

**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. 04 OF 2018**

**PARTIES:** Ashok Kumar Roy.  
**Vs.**  
Management of Dhemomain Colliery of ECL and Another.

**REPRESENTATIVES:**

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

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 25.01.2024

**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-22012/51/2017-IR(CM-II)** dated 09.01.2018 has been pleased to refer the following dispute between the employer, that is the Management of Dhemomain Colliery under Sodepur 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 Dhemomain Colliery under Sodepur Area in imposing a punishment of dismissal on Shri Ashok Kumar Roy, U G Loader vide order No. DMA/A/C-6/Dismissal/04/108 dated 03.07.2004 is just ad legal? If not, to what relief the workman is entitled to? ”*

1. On receiving Order **No. L-22012/51/2017-IR(CM-II)** dated 09.01.2018 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 04 of 2018** was registered on 23.01.2018 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 their list of witnesses.

2. Ashok Kumar Roy filed written statement on 18.11.2022 through Koyala Mazdoor Congress (HMS). The management of Eastern Coalfields Limited (hereinafter referred to as ECL) filed their written statement on 08.02.2023. The

fact of the case of the aggrieved workman, in gist, is that he was a permanent employee of Dhemomain Colliery under Sodepur Area of ECL and posted as Underground Loader having U.M. No. 129089. He could not attend his duty due to illness w.e.f. 18.03.2003. After recovery from his illness, he went to join his duty but the colliery Management did not allow him to join and issued a Charge Sheet on 22.12.2003. It is contended that the workman should be allowed to join his duty before any disciplinary action is taken against him on the basis of a proper enquiry. It is the case of the workman that short Notice of enquiry was sent fixing 16.03.2004 as the date of enquiry. The letter reached the address after the expiry of the date fixed for enquiry for which it was not possible for him to participate. The workman did not have any information about the enquiry. Further contention of the workman is that for his absence from duty for nine (9) months i.e. from 18.03.2003 to 20.12.2003 the management should not have imposed a grave punishment, disproportionate to the offence but in the instant case management awarded the highest and extreme punishment. According to the charged employee he is thirty-eight (38) years of age and in the Memorandum of Settlement reached before the Regional Labour Commissioner (Central), Asansol dated 22.05.2007 it was agreed that the workman who had absented from duty up to nine months and was within forty-five (45) years of age should be considered for reinstatement in duty on the basis of merit. The dismissed employee therefore should have been considered for reinstatement. Ashok Kumar Roy in his written statement prayed for allowing him to join duty and grant him full back wages with all other consequential benefits.

3. The management contested their case by filing written statement. According to the management Ashok Kumar Roy was permanent employee of ECL at Dhemomain Colliery. His date of appointment is 22.08.2000. it is claimed that a Charge Sheet was issued to Ashok Kumar Roy on 22.12.2003 for his absence from duty from 18.03.2003 to 20.12.2003. Mr. S. K. Chatterjee, the then

Personnel Manager of Dhemomain Group was appointed as the Enquiry Officer. The Enquiry Officer issued several Notices of enquiry to Ashok Kumar Roy for his appearance in the Enquiry Proceeding. After three Notices of enquiry the Enquiry Proceeding was conducted ex-parte on 05.05.2004 and charges of unauthorized absence from duty from 18.03.2003 to 20.12.2003 was proved. Further case of the management is that the attendance of the workman in the year 2001 was nil, 134 days in the year 2002, and only 38 days in the year 2003 for which he had been punished by reduction of his pay. A Second Show Cause Notice was issued to Ashok Kumar Roy on 07/11.05.2004 and then a letter dated 03.07.2004 was issued to him dismissing him from service. The management contended that the punishment awarded to the workman is totally justified and in accordance with his misconduct and that the dismissed workman is not entitled to any other relief or reliefs.

4. In support of his case Ashok Kumar Roy filed an affidavit-in-chief and adduced evidence. He has examined himself as workman Witness – 1. He has stated that the management issued Charge Sheet on 22.12.2003 but he could not attend enquiry because Notice of enquiry was not received in time. The Enquiry Officer conducted the Enquiry Proceeding ex-parte and recommended his dismissal and the General Manager of Sodepur Area dismissed him from the services. The letter of dismissal was issued by the Agent of the colliery on 03.07.2004. The workman witness further averred that management awarded disproportionate punishment to him. He claimed that management did not issue any Second Show Cause Notice before issuing letter of dismissal. In his examination-in-chief the witness stated that he was absent from duty due to illness and he did not receive any Charge Sheet nor did he receive any Notice of enquiry. Photocopy of the letter of dismissal dated 03.07.2004 has been produced by the witness as Exhibit W-1 and photocopy of the letter dated 16.11.2015 submitted by the workman for his reinstalment, as Exhibit W-2. In course of

cross-examination workman witness -1 deposed that he was suffering from malaria but he did not take medicine from any doctor. During his illness he was residing at Dhemomain Colliery. He further deposed that he was unable to perform the work of a loader for which he remained absent. WW-1 deposed that he did not submit any application before the Agent / Manager informing that he was unable to perform the work of a loader. A suggestion was put to the witness that Charge Sheet, Notice of enquiry and other documents relating to departmental enquiry were issued at his Dhemomain Colliery address and the same had been delivered to him. The witness denied the suggestion. He admitted that in the year 2003 he attended duty for 38 days. The witness also denied the suggestion that he was not suffering from illness or that he intentionally remained absent from duty due to which Charge Sheet was issued to him.

5. Smt. Gangula Meena Kumari, Deputy Manager (Personnel) of Dhemomain Colliery adduced evidence as Management Witness -1 and filed her affidavit-in-chief in support of the management case. In course of her evidence the witness deposed that she is unable to file a copy of Charge Sheet in connection with the case and Ashok Kumar Roy did not file any reply to the Charge Sheet. She also deposed that she was unable to produce document to show that the Charge Sheet and Notice of enquiry were served upon the workman. No A/D card or receipt of endorsement of the workman regarding service of Notice has been produced. In her evidence the management witness has produced the following documents :

- (i) Photocopy of the Appointment letter of the Enquiry Officer dated 13/16.02.2004 has been produced as Exhibit M-1.
- (ii) Photocopy of the Notice of enquiry, as Exhibit M-2.
- (iii) Photocopy of the 2nd Notice of enquiry, as Exhibit M-3.
- (iv) Photocopy of the 3rd Notice of enquiry, as Exhibit M-4.
- (v) Photocopy of the Enquiry Proceeding, as Exhibit M-5.
- (vi) Photocopy of the Second Show Cause Notice, as Exhibit M-6.

- (vii) Photocopy of the Note Sheet with approval for dismissal by the General Manager, as Exhibit M-7.
- (viii) Photocopy of the Letter of dismissal issued by the Agent, as Exhibit M-8.
- (ix) Photocopy of the Letter issued by the Dy. Chief Personnel Manager, Sodepur Area regarding decision of the General Manager for dismissal of Ashok Kumar Roy, as Exhibit M-9.

In course of cross-examination the witness deposed that the Second Show Cause Notice was addressed to Ashok Kumar Roy at Dhemomain Colliery. No other address was mentioned in the letter. It is deposed that the letter of dismissal from work was communicated to the workman by the Agent of Dhemomain Group on 03.07.2004. Suggestion was put to the witness that the Enquiry Proceeding was initiated against Ashok Kumar Roy without service of Charge Sheet, Notice of enquiry, and Second Show Cause Notice and that the punishment imposed in this case is disproportionate to the charge levelled. The witness having denied the suggestion, the question arising thereof is the subject matter of adjudication.

6. Mr. Rakesh Kumar, Union representative argued that the order of dismissal has been passed against the workman without service of Charge Sheet, Notice of enquiry, Second Show Cause Notice along with Enquiry Proceeding, keeping the workman in darkness about the enquiry proceeding. He was unable to represent his case and the order of dismissal passed against him cannot be sustained under the law as it amounted in gross violation of natural justice. Mr. Rakesh Kumar, Union representative argued that according to the Memorandum of Settlement dated 22.05.2007, the workman who is considerably young and had been absent due to illness for a period of nine months, may be reinstated in service without payment of back wages.

7. Mr. P. K. Das, learned advocate for the management of ECL argued that

workman was dismissed from service due to his habitual and long absence without any intimation to the company. It is further argued that long absence of the workman is a manifestation of misconduct and indiscipline which adversely affects the work of the employer and production process. It is contended that the punishment meted out to the workman was in consonance with his misconduct and charge proved against him, as such the order of dismissal against Ashok Kumar Roy is justified and there is no reason for any interference with the order of dismissal.

8. I have considered the rival contentions in this case in the light of evidence adduced by the parties and the argument advanced on behalf of both parties. Admittedly the workman had absented from service for nine (9) months and three (3) days for the period from 18.03.2003 to 20.12.2003. The workman claimed that he was suffering from illness for which he was unable to attend his work. In his cross-examination workman witness stated that he was suffering from Malaria but did not take any medicine from doctor. The workman failed to produce any document in support of his medical treatment. A person on his own cannot determine the nature of its malady nor can he be normally expected to suffer illness for such a long period of nine (9) months without taking any medicine which could have been available. Such evidence of workman witness is not found reliable. In the later part of his evidence the workman disclosed that he was unable to perform the work of loader for which he remained absent. The statement of the workman has to be considered seriously to assess whether the workman was absented from duty for any type of illness or his inability to perform his work in the capacity of a loader.

9. In order to justify the dismissal of Ashok Kumar Roy from service for his habitual absence from duty the onus lies upon the management to prove that a proper enquiry proceeding was held against the workman before he was held

guilty of the charge. From the initial stage the workman has contended that no Notice of enquiry or Second Show Cause Notice was served upon him and he was unaware about any Enquiry Proceeding. In the written statement the workman has mentioned that a Charge Sheet was issued to him on 22.12.2003 but no Notice of enquiry was served upon him in time. None of the parties have been able to produce a copy of Charge Sheet at the time of hearing at this Tribunal. The Management Witness -1 in her evidence stated that she cannot file photocopy of the Charge Sheet in connection with the case and that Ashok Kumar Roy did not reply to the Charge Sheet. Considering such evidence on record I have no hesitation to hold that the management has miserably failed to establish the very foundation of the Enquiry Proceeding. It is not known as to what charge was framed against the workman. The management was unable to show that the Charge Sheet and Notice of enquiry were served upon the workman. No A/D card or receipt of endorsement of the workman regarding service of Notice has been produced. The Enquiry Proceeding was held ex-parte. There is no material on record to show that Second Show Cause Notice was served upon the workman. The letter of dismissal dated 03.07.2004 (Exhibit M-8) was issued by the Agent and not by the competent authority. In view of the aforesaid major lapses on part of the management, I am of the considered view that the workman was illegally dismissed without giving him any opportunity to defend his case. There has been gross violation of natural justice as the management did not ensure proper service of Charge Sheet, Notice of enquiry and 2<sup>nd</sup> Show Cause Notice upon the workman before imposing such a grave punishment of dismissal from services. The order of dismissal of Ashok Kumar Roy issued by the Agent of Dhemomain Group on 03.07.2004 is found not tenable under the law and the same is set aside.

10. Ashok Kumar Roy is entitled to be reinstated in his service. Considering long absence of the workman from his duty, he is not entitled to any back wages or consequential reliefs. The management is directed to take appropriate steps for



reinstatement of Ashok Kumar Roy within two (2) months from the date of receipt of Notification. The period of absence of Ashok Kumar Roy from service shall be treated as 'dies non'.

Hence,

**ORDERED**

that the Industrial Dispute is accordingly disposed of in favour of the workman on contest. The letter of dismissal issued by the Agent of Dhemomain Group dated 03.07.2004 is not tenable under the law and the same is set aside. The management is directed to reinstate Ashok Kumar Roy to his post within two (2) months from the communication of the Notification of the Award. The workman shall not be entitled to any back wages or consequential benefits during his absence from duty. An Award be drawn up in favour of Ashok Kumar Roy in the 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.

**(ANANDA KUMAR MUKHERJEE)**

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