

**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 2022**

**PARTIES:** Arjun Bouri  
**Vs.**  
Management of Kumardihi 'B' Colliery, ECL

**REPRESENTATIVES:**

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.  
For the Management of ECL: Mr. P. K. Goswami and  
Mr. P. K. Das, Advocates.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 25.03.2025

**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-22012/07/2022-IR(CM-II)** dated 01.02.2022 has been pleased to refer the following dispute between the employer, that is the Management of Kumardihi 'B' Colliery under Bankola 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 Kumardihi B Colliery under Bankola Area in imposing a punishment of dismissal on Shri Arjun Bouri, Ex- U.G. Loader (U.M. 119280) Kumardihi B Colliery under Bankola Area w.e.f. 19-04-2020 is just and legal? If not, to what relief the workman is entitled to? ”*

1. On receiving Order **No. L-22012/07/2022-IR(CM-II)** dated 01.02.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 01.02.2022 / 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.

2. The union of Koyala Mazdoor Congress filed written statement on 01.11.2022 on behalf of Arjun Bouri through the President of the union. Management contested the case by filing the written statement on 17.01.2023. In nutshell, the fact of the case as disclosed in the written statement of the union is

that Arjun Bouri was employed at Kumardihi 'B' Colliery under Bankola Area of Eastern Coalfields Limited (hereinafter referred to as ECL) as an Underground Loader, bearing U.M. No. 119280. He could not attend his duty due to illness and after recovery from illness he reported for duty and submitted his medical documents before the Manager of the Colliery but the management did not allow him to join his duty and issued a Charge Sheet dated 18/21.05.2007 imputing the charge of unauthorized absence from 04.10.2006 to 18.05.2007 i.e., for a period of seven (7) months and fourteen (14) days. Arjun Bouri replied to the Charge Sheet and requested the management to allow him to join his duty. The management of the Colliery initiated a Domestic Enquiry Proceeding. The workman participated in the enquiry and disclosed the reasons that he was absent due to his illness and also submitted documents related to his medical treatment. After completion of the Enquiry Proceeding, the General Manager of Bankola Area dismissed the workman from his service by issuing a letter bearing Ref. No. BA/PD/DIS/992 dated 17/19.04.2010. After receiving the order of dismissal, Arjun Bouri submitted Mercy Appeal before the management of ECL Headquarters, once again disclosing the reason for his absence from duty. The mercy appeal was considered in the light of the Memorandum of Settlement signed before the Regional Labour Commissioner (Central), Asansol on 22.05.2007, wherein it was laid down that if a workman remained absent for a period up to nine (9) months and his age was below forty-five (45) years, then the mercy appeal would be considered. According to the union, competent authority of the management of ECL approved reinstatement of Arjun Bouri and communicated the same to the Area but did not inform Arjun Bouri. The Area Medical Officer was requested to arrange for medical examination of Arjun Bouri before his reinstatement but the date of medical examination was not communicated to the workman deliberately. The union under such circumstance raised the Industrial Dispute before the Assistant Labour Commissioner (Central), Raniganj and during conciliation management agreed to consider the mercy appeal and to process the proposal for his reinstatement. The management of the

Colliery initiated the proposal for re-validation of the order of reinstatement of Arjun Bouri issued by the Sr. Manager (P/L&IR), ECL vide Ref. No. ECL/CMD/C-6B/IL/11/DA/799 dated 13.08.2011. The proposal was then sent to the ECL Headquarters but no action has been taken till date. Further contention of the union is that the management awarded highest and extreme punishment upon Arjun Bouri which is not proportionate to the nature of charge levelled against him. Union prayed for issuing necessary direction upon the management to issue an order approving reinstatement of Arjun Bouri and payment of back wages with all other consequential benefits.

3. Management contested the Industrial Dispute contending inter-alia that enquiry was conducted against the workman, who took part against the Enquiry Proceeding. After careful perusal of the report and past attendance of the workman the concerned authority issued a second Show Cause Notice to the workman. The General Manager of Bankola Area thereafter dismissed Arjun Bouri by issuing a letter dated 17/19.04.2010. It is further contended that the union has raised the Industrial Dispute after lapse of several years, without explaining the delay. It is urged that the dismissal of Arjun Bouri was justified and he is not entitled to any relief.

4. In the instant case Arjun Bouri has filed his affidavit-in-chief and he is cross-examined as Workman Witness No. 1. He has filed the following documents in support of his case :

- (i) Copy of the Identity Card of Arjun Bouri issued by ECL has been marked as Exhibit W-1.
- (ii) Copy of the Charge Sheet dated 18/21.05.2007, as Exhibit W-2.
- (iii) Copy of the letter of dismissal dated 13/24.05.2010 issued by the Agent, Kumardihi 'B' Colliery, as Exhibit W-3.
- (iv) Copy of the Application of Arjun Bouri dated 02.04.2010 seeking reinstatement, as Exhibit W-4.

- (v) Copy of the Mercy Appeal of Arjun Bouri dated 28.05.2014, as Exhibit W-5.
- (vi) Copy of another Mercy Appeal of ad dated 29.12.2014, as Exhibit W-6.
- (vii) Copy of the written statement submitted by the management before the Regional Labour Commissioner (Central), Asansol in connection with dismissal of Arjun Bouri, as Exhibit W-7.

5. In cross-examination the witness denied the suggestion that he was a habitual absentee in service. The witness admitted that he attended duty for one hundred forty-four days only in the year 2003, in the year 2004 his attendance was nil and forty-seven days only in the year 2005. It transpires from his cross-examination that the workman had remained absent from his duty as he was harassed by money lenders due to his failure in re-payment and at the relevant time, he had run away from his village without informing the management. The workman after receiving the Charge Sheet, participated in the enquiry and received Enquiry Report and findings. It transpires from his evidence that no second Show Cause Notice was served upon him. The witness admitted his signature on an application submitted by him which has been marked as Exhibit W-4/1. He also identified his signature as Exhibit W-5/1 on a mercy appeal. It is gathered from his evidence that after his dismissal the workman requested the union to submit his mercy appeal. The witness denied the suggestion of the management that he had been notified by the management to report for medical examination after his dismissal. It is also evident from his testimony that witness did not withdraw his Provident Fund dues and Gratuity amount lying with the company.

6. Management filed an affidavit-in-chief of Mr. Anuj Lakra, Deputy Manager (Personnel), Kumardihi 'B' Colliery who is examined by the management as

Management Witness No. 1. Management produced the following documents in support of their case.

- (i) Copy of the Charge Sheet dated 18/21.05.2007 is marked as Exhibit M-1.
- (ii) Copy of the Enquiry Proceeding along with findings in ten pages is collectively marked as Exhibit M-2.
- (iii) Copy of the second Show Cause Notice dated 04/07.01.2010, as Exhibit M-3
- (iv) Copy of the letter of dismissal dated 17/19.04.2010, as Exhibit M-4.
- (v) Copies of three letters dated 15/16.04.1999, 11/14.05.2001, and 18/19.02.2002 regarding previous absence of the workman and their outcome is collectively marked as Exhibit M-5.
- (vi) Copy of the letter dated 17.07.2014 of the Sr. Officer (P&A), Kumardihi 'B' Colliery addressed to the Manager (P), Bankola Area regarding non-appearance of Arjun Bouri before the Area Medical Officer, as Exhibit M-6.
- (vii) Copy of the letter dated 13.08.2011 whereby prayer for reinstatement of Arjun Bouri along with others was considered by the management on the basis of mutual agreement in Form-H, as Exhibit M-7.
- (viii) Copy of the Agreement in Form-H, as Exhibit M-8.
- (ix) Copy of the Application of Arjun Bouri dated 16.07.2014 regarding his medical examination, as Exhibit M-9.

7. In course of cross-examination the management witness admitted that he was unable to produce any document showing service of second Show Cause Notice upon the workman. The witness admitted that after dismissal of the workman he submitted prayer for reinstatement in service and the same was considered by the management. The witness also deposed that by the letter dated 20.08.2011 the workman was referred for medical examination in connection to

his reinstatement in service. A copy of the letter is marked as Exhibit M-10. The letter was served upon the workman. The witness however stated that no further dated was fixed for medical examination of the workman and that in letter dated 20.08.2011 management of Bankola Area requested the Medical Officer to hold medical examination of the ex-employees including Arjun Bouri. Management witness deposed that he is unable to state the date fixed for medical examination nor could he produce any copy of Notice issued to the workman informing dated of his medical examination. The management witness admitted the fact that on 04.12.2013 a Memorandum of Settlement between the management and union was entered to resolve the dispute finally but management witness was unable to produce any document that management took any step to honour the agreement.

8. In the backdrop of the facts and circumstances, pleadings of the parties and the evidence adduced by the respective witnesses, the moot question which requires adjudication is whether the punishment of dismissal of Arjun Bouri w.e.f. 19.04.2020 is justified and legal and to what relief the workman is entitled to?

9. Mr. Rakesh Kumar, Union representative arguing the case on behalf of the dismissed workman submitted that Arjun Bouri was absent from his duty for less than nine months, due to his illness and at the relevant time he was less than forty-five years of age. Referring to the charge of unauthorized and habitual absence from duty levelled against the workman, it is argued that the charged employee submitted reply to the Charge Sheet wherein he cited the reason for his absence that due to harassment and fear of the money lenders at the workplace he could not attend work. The reason was not found satisfactory and an enquiry was initiated. The workman was found guilty of the charge under Clause 26.23 and 26.29 of the Certified Standing Orders applicable to the management and workman. Therefore, the punishment of his dismissal from service was disproportionate to the charge. The union representative further argued that after

dismissal of the workman by the Competent Authority the workman submitted a Mercy Appeal for reinstatement in service which was considered and an order dated 13.08.2011 was passed by the Sr. Manager (P/L&IR), ECL (Exhibit M-7), whereby the Competent Authority approved reinstatement of Arjun Bouri preceded by re-examination of the records of the Colliery to find out whether the age of the ex-employee was below the age of forty-five years on the date of application and the total period of absence was less than nine months. It is argued that on 20.08.2011, the Sr. Manager (P)/IC, Bankola Area issued a letter to the Medical Officer for arranging medical examination of Arjun Bouri of Kumardihi 'B' Colliery and the document has been produced by the management as (Exhibit M-10). It is further argued that since 20.08.2011 no communication was made to the dismissed workman, informing him any specific date for holding his medical examination. It is urged on behalf of the workman that there was deliberate silence and inaction of the management in disposing the matter for which a complaint was made and a Memorandum of Settlement was made in Form-H on 14.12.2013 (Exhibit M-8) where the management agreed before the Assistant Labour Commissioner (Central), Raniganj regarding implementation of settlement within thirty days from the date of settlement but no such settlement took place. Mr. Rakesh Kumar argued that the management has miserably failed to produce any evidence to show that the management had adopted any procedure for medical examination or for verifying the age of the workman at the time of his mercy appeal. It is vehemently argued that at this stage when the Competent Authority of ECL has accepted the prayer for reinstatement of the workman according to Memorandum of Settlement dated 22.05.2007, the question of legality of dismissal does not arise and the workman should be accommodated by way of setting aside the order of dismissal and reinstatement in service.

10. Mr. P. K. Das, learned advocate for the management, in reply, argued that ample opportunity was given to the workman for appearing before the Medical



Board but he did not avail the same. Referring to an application dated 16.07.2014 (Exhibit M-9) submitted by Arjun Bouri, learned advocate argued that the workman was aware about the requirement of his appearance before the Medical Officer but he did not comply the same. Learned advocate further argued that the workman is a habitual absentee and participated in the Enquiry Proceeding, therefore he is not entitled to any relief against the order of dismissal passed by the Competent Authority.

11. Having considered the arguments advanced by the learned advocate for the management and the union representative, it appears that the point of contention boils down to the question as to whether Arjun Bouri fulfilled the criteria for reinstatement as laid down in the Memorandum of Settlement dated 22.05.2007. It is explicit from Exhibit M-7 a letter dated 13.08.2011 that the Competent Authority had favorably re-considered the case of Arjun Bouri for his reinstatement in service at Kumardihi 'B' Colliery under Bankola Area of ECL if he fulfilled the conditions that his total period of his absence from duty was below nine (9) months and the concerned employee was below the age of forty-five (45) years at the time of filing his Mercy application. Copy of the decision was addressed to the Sr. Manager (P/Estb.), ECL Headquarters. The Sr. Manager (P)/IC, Bankola Area, in his turn, issued a letter to the Medical Officer requesting him to arrange for medical examination of Arjun Bouri along with others. The letter has been produced as Exhibit M-10. The management of ECL has miserably failed to prove that any concrete measure has been taken by the management of ECL at Bankola Area to implement the decision of Competent Authority of ECL. No letter has been produced by the management to prove that they had informed Arjun Bouri to appear for his medical examination before any Hospital or Medical Board on any particular date for determining his medical fitness. The age of the workman is already available with the management in the Service Record of the concerned ex-employee. There is no iota of evidence to show that the management

has made any sincere effort to comply its own Memorandum of Settlement. It is a well settled principle that parties entering into a settlement are bound to comply its terms. I therefore, find that it is a fit case where the management of Kumardihi 'B' Colliery, ECL should take immediate measure to determine whether Arjun Bouri was within forty-five (45) years of age on the date of his submitting the mercy appeal. So far as the period of absence is concerned it can be deduced from the Charge Sheet that the period of his absence was only seven (7) months and fourteen (14) days, which is less than the maximum period of nine months. Under the facts and circumstances of the case I hold that Competent Authority of ECL, having decided to re-consider the case of Arjun Bouri for his reinstatement in service, the letter of dismissal dated 17/19.04.2010 (Exhibit M-4) is not found valid and legally tenable and the same is set aside. The management of ECL is directed to take necessary step to reinstate Arjun Bouri in service within one month from the date of communication of this Award. In view of the facts and circumstances of the case I am not inclined to allow any back wages to the workman during the period of his absence from duty. However, the period of absence shall be considered as dies-non for the purpose of maintaining continuity of his service. The management of ECL is directed to pay fifty percent (50%) of the back wages to the workman from 13.08.2011 when the Competent Authority approved the prayer for reinstatement, till date.

Hence,

**ORDERED**

that the Industrial Dispute is allowed on contest. The order of dismissal passed against Arjun Bouri bearing Ref. No. BA/PD/DIS/992 dated 17/19.04.2010 is arbitrary, not found legally tenable and the same is set aside. The management of Kumardihi 'B' Colliery under Bankola Area of Eastern Coalfields Limited is directed to take necessary steps for reinstatement of Arjun

Bouri in his service within one month from the date of communication of the Award. The workman is not entitled to any back wages for the period of absence from his duty till 13.08.2011 when the Competent Authority approved reinstatement of the workman and the period of absence is treated as dies-non. The management of Eastern Coalfields Limited shall pay back wages to the workman from 13.08.2011 till his reinstatement in employment at the rate of fifty percent (50%) of his wages. 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 and Employment, Government of India, New Delhi for information and Notification.

*Sd/-*  
**(ANANDA KUMAR MUKHERJEE)**  
Presiding Officer,  
C.G.I.T.-cum-L.C., Asansol.