

**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 2021**

**PARTIES:** Sola Bouri  
**Vs.**  
Management of Sangramgarh Colliery, Salanpur Area, 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:** 30.04.2025

**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-22012/9/2021-IR(CM-II)** dated 19.04.2021 has been pleased to refer the following dispute between the employer, that is the Management of Sangramgarh Colliery under Salanpur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of the Management of M/s. Eastern Coalfields Ltd. in relation to its Sangramgarh Colliery under Salanpur Area in dismissing the services of Shri Sola Bouri, UGL, U.M. No. 118286 vide their letter dated 07/01/2003 is just and legal? If not, to what relief the concerned workman is entitled to ? ”*

1. On receiving Order **No. No. L-22012/9/2021-IR(CM-II)** dated 19.04.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 17.06.2021 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 dismissed workman filed his written statement on 14.11.2022 through the President of Koyala Mazdoor Congress. Management contested the Industrial Dispute filing their written statement on 30.01.2023. The fact of the workman's case is that Sola Bouri was posted as Underground Loader at Sangramgarh Colliery under Salanpur Area of Eastern Coalfields Limited (hereinafter referred

to as ECL). He was appointed on 28.01.1995 bearing U.M. No. 118286. Due to illness the workman was unable to attend his duty from 28.06.2002. He was under the treatment of Dr. Narayan Chandra Sadhu at Lalganj and submitted papers related to his medical treatment at the colliery. The management of ECL did not allow him to join his duty instead issued a Charge Sheet bearing no. SAN/C-6/1828 dated 29.07.2002 / 01.08.2002. The workman submitted his reply and participated in the enquiry proceeding. The management of the colliery submitted a proposal for his dismissal and the General Manager of Salanpur Area enforced the highest punishment of dismissal to Sola Bouri vide order no. C-6/36/P-2524 dated 03/07.01.2003, which was communicated to the concerned workman on 07.01.2003. It is contended in the written statement that the management without issuing a second Show Cause Notice awarded highest punishment of dismissal, which is harsh, extreme and disproportionate to the period of absence of Sola Bouri, which was only one month due to his illness.

3. The dismissed workman submitted mercy appeal for his reinstatement in the light of the Memorandum of Settlement signed by the management of ECL before Regional Labour Commissioner (Central), Asansol on 22.05.2007 but the mercy appeal was not considered. According to the union Sola Bouri fulfilled the criteria of the Memorandum of Settlement dated 22.05.2007 as his period absence was less than nine (9) months and his age was below forty-five (45) years at the relevant time. The dismissed workman is suffering due to his inability to maintain himself. According to the union the order of dismissal issued against the workman is illegal and unjustified and prayed for reinstatement of Sola Bouri in service with full back wages and consequential benefits.

4. Management in their written statement disclosed that Sola Bouri was chargesheeted for his unauthorized absence from duty form 28.06.2002. he was a habitual absentee and Charge Sheet was issued under Clause 26.23 and 26.29 of the Certified Standing Orders of the company. No satisfactory reply was

submitted by the concerned workman due to which a domestic enquiry was held and the Enquiry Officer on due compliance of principles of natural justice concluded the enquiry, holding Sola Bouri guilty of the charge. According to the management the workman during previous five years attended work for only 42 days in the year 1998, 72 days in the year 1999, 36 days in the year 2000, 10 days in the year 2001, and 03 days in the year 2002. Management further stated that the workman was previously punished for his unauthorized absence by issuance of letter of warning on 10.11.1999, stoppage of three Special Piece-Rate Allowances (hereinafter referred to as SPRA) on 25.07.2000, stoppage of three SPRA on 04.09.2001 and a letter of Caution was issued on 19.10.2001. It is asserted that the punishment awarded to the workman is proportionate and in spite of several opportunities workman did not rectify his conduct and performance. Management asserted that the enquiry proceeding was fair and if the Tribunal found that the enquiry was unfair for any reason in that event the management may be given an opportunity to prove the charges by independent proof.

5. In the instant case opportunity to adduce evidence was given to both the parties. Therefore, there is no necessity for considering fairness of the enquiry proceeding as a preliminary issue.

6. The point for consideration is whether dismissal of Sola Bouri is justified and legal? If not, what relief the workman is entitled to?

7. In support of its case union examined Sola Bouri as Workman Witness No. 1. He filed affidavit-in-chief on 02.07.2024. Documents produced by him have been marked as follows :

- (i) Copy of the Charge Sheet issued against the workman dated 29.07.2002 / 01.08.2002 has been marked as Exhibit W-1.
- (ii) Copy of the I.D. Card of Sola Bouri issued by ECL, as Exhibit W-2.

- (iii) Copy of the letter of dismissal dated 03/07.01.2003, as Exhibit W-3.
- (iv) Copy of the Mercy Petition of Sola Bouri, as Exhibit W-4.
- (v) Copy of Note Sheet dated 18.12.2002, as Exhibit W-5.
- (vi) Copy of the Medical Certificate issued by Dr. Narayan Chandra Sadhu, as Exhibit W-6.

8. The workman participated in the enquiry proceeding and claimed to have submitted his medical treatment papers before the Enquiry Officer. The witness deposed that he was suffering from jaundice and was treated by Dr. Narayan Chandra Sadhu at his local place. The witness further stated that enquiry proceeding was not supplied to him and no second Show Cause Notice was issued before his dismissal. In course of cross-examination the witness deposed that he was suffering from illness for a period of fortnight and after recovery he underwent treatment for fifteen days until Charge Sheet was issued. Witness produced a Certificate issued by Dr. Narayan Chandra Sadhu, which has been marked as Exhibit W-6. The witness could not produce any medical prescription in support of his illness. He admitted that he did not inform that the management of ECL about his illness resulting in his inability to attend duty.

9. Mr. Rakesh Kumar Waiker, Assistant Manager (Personnel) has been examined as Management Witness No. 1. The witness deposed that the workman was chargesheeted for unauthorized absence from duty without information and he was also a habitual absentee. He further stated the number of days the workman attended his duty in the preceding five years of employment. It is gathered from the testimony of the management witness that the workman participated in the enquiry proceeding and no second Show Cause Notice was issued to the workman before his dismissal. Management witness produced the following documents in support of the case :

- (i) Copy of the Charge Sheet issued against the workman dated 29.07.2002 / 01.08.2002 has been marked as Exhibit M-1.

- (ii) Copy of the reply dated 13.11.2002 to the Charge Sheet submitted by the workman, as Exhibit M-2.
- (iii) Copy of the Office Order dated 13/15.11.2002 by which Enquiry Officer was asked to expedite enquiry against Sola, as Exhibit M-3.
- (iv) Copy of the first Notice of enquiry dated 26/28.10.2002, as Exhibit M-4.
- (v) Copy of the Enquiry Proceeding 14.11.2002, as Exhibit M-5.
- (vi) Copy of the Enquiry Report dated 14.11.2002, as Exhibit M-6.
- (vii) Copy of the letter of dismissal dated 03/07.01.2003, as Exhibit M-7.
- (viii) Copy of the Mercy Petition of Sola Bouri, as Exhibit M-8.

10. In cross-examination the management witness stated that after mercy petition was submitted by the workman no communication was made to him. He denied that the order of dismissal is disproportionate to the nature of misconduct.

11. Mr. Rakesh Kumar, Union representative argued that Sola Bouri was unable to attend his duty for a period of one month and one day from 28.06.2002 to 29.07.2002 for which Charge Sheet was issued against him. The workman submitted a reply to the Charge Sheet but management initiated a domestic enquiry. Without holding enquiry in proper manner, the charged employee was found guilty of misconduct and without issuing any second Show Cause Notice management imposed the highest punishment of dismissal from service, which is harsh and disproportionate to the charge levelled against him. Mercy petition was submitted by the workman for his reinstatement. It is argued that the workman fulfilled the conditions for reinstatement as per Memorandum of Settlement dated 22.05.2007 as his period of absence was way less than nine months and his age at the relevant time was below forty-five years but the management did not consider his mercy petition (Exhibit W-4). It is submitted that the workman will attain the age of superannuation in the year 2036 and still has more than ten

years for service. The union representative prayed for setting aside the order of dismissal and reinstatement of workman along with back wages and consequential benefits.

12. Mr. P. K. Das, learned advocate for the management of ECL, in reply, argued that the workman remained absent without any intimation. He was a habitual absentee and in the previous five years his attendance was extremely bad. Referring to the few numbers of days the workman attended work it is submitted that the workman is a habitual absentee. It is further argued that the reply submitted by the workman against Charge Sheet disclosed that he was unable to attend his duty from 28.06.2002 to 13.11.2002 due to his illness and prayed for allowing him to join his duty. Learned advocate argued that it would appear from the reply of the workman (Exhibit M-2) that he was absent for more than a month as claimed by the union representative. After domestic enquiry was initiated, the workman participated in the enquiry. An office Order was passed for appointment of the Enquiry Officer, Notice of enquiry was issued and after considering the evidence record by the Enquiry Officer and the medical certificate issued by Dr. Narayan Chandra Sadhu (D.M.S.) it was found by the Enquiry Officer that he medical certificate had no merit or value as supporting prescription and cash Memorandum for purchase of medicine were not produced. Learned advocate admitted that no second Show Cause Notice was issued to the workman but the same did not cause any prejudice to the charged employee as he had participated in the enquiry proceeding and was aware about the proceeding and evidence adduced against him. Learned advocate submitted that the order of dismissal is appropriate to the charge and the workman is neither entitled to be reinstated in service nor any back wages.

13. I have considered the argument advanced by the union representative and learned advocate of ECL in the light of facts and circumstances of the case

disclosed in the pleadings and evidence adduced. Admittedly, Sola Bouri, a permanent employee of ECL was absent from duty w.e.f. 28.06.2002 and was issued Charge Sheet disclosing charge under Clause 26.23 and 26.29 of the Certified Standing Orders alleging habitual and unauthorized absence. The workman in his reply to the Charge Sheet disclosed that he was suffering from illness from 28.06.2002 to 13.11.2002. The charged employee participated in the enquiry held on 14.11.2002. From the Enquiry Proceeding, which is produced by the management and marked as Exhibit M-5, I find that Mr. Anjan Banerjee, Senior Personnel Officer was the Enquiry Officer, Mr. Goutam Sarkar and Mr. Jagai Chondra Mondal, clerks were the Management Representatives, and Sola Bouri, the chargesheeted workman were present at the time of proceeding. On a careful consideration of the enquiry proceeding, I find that the contents of the Charge Sheet dated 29.07.2002 / 01.08.2002 was read over and explained in Bengali to both the representatives of management and the workman. It needs to be mentioned that charge was not explicitly read over in the enquiry proceeding and no such recording was made. In order to prove the charge, the Enquiry Officer is required to examine the management representatives. It is incumbent upon the Enquiry Officer to record the statement of management representative, in verbatim in respect of charge disclosed and thereafter grant opportunity to the charge employee to cross-examine the management representative, serving as witness for the management. It is strange to find that that as the Enquiry Officer had no idea as to how an enquiry proceeding had to be carried out. He did not record the statements of management representatives present before him. No opportunity was granted to the workman to cross-examine the management representatives. It transpires from page no. (3) of the Enquiry Proceeding that statement of Sola Bouri was recorded, who deposed that he could not attend his duty due to illness and was under the medical treatment of Dr. Narayan Chandra Sadhu. No signature or Left Thumb Impression of the witness was obtained after the statement. Neither imputation of charge nor statements in proof of such



charge had been recorded in course of the Enquiry Proceeding. In my considered view the enquiry held was thoroughly an irregular proceeding and no material transpired for holding the charged employee guilty of misconduct. Enquiry Report marked as Exhibit M-6 appears to have more materials which are absent in the Enquiry Proceeding. Under such circumstances the findings of the Enquiry Officer is not tenable. It is an admitted fact that no second Show Cause Notice was issued to the charged employee for obtaining his response. From the Letter of dismissal dated 03/07.01.2003 (Exhibit W-3 / M-7) it appears to me that it has been mechanically prepared without any actual reference to the Enquiry Report. The competent authority has considered the Enquiry Report without considering the enquiry proceeding, therefore I hold the order of dismissal has no legal foundation. It is an established principle of law that when the Enquiry Officer and the Disciplinary Authority are different persons, the delinquent employee has a right to receive a copy of Enquiry Officer's report before the Disciplinary Authority arrive at its conclusion with regard to the charges levelled against him. The denial of the Enquiry Officer's report before the Disciplinary Authority takes its decision on the charge, is denial of opportunity to the employee to prove his innocence and amounts to a breach of principles of natural justice. This salubrious principle of natural justice has been laid down by the Hon'ble Supreme Court of India in the case of **Union of India and Others Vs. Mohd. Ramzan Khan [AIR (1991) SC 471]**. The said principle has been incorporated by the Coal India Limited in their Circular bearing no. CIL C-5A(vi)/50774/28 dated 12.05.1994. In the present case though the workman participated in the enquiry proceeding, I find that the enquiry proceeding itself is wholly unacceptable and the Enquiry Officer on the basis of assumption and without recording evidence has held the charged employee guilty. In view of my above discussion, I hold that the enquiry proceeding held against Sola Bouri is unfair, unjust and arbitrary. The order of dismissal based upon a faulty enquiry would automatically fails and the same is set aside. As per the order of dismissal the workman was dismissed from his

service on 07.01.2003 and this Industrial Dispute has been raised by the workman only in the year 2021. It is true that the law of limitation does not apply in the cases of labour court under the Industrial Disputes Act, 1947. However, considering the nature of dereliction and contributory negligence on the part of the workman in raising the Industrial Dispute after such long period of time, I am not inclined to allow any relief of back wages in his favour for the period of his absence during which he rendered no service. The Industrial Dispute is accordingly allowed on contest in favour of the workman.

Hence,

**ORDERED**

that the Industrial Dispute is allowed on contest in favour of the workman. The order of dismissal dated 01/07.03.2003 issued against Sola Bouri by the General Manager, Salanpur Area of Eastern Coalfields Limited is found unjust, untenable and the same is set aside. The management of Eastern Coalfields Limited is directed to reinstate Sola Bouri in the service of the company, within two (2) months from the date of communication of this Award maintaining continuity. In view of the delay committed by the employee in raising the Industrial Dispute before this Tribunal, I am not inclined to grant any relief of back wages to the workman during the period he rendered no service. He shall be entitled to other consequential benefits of his service. Let an award be drawn on the basis 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.