

**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. 03 OF 2008

PARTIES: Jayanta Gope.
Vs.
Management of Begunia Colliery, BCCL.

REPRESENTATIVES:

For the Union/Workman: Mr. Bipul Banerjee, Advocate.

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

INDUSTRY: Coal

STATE: West Bengal.

Dated: 25.09.2025

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-22012/355/2007-IR(CM-II)** dated 07.01.2008 has been pleased to refer the following dispute between the employer, that is the Management of Begunia Colliery under Chanch Victoria Area of Bharat Coking Coal Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of M/s. BCCL in dismissing Sri Jayanta Gope from service w.e.f. 11.05.2006 is legal and justified? If not, to what relief is the workman entitled? ”

1. On receiving Order **No. L-22012/355/2007-IR(CM-II)** dated 07.01.2008 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 16.01.2008 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.

2. The Vice President of Colliery Mazdoor Union filed written statement for the dismissed workman on 18.08.2009. Management filed their written statement on 10.11.2009. Brief fact of the case as disclosed in the written statement of the union is that Jayanta Gope was a permanent employee at Begunia Project under Chanch Victoria Area of Bharat Coking Coal Limited (hereinafter referred to as

BCCL) and was posted as an Underground Loader. The workman was unable to attend his duty from 08.09.2004 due to high fever and received medical treatment at Colliery Dispensary till 20.09.2004. After he was declared medically fit for duty on 21.09.2004 he was suffering from severe weakness and fell down in a drain as a result his left hand was fractured. Family members took him to the Sub-Divisional Hospital, Asansol instead of Colliery Dispensary for better treatment. The workman was unable to attend his duty and was advised to take rest for eight (8) weeks. After his recovery the Superintendent of Sub-Divisional Hospital, Asansol issued a Fit Certificate in favour of Jayanta Gope dated 24.11.2005 but the Colliery Doctor refused to issue any certificate to him to join his duty. When the workman went to resume duty after his treatment the Personnel Manager of the Colliery did not permit him to join and issued a Charge Sheet bearing No. 1859 dated 26.11.2004. The workman replied to the Charge Sheet, stating the cause of his absence but the same was not found satisfactory and he was dismissed from service on 11.05.2006 without holding any Domestic Enquiry. The order of dismissal was issued bearing No. BCCL/XII/BP/06/786 dated 11.05.2006. According to the workman the reason for his absence was beyond his control as he was suffering from illness and he was prevented from joining his duty. The workman submitted an appeal against the order of dismissal but the management did not consider the same.

3. The workman informed the matter to the Vice President of Colliery Mazdoor Union (INTUC) and an Industrial Dispute was raised before the Assistant Labour Commissioner (C), Asansol under Reference No. CMU/UP/2007 dated 16.06.2007. On failure of conciliation proceeding the Government of India, New Delhi made reference of an Industrial Dispute to the Central Government Industrial Tribunal -cum- Labour Court, Asansol for adjudication. Union contended that the action of the management in dismissing Jayanta Gope from his service is highly illegal, discriminatory, whimsical, resulting unfair labour

practice. It is further contended that dismissal from service for absenting from duty from 21.09.2004 to 26.11.2004 is without justification due to the fact that the workman could not attend duty on account of fracture of his bone and the charge of habitual absence without sufficient cause is unexplained. It is inter-alia contended that the workman has been dismissed without any opportunity of being heard and the order has been passed without following principles of natural justice. The union claimed that the order of termination from service issued by the management of BCCL is mala fide, baseless and grossly illegal. It is prayed that the order of dismissal of Jayanta Gope from his service w.e.f. 11.05.2006 be set aside and the workman be reinstated in service along with payment of back wages and other incidental benefits.

4. Management refuted the allegations made by the union that the dismissal of the workman was made without holding enquiry. According to the management Jayanta Gope was absenting from his duty in unauthorized manner from 21.09.2004 without prior permission or sanctioned leave and a Charge Sheet was issued against him on 26.11.2004 under Clause 26.1.1 of the Certified Standing Orders of the company for his willful and habitual absence from duty without sufficient cause. The chargesheeted employee failed to submit any satisfactory reply and a domestic enquiry was held into the charge. The Enquiry Officer was appointed in accordance with the provisions of the Certified Standing Orders of the company. Notice of enquiry was issued to the chargesheeted employee for attending the enquiry. Jayanta Gope participated in the enquiry proceeding and reasonable opportunity was provided to him to defend his case. The Enquiry Officer after holding the enquiry found the workman guilty of charge levelled against him for misconduct. It is stated that the workman is a habitual absentee and in the previous three (3) years he attended duty on only two (2) days in the year 2002, eighteen (18) days in the year 2003 and forty-four (44) days in the year 2004. On previous occasion the workman was chargesheeted and he was allowed

to join his duty after awarding lighter punishment of stoppage of two SPRA for his misconduct. The workman failed to rectify his conduct and his habitual absence continued unabated.

5. Management denied that the workman was suffering from acute fever from 08.09.2004 or that he was unable to perform his duty due to illness of that he fell down in a drain on 20.09.2004 and sustained injury. According to the management the workman never intimated the colliery authority the reasons for his absence. It is asserted that the workman has been dismissed from service without any discrimination and the enquiry proceeding was held observing the principles of natural justice. According to the management the workman is not entitled to any relief and the Industrial Dispute is liable to be dismissed.

6. The dismissed workman filed an affidavit-in-chief in support of his case and has been examined as Workman Witness No. 1. In his affidavit-in-chief the workman stated that he fell down in a drain on 21.09.2004 and was under the treatment at Sub-Divisional Hospital, Asansol from 21.09.2004 to 24.11.2004 and thereafter he was declared fit for duty w.e.f. 25.11.2004. It transpires from his statement that he was unable to attend duty from 21.09.2004 to 24.11.2004. The workman however failed to produce any document in support of his medical treatment either at the Colliery Dispensary or of the Sub-Divisional Hospital, Asansol. According to the workman he went to join his duty on 25.11.2004 but he was not allowed to join his duty. In his affidavit-in-chief the workman stated that he replied to the Charge Sheet. No copy of enquiry proceeding nor any second Show Cause Notice was issued to him by the management before his dismissal.

7. In course of cross-examination by the management the workman witness stated that he submitted all his medical papers before the colliery management. However, not a single document has been produced by the workman to establish

that he was actually receiving medical treatment at the hospital during the period of his absence.

8. It may be noted that in Paragraph No. (4) of the written statement filed by the union it is claimed that the workman was dismissed from the service from 11.05.2006 without holding any domestic enquiry. This statement does not find any support from the affidavit-in-chief and there is no assertion by the workman witness that he did not participate in the enquiry proceeding. The only case of the workman is that no second Show Cause Notice was issued to him before dismissal.

9. Mr. Brajanath Banerjee, Assistant Manager (Personnel), Begunia Colliery has been examined as Management Witness No. 1. He has filed his affidavit-in-chief where he has stated that Jayanta Gope was absent from duty in an unauthorized manner from 21.09.2004 without prior permission or sanctioned leave and a Charge Sheet was issued under Clause 26.1.1 of the Certified Standing Orders for his habitual absence from duty without sufficient cause. The management witness has produced the following documents :

- (i) Copy of the Charge Sheet dated 25/26.11.2004 has been produced as Exhibit M-1.
- (ii) Copy of the reply to the Charge Sheet, as Exhibit M-2.
- (iii) Copy of the appointment letter of the Enquiry Officer, as Exhibit M-3.
- (iv) Copy of the Notice of enquiry dated 15.08.2005, as Exhibit M-4.
- (v) Copy of the Notice of enquiry dated 03.01.2006, as Exhibit M-4/1.
- (vi) Copy of the Enquiry Proceeding, as Exhibit M-5.
- (vii) Copy of the Findings of the Enquiry Officer, as Exhibit M-6.
- (viii) Copy of the Note-Sheet of the Project Officer, Begunia Colliery, dated 14/15.04.2006, proposing dismissal of Jayanta Gope from service, Exhibit M-7.

(ix) Copy of the letter of dismissal dated 11.05.2006, as Exhibit M-8.

It is clearly admitted by the management witness in his evidence-in-chief that no second Show Cause Notice was issued. The management witness claimed that the order of dismissal is proper and the workman is not entitled to any relief. It appears from the record that on the date of examination of management witness on 03.03.2025 no one appeared for the union to cross-examine the witness and the witness was discharged without cross-examination. On a simple reading of evidence adduced by the management witness it is evident that the statement made by the Management Witness No. 1 remained uncontroverted.

10. Mr. P. K. Das, learned advocate for the management of ECL advancing his argument submitted that admittedly the workman was absent for more than two months without any information to the management of the employer company resulting in dislocation and disruption of work. It is argued that on previous occasion the workman habitually remained absent and opportunity was given to him to resume duty and lighter punishment of stoppage of increments were imposed. The workman did not rectify his conduct and continued to remain absent on various pretext. In the instant case it is argued that the workman failed to produce any document in support of his illness. Therefore, it cannot be presumed that he was prevented from attending his duty due to illness. Learned advocate submitted that a fair enquiry proceeding was held in which the workman has participated. The charge levelled against him has been established and the Disciplinary Authority has passed the order of dismissal for proper reason, therefore, the workman is not entitled to any relief.

11. Perused the order of reference, pleadings of union as well as management, evidence of both parties and documents. Initially, the workman tried to project a case that he was arbitrarily terminated from service on the pretext of unauthorized absence without holding any enquiry against him. In course of

evidence, it unfolded that a fair and proper enquiry proceeding was held by the Enquiry Officer by issuing Notice of enquiry. The workman participated in the enquiry proceeding and put his signature on the Enquiry Proceeding (Exhibit M-5). The Enquiry Officer in his Findings dated 14.03.2006 (Exhibit M-6) held the workman guilty of the charge beyond reasonable doubt. A Note-Sheet was prepared by the management which recommended his dismissal from the company. The General Manager who is the Disciplinary Authority approved the proposal for dismissal and a letter of dismissal of Jayanta Gope dated 11.05.2006 was issued (Exhibit M-8). I find that the charge of habitual absence and unauthorized absence from duty has been clearly established against the workman which caused dislocation of company's work and inconvenience to the fellow workmen. The workman was dismissed from service with immediate effect and he was advised to collect his dues, if any. The evidence of Management Witness No. 1 is explicit regarding non-issuance of second Show Cause Notice. In the instant case the charge against the workman has been proved beyond doubt and the union has failed to dislodge the evidence adduced by the management witness. If for argument's sake the workman produced document regarding his medical treatment before the Enquiry Officer and the same were not considered in the enquiry proceeding, then he was at liberty to place such document before this Tribunal to establish that his claim is justified and the absence from duty for such a long period was beyond his control. The union has failed to adduce any trustworthy evidence to prove that the workman had actually received any medical treatment from Sub-Divisional Hospital, Asansol. According to the rules a public hospital maintains a record of medical treatment specially in case of injury. Non-production of such evidence gives rise to adverse presumption against the workman.

12. It is true that the management was required to issue a second Show Cause Notice to the workman preceding the order of dismissal, especially when the

Enquiry Officer and Disciplinary Authority, issuing the order of dismissal are two different persons. A Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994 issued by the Coal India Limited also provides that the charged employee had to be supplied with Enquiry Proceeding and Enquiry Report and a Second Show Cause Notice had to be issued to him before taking any final decision of removing him from service. I find that in this case the evidence adduced against the workman is sufficient to hold him guilty of charge. Opportunity was provided to him to represent his case. Therefore, the workman was not prevented from understanding the charge levelled against him and he was not prejudiced in the procured observed. Consequently, the punishment imposed is justified. In my view non-issuance of second Show Cause Notice does not demolish the charge substantiated against the workman nor any prejudice is caused to the charged employee for interfering with the order of dismissal passed against hm.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest. Jayanta Gope, the dismissed workman is not entitled to any relief of reinstatement or back wages. The dismissed workman is however entitled to the legal dues, if any, for his past service. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

Sd/-

(ANANDA KUMAR MUKHERJEE)

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