

**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. 05 OF 2012

PARTIES: Tapas Kora
(dependent son of Late Niyati Kora)
Vs.
Management of Jambad Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Milan Kumar Bandyopadhyay, Advocate.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 28.03.2024

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-22012/54/2011-IR(CM-II)** dated 20.03.2012 has been pleased to refer the following dispute between the employer, that is the Management of Jambad Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the Management of Jambad Colliery, Kajora Area of M/s ECL in not providing dependent employment to Sri Tapas Kora dependent son of Lt. Niyati Kora, Ex. Wagon Loader as per provisions of N.C.W.A is legal & justified? If not, what relief the workman is entitled to? ”

1. On receiving Order **No. L-22012/54/2011-IR(CM-II)** dated 20.03.2012 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 05 of 2012** was registered on 09.04.2012 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 a list of witnesses.

2. Written statement was filed by Tapas Kora on 23.05.2012 through Mr. Niren Chandra Das, Organizing Secretary, Colliery Republican Mazdoor Sabha (BMM), Union. The management of Eastern Coalfields Limited (hereinafter referred to as ECL) contested the case by filing their written statement on

03.07.2013. The fact of the case, in brief, as disclosed by union is that Late Niyati Kora was a permanent employee at Jambad Colliery under Kajora Area of ECL. She was appointed in the service on 21.01.1984. Initially, Niyati Kora nominated Tapas Kora for employment under Female Voluntary Retirement Scheme (hereinafter referred to as FVRS) but her prayer was not allowed as the scheme was abolished. Niyati Kora died on 01.01.1993 while she was in service of the company. According to the provisions of Clause 9.3.2 of National Coal Wage Agreement (hereinafter referred to as NCWA) – V one of the dependent of the permanent employee is entitled to employment in place of the deceased employee. Tapas Kora, dependent son of Late Niyati Kora submitted an application before the management of the company for providing him with employment as a dependent of his mother. The other son and daughter filed “no objection” in favour of Tapas Kora. It is stated that the management of ECL did not consider the application for employment in place of his mother and also refused to pay the gratuity amount in respect of Late Niyati Kora. Subsequently the company issued a direction for payment of gratuity amount to Tapas Kora, the son of Late Niyati Kora. After repeated request the management intentionally and illegally denied employment to the petitioner. It is the case of the union that Tapas Kora is still unemployed and his financial condition is bad. It is asserted that the petitioner’s claim for employment as dependent is genuine.

3. In the written statement filed by the management it has been contended that the Industrial Dispute is a belated one and raised after a lapse of 14 years. Due to such inordinate delay the Reference case is liable to be dismissed. Further case of the management is that Late Niyati Kora, Ex-Wagon Loader, during her lifetime opted for FVRS and nominated Tapas Kora for employment. The scheme was abolished. Once again after the death of Niyati Kora, Tapas Kora claimed to be her son and applied for employment. On examination of the claim for employment it was revealed that the photograph of Tapas Kora which was

submitted by Late Niyati Kora did not match with the present petitioner. It is contended that the claim for employment of Tapas Kora is fraudulent. He impersonated as Tapas Kora either in the application submitted during lifetime of Late Niyati Kora under the FVRS or after her death with ulterior motive to get employment by defrauding the company. They denied that the claimant's photograph affixed in the two applications were identical, of the same person or there was no discrepancy. It is urged that the management of ECL is absolutely justified in not providing employment to the claimant whose identity is disputed.

4. In order to substantiate his claim for employment Tapas Kora examined himself as Workman Witness – 1 and filed his affidavit-in-chief. In his affidavit-in-chief he stated that Niyati Kora, Ex-Wagon Loader at Jambad Colliery was his mother and she died on 01.01.1993 while she was on the roll of the company. During her lifetime she had applied for employment of Tapas Kora under FVRS. The management did not process the employment proposal of Tapas Kora on the ground that his previous photograph, submitted for employment under FVRS did not match with the present photograph, filed after the death of Niyati Kora. It is averred that Tapas Kora received the gratuity amount of Late Niyati Kora as directed by the Assistant Labour Commissioner (Central), Asansol. He has also filed his Voter Identity Card, Relationship Certificate issued by the Pradhan, Death Registration Certificate of Niyati Kora, Ration Card, Service Record Excerpt of Late Niyati Kora, Relationship Certificate with details of family members, issued by the Pradhan and the B.D.O of Saltora Block Office, and Driving License issued by the Motor Vehicle Department, Durgapur. It is urged that the action of management in not providing employment to him is improper. The witness was re-examined on recall for admitting some documents in evidence. Workman Witness -1 has produced photocopy of his Voter Identity Card as Exhibit WW-1; photocopy of his Aadhaar Card, as Exhibit WW-2; Photocopy of his Ration Card, as Exhibit WW-3; photocopy of the Service Record Excerpt of Late Niyati Kora, as

Exhibit WW-IV; photocopy of the Death Certificate of Niyati Kora, as Exhibit WW-V, photocopy of the Screening Committee's Report, as Exhibit WW-VI; photocopy of the letter dated 07/15.06.2010 denying employment to the dependent son of Late Niyati Kora, as Exhibit WW-VII; photocopy of the application nominating dependent for employment under FVRS, as Exhibit WW-VIII; photocopy of the Relationship Certificate, as Exhibit WW-IX.

5. In course of cross-examination the workman witness denied that the photograph submitted by Late Niyati Kora at the time of nominating her son for employment and the application submitted by him, bearing photograph were of different persons. The witness stated that he has a Driving License, where his father's name appears as Naba Kora. It is further stated that Abhiram Kora is the husband of Late Niyati Kora. The witness deposed in his cross-examination that his father's name appearing in the Driving License is a printing mistake and that he is driving motor vehicle with the same license. The witness denied that he is not Tapas Kora or that he is not the son of Late Niyati Kora. He further denied that his father's name is Naba Kora.

6. Parimal Kora, son of Late Abhiram Kora and Sulochana Mudi, married daughter of Late Abhiram Kora have filed affidavit-in-chief in support of the claim of Tapas Kora. Sulochana Mudi has not appeared for her cross-examination. Parimal Kora deposed as Workman Witness - 2. In his evidence-in-chief he deposed that Tapas Kora is a driver and worked under a private agency. His brother has claimed employment under ECL as a dependent of his mother and he has no objection if his brother gets employment under ECL. In cross-examination the witness stated that they have one sister whose name is Sulochana Mudi. In course of cross-examination identity of Tapas Kora has not been disputed by ECL.

7. Management examined two witnesses. Mr. Budhram Mandal, Assistant

Manager (Personnel) of Jambad Colliery filed an affidavit-in-chief and was cross-examined in part. In his cross-examination the witness deposed that the competent authority ordered the payment of Gratuity in favour of Tapas Kora. He also deposed that unit level screening committee is competent to close the file relating to employment proposal. Witness further stated that when any dispute arises regarding genuineness of identity and genuineness of relationship between the petitioner and the ex-workman, report of three men's Committee is held and Police Verification is sought for but in the present case no such Police Verification was made.

8. Mr. Ashish Mohan, Deputy Manager (Personnel) at Jambad Colliery filed an affidavit-in-chief on 16.10.2023 and produced some documents as follows :

- (i) Photocopy of the Attestation Form in four pages has been marked as Exhibit M-1.
- (ii) Photocopy of the Relationship Certificate of Tapas Kora in respect of Late Niyati Kora issued by the Pradhan and the Block Development Officer, Saltora, Bankura, as Exhibit M-2.
- (iii) Photocopy of the Service Record Excerpt of Late Niyati Kora, as Exhibit M-3.
- (iv) Photocopy of the Application of Tapas Kora dated 07.07.1993 for employment, as Exhibit M-4.
- (v) Photocopy of the Application of Tapas Kora dated 26.08.1994 submitting Attestation Form, Relationship Certificate, No Objection Certificate, Family details Certificate, and Death Certificate of Niyati Kora is marked as Exhibit M-5.
- (vi) Photocopy of the Report of the Screening Committee in three pages collectively, as Exhibit M-6.

9. In his cross-examination the witness deposed that Tapas Kora has put his

signature on the Screening Committee's report, which is marked as Exhibit M-6/A. It may be gathered from the cross-examination that the company did not lodge any complaint against the appellant regarding any practice of fraud by Tapas Kora or that he was trying to cheat the company by impersonation. Witness disclosed that higher authority did not consider the matter. The witness is also unaware about the payment of his mother's gratuity made to Tapas Kora. The witness stated that Tapas Kora is entitled to employment as a dependent, if he is the son of Late Niyati Kora.

10. Mr. Milan Kumar Bandyopadhyay, learned advocate for the dependent of Late Niyati Kora, advancing his argument submitted that during the lifetime, Niyati Kora applied for voluntary retirement under FVRS and applied for service of Tapas Kora, her son. The scheme was abolished on 02.06.1993 but Niyati Kora died on 01.01.1993, while in service and before abolition of the FVRS. Thereafter Tapas Kora applied for his employment as a dependent under the provisions of NCWA. It is argued that the management with an oblique motive to deprive Tapas Kora from his rightful claim of employment had disputed that photograph appearing on the Attestation Form for the FVRS that it belonged to some other person and was not of Tapas Kora. Learned advocate asserted that the photograph on the Attestation Form was of Tapas Kora and his father's name appeared as Late Abhiram Kora. It is further submitted that after the death of his mother, Tapas Kora submitted his application dated 07.07.1993 for employment against the death of his mother, i.e. within a very short period from the death of his mother. The Screening Committee of the management examined various documents and on 08.04.1995 and observed that nothing appeared doubtful about the relationship of Tapas Kora and on considering the documents such as Indemnity Bond, Relationship Certificate / Attestation Certificate issued by the Block Development Officer of permanent locality, the Committee recommended Tapas Kora for employment against his claim. Learned advocate argued that the

management deliberately delayed the matter and the delay in considering the dependent's case for employment can be attributed to the management. It is argued that Tapas Kora, being the dependent son, he is entitled to get employee under NCWA applicable to him.

11. Mr. P. K. Das, learned advocate for the management, in reply, argued that Tapas Kora is not entitled to any employment as a dependent of Late Niyati Kora due to the fact that Late Niyati Kora while nominating Tapas Kora, for employment affixed photograph of different person other than Tapas Kora. Furthermore, at the time of appearance of Tapas Kora before the Screening Committee of the company it was revealed that the age of Tapas Kora as 18 years as on 01.04.1987 in the Service Record of Late Niyati Kora, while her date of birth was recorded as 01.07.1963 which implies that Tapas Kora was only six (6) years younger to Late Niyati Kora, which is absurd and impossible and is an outcome of impersonation of Tapas Kora as a son of Late Niyati Kora. Learned advocate further argued that in cross-examination Tapas Kora (ww-1) admitted that he has a Driving License wherein his father's name is recorded as Naba Kora. Though the witness claims the same to be a mistake in printing, he admitted that he is using the Driving License at the time of driving motor vehicle. Learned advocate submitted that unless such discrepancies relating to the name, age, and identity are clarified to the satisfaction of the company no employment could be provided to Tapas Kora.

12. I have perused the Industrial Dispute referred for adjudication along with the written statement and evidence of both parties. Also considered the argument advanced by the learned advocates in support of their respective cases.

13. Instant reference has been made by the Government of India 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), as a consequence of

failure of conciliation proceeding before the Conciliation Officer. Niyati Kora, an employee of ECL at Jambad Colliery, expired on 01.01.1993 and an application was submitted by Tapas Kora, son of Late Niyati Kora on 07.07.1993 praying for providing him with employment against the death of his mother. A Photocopy of the said application has been produced as Exhibit M-4. A Photocopy of Death Registration Certificate has been placed on record as Exhibit WW-V. The dependent appears to have laid his claim for employment according to the provisions of NCWA at the earliest point of time and within a period of six (6) months and six (6) days from the date of death. The management took two years to arrange for holding screening test of Tapas Kora. On his appearance before the Screening Committee, Tapas Kora disclosed that Late Abhram Kora, his father was also an employee of ECL. At the relevant time he was six to seven years of age when employment was provided to his mother who actually was an insane person and died on 01.01.1993, leaving behind two sons and one daughter. Tapas Kora stated before the Screening Committee that he is the eldest son and his sister was married during the lifetime of his mother. Regarding nomination of any other person by the name of Tapas Kora as the son of the employee for employment, Tapas Kora stated that he has no knowledge about the same. Regarding the photograph appearing on the Attestation Form, Tapas Kora identified the person as Pawan Kora, son of Balram Kora, his paternal uncle. Nothing has been brought on record by the management that such Attestation Form was submitted at the instance of Tapas Kora. Therefore, Tapas Kora cannot be held responsible if any racket was functioning at different levels to make provision for employment of any other person using the name of Tapas Kora against his interest. To my mind the management of ECL is dutybound to unearth such malpractice and identify the persons responsible for such offence of impersonation. The Screening Committee of the company, long back in 1995 was satisfied to recommend Tapas Kora for employment subject to his medical fitness. It is to be borne in mind that a person cannot impersonate himself. Such finding

of the Screening Committee supports the claim of Tapas Kora. The pretext on which the company denied the employment to the dependent son of the deceased, that there was impersonation of Tapas Kora for FVRS is unfounded and cannot deprive the claimant of his employment.

14. The dependent son of the deceased employee was eighteen years of age on 01.04.1987, therefore on 01.01.1993 Tapas Kora was twenty-four years of age. From array of documents like PAN Card and Voter Identity Card it appears that the year of birth of Tapas Kora is 1970. Therefore, the age of Tapas Kora appearing as eighteen years in the Service Record of his mother does not raise any doubt regarding his age at the relevant time. At this stage no occasion has arisen for considering the correctness of age of Late Niyati Kora as recorded in the Service Record. Any mistake in recording her age in the Service Record at the time of joining service cannot destroy the right for employment of Tapas Kora, which arise from the agreed terms of NCWA.

15. In a letter dated 07.06.2010 / 15.06.2010 issued by the Deputy Personnel Manager (Empl)ED, ECL, Headquarters, addressed to the Assistant Labour Commissioner (Central), Asansol on the subject matter of denial of employment to the son of Late Niyati Kora (Exhibit WW-VII), it was stated that on examination of claim for employment it was found that the photograph of Tapas Kora, does not tally / match with the photograph of Tapas Kora submitted by Niyati Kora during her nomination, when she declared Tapas Kora as her son under FVRS. On the basis of such mismatch of photograph, the management of the company has reached to a conclusion that Tapas Kora has impersonated himself as the dependent son of the deceased employee, either in the application submitted during the lifetime of Late Niyati Kora or after her death and for such a reason there is no merit in the claim for employment. I did not find any substance in such allegation of the management. Tapas Kora cannot be held responsible for

affixing photograph of some other person claiming employment under FVRS. Such act does not serve interest of the dependent son and it cannot be used to his disadvantage. The management has miserably failed to adduce any evidence to establish that Tapas Kora was responsible for such act, which is actually against his interest. The stand adopted by the management depriving Tapas Kora of his employment is violative of the agreed terms of NCWA and hence unsustainable.

16. On a conspectus of available material and the evidence adduced by the parties, I hold that the management of ECL has committed undue delay in providing employment to the son of deceased employee. If for argument's sake it is accepted that there was any substance in the complaint of impersonation at the instance of Tapas Kora. The management was dutybound to perform Police Verification for ascertaining the genuineness of the person, which is the usual course adopted by the management in other cases. In absence of any such steps by the management it is presumed that there was no ambiguity in the genuineness of Tapas Kora being son of Late Niyati Kora, it is also reflected in the Page 2 of the Screening Committee's Report that nothing was doubtful. It is also appeared that Gratuity of Late Niyati Kora was released in favour of Tapas Kora in June 2009 and March 2011. The management did not deny such averments in Paragraph 5 of the affidavit-in-chief nor have they denied the claim. Several years have passed since this dispute has been raised before the Assistant Labour Commissioner (Central), Asansol and thereafter referred to this Tribunal as an Industrial Dispute in the year 2012. I find no lacuna or fault on the part of Tapas Kora, as he laid claim for employment soon after his mother's death. The management has committed delay in taking proper decision within time and thereby frustrated the dependent's claim for employment under Clause 9.3.2 of NCWA – V. To observe fairness of things the management is dutybound to finalize the claim for employment of Tapas Kora within one (1) month from the date of

communication of the Award. The Industrial Dispute is accordingly decided in favour of the petitioner on contest against the management.

Hence,

ORDERED

that an Award be drawn up in favour of Tapas Kora, dependent son of Late Niyati Kora, ex-employee of ECL, directing the management of Jambad Colliery under Kajora Area of ECL to process the claim for employment within one (1) month from communication of the Award. 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.