

**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.

**REFERENCE CASE NO. 27 OF 2021**

**PARTIES:** Bidhan Bouri  
Vs.  
Management of Nabakajora Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: Mr. M.K. Bandyopadhyay, Adv.  
For the Management of ECL: Mr. P. K. Das, Adv.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 30.11.2023

*Shri. Mukherjee*



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**A W A R D**

In exercise of powers conferred under clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India through the Ministry of Labour, vide its Order **No. L-22012/62/2021-IR(CM-II)** dated 10.12.2021 has been pleased to refer the following dispute between the employer, that is the Management of Nabakajora Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.


**THE SCHEDULE**

*“Whether the action of the Management of Nabakajora Colliery, Kajora Area, M/s. E.C.Ltd. in non-reinstatement in service of Sri Bidhan Bouri, Ex- General Mazdoor (U.G) is justified or not? If not, to what relief the workman is entitled to.”*

1. On receiving Order **No. L-22012/62/2021-IR(CM-II)** dated 10.12.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 27 of 2021** was registered on 10.12.2021/01.07.2022 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

2. Mr. Niren Chandra Das, President of Bharatiya Mazdoor Sangh, Asansol appeared on 03.08.2022 and submitted written statement on behalf of the dismissed workman. Mr. P. K. Das, learned advocate for the management of ECL

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filed written statement for ECL on 13.09.2022. The fact of the case as disclosed in the written statement of the union is that Bidhan Bouri was a permanent employee of Nabakajora Colliery under Kajora Area of ECL and posted as General Mazdoor bearing U.M. No : 187972. A Charge Sheet dated 15.12.2015 was issued to him on the allegation of his unauthorized absence from duty from 27.10.2015 to 14.12.2015 for a period of one month and seventeen days only. The workman is a member of Scheduled Caste community having no formal education. He submitted an explanation against the Charge Sheet but the management without considering the same initiated a departmental enquiry against him. Bidhan Bouri participated in the enquiry proceeding but he was not allowed any opportunity to have the assistance of any co-worker. The workman was held guilty of the charge and a second Show Cause notice was issued to him on 14.03.2016. On the basis of a biased and faulty enquiry, the workman was removed from his service by an order dated 31.03.2016 issued by the Agent, Nabakajora Colliery which was communicated to the workman by letter no. ECL/NKC/AM(HR/P)/16/255 dated 04.04.2016.

3. The dismissed workman submitted an application addressed to the Director (Personnel), ECL Head Quarter praying for his reinstatement in service but the prayer was not considered. Further case of the aggrieved workman is that his date of birth is 22.10.1977 and he was within 45 years of age and his period of absence was less than nine months. As such, his case was required to be considered under Memorandum of Settlement dated 22.05.2007, which provided for an opportunity of reinstatement to the workman whose period of absence was less than nine months and age was within 45 years. It has been contended that the Enquiry Officer was predetermined to hold the workman guilty and the workman did not understand the proceeding which was recorded in English. Thereby, the principles of natural justice was violated. In support of the case of the workman,

*Dr. Anshu Jaiswal*



the union has relied upon a decision of the Hon'ble Supreme Court of India in the case of **Krushnakant B. Parmar Vs. Union of India and another**, wherein it was observed that : *"Absence from duty without any application or prior information may amount to unauthorized absence, but it does not always mean willful. There may be different eventualities due to which an employee may abstain from work like illness, accident, hospitalization etc., but in such case the employee cannot be held guilty of failure of devotion to duty or a behavior unbecoming of a government servant. In a departmental proceeding, if allegation of unauthorized absence is made, the disciplinary authority is required to prove that the absence is willful. In absence of such finding, the absence will not amount to misconduct."*

4. The workman took a plea that he was suffering from some family problems at the relevant time and his absence was not willful. Accordingly, it is urged that the order of termination is bad in law and the same is liable to be set aside.

5. The management filed a written statement contending therein that Bidhan Bouri was appointed on 15.11.2006 as a General Mazdoor at Nabakajora Colliery is a habitual absentee. For various reasons he was reprimanded several times for his absence from duty but he maintained the same conduct and remained absent without any authorised leave or information to the Appropriate Authority. A Charge Sheet was issued against the workman dated 15.12.2015 under clause 26.23 and 26.39 of the Certified Standing Order for habitual late attendance and habitual absence from duty without sufficient cause and absence from duty beyond ten days without sanctioned leave or leave without valid reasons. The matter was referred for domestic enquiry. The charge was proved against the workman beyond doubt and on the basis of the finding of the Enquiry Officer, the General Manager, Kajora Area vide letter No. KA/APM/C-6/Dismissal/10/1306 dated 31.03.2016, dismissed the workman. Further case of the management is

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that in the past few years the attendance of the workman was very meagre. Management contended that absenteeism is a serious offence which hampers work of the Employer and the production process. Referring to the decision of Hon'ble Supreme Court, it is pointed out that habitual absenteeism means gross violation of discipline and that it establishes lack of interest in work. Referring to previous conduct of the workman, the management pointed out that his one increment was stopped on 02.08.2008, two increments were stopped with final warning on 01.04.2009, one increment was stopped on 31.07.2009, two increments were stopped on 19.05.2010. He was also demoted from Category II to Category I on 05.09.2011. Thereafter, one increment was stopped on 01.06.2012 and three increments were stopped on 05.10.2014 with cumulative effect. The attendance and past record of the workman reveals that he is not interested in his job and there is no reason to misplace sympathy on the workman. Management claimed that the Industrial Dispute raised at the instance of the workman has no merit and the workman does not deserve to be reinstated.

6. In support of the case of the workman, Bidhan Bouri was examined as WW-1. He filed his affidavit-in-chief wherein he averred that management did not allow him the assistance of co-workers during enquiry and his explanation against the Charge Sheet was not considered. It is further stated that Enquiry Proceeding conducted by Enquiry Officer was biased and he submitted his report arbitrarily and a second Show Cause notice was issued on 14.03.2016. After submitting his explanation of the second Show Cause notice, he was dismissed from service on 31.03.2016. The workman produced the following documents in support of his case :

- (i) A copy of his letter of appointment is marked as Exhibit W-1.
- (ii) Copies of Identity Card, as Exhibit W-1/1.
- (iii) Copy of Charge Sheet dated 15.12.2015, as Exhibit W-1/2.

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- (iv) Notice dated 11.03.2016 for holding domestic enquiry on 11.03.2016 is produced as Exhibit W-1/3.
- (v) A copy of Enquiry Proceeding with finding in three pages is produced as Exhibit W-1/4.
- (vi) Application of Bidhan Bouri praying for his reinstatement, as Exhibit W-1/5.
- (vii) Copy of Aadhar Card of Bidhan Bouri, as Exhibit W-1/6

In course of cross-examination by management, the witness admitted that he did not submit any application for his absence from duty from 27.10.2015 to 14.12.2015. He did not produce any document to show that he was suffering from any illness during his absence nor did he raise any objection before the Enquiry Officer that he was not given assistance of co-workers in Enquiry Proceeding. It is specifically admitted by the witness that opportunity was given to him by the Enquiry Officer and he submitted his reply to the second Show Cause notice. The management suggested to witness that he was not entitled to be reinstated in service which was denied by the workman.

7. The management of ECL examined Ramjee Tripathi, Assistant Manager (Personnel) as MW-1. In course of his evidence, the management produced the following documents for consideration :

- (i) A copy of Charge Sheet dated 15.12.2015, as Exhibit M-1.
- (ii) Copy of Office Order dated 06.03.2016 appointing Miss Moumita Joardar as Enquiry Officer for holding the domestic enquiry is produced as Exhibit M- 2.
- (iii) Notice of Domestic Enquiry dated 08.03.2016 is produced as Exhibit M-3.

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- (iv) Copy of Enquiry proceeding collectively in three pages is produced as Exhibit M- 4.
- (v) Copy of second Show Cause notice issued by the Agent dated 14.03.2016 is produced as Exhibit M- 5.
- (vi) A reply to the second Show Cause notice submitted by Bidhan Bouri is produced as Exhibit M-6.
- (vii) Office Order related to dismissal of Bidhan Bouri issued by the Agent, Nabakajora Colliery dated 04.04.2016 is marked as Exhibit M-7.

8. In course of cross-examination, the management witness deposed that the workman did not submit any reply to the Charge Sheet. The management admitted that it cannot produce any document to show that the Enquiry Officer submitted the Enquiry Proceeding to the Agent of Nabakajora Colliery. It is also admitted by the management witness that the Office Order of dismissal was signed by the Agent on approval of the General Manager but he was unable to produce any document to show that it was approved by the General Manager. In reply to a suggestion that order of dismissal was not approved by the General Manager, the witness answered in the negative.

9. Mr. M.K. Badyopadhyay, learned advocate for the workman advanced an argument that Enquiry Officer violation of natural justice in holding Enquiry Proceeding. Referring to the report of Enquiry Officer (Exhibit M-4 and Ext W-1/4) it is argued that the Enquiry Proceeding was a table work and the document is not reliable. Learned advocate drew my attention to the fact that according to notice of enquiry, the Enquiry Proceeding was to be held on 11.03.2016 which has also been stated in the Enquiry Report but signature of Mr. P.K. Nandi, Management Representative and Ms. Moumita Joardar, Enquiry Officer appears to have been obtained on the Enquiry Report on 09.03.2016. Therefore, no enquiry was held on 11.03.2016 as claimed by the management. Learned advocate for the workman further argued that the workman could not perform his duty

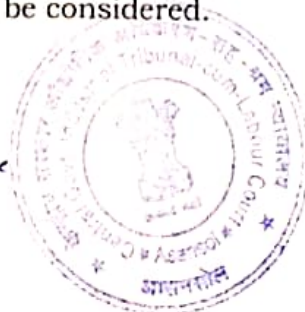
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from 27.10.2015 due to his illness and mental ailment but the short period of his absence was not condoned and the Enquiry Officer held the workman guilty of the charge which was arbitrary in nature. It is argued that there is no document to show that the report of Enquiry Officer was submitted before the Agent for consideration of the competent authority or that considering the Enquiry Report, the General Manager approved the dismissal of the workman. Learned advocate vehemently argued that Agent is not the appropriate authority to dismiss a workman. Therefore, the order of dismissal is bad in law and the workman should be reinstated in service.

10. Mr. P. K. Das, learned advocate for the management of ECL argued that the workman is a habitual absentee without reason. Charge is levelled against him under clause 26.23 and 26.39 of the Certified Standing Order. The workman received the Charge Sheet but did not submit any reply. Enquiry Proceeding was held by the Enquiry Officer and reasonable opportunity was given to the workman to defend himself. The management representative relied upon the past attendance record of Bidhan Bouri to establish that he attended duty for 10 days in 2013, 24 days in 2014 and 89 days in 2015 for which he had been punished on earlier occasions. Learned advocate drew my attention to the Enquiry Report where it is noted that reason for his absence was "family problem" and that as he was residing in Dakhinkhanda village, which was far away from his workplace and he faced problem in attending his duty. In respect of the order of dismissal, learned advocate for management submitted that second Show Cause notice was served upon the workman to which he submitted his reply but management considering all aspect and past record of the workman, dismissed him from service with the approval of General Manager. Mr. Das fairly submitted that he is unable to show any document that the General Manager, Kajora Area had approved the decision of dismissal of the workman. Regarding the claim of reinstatement, it is argued that the application was made at a belated stage, more than three years after his dismissal and the same cannot be considered.

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11. I have considered the fact and circumstances of this case and arguments advanced in the light of the evidence adduced on behalf of the workman and the management witness including the documents admitted in their favour. It is undisputed that the concerned workman had absented from his duty several times on previous occasions and lastly from 27.10.2015 till issuance of Charge Sheet on 15.12.2015 (Exhibit W-1/2). The charge levelled against him is under clause 26.23 and 26.39 of the Certified Standing Order applicable to the company which is related to habitual late attendance or habitual absence from duty without sufficient cause and absence from duty beyond ten days without sanctioned leave or leave without valid reasons. Before dismissal of the workman, notice of enquiry was issued to him which is produced as Exhibit W-1/3 and Exhibit M-3. The workman admittedly participated in the Enquiry Proceeding on 11.03.2016. Bidhan Bouri, the charged workman, Mr. P.K. Nandi, the Management Representative and Miss M. Joardar, the Enquiry Officer appears to have put their signature on the report of the Enquiry Proceeding held on 11.03.2016 but their signatures are dated "09.03.2016". It is nobody's case that the Enquiry Proceeding was preponed to 09.03.2016 nor did the workman raise any objection that no enquiry was held at all. Under such circumstances, the dates appearing below the signatures of the said persons indicate that such signatures were obtained at some other time on a different date and certainly not on 11.03.2016. No suitable explanation has been submitted by the management of ECL to clarify the anomaly apparent.

12. In his evidence-in-chief, the workman witness stated that he was absent from his duty as he was suffering from illness but he was unable to produce any document in support of his claim. It transpires from the Enquiry Report and written statement that due to some family problem the workman did not attend his duty and furthermore he was confronted with problems in attending duty as his place of residence was far away from his workplace. There is nothing on record to establish that absence of workman from duty was due to his illness or that

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his absence from duty was not willful. After completion of the Enquiry Proceeding, a second Show Cause notice was issued by the Agent dated 14.03.2016 (produced as Exhibit M-5). The undated reply submitted by Bidhan Bouri against second Show Cause notice (Exhibit M-6) disclose that he was mentally unwell. The workman admitted that he was on unauthorized leave. On considering such factors, the Agent, Nabakajora Colliery issued a letter dismissing Bidhan Bouri from service w.e.f. 31.03.2016 (Exhibit M-7). The management failed to produce any evidence to indicate that such order of dismissal had the approval or the concurrence of the General Manager, Kajora Area. In another Office Order bearing no. KA:APM:C-6:Dismissal:10:1306 dated 31.03.2016, the Area Personnel Manager has also stated that Bidhan Bouri was being removed from service of Eastern Coalfields Limited w.e.f. 31.03.2016 and it had the approval of the General Manager, Kajora Area. However, the management has failed to show that competent authority had any opportunity to consider the Enquiry Report, Enquiry Proceeding, findings of the Enquiry Officer or the reply submitted by the charged employee against the second Show Cause notice. In a case where a grave penalty of dismissal is passed against a workman, it cannot lightly be presumed that the competent authority has approved the dismissal without such evidence being placed. From the attending facts, circumstances and evidence on record it appears to me that the management has violated the mandate of Hon'ble Supreme Court in the case of **Union of India Vs. Md Ramzan Khan (AIR 1991 SC 471)**, wherein the Hon'ble Supreme Court of India laid down the laws as follows :

*"When the Enquiry Officer is not the Disciplinary Authority, the delinquent employee has the right to receive the copy of Enquiry Report of Enquiry Officer before Disciplinary Authority arrives at it's conclusion with regards to the charges levelled against him. A denial of Enquiry Officer report before the Disciplinary Authority takes his decision on charges is denial of opportunity for the employee to prove his innocence and is a breach of principles of natural justice".*

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13. In the instant case, there is no iota of evidence that the Disciplinary Authority i.e. the General Manager of Kajora Area had any occasion to actually consider the findings of the Enquiry Officer or the reply submitted by the charged employee against the second Show Cause notice. The Management was provided several opportunity to produce the approval of the General Manager but did not discharge the onus of proof. They failed to submit any satisfactory explanation as to how the Enquiry Officer and Management Representative had put their signature on the Enquiry Report on "09.03.2016" when the proceeding was said to have been held on "11.03.2016". It appears to me that the Enquiry Proceeding has been held in a slipshod manner and even the statement of the charged employee was not recorded. Due to such discrepancy, I am unable to place reliance upon the findings of the Enquiry Officer, holding the charged employee guilty. Accordingly, the dismissal of the workman on such faulty enquiry is not sustainable and his dismissal from service is set aside.

14. Considering all these aspects and in view of the provision under Section 11-A of I.D. Act, I hold that the order of dismissal of the workman issued by the Agent, Nabakajora Colliery in his Office Order dater 31.03.2016, communicated under memo dated 04.04.2016 is arbitrarily, illegal and not tenable under the law. The same is accordingly set aside. The management is directed to reinstate Bidhan Bouri in service within thirty days from the date of notification of this Award. In view of facts and circumstances and the contradictory statements made by the workman as the reasons for his absence, I am not inclined to grant any benefit of back wages to the workman. Accordingly, workman shall not receive any back wages for the period of his absence. The period of his absence from duty shall be treated as dies-non.

Hence,

**ORDERED**

the Industrial Dispute is allowed on contest in favour of the workman. The

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*A. K. Kishore*



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order of dismissal issued by the Agent, Nabakajora Colliery dated 31.03.2016 and communicated under letter No. ECL/NKC/AM(HR/P)/16/255 dated 04.04.2016 is set aside. The management is directed to reinstate Bidhan Bouri in service within thirty days from date of notification of this Award. The period of absence shall be treated as dies-non. The workman will not be entitled to any back wages for the period of his absence. Let a copy of this Award be communicated to the Ministry for information and Notification



*An. Mukherjee*  
**(ANANDA KUMAR MUKHERJEE)**  
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