

THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
JABALPUR

NO. CGIT/LC/R/80/2024

Present: P.K.Srivastava

Judicial Member

**Swayamber Jha,
M/805 Colony Adarsh Nagar Kusmunda,
Kobra, Chhattisgarh - 495454**

Workman

Versues

**General Manager,
Kusmunda Area Katghora,
Korba, Chhattisgarh - 495454**

Management

(JUDGMENT)

(Passed on this 27th day of November - 2025)

As per letter dated 03.12.2024 by the Government of India, Ministry of Labour, New Delhi, the reference is made to this Tribunal under Section-10 of Industrial Disputes Act, 1947 (in short the 'Act') now the Industrial Relations Code, 2020 (in short the 'Code') as per Notification No. RP2(1-2)/2024-ES-III dt. 03.12.2024. The dispute under reference relates to:

“Whether The Action On The Part Of The Management Of South Eastern Coalfields Limited (SECL), Kusmunda Area, Dist. Korba (CG) In Not Paying The Subsistence Allowance To The Workman For The Period From 20-04-2002 To 01-11-2002 When He Was Not Allowed To Join Duty And Also Wages Including Allowance And Other Benefits For The Period Of His Alleged Arbitrary & Illegal Termination Of Services From 01-11-2002 To 21-05-2022 Of Workman Shri Swayamber Jha, Ex-Clerk Grade-Ii Is Legal And Justified? If Not, To What Relief The Workman Is Entitled To?”

Notices were sent to the parties. They appeared and filed their respective statement of claim and defense.

The undisputed facts of the case are that, the Applicant Worker Swayamber Jha, while he was working with the Management of SECL, was convicted for a charge under Section 307 IPC read with 3(2) (5) of the ST/SC (Prevention of Atrocities Act) Act, 1989 and was sentenced by judgment of Hon'ble Special Judge, Bilaspur on 09.11.2001. He preferred an appeal against the conviction and sentence, which was registered as Criminal Appeal No. 1118/2001 and was released on bail by Hon'ble High Court vide order dated 17.04.2002. He reported on duty thereafter on 20.04.2002 and explained about his absence. He was terminated from service by Management on the ground of his conviction in an act of moral turpitude which was misconduct under Clause 26.8 and 26.30 of Certified Standing Orders. The Criminal Appeal was allowed and he was acquitted from all the charges setting-aside his conviction and sentence vide order dated 01.10.2021. He submitted a representation before Management seeking his reinstatement on the ground that he was removed from his service on the ground of his conviction without any Departmental Enquiry and was entitled to be reinstated after his conviction was set-aside.

After checkered litigation, Management granted his relief for his reinstatement vide their order dated 21.05.2022 with certain conditions mention in the said order.

The Applicant has now prayed that, he is entitled to substance allowance for the period 20.04.02 to 01.11.02 when he could not join his duty because he was serving sentence for his conviction mentioned above and refusal of substance allowances/wages as well other benefits for this period by the Management is in violation of the Standing Orders and is unjust, arbitrary and illegal. He has prayed that, holding him entitled to subsistence allowances and wages as well as allowances for the period he was in the sentence for conviction. The Management be directed to give the benefits as claimed by him.

The Management has contested his claim on the ground that the claim is wholly untenable, misconceived, contrary to terms of reinstatement which

the applicant has accepted. Also the case of the Management is that he was not on duty for the period because he was in custody serving the sentence, hence was not entitled to any wages, on the ground of “*no work no pay*”, also he was not suspended by the Management during the pendency of enquiry, he was not entitled to any subsistence allowance for the period i.e. 20.04.2002 to 01.11.2002 as claimed by him.

Both the sides have filed photocopy which are not disputed Court Order which are not disputed and will be referred to as and when require.

Since, ther dispute is not with respect to facts, arguments of learned Counsel for the Applicant Mr. Harry Bamoriya and Mr. Neeraj Kewat for Management were heard. I have gone through the record as well.

Main argument from the side of applicant is that the he could not attend his duties because he was in custody. Since he was in custody for more than 48 hours, he will be deemed to be suspended. Hence, is entitled for subsistence allowance admissible to suspended employees pending enquiry.

Learned Counsel for Management has submitted that, the terms and conditions with respect to his reinstatement were mentioned in the reinstatement order which he accepted and was reinstated. There was no condition for payment of any allowance or wages for the period he spent in custody, hence he cannot claim it later because he will be deemed to have waived his claimed in this respect. Also it has been submitted that, since he was not suspended by Management as no enquiry with respect to any misconduct was contemplated against him, no subsistence allowances is admissible to him under Clause 28.5 of the certified standing orders.

A perusal of Clause 28.5 and 28.9 of the Certified Standing Orders reveals that substance allowances is admissible only to an employee who has been suspended due to pending enquiry. These clauses are being reproduced as follows:

28.5 If after enquiry or conclusion of the criminal proceedings, workman is held guilty of the charges alleged against him or some other charges brought in the course of the enquiry or is convicted in the criminal proceedings and is consequently

discharged or dismissed, he shall not be entitled to any remuneration for such period other than the subsistence allowance already paid to him. If a penalty other than dismissal or discharge or removal is imposed on him or he is exonerated of charges against him or he is not convicted in the criminal proceedings, he shall be paid the difference of the subsistence allowance already paid to him and the wages which he would have got if he had not been suspended except in case where he is suspended not exceeding ten days, as a measure of punishment

28.9 *Notwithstanding the provisions contained in these Standing orders, as above, the management reserves the right to suspend a workman being prosecuted in a court of law for any grave criminal offence involving moral turpitude or murder until the disposal of the trial. In such cases, the workman concerned shall be entitled to 50% of wages as subsistence allowance. In case the above workman is finally acquitted, he would be paid full wages for the period of suspension.*

In the case in hand, there was no departmental enquiry contemplated or pending against the applicant. **Secondly**, maybe he would be deemed to be suspended for the period he spent in custody which were 48 hours, but this deemed suspension also requires a formal order which is not there in this case. The reinstatement order also does not mention any such condition. Hence, in these circumstances, the applicant is held entitled to no subsistence allowances, wages or other allowances for the period from 20.04.2002 to 01.11.2002.

The reference stands answered accordingly.

No order as to cost.

DATE:- 27/11/2025

**(P.K.SRIVASTAVA)
JUDICIAL MEMBER**