

**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. 03 OF 2019**

**PARTIES:** Kajal Bouri  
**Vs.**  
Management of Jambad Colliery of ECL.

**REPRESENTATIVES:**

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.

For the Management of ECL: Mr. P. K. Das, Advocate.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 15.01.2024

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**A W A R D**

1. The instant application under sub-section (2) and (3) of Section 2A of Industrial Disputes (Amendment) Act, 2010 has been filed by the petitioner Kajal Bouri on being dismissed from service on 26.05.2016.

2. The fact of the petitioner's case in brief is that, the petitioner was a permanent employee of Eastern Coalfields Limited (hereinafter referred to as ECL) and posted at Jambad Colliery as General Mazdoor bearing U.M. No. 194564 under Kajora Area of ECL. Due to illness, he could not attend his duty from 27.08.2015. After his recovery he reported for duty but the management did not allow him to join and issued Charge Sheet against him bearing no. ECL/JC/C-6/P&IR/15-16/5B/744 dated 23.03.2016. Kajal Bouri submitted a reply against the Charge Sheet along with document relating to his medical treatment under Dr. Shyamal Sanyal (Ex-Medical Superintendent of S.D. Hospital, Asansol), Gopalpur, Asansol. An Enquiry Proceeding was held against the petitioner. The charged employee participated in the enquiry and informed the Enquiry Officer that in future he will attend his duty regularly. After he was found guilty of the charge the management issued a Second Show Cause Notice dated 15/16.05.2016 asking him to show cause against the findings of the Enquiry Officer. Kajal Bouri submitted his reply and undertook that he will not commit such misconduct in future. The Agent of Jambad Colliery then initiated a proposal for allowing Kajal Bouri to join his duty and the case was sent to the General Manager of Kajora Area of ECL for taking suitable action. The General Manager however approved the dismissal of the workman. Accordingly, an Order of Dismissal was issued by the Area Personnel Manager of Kajora Area on 26.05.2016 on the approval of the competent authority.

3. It is the case of the petitioner that his period of absence from duty was six months, from 27.08.2015 to 23.03.2016 and such an extreme punishment of dismissal should not have been awarded against him. The petitioner contended that the punishment of dismissal is disproportionate to the nature of misconduct. Furthermore, the order of dismissal is not signed by the General Manager of the Area which is a prerequisite. Referring to the Memorandum of Settlement dated 22.05.2007 it is urged that the management of ECL allowed thousands of workers to join the duty for absence for a short period where their age was below forty-five (45) years. In the instant case the petitioner was aged about thirty-eight (38) years and is fit to perform his work in the mine but the management did not consider his mercy petition till date.

4. Challenging the order of dismissal the petitioner made an application before the Conciliation Officer, which could not be disposed of within forty-five (45) days. The petitioner therefore has filed an application directly before this Tribunal under Section 2A (2)(3) of the Industrial Disputes (Amendment) Act, 2010 well within three years from the date of dismissal. It is contended that the enquiry held by the management was unfair and the workman was not given opportunity to take the assistance of co-worker, resulting in violation of natural justice. The petitioner prayed for his reinstatement in service of the company by declaring the order of dismissal illegal and to grant him full back wages with all other consequential benefits.

5. After registration of the application as an Industrial Dispute on 06.03.2019 Notice under registered post were issued to both the parties. Mr. Rakesh Kumar, President, Koyala Mazdoor Congress represented the dismissed workman and also filed a Certificate dated 20.11.2018 issued by the Assistant

Labour Commissioner (Central), Raniganj at Durgapur, whereby the Conciliation Officer certified that no settlement was reached and the union wanted to discontinue the conciliation process and take up the matter with the Central Government Industrial Tribunal -cum- Labour Court directly under sub-section (2) and (3) of Section 2A of Industrial Disputes (Amendment) Act, 2010.

6. The management of ECL contested the case by filing written statement on 31.10.2022. The contrary case of the management of ECL is that Kajal Bouri was a habitual absentee for which he was reprimanded several times. As per the record of the company he absented from duty on and from 27.08.2015 without any authorized leave or intimation to the appropriate authority. A Charge Sheet was issued to Kajal Bouri on 23.03.2016 and a Domestic Enquiry was initiated. Kajal Bouri participated in the enquiry where he accepted the charge of misconduct by not informing the management about his absenteeism. The charge of unauthorized and habitual absence were proved against him beyond doubt and based on the findings of the Enquiry Officer he was dismissed by the General Manager of Kajora Area. The dismissal was communicated to Kajal Bouri through letter no. KA:APM:C-6:Dismissal:10:1860 dated 26.05.2016. The management of the company issued a Second Show Cause Notice to the concerned employee against which he submitted a reply to it. Ample opportunity was granted to the employee to defend his case in accordance with the principles of natural justice. the dismissal of the workman is therefore proper. According to the Certified Standing Order of the company the workman is supposed to appeal against the punishment within forty-five (45) days from the issuance of the order but he failed to file any appeal. The respondent company admittedly has entered into a Memorandum of Settlement with the representative of union wherein it was agreed that dismissal of workman for absenteeism could be

considered for reinstatement on merit based upon eligibility criteria. According to the management absenteeism is a serious misconduct which hampers the work of the employer as well as production process. The employee must conduct himself in a disciplined manner and must perform his duty with responsibility. It is urged that an employee who absented from duty for nine (9) months without obtaining leave and without intimation to the employer does not deserve sympathy. The management therefore prayed for dismissal of the case.

7. Both parties adduced evidence in support of their respective case. Kajal Bouri filed an affidavit-in-chief and examined himself as workman witness – 1. He has produced following documents which have been admitted in the evidence :

- (i) Photocopy of the Identity Card issued by ECL, as Exhibit W-1.
- (ii) Photocopy of the Charge Sheet dated 23.03.2016, as Exhibit W-2.
- (iii) Photocopy of the Reply to the 2<sup>nd</sup> Show Cause Notice, as Exhibit W-3.
- (iv) Photocopy of the Dismissal Order dated 26.05.2016, as Exhibit W-4.
- (v) Photocopy of the Mercy Petition dated 28.12.2016 filed before the General Manager (P&IR), ECL, Sanctoria, as Exhibit W-5.
- (vi) Photocopy of the Office Order dated 30/31.05.2016, deleting the name of Kajal Bouri from the Manpower roll of Jambad Colliery, as Exhibit W-6.

8. In his cross-examination witness claimed that he was suffering from illness during his absence since 27.08.2015 and during his absence he was under medical treatment at his house and also under Dr. Sunil Mondal, a Registered Medicine Practitioner. The witness deposed that he did not submit any document issued by Dr. S. Mondal and he has no other document than those

issued by Dr. S. Sanyal. The witness in course of his cross-examination disclosed that he was suffering from jaundice. The witness admitted that in his mercy petition he stated that being threatened by moneylenders he was suffering from mental tension, resulting in his absence from duty.

9. Mr. Ramjee Tripathi, Assistant Manager (Personnel), Jambad Colliery has examined himself as Management witness – 1. He has filed affidavit-in-chief in support of the management case. In his cross-examination the witness deposed that Kajal Bouri participated in the Enquiry Proceeding. The witness also denied that the punishment awarded to Kajal Bouri was disproportionate to the charge levelled against him. In course of his evidence management witness produced the following documents :

- (i) Photocopy of the Charge Sheet dated 23.03.2016, as Exhibit M-1.
- (ii) Photocopy of the reply submitted by Kajal Bouri against the Charge Sheet, as Exhibit M-2.
- (iii) Photocopy of the letter dated 11.05.2016 appointing Mr. Budhram Mandal as the Enquiry Officer, as Exhibit M-3.
- (iv) Photocopy of the Enquiry Report in six pages, as Exhibit M-4.
- (v) Photocopy of the 2<sup>nd</sup> Show Cause Notice dated 15/16.05.2016, as Exhibit M-5.
- (vi) Photocopy of the Reply to the 2<sup>nd</sup> Show Cause Notice, as Exhibit M-6.
- (vii) Photocopy of the Note Sheet dated 16.05.2016 and 21.05.2016 approving dismissal of the workman, as Exhibit M-7.
- (viii) Photocopy of the Order of Dismissal dated 26.05.2016 issued by the Area Personnel Manager, Kajora Area, as Exhibit M-8.

10. It is undisputed that Kajal Bouri was a permanent employee of ECL at

Jambad Colliery under Kajora Area and that he absented from his duty from 27.08.2015 till issuance of the Charge Sheet on 23.03.2016 without any prior intimation or leave. The concerned workman was chargesheeted under Clause 26.23 of the Certified Standing Orders of the company for his habitual absence from duty without sufficient cause and under Clause 26.29 of the Certified Standing Orders of the company for absence from duty beyond ten days without sanctioned leave or permission. The workman admitted receipt of the Charge Sheet and also claimed that he submitted reply to the Charge Sheet. On a perusal of the record, it appears from the Exhibit M-2, the reply submitted against the Charge Sheet that due to death of his uncle he had to perform the last rite at his native place for which he could not attended his duty or respond to the Charge Sheet. The workman did not dispute the contents of the reply to the Charge Sheet. There is no whisper about his illness at the first instance.

11. In his application under Section 2A (2)(3) of the Industrial Disputes (Amendment) Act, 2010 the workman has disclosed that he could not attend his due to illness. In the affidavit-in-chief the charged employe in paragraph – (4) disclosed that he submitted treatment papers issued by Dr. Shyamal Sanyal (Ex-Medical Superintendent of S.D. Hospital, Asansol). During his examination-in-chief the witness deposed that he was under medical treatment of Dr. S. Sanyal and that he was suffering from jaundice. In course of his evidence the witness did not file any document relating to his medical treatment under Dr. S. Sanyal. The charged employee participated in the Enquiry Proceeding where he stated that he did not inform the management about his illness and that he submitted medical certificate issued by Dr. S. Sanyal along with the reply to the Charge Sheet. On a careful scrutiny of the reply to the Charge Sheet (Ext. M-2) I find that there is no mention about illness or any enclosure of medical certificate issued by Dr. S. Sanyal.

12. The Enquiry Report reveals that one Mr. G. Paramanik, management representative in his evidence stated that Kajal Bouri submitted his reply to the Charge Sheet on 10.05.2016 along with a Sick/Fit Certificate issued by Dr. S. Sanyal, a private medical practitioner of Gopalpur, Asansol covering the period of his treatment under him from 27.08.2015 to 15.04.2016. It is stated that no supportive medical document has been filed. The management witness further stated that Kajal Bouri did not have sanction of leave for the period of his absence as there was no entry in the 'G' and 'H' Register maintained at the colliery. The witness also deposed that in the previous three years Kajal Bouri attended duty for only sixty-six (66) days in 2013, one hundred sixty-six (166) days in 2014, and thirty-eight (38) days in 2015. He had been warned for his unauthorized absence from 14.02.2013 to 19.03.2013. One increment was stopped for his unauthorized absence from 26.05.2013 to 20.08.2013 and another increment was stopped for his unauthorized absence from 17.09.2013 to 19.04.2014. The workman did not cross-examine the management witness. The Enquiry Officer in his findings held the workman guilty of the charge of habitual absenteeism as well as his absence from duty without any prior leave. A Second Show Cause Notice was issued to the workman directing him to show cause within seven (7) days as to why no disciplinary action shall not be taken against him for the charge of misconduct. In his reply to the Second Show Cause Notice (Exhibit M-6) the workman has apologized for his conduct and prayed for allowing him to join. The management initiated a Note Sheet and the General Manager of Kajora Area on 21.05.2016 after considering the repeated misconduct of the workman and the fact that attendance record of the workman did not show any improvement, proposed for his removal from the services of the company. Accordingly, on the direction of the General Manager of Kajora Area Personnel Manager of Kajora Area issued an order of dismissal on 26.05.2016 (Exhibit M-8).



13. Mr. Rakesh Kumar, Union representative appearing for the workman argued that the charged employee could not attend his duty due to illness. He participated in the enquiry and replied to the Second Show Cause Notice. It is argued that the workman is only thirty-nine (39) years of age and he may be reinstated in service without any back wages. It is further argued that the workman was not given reasonable opportunity to take the assistance of co-worker at the time of enquiry. The Enquiry Proceeding was not fair and the order of dismissal was not passed by the controlling / appropriate authority. Therefore, the order of dismissal is liable to be set aside.

14. In reply Mr. P. K. Das, learned advocate for the management of ECL argued that the workman was a habitual absentee and he had remained absent from duty for more than six (6) months and twenty-six (26) days without any prior intimation or leave. It is argued that the past conduct of the workman was bad and he frequently remained absent from duty without any intimation for which he had been warned and his increments were stopped from time to time. Learned advocate referred to the various documents filed by the management witness and submitted that the workman failed to produce any document to show that he was under medical treatment of Dr. S. Sanyal. Furthermore, the workman made various contradictory statement at various time raising an air of doubt. Learned advocate pointed out that in his reply to the Charge Sheet the charged employee stated that he could not attend duty as he had to perform the last rite of his uncle at his native place, the workman was silent about his illness in the reply. Subsequently, he took a plea that he was absent from duty as he was suffering from Jaundice. No document has been produced in support of his medical treatment. The workman subsequently submitted a mercy petition (Exhibit W-5) where he stated that he was threatened by moneylenders and anti-socials due

to which he suffered from mental tension and could not attend his duty. Learned advocate argued that the workman has been dismissed from service on the basis of a proper Domestic Enquiry and there is no scope for interference with the order.

15. I have considered the facts and circumstances of the case in the light of the evidence produced by the parties and arguments advanced on behalf of the charged employee and learned advocate for the management. The evidence on record is rife to establish that the workman was a habitual absentee on the past occasion and he did not inform the management of the company on the last occasion when he was absent for a long period, for over six (6) months. The workman was served with a proper Charge Sheet, giving him opportunity to show cause why disciplinary action shall not be taken against him. The reply to the Show Cause Notice was submitted by Kajal Bouri (Exhibit M-2) does not disclose any satisfactory reasons for long absence of over six months for which a Domestic Enquiry was initiated after proper Notice. The workman participated in the enquiry but failed to assign reasons justifying his long unauthorized absence and also his habitual absence. The Enquiry Officer found him guilty of charge and a Second Show Cause Notice was issued to the workman. Kajal Bouri submitted his reply to the Second Show Cause Notice. The management after considering the nature of misconduct and the fact that there had been no improvement in his attendance, ordered his removal from the services of the company. The Note Sheet dated 21.05.2016 (Exhibit M-7) of the General Manager of Kajora Area reflects the decision of the General Manager to dismiss Kajal Bouri from services of the company. The order of dismissal was issued by the Area Personnel Manager of Kajora Area on approval of the General Manager of Kajora Area. Considering all these aspects I hold that there is no illegality or

irregularity in the Enquiry Proceeding or the order of dismissal passed against the workman held guilty of misconduct. The punishment imposed for long and habitual absence from duty is found appropriate and justified. Therefore, there is no reason for interfering with the order of dismissal passed against Kajal Bouri. The Industrial Dispute 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. 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.

**(ANANDA KUMAR MUKHERJEE)**

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