March 1997. It is the further admitted case of both the parties that on 5-7-11997, the Deputy Regional Worker of the first party management inspected the Sahara India, Branch Office at Rourkela and found shortage of cash of Rs. 7,69,061. It is the specific case of the second party that on the said date he was not in-charge of cash and the cash was kept in iron safe having two keys out of which the first key was with the Cashier (Shri Jagannath Dhal) and the second key was kept by Shri Arun Kumar Sinha, the Sector Financing Officer of Rourkela Branch Office. Such averment of the second party in his claim statement is simply denied by the first party in their written statement. There is no averment by the first party regarding the custody of cash in the office of the management. The second party examined as W.W.1 clearly deposed in his evidence that he handed over-charge of cash to Shri Jagannath Dhal, Assistant Junior Worker of the management as per office Order Dt. 13-3-1997 and recorded about transfer of charge of cash in the Cash Book itself. He has specifically stated that in the cash book handing over and taking over of the charges of cash was reflected and signed by him and the said Shri Jagannath Dhal. The second party has deposed in clear terms.

“The cash iron safe was having two keys and one of the key was kept by Shri Arun Kumar Sinha, Sector Financing Officer of Rourkela Branch and the other key of the safe was kept by the Cashier. Whenever any cash transfer was being made, both the persons holding the keys have to be present for keeping the cash in the iron safe and getting cash out from the iron safe”. The above evidence of the second party workman has not been taken during cross-examination. There is even no suggestion to the witness during cross-examination that the above nature of custody of cash and transaction of cash was wrongly deposed by the second party. Although, the workman has specifically stated the name of two employees of the management to have been in custody of the cash,, the management did not examine the said persons in counter to the evidence of the workman. In such circumstances, I find absolutely no material to disbelieve the evidence of the second party workman that he was not in custody of cash on the date of inspection, particularly when the management has admitted that in the month of March 1997, the second party handed over the charge of cash to one Shri Jagannath Dhal.

8. It is the case of the management that the Deputy Regional Worker who inspected the cash found the second party liable for shortage of cash and therefore, he was placed under suspension. Admittedly, the second party was suspended with effect from the 7th July 1997, i.e., one day after the date of inspection. The management conducted domestic enquiry framing charge against the second party and it reveals from the enquiry report marked Ext.B./1 that the entire enquiry was conducted on a single day i.e on 11-9-1998 and the Enquiry Officer submitted his report on 10-11-1998 with a finding that the second party is fully responsible for the shortage of cash of Rs. 7,69,061. On the basis of the enquiry report, the second party was terminated from service with effect from the 4th January 2000. Before the date of termination of service, the management filed a report at Rourkela Plant Site Police Station on 19-2-1999 (as asserted by the second party in

his statement of claim and not disputed by the management in written statement. On 15-3-1999 the first party management filed complaint against the second party in the Court of the Judicial Magistrate of First Class, Panposh at Uditnagar alleging criminal breach of trust and misappropriation of the aforesaid amount of cash which constitute offence under Section 408 of the I.P.C. The second party deposed that he was acquitted from the said charge and filed the copy of judgement of the learned JMFC which was marked as Ext.3. The Ext.3 reveals that the complaint of the management was registered as I.C.C 30/99 corresponding to Trial No. 50/2004. In the said case, the management examined 3 witnesses namely Rajesh Kumar Singh, Nirvay Kumar Mishra and Jagannath Dhal. The learned JMFC having considered the evidence on record arrived at a conclusion that there was no evidence in respect of entrustment by the Complainant to the accused. The learned Court further held that the testimony of the prosecution witnesses did not inspire confidence so as to hold the accused (second party) guilty for the alleged offence. In the result, he acquitted the accused from the charge under Section 408 I.P.C. and set him at liberty. It is the submission of the learned advocate for the management that the judgement and order of acquittal of learned JMFC is challenged by the management before the Hon'ble High Court of Orissa and in support of such fact, he has filed the certified copy of Order Dt. 4-1-2007 passed by the Hon'ble High Court in Criminal Appeal No. 511/2006 filed by Rajesh Kumar Singh on behalf of the management. It reveals from the Order that the Criminal Appeal has been admitted and an Order has been passed to issue notice on the question of hearing. Although the appeal was admitted in the month of January 2007, the management has not filed any document indicating the latest position of the appeal. Unless and until the judgement and order of acquittal of the second party is reversed by the Hon'ble High Court the finding of the learned JMFC cannot be questioned in this forum. It is submitted by the learned advocate for the management that the disciplinary proceeding and criminal proceeding can run together and there can be different finding of the two authorities. There is no dispute in such legal position. However in the present case the workman denies his liability for shortage of cash on the ground that he was not in charge of cash. Admittedly, he handed over the charge of cash to one Jagannath Dhal in the month of March 1997 but the shortage of cash was detected on Dt. 5-7-1997. The learned JMFC having considered the evidence of said Jagannath Dhal and other witnesses arrived at a finding that there was no proof of entrustment upon the accused (second party) and therefore, disbelieved the allegation of the management regarding breach of trust and criminal misappropriation. Since in the present case, the management failed to examine the person taking over the charge of cash namely Jagannath Dhal, it is not possible to hold that the second party remained in charge of cash on the date of inspection.

9. The learned advocate for the management submitted that the second party workman admitted his guilt and therefore, there was no need to prove the fact of misappropriation of cash by him. He relies upon a certified copy of an affidavit sworn by the second party on 25-9-1997 and a promissory note executed by him on the same day. The management relied upon these two documents before the learned JMFC in the aforesaid Criminal case (ICC No. 30/99) but the same was not found to be in favour of the management to record conviction. The second party put himself for examination and cross-examination in this Court but during his evidence the affidavit and Promissory note said to have been executed by him was not confronted. Besides, although in the affidavit Dt. 25-9-1997 the workman is said to have admitted that the irregularity in cash to the tune of Rs. 7,69,061 was caused during his tenure of service and he is responsible for the same,

there is no admission that he misappropriated the said amount. As per the affidavit an amount of Rs. 3,23,799 was already recovered from him and he took responsibility to pay the balance amount of Rs. 4,45,262 under a promissory note executed on 25-9-1997. It may be pertinent to repeat here that the second party was suspended from service with effect from the 7th July 1997 and the affidavit was sworn by him on 25-9-1997. On the same day also he executed the Promissory Note making a promise to pay on demand a sum of Rs. 4,45,262. It might be a fact that the second party sworn an affidavit and promissory note under the pressure of the management or in order to save his service. The affidavit and promissory note even if taken in its face value do not establish the fact that the second party misappropriated the cash. The admission therein at best indicate the fact that there was some irregularity in the maintenance of cash and he took responsibility to pay the shortage amount of cash. But the same cannot be said to be an admission of guilt particularly when he handed over the charge of cash to another person much before the date of detection of cash shortage.

10. The management took a plea that although the second party handed over the charge of cash to another employee, he continued to supervise the cash work in the capacity of Chief Cashier and was getting cash allowance. During course of hearing the management filed a copy of salary slip of the workman for the month of July 1997 and the said document has been marked Ext.E. This document reveals that in addition to basic salary, D.A. and other dues, the second party was paid cash allowance of Rs. 300. The workman does not dispute the fact of receiving cash allowance but he denies to have been in charge of cash as Cashier or as Supervisor of cash. The management witness during cross-examination has clearly made following admissions. "Till March, 1997 the second party was in charge of cash. He handed over the charge of cash to one Jagannath Dhal, Assistant Junior Worker on 13-3-1997. He took exclusive charge and the second party was merely supervising his work. We have not filed any document to show that the second party was given the charge of supervision (Paragraph-15).....The Deputy Regional Worker visited our branch on 5-7-1997. On that day another person was in charge of cash. The second party was not in any manner connected with the charge of cash (Paragraph-17)". In view of the clear admission of the management witness as noted above. I have no hesitation to hold that the second party was not entrusted with the charge of cash of the Rourkela Branch office of the management on the date of inspection i.e. 5-7-1997. On the basis of the salary slip only it cannot be said that the second party was in charge of cash on the relevant date and he was solely responsible for shortage of cash. The person in charge of cash namely Jagannath Dhal would have been best person to say about the removal of cash from the cash iron safe prior to the date of inspection. The management without examining the said person cannot convince the Court that the second party misappropriated the alleged cash and was responsible for the shortage only because he received cash allowance for the month of July 1997.

The second party challenges the fairness of the disciplinary enquiry on several grounds. However, on perusal of the materials supplied by the first party, more particularly the entire disciplinary proceeding file (in 43 sheets) vide Ext.B and the enquiry report marked Ext.B/1, I find, the disciplinary proceeding was taken up after service of copy of charge upon the second party. The second party himself submitted a show cause in his own handwriting on Dt. 10-9-1998 (marked Ext.A). The show cause was not found satisfactory and the workman participated in hearing of the disciplinary

proceeding that was conducted on 11-9-1998. He has signed all relevant documents on Dt. 10-9-1998 and Dt. 11-9-1998. The recording of evidence was made by the enquiry officer in his presence and he has signed on all sheets of the proceedings. Although the entire hearing was completed in one day, there is no material indicating the fact that the workman was not given adequate opportunity. The learned Advocate for second party submitted that the enquiry report was not communicated to the workman. The Advocate for the management submitted that the workman refused to receive the same. In the case of *Debendranath Khuntia vs. P.O.I.T. & another* reported in 2003 (Supp) OLR 509, our Hon'ble High Court observed "No order of dismissal can be mechanically set aside because the delinquent was not furnished with a copy of enquiry report". Since the second party participated in the disciplinary proceeding and prior to the initiation of proceeding he had sworn affidavit and promissory note, acknowledging his responsibility to make up the shortage of cash, I am inclined to hold that the technical points raised by the Advocate for second party are not tenable. The enquiry report of the disciplinary authority cannot be found fault with.

12. In view of the discussions made above I am constrained to hold that the domestic enquiry conducted by the management is fair and proper and as such the issue No. (iii) is answered in the affirmative.

13. So far as the question of legality of termination of service of second party, I find, on the basis of an admission of the workman submitted in show cause, so also the findings of enquiry officer, the management found the workman responsible for shortage of cash to an amount of Rs. 7,69,061. The second party admitted to make up the loss. From the said amount a sum of Rs. 3,23,799 has already been recovered and the second party undertook to pay on demand the balance of Rs. 4,45,262. When in the criminal proceeding the second party was acquitted on charge of misappropriation and there is positive evidence that the second party handed over charge of cash to another person, sufficient before the date of inspection, I feel the punishment of dismissal from service is not justified. The workman should have been demanded the agreed amount and continued in service. In the facts and circumstances I feel the mere admission of the second party regarding his responsibility is not sufficient to hold him guilty of misappropriation. The highest punishment awarded by management appear to be improper. The issue No. (i) is accordingly answered.

14. *Issue No. (ii)*—As regards the relief to the second party, I find there is ample proof that there was shortage of cash of more than Rs. 7,00,000 in the Rourkela Branch office of the management on the date of inspection Dt. 5-7-1997. By then one Jagannath Dhal was in charge of cash who took over the said charge from the workman in the month of March 1997. However, the workman soon after the inspection and before the disciplinary proceeding was taken up admitted his liability and responsibility in the matter of shortage of cash. He acknowledged recovery of an amount of Rs. 3,23,799 from him without any objection and sworn an affidavit on 25-9-1997 stating therein that he is liable to pay the balance amount of Rs. 4,45,262. He even executed a promissory note on 25-9-1997 to pay the said balance amount. In such view of the matter the management was clear in their pervue to keep the second party out of service. However since in my discussion on other issues I have observed that the second party handover the charge of cash to another employee as per the office order of the management but the said person has not been awarded

with any punishment by the management, I feel it would be just and proper to direct the management to reinstate the second party in service without back wages subject to condition he pays the agreed amount the affidavit and promissory note. However, in the event the criminal appeal No. 511 of 2006, preferred by the management against the judgement of acquittal is decided in favour of complainant in ICC No.30/99, the first party shall be liberty to terminate the service of the second party. The issue is answered accordingly.

16. In view of the determination of the issues in the manner aforesid, the following Award is passed :—

#### AWARD

16. The reference is answered on contest in favour of the workman without cost. The termination of service of the second party by the management of Sahara India, Rourkela with effect from the 4-1-2000/11-1-2000 is found to be illegal and unjustified. The second party is entitled to reinstatement in service without back wages with condition that he shall deposit an amount of Rs. 4,35,262 within a period of one month of receipt of reappointment letter to be issued by the first party within 3 months of publication of this Award in the Official Gazette.

Dictated and corrected by me.

SRIKANTA MISHRA  
27-3-2014  
Presiding Officer  
Labour Court, Sambalpur

SRIKANTA MISHRA  
27-3-2014  
Presiding Officer  
Labour Court, Sambalpur

---

By order of the Governor  
M. NAYAK  
Under-Secretary to Government