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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 22nd February 2023

S.R.O. No. 111/2023—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 31st January, 2023 passed in the ID Case NO.41 of 2022 by the Presiding officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between Management of M/s.OCP Private Limited, Jharsuguda and Shri Prafulla Chandra Pradhan, C/o - Uchhab Mohanty, At- Bijanagar, P.O.Industrial Estate, Dist. Jharsuguda At present- Plot No.22, Industrial Colony, Unit-3, P.S-Kharvela Nagar, Bhubaneswar, Dist-Khurda was referred to for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 22 OF 1999

Dated the 31st January 2023

BEFORE THE INDUSTRIAL TRIBUNAL, BHUBANEWAR

PRESENT: Shri Hiranmaya Bisoi, LL.M.
P.O, Industrial Tribunal Bhubaneswar.

I.D. Case No.41 of 2022

(previously registered as I.D. Case No.22 of 1999 in the file of
P.O., Industrial Tribunal, Rourkela.

Dated, Bhubaneswar, the 31st January,2023

BETWEEN:

The Management of - M/s. OCP Private Limited,
Jharsuguda.

..... 1 st Party-Management

AND

Sri Prafulla Chandra Pradhan,
C/o : Uchhab Mohanty,
At: Bijanagar,P.O. Industrial Estate, Dist: Jharsuguda.
At present: Plot No.22,
Industrial Colony, Unit-3,
P.S.Kharvela Nagar, Bhubaneswar, Dist : Khurda.

..... 2nd Party-Workman

Appearance for 1st Party : S. Mishra,Advocate
Appearance for 2nd Party : S. Dash,Advocate.

Date of Argument : 16.01.2023
Date of Award : 31.01.2023

AWARD

The ongoing dispute between the 2nd party-Workman and the 1st party-Management was firstly bottomed out over a matter of transfer and subsequently retched up in dismissal of the 2nd party- Workman.

2. The effort of Conciliation between above mentioned parties was in run to put an end to the dispute yet it worked out nothing. Consequently, the Conciliation Officer submitted a failure report as per law to get the dispute adjudicated. The Appropriate Government having found the existence of industrial dispute referred the dispute between parties as per the following Order of Reference

“Whether the dismissal of Sri P.C.Pradhan, Senior Office Assistant from service w.e.f. 19.04.97 by the management of OCP India Private Ltd., Jharsuguda is legal and or justified? If not, to what relief Sri Pradhan is entitled?”

3. The referred dispute dates back to passing of an earlier award by P.O. Industrial Tribunal, Rourkela bearing I.D.Case No.22 of 1999 in pursuant of the Govt reference vide Order No.5043 dtd. 15.04.1999. Being dissatisfied with denial of any relief as sought by the second party, it challenged the impugned award before the Hon’ble High Court in filing W.P.(C) No.2840 of 2002. The Hon’ble Court was pleased to quash the Award of Industrial Tribunal, Rourkela and remanded the matter directing for fresh disposal in accordance with law

by the P.O. Industrial Tribunal, Bhubaneswar. As the case record i.e., I.D.Case No.22 of 1999 was reported to have been destroyed by the P.O. Industrial Tribunal, Rourkela, the record was re-constructed and re-numbered at this end as I.D. Case No. 41 of 2022 (previously I.D. Case No. 22 of 1999) by virtue of orders of the Hon'ble Court passed in I.A. No. 3702 of 2022(arising out of W.P.(C) No. 2840 of 2022),

4. The pith and substance of the dispute in hand is that the 2nd party was appointed by the first party management on 21.01.1978 being posted at the Head Office, Bhubaneswar. He stated to be given willingness to quit his services but dissuaded by the management with an assurance to continue under management being remained at Bhubaneswar till attaining the age of superannuation and accordingly an agreement claimed to be executed on 25.09.1987. Despite being existence of such agreement, the management transferred him from Bhubaneswar to Jharsuguda on 17.02.1993 and thereafter from Jharsuguda to Guwahati to work under a different company namely M/s. Rungta Agencies Pvt.Ltd. Several representations were made to cancel the transfer order yet proved to be futile. It is further stated that while continuing as a Senior Assistant in the office of the management at Jharsuguda, he was charge-sheeted on 18.04.1996 and 25.04.1996 respectively for having allegedly left the factory premises without due permission after reporting for duty at 8.05 A.M. on 17.4.1996 and for having written a letter to the management making false and fabricated allegations against the managerial staff and further while under suspension he came to the main gate and started inciting, instigating and threatening the willing workers not to rejoin their duty and

continued with the illegal strike, as a result of which the willing workers did not rejoin their work. The matter was enquired into ex- parte and basing on the findings of such enquiry he was inflicted with the punishment of dismissal from service w.e.f. 19.04.1997. It was the case of 2nd party that he had been persecuted on the basis of vague and baseless charge-sheets as the issuance of the same was a counter blast of staying the transfer order through Civil Court deplored the 1st party management to indulge in unfair trade practice and for that reason, the dismissal order is not sustainable and he is liable to be re-instated into services with full back wages/salaries on promotional scale of pay and other series of reliefs as prayed in the statement of claim.

5. The 1st party-management denied most of the assertions made in the statement of claim. On 18.04.1996 and 25.05.96 two charge sheets were issued basing upon various allegations contained therein which were serious misconduct as mentioned in Sub-clauses (iv) & (xx) of Clause 30 of the C.S Order of the company. On being received the charge-sheet, a belated written explanation was filed which was not satisfactory. Accordingly, the enquiry was set up by appointing an independent person but the 2nd party did not appear in the enquiry in spite of notices, as such the enquiry proceeded exparte and followed by imposition of punishment against the 2nd party. It was the case of the 1st party that the CSE was removed from the services of the 1st party due to his own commission of misconduct and he had been rightly punished as because the charges had been proved against him. There had been no victimization of the 2nd party. The punishment as awarded or inflicted on the 2 party workman is fair, legal and justified and all legal and fair procedures were adopted while removing him

from services, hence he is not entitled to any relief.

6. The rival pleadings of party paved the way to frame as many as three issues for proper adjudication;

Issues

- i) Is the reference maintainable?
- ii) Is the domestic enquiry conducted against the second party workman namely Sri Prafulla Chandra Pradhan fair and proper?
- iii) If yes, is there any justification in dismissing the services of Sri Prafulla Chandra Pradhan w.e.f. 19.04.1997 by the 1st party management of OCP India Private Ltd, Jharsuguda legal and/or Justified?
- iv) If not, what reliefs the Workman is entitled to?

7. As the dispute between parties is not a case of termination of an employee simplicitor but a case of dismissal of the 2nd party-Workman as a punishment inflicted by way of disciplinary action, the fairness and propriety of disciplinary proceeding held against the 2nd party was taken up to be decided preliminarily along with an application of the 1st party for approval of action taken against the 2nd party during pendency of industrial dispute U/s.33(2)(b) of the Act which went in favour of the 1st party-Management. Once the answer of issue No.(ii) goes in favour 1st party-management, the point of maintainability loses its significance and it goes without saying that the reference is maintainable.

8. The surviving issue that falls for adjudication is as to whether there has been any legality and justifiability in dismissing the services of the 2nd party w.e.f. 19.04.1996 by the management of OCP

India Private Ltd, Jharsuguda. Before delving into the issue, it is apposite to mention here that the permission granted under section 33 of the Act does not have the effect of validating the order of dismissal as per the verdict of **The Management of Orissa Road Transport Company Ltd Vrs. The Workman T. Bangali Patra and Others**. The apparition of finality over the controversy under issue No.ii unquestionably brings in a narrow scope in the matter of exercising jurisdiction of the Tribunal to deal justifiability of the punishment of dismissal under section 10 of the Act. Although, the power of the Tribunal under section 11-A of the Act has been clarified as per the verdict of the Apex Court in **Workmen of Firestone Tyre and Rubber Co. Vrs. Management (1973) 1 SCC 813** yet it has been gradually restricted by subsequent judgments of the Hon'ble Apex Court. It is settle principle of law in a case of **B.C Chaurvedi Vrs. Union of India and Others AIR (1996) SC 484** that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof. The Tribunal cannot normally interfere with the findings of fact based on evidence and substitute its own conclusion on penalty and impose some other penalty imposed. Keeping in view the principle in mind, it is to be seen as to whether the dispute in hand comes under the rare category or not.

9. There is no controversy over the fact that two separate charge-sheets were issued against the 2 party and the enquiry officer

found him guilty in an exparte inquiry. The enquiry report along with proceeding found to have proved as Ext.D from the side of the 1st party-management. Especially, the inquiry report submitted by EO clearly indicated that the CSE held guilty of all charges and there had been a recommendation of deterrent punishment to show an example in the mind of other workers in offence. Accordingly, the GM of the 1st party-management dismissed the CSE from company on the basis of the findings of enquiry report as per Ext.E. It appears from Ext.D that the finding facts of the enquiry report submitted by EO on the basis of the statements of one Hum Bahadur Thapa (Security I/c); Prakash Thapa, (Security Guard); Sri S.S. Das, PO and Sri R.K. Sharma along with some supportive documents to hold the charges proved beyond all reasonable doubt. The finding facts so arrived at by EO on the basis of charge sheet dtd. 18.04.1996 for going out of factory premises illegally without receiving a letter; made false statement against the administrative and managerial staffs of the company by writing a letter dtd. 17.04.1996. According to the 1st party, the acts amount to majorconducts under 30 (ix) and Clause (xxxxiv) of the Certified Standing Order of the Company; the charge sheet dtd.25.05.1996 disclosed that he was inciting, instigating and threatening willing workmen when they came for reporting to duty and the incitement was to continue the illegal strike which constitutes an act of serious misconduct under sub-clause (iv) and (xx) of Clause 30 of the certified standing orders of the company.

9-1. It is no doubt true that the witnesses so examined by the Department had not been cross-examined to stand firm in their respective testimony and the unchallenged oral evidence, un-rebutted documentary evidence

undoubtedly led the EO to base a guilty findings. However, it could not afford any ground to dispense with the burden of proof in the matter of proving the charges leveled against the CSE. The question is whether the testimony of witnesses, document did have any legality or sanctity to put into a favourable light over the finding facts. On careful consideration of the statement both material witnesses in support of two charge sheets, it appears to be similar, identical and consistent to each other, therefore there was no reason as to why and wherefore the EO held in its enquiry report the charges against the 2nd party to be proved beyond all reasonable doubt as it went contrary to the principle of settled principle as cited by the management to justify that the disciplinary authority is expected to prove the charge on preponderance of probability and not on proof of beyond reasonable doubt (**AIR 2005 (SC) 570 Cholan Road Ways Ltd. Vrs. Thirugnanasambandam; 2008 LLR 619 (SC) Usha Breco Mazdoor Sangh Vrs. Management of M/s.Usha Breco Ltd & another**). Be that as it may, it cannot be lost sight of fact that the second charge-sheet was issued some months after the issuance of first charge-sheet dtd. 18.04.1996. So far as the proof of the allegations contained in second charge-sheet is concerned, there is nothing on the enquiry record to indicate that whether the alleged instigation, threaten warrant issued by the 2nd party were directed to actual loyal workers of the company or not to make the alleged imputable conduct of the 2nd party worthy of proving. Not a single name of obstructed loyal worker had ever come to fore any manner to find place in the charge sheet; nor did the same crop up during course of domestic enquiry to examine them as a matter of legal, supportive evidence against the allegations depicted in subsequent charge sheet. In such circumstance, it made the 1st

party management obligatory, at least, to conduct a preliminary enquiry to reach out the fact as to who were the loyal workers subjected to the illegal obstruction. Not having done so, it left open the allegations contained in the charge sheet dtd.25.05.1996 to be omnibus and placing reliance on such irrelevant particulars in the charge, evidence of witness, not touching at the source of allegation and pre-ponderance existence of facts, it would materially affect the finding facts of the EO made in the enquiry report.

9-2. It was specifically contended by the learned counsel for 2nd party that the allegations in the charge sheet No.2 is vague and ambiguous. The management witness admitted in para-22 of his cross- examination that Ext.7 does not disclose the detail particulars of the date, time and persons to whom the second party had put obstruction to join in their duties. Not a single alleged obstructed person had ever filed any complaint before the 1st party management. On threadbare consideration of the material, most particularly Ext.7 and submission of the 2nd party admits of verisimilitude. It is settled principle of law that the charge-sheet is the charter of disciplinary action. Fair hearing presupposes a precise and definite catalogue of charges, so that person charged may understand and effectively meet them. Even if the CSE did not appear in the proceeding yet there has been no date, time, name of the alleged loyal workers of the company and manner of obstruction to invite a fair and proper proof of the charge dtd.25.05.96 and the available evidence on inquiry record in support of above appears to be incomplete, ambiguous charge-sheet and is not sufficient to form a concrete opinion over any kind of illegal obstruction to the royal workers of the 1st party-management, on bare reading of the

sheet dtd.25.05.1996, it also appears to be comprehensible the true state of affairs which is the right of the CSE. Once the Tribunal finds the charge sheet dtd.25.05.1996 to have issued with insufficient, ambiguous material particulars, the possibility of evidence being teetered on such vague and ambiguous charge cannot be ruled out in extent of the charge sheet dtd.25.05.1996. But it did not necessarily follow that the chargesheet dtd. 18.04.1996 had been plagued by spate of ambiguous facts. Viewing all aspects of the finding facts and legal evidence in support of the above stated charge, the allegations were stood proved against the CSE as no irrelevant facts were taken into consideration. As far as punishment against the proved misconduct is concerned, the law is well settled in **Om Kumar and Others Vrs. UOI (2001) 2 SCC 386** while considering the quantum of punishment/proportionality has observed that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. Admittedly, the administrative authority has awarded the punishment of dismissal against the CSE.

10. It was argued by the learned counsel appearing for the 2nd party workman that the punishment of dismissal was a clear case of victimization for challenging the order of his transfer from Jharsuguda to Guwahati before the Civil Court of Jharsuguda and the Charge sheets were outcome of such vindictive action of the management. On the contrary, the learned counsel for the 1st party submitted that victimization is a serious charge by an employee against an employer; therefore, it must be properly and adequately pleaded giving all particulars upon which the charge is

based to enable the employer to fully meet them. It further argued that there has been no evidence on record to show or justify bias/grudge/victimization against the second party or unfair labour practice adopted by the management or any strain relationship between the management and the workman. It further argued that the fact that the relations between an employer and the union were not happy and the workmen concerned were office bearers or active workers of the union would by itself be of no evidence to prove victimization and relied on two reported judgments of **Bharat Iron Works Vrs. Bhagubhai Balubhai Patel; 1976 SCC (L & S)-92 and Bengal Bhatdee Coal Ltd Vrs. Ram Probesh Singh & Othres; AIR 1964, SC-486** to buttress its submission.

10-1. Regard being had to the contentious submission of both party and examining the reported judgments, the Tribunal is of considered opinion that both reported judgments had been relied on two different contexts such as there must be case with no material particulars of victimization in the pleading of employee and existence of material particulars of mere unhappy relationship between employer and employee. Citing the reported judgment of **Bengal Bhatdee Coal Ltd (Supra)** the 1st party management wanted to make a point the fact of unhappiness to be existed between parties. Whether or not the 2nd party has specifically pleaded the fact of victimization, the Tribunal is inclined to examine the pleading and found that the 2nd party has pleaded in paragraph No.3, 4, 5 and 14 over the fact of victimization. Now the question of proof of such pleading counts upon the proof of Ext. 19, Ext.20, Ext.24, Ext.25 and Ext.26. In this aspect WW.1 deposed that he worked at Jharsuguda office of the management company and thereafter the management vide office order

dtd.07.12.1995 illegally and malafidely transferred him to Guwahati in a lower post. He filed a Civil Suit bearing TS No.05 of 1996 and Misc Case No.04 of 1996 against the management before CJJD, Sambalpur and the court was pleased to pass an ad-interim ex parte order on 18.01.1996 directing the management to maintain the status-quo until further order. Although the 1st party Management raised objection over marking of Ext. 19 and Ext.20 on the ground of forged documents and others are on the point of relevancy but the existence Ext.28 has not been specifically denied any manner and a suggestion made to WW.1 in para-15 of cross-examination that Mr.Dinesh Kumar Ray had no power/authority to execute Exts.19 and Ext.20, thereby the management somehow or the other admitted its existence. Mere proof of existence of a document does not ex-facie prove its contents whenever the 1st party disowned the execution of Ext. 19. On the contrary, mere saying Ext. 19 and Ext.20 are forged documents without offering proof or obtaining declaration of invalid and forged document from a competent authority, it would no way help to the management. Therefore, on analysis of evidence of W.W.No.1 and MW.1 the facts unerringly proved that Mr. Dinesh Ku. Ray was an executive officer under the management at the material time of the alleged execution of documents and the dispute over the documents was firstly raised when the 2 party got a status- quo order, not at earlier point of time. It appears from case record that the order of status quo dtd.18.01.96 was made not to give effect to Ext.24 and both charge sheets issued to the 2nd party on 18.04.1996 and 25.05.1996 respectively. On careful consideration of charge-sheets issued against the CSE, one was depicted detail particulars, while other was not. There can be no denial of proposition of

law that the framing of vague and absurd charge dtd.25.05.1995 is somehow or the other can be termed as victimization but in the present case the management has successfully proved the other charge sheet. Therefore, the Tribunal is of opinion that the 2 party failed to put forth best evidence over factual victimization and whatever the evidence produced, did not vouch for the existence of any victimization and accordingly as the same could not stand to the scrutiny of the objection raised by the 1st party, accordingly the 2nd party failed to prove the victimization of unfair labour practice and for no reason the charge sheet dtd. 18.04.1996 cannot be said to be illegal even though there had been irregularity in framing and proving of other charges.

11. Now, it is to be considered as to whether the punishment of dismissal is proportionate to the proved misconduct. There is no second opinion that one willful insubordination and other disobedience of any lawful and reasonable orders of superiors on a proper construction of the Standing Order, may be sufficient to impose any harsh punishment. An employee however old and senior in service has no right to defy the order of his superiors whatever his grievance in that behalf. Disobedience to orders, disaffected attitude towards authority attracts insubordination. Thus, on consideration of whole materials on record, the charges No.1 covered under charge sheet dtd. 18.04.1996 amounted to insubordination and proved against the CSE. The charges had been framed against the CSE in violation of the provision Clause 11 (b) which according to the management amounts to major misconduct under Clause 30 (ix) and (xxxxiv) of Certified Standing Order of the Company. On careful examination of Ext.G, it appeared that Clause-30 of the Certified Standing Orders defines

the acts, of misconduct, omission and commission in order to maintain discipline among the workmen as well as the punishment prescribed in Clause-32, but nowhere the acts of misconduct, omission and commission have been categorized as serious misconduct. In such circumstance, the only recourse was available to balance the nature of acts committed by the CSE and punishment prescribed in the Certified Standing Order. There is no dispute of fact that the management found suitable to impose a punishment of dismissal from his services. Suffice it to say here that discipline finds its importance in every aspect of human as well as other forms of life. It instills a sense of responsibility, credibility and nurtures a person to be more accountable for their actions. It is important to understand that the same book of rules does not work for every person. Punishment may work brilliantly for one employee in the company but make another employee feel miserable. So discipline anywhere should be compatible and considerable

12. During course of argument, learned counsel for the 2nd party submitted that Ext.G is the Certified Standing Order of the company. Clause-32 prescribes that in awarding punishment under the standing order, the gravity of misconduct and previous record if any of the workman and other extenuating or aggravating circumstances that may exist shall be taken into consideration. But while awarding the punishment on the 2nd party said extenuating or aggravating circumstances were not taken into consideration. The 2nd party had no previous antecedents and there were no aggravating circumstances against the 2nd party which could be well proved from Ext.23, Ext.29 to 34/a. Ext.23 disclosed that 2 party was a sincere and faithful staff. Ext.E does not reflect any previous

antecedents and extraneous circumstances of the 2nd party. Furthermore, the 2nd party asserted that he had been put an unblemished service of more than nineteen years and the same went on unchallenged by adducing any contrary evidence. In support of its contention, it relied on a reported cases of Hind Construction, AIR 1967 SC 917 and Bharat Iron Works, AIR 1976 SC 98 which held that charges leveled against the respondentdelinquents which were held proved even though reflecting major misconducts, were not such in the light of their past service record as would merit imposition of punishment of dismissal. This factual finding would obviously attract the conclusion that by imposing such punishment the appellant-management had victimized the respondentdelinquents. Imposition of such shockingly disproportionate punishment by itself, therefore, has to be treated as legal victimization apart from not being factual victimization. On contrary, learned counsel for the 1st party objected the documentary evidence over past performance of the CSE on the ground that those were arranged for the purpose of the dispute.

13. Having regard to the evidence, submission of parties, even if the 1st party objected to Ext.23, Ext.29 to 34/a, it has been proved otherwise from the evidence of the 1st party evidence that the 2nd party had good service record and performance. Admittedly, Ext.E does not reflect the presence of above stated performance of the CSE towards consideration of extenuating circumstance in his favour for balancing the imposition of punishment. The material placed during adjudication did not speak of any previous antecedent of the CSE and he had very good service career. It appears from the case record that the disciplinary authority had not properly exercised its jurisdiction available

under common law as well as Certified Standing Order of the company to adopt the principle of balancing in imposing the punishment. It ought to have taken into consideration the gravity of the acts committed by the delinquent and proportionality in imposing punishment considering the extenuating factors, thereby failed to discharge its administrative duty. The question is whether an act of misconduct is sufficient to justify dismissal is not dependent upon the proof that such misconduct has in fact serious consequence. The proved misconduct was that he went out factory premises without any proper authority and wrote a letter making false statements against the staff of the company. The matter needs to be examined in the light of surrounding circumstances. In case of a single or isolated act of misconduct or record of unsatisfactory behaviour may tip the balance not justifying the dismissal but what is to be regarded as an important term will depend upon the nature of the business or nature of the position of the workman. There is no dispute of fact that the CSE had a lengthy unblemished service career and the 1st party management had issued appreciation time to time over his performance. Having considered the materials on record and the submission of learned counsels of respective parties, it is quite apparent that the punishment of dismissal passed by 1st party-management against the 2nd party found to have not proportionate to the proved charges covered under Charge sheet dtd18.04.1996 and it could be considered, a punishment lesser than the one amounting to a shockingly disproportionate punishment could be granted. In the light of the above, as the harsh punishment of dismissal would not be sustainable in the eye of law as per the reasons arrived at by the Tribunal; the same is hereby set-aside to impose a lesser, alternative punishment. Thus, the

Tribunal awarded punishment of Stoppage of three years increments with cumulative effect in accordance to the provision of Clause-32 of Standing Order of the company for ends and interest of justice. No specific order is passed to disturb the final order over the punishment imposed against the period of suspension of the employee. In setting aside the dismissal punishment only, reinstatement in service would, therefore, be consequential. The next aspect is whether the workman is entitled for re-instatement in its service, back wages and consequential benefits as prayed for in the statement of claim. In view of the above, this Tribunal is of opinion that over two decade of time has already been passed and the dismissal from the services is become an event of past and in the passage of time the dismissed employee has already . crossed the age of superannuation, so any order of re-reinstatement of the present situation seems to be not practicable. Accordingly, the 2 party is entitled to reliefs of back wages from the date of reference up to his superannuation with all consequential service benefits.

In the result, the reference is answered as per the observation made above by the Tribunal.

Dictated and corrected by me.

HIRANMAYA BISOI
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.
Dt. 31-01-2023

HIRANMAYA BISOI
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.
Dt. 31-01-2023

[No. 1974—LESI-IR-ID-0020-2023-LESI]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government