

**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 2019**

**PARTIES:** Working President, Colliery Mazdoor Union (INTUC)  
**Vs.**  
The Agent, Sodepur Colliery of ECL.

**REPRESENTATIVES:**

For the Union/Workman: Mr. Pajay Masih, Working President, CMU (INTUC).  
For the Management of ECL: Mr. P. K. Das, Advocate.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 27.06.2024

(Contd. Page – 2)

**A W A R D**

1. The petitioner, a registered Trade Union has filed an Application under sub-Section (2) and (3) of Section 2A of Industrial Disputes (Amendment) Act, 2010, along with a Certificate issued by the Assistant Labour Commissioner (Central), Asansol dated 14.12.2018, representing the case of Chalitar Bouri, a member of the union and ex-employee of Eastern Coalfields Limited (hereinafter referred to as ECL).

2. The fact of the case in brief is that Chalitar Bouri was employed at Sodepur Colliery under Sodepur Area of ECL as an Underground Loader, having U.M. No. 123924 and was appointed in the year 1993. Due to his habitual and unauthorized absence from duty from 14.04.2016 to 29.07.2016 the management of Sodepur Colliery issued a Charge Sheet bearing No. SC/C-6/F-07/2016/340 dated 12.08.2016. The workman submitted his reply to the Charge Sheet, informing that he could not attend his duty due to illness of his wife. It is contended by the union that the management without giving any reasonable opportunity to the workman to defend his case, the Enquiry Officer found him guilty of charge and he was dismissed from his service in an arbitrary and illegal manner. According to the union the punishment awarded against the workman is harsh and disproportionate to the nature of charge. The union raised an Industrial Dispute before the Assistant Labour Commissioner (Central), Asansol under Section 2A of Industrial Disputes Act, 1947. No settlement was reached between the parties and the representative of the union wanted to discontinue the conciliation proceeding and raised the Industrial Dispute before this Tribunal under sub-Section (2) and (3) of Section 2A of Industrial Disputes (Amendment) Act, 2010. Since the mandatory period of forty-five days of filing of

the Industrial Dispute was over the Assistant Labour Commissioner (Central), Asansol issued a Certificate dated 14.12.2018 to proceed before Central Government Industrial Tribunal -cum- Labour Court, Asansol. In their application the union has prayed for reinstatement of the workman in his service and payment of back wages. The Application was registered before this Tribunal on 14.01.2019.

3. The opposite party / management of ECL contested the case by filing written objection on 10.02.2023, contending inter-alia that Chalitar Bouri is not entitled to any relief and the application is not legally tenable. It is stated that the workman was chargesheeted for his unauthorized absence from duty from 14.04.2016 to 29.07.2016 vide Charge Sheet dated 12.08.2016. It is further stated that the dismissed workman is a habitual absentee for which he was chargesheeted under Clause 26.23 and under Clause 26.29 of Certified Standing Order for his absence from duty without sanctioned leave, beyond a period of ten days. The Charge Sheet was duly served upon the workman who submitted a reply on a plea that he was unable to attend duty due to illness of his wife. The explanation was not found satisfactory to the management and a Domestic Enquiry was ordered. The workman participated in the enquiry and reasonable opportunity was provided to him to defend his case. It is the specific case of the management that the workman was a habitual absentee. He attended his duty for twenty-three days in the year 2013, fourteen days in the year 2014, six days in the year 2015, and twenty-seven days in the year 2016. On an earlier occasion due to unauthorized absence from duty from 23.03.2011 to 06.12.2011 the workman had faced Domestic Enquiry and he was allowed to resume his duty with stoppage of three Special Piece Rate Allowance (hereinafter referred to as SPRA) as punishment as a last chance on the basis of an agreement made in Form 'H'. Subsequently, for unauthorized absence from duty from 05.11.2013

to 28.02.2014 Chalitar Bouri was permitted to resume his duty with a punishment of stoppage of three SPRA. Once again for his unauthorized absence from duty from 15.11.2014 to 19.01.2015 the workman was strongly warned and allowed to resume his duty after stoppage of two SPRA as punishment. It is the case of the management that the workman did not mend himself and did not improve his performance. The Enquiry Officer found the workman guilty of the charge and management issued a 2<sup>nd</sup> Show Cause Notice, which was sent to the charged employee at his home address under registered post but he did not submit any reply. The Disciplinary Authority i.e. the General Manager of Sodepur Area of ECL after consideration of the Charge Sheet, Enquiry Proceeding, findings of the Enquiry Officer and past conduct of the Chalitar Bouri, dismissed Chalitar Bouri from service w.e.f. 08.06.2017. According to the management the action taken against Chalitar Bouri for his misconduct is justified and the punishment awarded against him is appropriate and proportionate to the nature of the misconduct, which was established against him. It is contended that the workman has been dismissed from service after observing rules, procedure and principles of natural justice. It is asserted that Chalitar Bouri is not entitled to any relief and the application is liable to be dismissed.

4. The point for consideration before this Tribunal is whether the dismissal of Chalitar Bouri from his service w.e.f. 08.06.2017 is justified and whether he is entitled to any relief of reinstatement in service with back wages.

5. The union has filed affidavit-in-chief of Chalitar Bouri and examined him as Workman Witness – 1. In his affidavit-in-chief he has reiterated his case disclosed in the application. The workman admitted that he received Charge Sheet dated 12.08.2016 and submitted his reply disclosing that he could not attend his duty due to ongoing treatment of his wife in a government hospital as

OPD patient. He further stated that management did not extend reasonable opportunity to him to defend his case and he was illegally dismissed from service. WW-1 deposed that he was dismissed from his service while he was posted at Mouthdih Colliery under Sodepur Area of ECL and stated that he was absent from service for five (5) months due to illness of his wife and did not inform the management about the same. In course of his evidence the workman produced a copy of the Identity Card, as Exhibit W-1. Copy of the Charge Sheet dated 12.08.2016, as Exhibit W-2. Copy of the reply to the Charge Sheet, as Exhibit W-3. Copy of the Certificate dated 14.12.2018 issued by the Assistant Labour Commissioner (Central), Asansol, as Exhibit W-4. In his evidence the witness stated that Dipmala Bouri is his wife and copies of the medical documents issued by the Medical Officer relating to his wife's illness have been produced as Exhibit W-5 and W-6. Admittedly, the workman had participated in the Enquiry Proceeding and he produced the copy of order of dismissal as Exhibit W-7.

6. In cross-examination the workman admitted that he did not inform the management about his absence from duty and at the time of enquiry he did not submit any document relating to his wife's illness. It is gathered from the cross-examination of the workman witness that he occasionally remained absent from duty. There is a clear admission by the witness that he attended duty for twenty-three days in the year 2013, fourteen days in the year 2014 and only six days in the year 2015. The witness further admitted that due to such absence three SPRA were stopped in the year 2011 and again three more SPRA were stopped in the year 2013 due to poor attendance.

7. The management examined Mr. Pramod Kumar Maurya as Management Witness – 1. The witness deposed that on the last occasion, relating to this proceeding, the workman was absent from 14.04.2016 to 29.07.2016 without

any information. On earlier occasion he was punished in the year 2011 by stoppage of three more SPRA. In the year 2013 he was again punished by stoppage of three SPRA. In the year 2014 due to his unauthorized absence for two months he was punished by way of stoppage of two SPRA. Opportunity was given to the workman to join his duty on earlier occasion. In course of evidence the management witness produced a copy of the Charge Sheet as Exhibit M-1. Copy of the Enquiry Report and findings are produced as Exhibit M-2 collectively in five pages. The workman participated in the Enquiry Proceeding and in course of enquiry the charge was found to be established and thereafter a 2<sup>nd</sup> Show Cause Notice was issued on 24.03.2017, copy of the same was marked as Exhibit M-3. A reply to the 2<sup>nd</sup> Show Cause Notice was submitted by the workman as Exhibit M-4. Considering the findings in the Disciplinary Proceeding the General Manager, Sodepur Area issued a letter dated 08.06.2017 as Exhibit M-5. The witness claimed that the punishment of dismissal of the workman commensurated with the charge established against him.

8. In cross-examination the witness admitted that in the Enquiry Report the statement recorded as *“Sri Bouri failed to produce any Medical Certificate and Cash Memo of purchasing medicine. He stated that he took treatment of his wife from a private doctor.”* is the statement of the Enquiry Officer not of Chalitar Bouri. He further stated that the charged employee had submitted reply to the 2<sup>nd</sup> Show Cause Notice and denied that the management did not consider the reply submitted by Chalitar Bouri against the 2<sup>nd</sup> Show Cause Notice. The witness also denied that the order of dismissal is disproportionate to the charge of unauthorized and habitual absence from duty.

9. Mr. Pajay Masih, union representative arguing the case on behalf of the dismissed workman submitted that the workman participated in the Enquiry

Proceeding but for a light offence of remaining absent from duty for three months and fifteen days the workman was subjected to harsh and disproportionate punishment of dismissal from service. The union representative argued that the workman rendered unblemished service and produced document of medical treatment of his wife during the relevant period. It is urged that the order of dismissal of the workman requires to be set aside and appropriate relief under Section 11A of the Industrial Disputes Act, 1947 be allowed by reinstatement of the workman in his service and the management may be directed to pay the back wages.

10. Refuting the claim of the workman Mr. P. K. Das, learned advocate for the management submitted that the workman was a habitual absentee and was never inclined to perform his duty. Learned advocate contested that in the proceeding four years the workman had performed duty for eighty-six days only and he had been warned and punished on three occasions by stopping of his SPRA but the workman did not mend his conduct. Charge Sheet was once again issued to the workman under Clause 26.23 and 26.29 of the Certified Standing Order applicable to the company. Charge Sheet was duly served upon the workman. He submitted his reply and participated in the Enquiry Proceeding. Reasonable opportunity was provided to him to represent his case and after following the principles of natural justice the Enquiry Officer conducted the enquiry and found the charged employee guilty of the charge levelled against him. A 2<sup>nd</sup> Show Cause Notice was served upon the workman and he submitted his reply, which has been produced as Exhibit M-4. After considering all the materials and reply to the 2<sup>nd</sup> Show Cause Notice, the General Manager of Sodepur Area of ECL dismissed Chaltar Bouri from his service w.e.f. 08.06.2017 (Exhibit M-5). Learned advocate argued that the punishment imposed against the workman for his misconduct is proportionate and the Industrial Dispute is liable to be dismissed.

11. I have considered the arguments advanced on behalf of the union and management in the light of the facts and circumstances of the case and the material available on record. From the Charge Sheet (Exhibit W-2 / M-1) it appears that Chalitar Bouri had absented from duty from 14.04.2016 to 29.07.2016, without any sanctioned leave or being sick himself. Charges under Clause 26.23 and 26.29 of the Certified Standing Order was proposed. Copy of Charge Sheet was served upon the workman who pleaded that he was unable to attend duty due to illness of his wife. The Enquiry Report produced by the management reveals that the workman attended his duty on twenty-three days in the year 2013, fourteen days in the year 2014, six days in the year 2015 and twenty-seven days in the year 2016 (up to April). It is undisputed that the workman had suffered punishment by stoppage of SPRA on several occasions in the past, had been warned and allowed to resume his duty. Management representative Mr. P. K. Mitra, Senior Manager (M) and management witnesses Mr. Sukumar Sahu, Clerk and Mr. S. C. Banerjee, Senior Clerk adduced evidence in the enquiry. The 'G' and 'H' Registers of Chalitar Bouri were produced showing his attendance for the three proceeding years till April 2016. Mr. Dipak Bouri, Dispensary Clerk was examined as management witness – III. Chalitar Bouri did not cross-examine any of the management witnesses. It is gathered that no medical certificate nor prescription relating to his wife's illness was produced by the charged employee. The workman stated that as he is the only person to look after his wife, he could not attend duty. During his examination the witness stated that his wife was receiving treatment at his home and replied in the negative when he was asked to show the prescriptions and various vouchers relating to the purchase of medicines. Having considered the contents of the Enquiry Proceeding, 2<sup>nd</sup> Show Cause Notice, the reply submitted against the 2<sup>nd</sup> Show Cause Notice it appears to me that the charges under Clause 26.23 and



26.29 of Certified Standing Order were established against Chalitar Bouri and the Enquiry Officer had conducted the Domestic Enquiry following the principles of natural justice and had provided reasonable opportunity to the workman to establish his case that it was impossible on his part to attend duty or to seek leave from the management due to his wife's illness. The Disciplinary Authority issued order of dismissal against the workman on 08.06.2017 observing that the misconduct committed by him deserves exemplary punishment. The fact regarding meager attendance of the workman for the last four years of his service from 2013 to 2016 has not been controverted by the workman. He did not perform continuous service during the three preceding years before his dismissal. The workman made no effort to rectify his absenteeism. His nonchalant conduct of continuously remaining absent from duty does not deserve any concession. On three previous occasions SPRA of the workman were stopped and he was reinstated in his service, providing him opportunity to continue. However, such opportunity did not have any effect on the charged employee. At the time of enquiry, no document relating to the medical treatment of his wife was submitted. The enquiry was concluded on 24.12.2016 but the Medical Certificate of Dipmala Bouri, purportedly issued by the Medical Officer, Barakar PHC is dated 02.05.2017. On a close reading of the Medical Certificate, it would appear that Chalitar Bouri's wife was under the treatment of the concerned Doctor from 13.04.2016 to 01.05.2017. The nature of ailment is disclosed as "Broncho Pneumonitis" and she was advised rest from 13.04.2016 to 01.05.2017. It is certified that she was physically fit to attend her normal duty from 02.05.2017. The certificate does not appear consistent with the plea of the workman that his wife was suffering from illness during his absence from 14.04.2016 to 29.07.2016. The medical certificate is not contemporaneous to the date of Enquiry Proceeding and it is prepared for the purpose of this Industrial Dispute. Therefore, it does not lend any support to the case of the union.

12. After several opportunity given to the workman, he did not responsibly participate in his duty. The management chose to dismiss him from service after granting several opportunities. The punishment of dismissal from service does not appear to be disproportionate to the misconduct of the workman who failed to participate in his work in a responsible manner and lacked discipline. In such view of the matter, I hold that the dismissal of the workman after holding a proper Enquiry Proceeding is fully justified and do not find any merit in the case of the union for reinstatement of the workman or to allow him back wages. The Industrial Dispute is accordingly dismissed on contest.

Hence,

**ORDERED**

that the Industrial Dispute raised by the union under sub-Section (2) and (3) of Section 2A of Industrial Disputes (Amendment) Act, 2010, claiming reinstatement and back wages of Chalitar Bouri is dismissed on contest. Let an Award be drawn up in light of the above decision. 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.

**(ANANDA KUMAR MUKHERJEE)**

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