

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,
ASANSOL.**

PRESENT: Shri Ananda Kumar Mukherjee,
Presiding Officer,
C.G.I.T-cum-L.C., Asansol.

APPLICATION NO. 02 OF 2018

PARTIES: Akash Gantait
(represented by Koyala Mazdoor Congress)
Vs.
Management of Parbelia Colliery of ECL.

REPRESENTATIVES:

For the Union/Workman: Mr. Pradip Kumar Goswami, President, Advocate.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 20.11.2024

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A W A R D

1. This Industrial Dispute has been raised by Koyala Mazdoor Congress, a recognized trade union on failure of conciliation proceeding under section 2A of the Industrial Disputes Act before the Assistant Labour Commissioner (Central), Asansol. The concerned union filed an application under section 2A(2) of the Industrial Disputes (Amendment) Act, 2010 along with a certificate u/s 12(4) of I.D. Act dated 15.05.2017 issued by the Assistant Labour Commissioner (Central), Asansol from the purpose of enabling the union to approach the CGIT-cum-Labour Court, Asansol for adjudication of the dispute.

2. The union filed their Application on 05.03.2018 on the basis of which the instant case has been registered. Fact of case in nutshell is that Akash Gantait, UG Loader bearing U.M. No. 124245 was a permanent employee at Parabelia Colliery, ECL. Due to serious illness, he could not attend duty. After he was declared medically fit, he went to join his duty but the management of the company issued Charge Sheet against him and after a domestic enquiry dismissed him from the service of the company on 11.07.2016. It is the case of the workman that he submitted medical certificate in support of his illness, but the management did not consider his case and dismissed him from service ignoring the principle of natural justice. It is further submitted that the alleged misconduct of absence from duty was beyond his control as he was suffering from illness and the punishment imposed against him is disproportionate to his alleged misconduct. The workman prayed for his reinstatement in service and payment of back wages.

3. Management of the Parabelia Colliery contested the case by filing their written statement on 01.11.2021 through the Chief Manager (Mining), Parabelia Colliery. The specific case of the management is that the workman was charge sheeted for his unauthorized absence from duty from 18.09.2014 to 01.04.2015. The workman failed to submit any satisfactory reply to the Charge Sheet. As a result, a domestic enquiry was conducted by Enquiry Officer and the workman participated in the enquiry along with co-worker. The Enquiry Officer submitted his Report and the charge framed against the workman was proved beyond any doubt. Management inter alia stated that the attendance of the workman in the preceding three years was very poor. Akash Gantait attended his duty for 72 days in 2012, 31 days in 2013 and 47 days in 2014. After completion of the enquiry, a second Show Cause Notice was issued to the workman by the General Manager, Sodepur Area dated 07/09.01.2016 through registered post and the ex-workman submitted his reply to second Show Cause Notice which was again found unsatisfactory. After careful consideration of the Charge Sheet, Enquiry Proceedings and other relevant papers, the competent authority dismissed the workman from service by letter dated 09/11.07.2016. According to the management, the ex-workman did not send any information about his illness. It is urged that there was no illegality on the part of the management in dismissing the charged employee from service. It is asserted that the management lost their confidence in the ex-workman and there is no scope for his reinstatement in service. It is submitted that the workman is not entitled to reinstatement nor payment of back wages and the Application is liable to be dismissed.

4. On the basis of pleading of both parties, the following issue was framed:

ISSUE

1. “Whether dismissal of Akash Gantait, Ex-Loader, UM No. 124245 by the management of Parbelia colliery is legally tenable and justified? If not, what relief the workman/dependent of workman is entitled to?”

5. In order to substantiate their case, the union examined Akash Gantait as WW-1. Affidavit-in-chief of Akash Gantait was filed on 26.09.2022. It is stated by the workman that Charge Sheet No. 396 dated 02.04.2015 was issued to him for unauthorized and habitual absence from duty wherein it was stated that he was absent from duty from 18.09.2014 to 01.04.2015. He further stated that he was unable to attend his duty due to illness and same was informed to the management from time to time through his letter dated 18.09.2014, 15.10.2014, 11.12.2014, 23.01.2015, 18.02.2015, 25.07.2015 and 22.06.2015 along with medical certificates. The workman admitted that a second Show Cause Notice was issued to him and he submitted his reply on 18.03.2016. According to him, apart from Charge Sheet No. 396, he was never charge sheeted on earlier occasion and was not cautioned for his absence. It is stated that his wife died in the year 2001 and sometimes he absented from his duty to attend his five years old child. In his evidence-in-chief, the workman witness stated that he was suffering from typhoid during his absence from duty but was unable to state if any test for diagnosis of Typhoid was conducted or not. The medical certificate issued by Dr. M.P. Burnwal and Dr. S.K. Pattanayak, homeopathic doctors has been marked as Exhibit W-6 and Exhibit W-6/1. Copies of six letters for intimation to the management have been marked as Exhibit W-7 to Exhibit W-7/5. The workman admitted that he was absent for five years and in the course of cross-examination, the witness deposed that the Charge Sheet was issued to him for his absence from duty from 18.09.2014 till 01.04.2015. When asked

about the number of days he attended duty in the year 2012, he did not deny that he attended only on 72 days and went ahead to admit that he attended duty only on 31 days in 2013 and 47 days in 2014. The witness volunteered that he was absent for most of the time to look after his 10 months old daughter as his wife had passed away at the relevant time. It is also gathered from his cross-examination that he had not informed the management that he was absent from duty in order to look after his new born child as his wife had died. No document is produced to show that he communicated to the management about reason of his absence i.e. taking care of his minor child. The witness participated in the departmental enquiry but did not examine any doctor who treated him.

6. The workman has produced the following documents in support of his case:

- (i) Copy of Charge Sheet dated 02.04.2015 is produced as Exhibit W-1.
- (ii) Reply submitted by the workman on the right side of the Charge Sheet, as Exhibit W-2.
- (iii) Copy of second Show Cause Notice dated 07/09.01.2016, as Exhibit W-3.
- (iv) Copy of reply against second Show Cause Notice, as Exhibit W-4.
- (v) Further reply to the second Show Cause Notice, as Exhibit W-5.
- (vi) Copy of medical certificates issued by Dr. M.P. Burnwal and Dr. S.K. Pattanayak, as Exhibit W-6 and Exhibit W-6/1 respectively.
- (vii) Copy of letter issued by the workman intimating his illness, as Exhibit W-7 to Exhibit W-7/5.

7. Mr. Chinmoy Senapati, management witness filed his affidavit-in-chief on 30.01.2023 and has been examined as MW-1. In his affidavit-in-chief, he stated

that the workman was charge sheeted on 02.04.2015 by the management for his unauthorized absence from duty from 18.09.2014 and that he was a habitual absentee and for this act of misconduct a departmental enquiry was initiated. The workman participated in the enquiry. Reasonable opportunity was given to the workman to defend himself following the principles of natural justice. The Enquiry Officer after conclusion of his Enquiry Proceeding submitted his Enquiry Report, holding the workman guilty of charge. A second Show Cause Notice was issued to the workman and he submitted his reply against the findings. The management found no extenuating circumstances for absence of the workman from duty on proper grounds and dismissed him from service. In course of his evidence, the management produced following documents:

- (i) A copy Charge Sheet dated 02.04.2015 is produced as Exhibit M-1.
- (ii) Reply submitted by the workman on the right side of the Charge Sheet, as Exhibit M-2.
- (iii) Copy of letter dated 04.09.2015 appointing the Enquiry Officer, as Exhibit M-3.
- (iv) Notice of Enquiry dated 09.09.2015, as Exhibit M-4.
- (v) Copy of Enquiry Proceeding in four pages is collectively marked as Exhibit M-5.
- (vi) Copy of Enquiry Report and findings, as Exhibit M-6.
- (vii) Copy of second Show Cause Notice dated 07/09.01.2016, as Exhibit M-7.
- (viii) Reply to the second Show Cause Notice, as Exhibit M-8.
- (ix) Further reply to the second Show Cause Notice, as Exhibit M-9.
- (x) Order of dismissal dated 09/11.07.2016 issued by the General Manager as Exhibit M-10.

8. It his cross-examination, the management witness deposed that on earlier occasions Charge Sheet was issued to the workman for his absence from duty for the years 2012, 2013 and 2014. The witness further deposed that no settlement could be reached for reinstatement of the workman and denied the suggestion that the enquiry was not conducted in a proper manner or that dismissal of the workman was illegal and unjust.

9. The short question for consideration is whether the dismissal of the workman from service was just and proper and what relief the workman is entitled to?

10. Mr. Pradip Kumar Goswami, learned advocate advancing the argument on behalf of the union submitted that the workman Akash Gantait expired on 25.06.2023 and his legal heirs namely Jharna Gantait, Paltan Gantait and Rikta Gantait have been substituted in his place and are representing the interest of the deceased workman. It is argued that the workman is not guilty of unauthorized absence as he had kept the management informed about the reason of his absence. It is submitted that the workman was suffering from various ailments like typhoid and jaundice for which he was unable to attend his duty. It is contended that the workman cannot be responsible for his illness which was beyond his control. Learned advocate drew my attention to Exhibit W-6 and Exhibit W-6/1, Medical Certificates issued by Dr. S.K. Pattanayak dated 15.02.2015 and the one issued by Dr. M.P. Burnwal dated 04.08.2015. Learned advocate referred to the Report of the Enquiry Proceeding (Exhibit M-5) and argued that the management witness did not produce the copy of any earlier Charge Sheet or Enquiry Proceeding to prove that the workman was a habitual

absentee in 2012, 2013, 2014 and 2015. It is also contended that the Enquiry Officer did not consider the Medical Certificates issued by the doctors which would prove that the workman was under their medical treatment during the period of his absence. It is argued that punishment of dismissal from service was disproportionate and the same not being tenable under law is liable to be set aside. Learned advocate argued that since the workman has expired during pendency of the Industrial Dispute, his legal heirs are entitled to the reliefs of back wages.

11. Mr. P.K. Das, learned advocate for the management of ECL strongly contended that the charges of habitual absence and unauthorized absence have been well established against the charged person based upon evidence adduced by the management representatives who have not been cross-examined by the workman or his representative. It is submitted that in the Domestic Enquiry the workman examined himself but he has not been able to produce any prescription from the doctor. Learned advocate referred to the statement of Akash Gantait where he deposed before the Enquiry Officer that he has been absenting from from his duty with effect from 18.09.2014 due to his illness. He stated that he was suffering from typhoid, blood dysentery and other ailments. He produced the medical certificate dated 04.08.2015 and 15.02.2015. He also deposed that he was mentally disturbed due to his family problems. Learned advocate argued that the workman in his application before the Tribunal did not disclose the nature of his illness or doctors from whom he received treatment. In his affidavit-in-chief, the workman also did not disclose the nature of his illness but stated that due to the death of his wife, he had to look after his five years old child for which he absented from duty. In respect of the two medical documents filed on behalf of the workman, it is submitted that the purported certificate issued by

Dr. M.P. Burnwal dated 04.08.2015 (Exhibit W-6) and Dr. S.K. Pattanayak dated 15.02.2015 (Exhibit W-6/1) are fabricated documents. In the Exhibit W-6/1, it has been certified that the workman was suffering from respiratory cough for which he was under his treatment from 17.09.2014 to 15.02.2015. It is argued that the said certificate neither bears the signature of patient nor his LTI has been identified by the doctor. Referring to Exhibit W-6, learned advocate argued that even in the said certificate, neither the signature nor LTI of the patient was identified and the workman was said to be suffering from typhoid and jaundice from 17.03.2015 to 14.08.2016. It is argued that the workman did not examine the doctors to verify the truth in the certificates and has failed to produce any prescription during his long period of illness. It is argued that the certificates are false. Learned advocate argued that the Enquiry Officer provided ample opportunity to the workman to defend his case and the principle of natural justice were observed by the Enquiry Officer. It is urged that the misconduct of habitual absence have been proved beyond doubt and this has disrupted the work of the management and they have lost confidence in the workman and all procedures for dismissal of the workman were complied. It is further argued that the workman has not rendered any service since his dismissal and he is not entitled to any back wage.

12. I have heard the arguments advanced by the learned advocates of the respected parties and considering the pleadings and evidence adduced by both parties. The workman was admittedly absented from his duty from 18.09.2014 till issuance of Charge Sheet on 02.04.2015. He neither disclose the nature of his ailment in the Application filed nor in his affidavit-in-chief. For the

first time in his evidence-in-chief, he stated that he was suffering from typhoid but was unable to state if any test was conducted to diagnose the disease. In course of his cross-examination, the workman admitted that he attended his duty for 31 days in 2013 and 47 days in 2014. Therefore, the charge of habitual absence from duty stands proved by the management. The witness volunteered in his cross-examination that he was absent in order to take care of his minor daughter after the death of his wife. In paragraph 10 of his affidavit-in-chief, the workman stated that his wife Santa Gantait died in the year 2001. Therefore, the statement of remaining absent from duty for taking care of his minor daughter is absolutely false. The medical certificate (Exhibit W-6) produced by the workman is dated 04.08.2015 and the Charge Sheet was issued on 02.04.2015. This implies that the medical certificate was procured by the workman for meeting the charge relating to his long absence from 18.09.2014. No medical document or medical prescription for the period from 18.09.2014 has been produced by the workman to establish his claim of suffering from illness. The medical certificates (Exhibit W-6 and W-6/1) are not trustworthy as they do not bear the signature of the patient and were issued to suit the purpose of the absenting workman. Some letters have been produced by the workman as Exhibit W-7 to Exhibit W-7/5 to prove that he had been informing the management of Parbelia Colliery of his absence due to illness from time to time. In all his applications, he has stated that he was suffering from hepatitis but he has not stated anything about his suffering from jaundice or typhoid. Therefore, the letters said to have been submitted by the workman are not consistent with the two medical certificates (Exhibit W-6 and Exhibit W-6/1). I am unable to place reliance upon the documents produced as medical certificates and letters disclosing the reason of absence of the workman from duty.

13. On perusal of the Enquiry Proceeding (Exhibit M-5) I find that Indradeo Paswan, MW-1 produced Form 'G' and 'H' register and stated that in the preceding three years, the workman's attendance was 31 days in 2013, 47 days in 2014 and Nil in 2015. The MW-1 was not cross-examined by the charged employee. The billing register was produced by Ajit Kabi, MW-2 who stated that no wage bill was paid to the workman. Subir Sinha, MW-3 who produced the Sick Register admitted that no sick wages was given to Akash Gantait. The evidence of management witness remained unchallenged. Akash Gantait in his evidence stated that he was suffering from typhoid, blood dysentery and other illness. In none of the letters purportedly submitted before the management (Exhibit W-7 to Wxhibit W-7/5), the workman mentioned his suffering from illness like typhoid or blood dysentery. Considering all these materials in this reference case it appears that the workman has not been able to rebut the findings of the Enquiry Officer. A second Show Cause Notice was issued to the workman (Exhibit M-7). The workman submitted his reply to second Show Cause Notice (Exhibit M-8 and Exhibit M-9) where he has stated that he was absent due to serious illness. The competent authority having considered all materials has dismissed the workman from his service with effect from 11.07.2016. The Enquiry Proceeding has been held in a fair manner observing the principle of natural justice. I therefore find no extenuating circumstance in favour of dismissed workman and there is nothing on record to show that the Enquiry Proceeding or order of dismissal of the workman was arbitrary or unjust. The management had extended opportunities to the workman and had accommodated his previous absences but the same continued unabated. The purpose and object of employment was disrupted and the management appears

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to have lost confidence in the workman. The workman has expired during pendency of this Industrial Dispute. There is no material in his favour to interfere with the order of dismissal. Accordingly, the legal heirs are not entitled to get any relief in this case. The Industrial Dispute raised by the union on behalf of the workman is accordingly dismissed on contest.

Hence,

ORDERED

that the Application under sub-section (2) and (3) of Section 2A of Industrial Disputes (Amendment) Act, 2010 is dismissed on contest. The order of dismissal of Akash Gantait impugned in this Application calls for no interference. Let an Award be drawn up in light of the above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

Sd/-

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.