

**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. 07 OF 2003

PARTIES: Angshu Prakash Das
Vs.
Management of Chinakuri Mine No. I, ECL

REPRESENTATIVES:

For the Union/Workman: Ms. Debarati Konar, Advocate.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 28.03.2025

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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-22012/148/2002-IR(CM-II)** dated 08.05.2003 has been pleased to refer the following dispute between the employer, that is the Management of Chinakuri Mine No. I under Sodepur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“Whether the action of the management of Chinakuri Mine-I PO Sundarchak, Distt. Burdwan in dismissing the service of Sh. Angshu Prakash Das w.e.f. 26.9.95 is justified? If not, to what relief is the workman entitled? ”

1. On receiving Order **No. L-22012/148/2002-IR(CM-II)** dated 08.05.2003 from the Government of India, Ministry of Labour, New Delhi for adjudication of the Industrial Dispute, a Reference case was registered on 19.05.2003 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 workman was initially represented by Mr. Sayantan Mukherjee, learned advocate and filed his written statement on 12.07.2016. The case of the aggrieved workman, in brief, is that he was an employee of Chinakuri Mine No. I under Sodepur Area of Eastern Coalfields Limited (hereinafter referred to as ECL) having U.M. No. 16432. He performed his work under the employer faithfully, diligently and to the full satisfaction of the management till 11.09.1994. In spite of repeated

requests, the management did not provide him any accommodation in the Colliery and he attended his work from his sister's house at Sitarampur, under PS: Kulti. Further case of the workman is that there is no provision for any drinking water in the Colliery premises and he was exposed to obnoxious gases and coal dust at Chinakuri Mine No. I. Due to such hazardous atmosphere the workman suffering from hepatitis from 12.09.1994 and reported the matter to the Senior Medical Officer, Chinakuri Colliery, who referred him to Central Hospital, Kalla for treatment. Doctor at Central Hospital at Kalla advised him for complete bed rest. The family members of the workman took him to his native place at Mahishadal, Dist.: Purba Midnapur and he could not report his sickness at Chinakuri Colliery Dispensary. An application was addressed to the Superintendent / Manager, Chinakuri Colliery, informing him of the workman's illness and prayed for granting him leave till his recovery. The application was transmitted under registered post with acknowledgement, which was served upon the Superintendent / Manager, Chinakuri Colliery. A Charge Sheet bearing Ref. No. CKI/MGR/M-1/94/706 dated 22.09.1994 was issued by the Manager, Chinakuri Mine No. I. Charge was levelled against him under Clause No. 17(i)(n) of the Model Standing Orders with the imputation of unauthorized absence from duty from 12.09.1994. It is inter alia contended that the Manager Chinakuri Mine No. I without being vested with the power of appropriate authority issued Charge Sheet against him without any details about the charge and the witnesses. It is contended that the Charge Sheet is vague and without foundation. In his reply to the Charge Sheet the workman stated that his absence from duty was beyond his control, due to illness. After reply, the Manager, Chinakuri Colliery issued two letters to the workman bearing No. CKI/MGR/M-1/94/717 dated 24.09.1994 and No. CKI/MGR/M-1/94/832 dated 08.11.1994, to which he replied. The Manager, Chinakuri Colliery thereafter in his letter No. CKI/MGR/M-1/94/964 dated 20.12.1994 directed the workman to appear before the Senior Medical Officer, Chinakuri Colliery. Due to his alarming physical condition, it was impossible for him to appear before the Senior Medical Officer, Chinakuri Colliery. On behalf of

the workman his mother sent an application addressed to the Superintendent of Chinakuri Colliery, disclosing that his son is ill and unable to attend his duty. On 18.06.2000 the workman returned to resume his duty but the Manager, Chinakuri Colliery did not allow him to join his duty nor did he pay any subsistence allowance to the workman. It is further contended that though Charge Sheet dated 22.09.1994 was issued, the workman did not receive any Charge Sheet at any point of time and was unable to submit any reply. The Personnel Manager, Chinakuri Colliery as the Enquiry Officer, enquired the charge levelled against the workman but no Notice of enquiry was issued to him. It is inter-alia contended that the Enquiry Proceeding was held in violation of the principles of natural justice. The charged employee did not participate in the Enquiry Proceeding and he has been found guilty of the charge on the basis of the Enquiry Report, which is self-contradictory. No Enquiry Proceeding or Report of enquiry was issued to the workman and the letter of dismissal was issued by the Dy. CME/Agent, Chinakuri Colliery bearing No. Pd/C-6/98/CS/2093 dated 21.09.1995, though the concerned official is not the Competent Authority to dismiss the workman from service. After recovery from illness the workman went to Chinakuri Colliery to resume duty but learnt about his dismissal from service. It is urged that the order of dismissal dated 26/27.09.1995 has not been passed by the Competent Authority, as the Superintendent / Manager of Chinakuri Mine No. I, issuing such order is neither the appropriate authority nor the competent authority to dismiss a person from his service. The workman in his written statement prayed for setting aside the order of dismissal and prayed for an Award in his favour directing the employer to pay him the back wages and other consequential benefits to the workman.

3. Management contested the Industrial Dispute by filing written statement. The fact of the management's case is that the Charge Sheet bearing No. CKI/MGR/M-1/94/706 dated 22.09.1994 was issued against the workman for his unauthorized absence from duty from 12.09.1994 and he failed to submit any

satisfactory reply to the Charge Sheet. A domestic enquiry was held against the him. The Enquiry Officer issued Notice of enquiry on several dates but the workman did not participate in the enquiry to defend his case and an ex-parte enquiry was held. The Enquiry Officer found the workman guilty of the charge. The Disciplinary Authority after careful consideration dismissed the workman from service by issuing order of dismissal bearing order No. CKI/MGR/M-I/95/1015 dated 26/27.09.1995. It is the case of the management that the order of dismissal passed against the charged workman is justified and in accordance with the gravity of the misconduct committed by him for his unauthorized and long absence from duty. It is urged that the workman was not entitled to get any relief in this case and the same merits dismissal.

4. Angshu Prakash Das filed his affidavit-in-chief on 31.10.2023, stating therein that while he was performing his duty diligently and to the full satisfaction of the management, he fell sick due to hepatitis from 12.09.1994. He reported about his illness at Chinakuri 1 and 2 Colliery Dispensary on 13.09.1994 and was referred to the Central Hospital, Kalla, where he was also treated on 14.09.1994. The workman reported his illness to Chinakuri 1 and 2 Colliery management. Due to deterioration of his health condition, he was shifted to his village at Mahishadal, Purba Medinipur. The management issued a Charge Sheet against him on 22.09.1994 under Section 17(i)(n) of the Certified Standing Orders, disclosing that he was absent since 12.09.1994 was no Certified Standing Orders was prevailing in ECL in the year 1994. He further stated is that the Manager, Chinakuri 1 and 2 Colliery did not have any jurisdiction to issue Charge Sheet as he was not the Appointing Authority or Disciplinary Authority and no copy of preliminary enquiry report was enclosed with the Charge Sheet. The workman further stated in his affidavit-in-chief that he did not receive any Notice of enquiry and the report of enquiry is manufactured. It is further stated that there is no charge against him that the medial papers submitted by him are not genuine. It is asserted that the Agent of Chinakuri Mine No. I who issued the letter of

dismissal dated 26/27.09.1995 is not the Competent Authority to dismiss him from service and no second Show Cause Notice was served upon him though it is mandatory before dismissal from service. In course of his examination-in-chief the workman witness has produced the following documents :

- (i) Copy of Charge Sheet dated 22.09.1994 has been produced as Exhibit W-1.
- (ii) Copy of the communication of dismissal dated 26/27.09.1995, as Exhibit W-2.
- (iii) Copy of the medical prescription dated 14.09.1994, as Exhibit W-3.
- (iv) Copy of the medical prescription dated 13.09.1994, as Exhibit W-4.
- (v) Copy of the medical fitness certificate dated 16.02.1995 issued by Dr. Manoranjan Maiti, as Exhibit W-5.
- (vi) Copies of the medical fitness certificates dated 03.06.1995, 10.02.1996, 06.10.1997 issued by Dr. Kaniska Sarkar, as Exhibit W-6, W-7 and W-8.
- (vii) Copies of the two A/D cards under which letters relating to his sickness were transmitted to the management, as Exhibit W-9 and W-10.

In his examination-in-chief the workman witness was examined where he stated that towards December 1995, he went to join his duty after absenting for ten to eleven months but he was not allowed to join on the pretext that he has been dismissed from service due to unauthorized absence from duty. Witness stated that Dr. Kaniska Sarkar treated him for his Acute Hepatitis with Jaundice and referring to the fitness certificate issued by the doctor as Exhibit W-6 with stated that he was declared medically fit for duty on 03.06.1995. The witness further stated that there were other certificates Exhibit W-7 and W-8 which declared him fit on different dates.

5. In cross-examination the workman witness stated that in his Service Record his permanent address was recorded as Vill + PO + PS: Mahishadal, Dist.:

Purba Midnapur. He further deposed that he was medically treated at colliery dispensary and at Central Hospital, Kalla as an outdoor patient.

6. Management filed affidavit-in-chief of Mr. Pramod Kumar Maurya, Assistant Manager (Personnel), Chinakuri Sodepur Group of Mines as Management Witness No. 1. It is stated that in response to letter dated 16.09.1994 issued by the workman claiming to be suffering from illness, the Manager, Chinakuri Mine No. I issued a letter dated 24.09.1994 to the workman at his home address asking him to report to the Senior Medical Officer, Chinakuri 1 and 2 Pits Colliery for his medical examination. Once again, the Manager, Chinakuri Mine No. I issued letter dated 07/18.11.1994 asking the workman to report for his medical examination by the Medical Officer, Chinakuri 1 and 2 Pits Colliery within two days of receipt of the letter and in reply, the workman addressed a letter to the Manager, Chinakuri Mine No. I dated 14.11.1994 informing that he was unable to attend the medical examination due to his illness. On the third occasion a letter dated 20/21.12.1994 was issued directing the workman to report to the Senior Medical Officer, Chinakuri 1 and 2 Pits Colliery for his medical examination within seven days or receipt of the letter. In reply, the workman sent a medical certificate dated 16.02.1995 issued by Dr. Manoranjan Maiti. In reply to the letter dated 02.02.1995 of the Manager, Chinakuri Mine No. I, the workman submitted a letter seeking condonation of his absence due to illness and to sanction leave in his favour. The management witness stated that Mr. T. K. Mallick was appointed as the Enquiry Officer who conducted the domestic enquiry and issued several Notice of enquiry to the workman dated 22.09.1994, 12.07.1995, and 28/29.07.1995 under registered post at his home address, fixing 04.09.1995 as the date of enquiry. It is stated that Miss Monisha Das, sister of the workman sent a letter dated 17.06.1995, requesting postponement of Enquiry Proceeding. The Enquiry Officer after giving reasonable opportunity to the workman held the Enquiry Proceeding and submitted his report. On the basis of such enquiry the workman was dismissed on approval of

the General Manager of Sodepur Area. The order of the General Manager, Sodepur Area dated 21.09.1995, has been produced as Exhibit M-7. In course of his examination-in-chief the management witness has produced the following documents :

- (i) Copy of the Charge Sheet dated 22.09.1994 has been produced as Exhibit M-1.
- (ii) Copy of the Enquiry Notice dated 12.07.1995, as Exhibit M-2.
- (iii) Copy of the acknowledgement receipt of the postal department, as Exhibit M-3.
- (iv) Copy of the appointment letter of the Enquiry Officer dated 06/08.05.1995, as Exhibit M-4.
- (v) Copy of the Enquiry Proceeding in three pages collectively, as Exhibit M-5.
- (vi) Copy of the Enquiry Report in four pages collectively, as Exhibit M-6
- (vii) Copy of the dismissal letter dated 21.09.1995, as Exhibit M-7.

7. In his cross-examination the management witness deposed that the Charge Sheet was issued against the workman for violation of Clause 17(i)(n) of the Certified Standing Orders. He admitted that the General Manager was the Disciplinary Authority in respect of the workman and the Manager, Chinakuri Mine No. I, issuing the dismissal order, communicating the decision of the General Manager. It further transpires from the cross-examination of the management witness that Angshu Prakash Das had communicated to the Manager that he was suffering from illness and he had sent a letter to that effect. The Colliery Doctor verified medical documents and asked the workman to report to the medical unit of the company. The witness deposed that the medical documents produced by the workman are not genuine. The witness deposed that in the medical certificate the doctor found Angshu Prakash Das fit for duty but the workman did not join his duty. It is further stated that the management did

not service copy of Enquiry Report to Angshu Prakash Das before deciding his dismissal.

8. The moot question for consideration is whether the dismissal of Angshu Prakash Das from his service is legal and justified. if not, to what relief the workman is entitled to?

9. Ms. Debarati Konar, learned advocate appearing for the dismissed workman argued that the workman was suffering from acute hepatitis and jaundice for a long time due to which he was unable to attend his duty and he informed the management about the reason of his absence. Learned advocate argued that the circumstance under which the workman was unable to attend his duty was beyond his control and there was no misconduct on his part by not attending his duty. Referring to the Charge Sheet and letter communicating dismissal, learned advocate submitted that the Manager, Chinakuri Mine No. I is neither the Competent Authority nor the Appointing Authority to issue Charge Sheet against the workman and he did not have the capacity to dismiss the workman by issuing letter of dismissal dated 26/27.09.1995 (Exhibit W-2). Learned advocate argued that the illegality in dismissal of the workman has been compounded by non-issuance of second Show Cause Notice to the workman and non-service of the copy of Enquiry Proceeding to him seeking his response against the same. It is argued that the order of dismissal passed against the workman suffers from illegality, the same is not maintainable and is liable to be set aside. Learned advocate prayed for payment of back wages to the workman and other consequential reliefs.

10. Mr. P. K. Das, learned advocate for the management of ECL, in reply argued that the workman absented from the duty of the company from 12.09.1994 without any intimation and for his unauthorized absence a Charge Sheet was

issued on 22.09.1994 under Clause 17(i)(n) of Certified Standing Order applicable to the workman. Charge Sheet was sent to the workman but his reply was not found satisfactory. The workman claimed to be suffering from illness and several letters were issued by the Manager of Chinakuri Mine No. I repeatedly asking the workman to appear before the Senior Medical Officer, Chinakuri 1 and 2 Pits Colliery for his medical examination but the workman did not bother to turn up and the management was compelled to initiate a domestic enquiry. Several Notice were sent to the workman under registered post but he did not participate in the Enquiry Proceeding. The Enquiry Officer found the workman guilty of the charge and submit his report which has been produced as Exhibit M-6. The General Manager, Sodepur Area in his letter bearing No. Pd/C-6/95/CS/2093 dated 21.09.1995 informed the Agent, Chinakuri Colliery that after considering the Charge Sheet, reply of the workman, Enquiry Proceeding, and report of the Enquiry Officer he fully concurred with the findings of the Enquiry Officer that the charge levelled against Angshu Prakash Das was established beyond doubt. The Competent Authority found that there was no extenuating circumstance on record and he ordered dismissal of Angshu Prakash Das with immediate effect. The letter dated 21.09.1995 has been marked as Exhibit M-7. Learned advocate argued that though Angshu Prakash Das was declared medically fit on several occasions he did not turn up for duty. After his dismissal from service in the year 1995, this Industrial Dispute raised after eight years is stale and not maintainable. Learned advocate further argued that at the time of adducing evidence in the year 2023, in his affidavit-in-chief, Angshu Prakash Das has clearly stated that he was sixty-two (62) years of age. The workman therefore has already crossed the age of superannuation and he is not entitled to any relief at this stage.

11. I have considered the materials on record and argument advanced on behalf of the dismissed workman and management. The workman in paragraph no. 12

of his written statement stated that he did not receive any Charge Sheet and was unable to submit any reply regarding his unauthorized absence. I find from paragraph no. 7 of the written statement that he has contradicted himself by stating that the Charge Sheet issued by the Manager of Chinakuri Mine No. I did not enclose copy of Preliminary Enquiry Report. In paragraph no. 8 he stated that he submitted his reply stating that his absence from duty was beyond his control due to illness and that he was under medical treatment. From such self-defeating statements it can be deduced that the workman had received Charge Sheet and actually submitted his reply claiming that he was suffering from illness at the relevant time. Management has produced Notice of enquiry and cop of A/D card, indicating that the Notice of enquiry was sent under the registered post at Sitarampur, Dist.: Burdwan. Notice of enquiry have been produced as Exhibit M-2 and M-4. In paragraph no. 3, 4, 5, and 7 of the affidavit-in-chief, the management witness stated that the Manager of Chinakuri Mine No. I issued letters dated 24.09.1994, 07/08.11.1994, 21/21.12.1994, and 02.02.1995 addressed to the workman, asking him to appear before the Medical Officer, Chinakuri 1 and 2 Pits Colliery for his medical examination but the workman reportedly informed that he was unbale to attend due to illness. In course of cross-examination of the management witness there was no denial that letters were issued by the Manager asking the workman to appear for his medical examination. The workman was therefore completely aware about the Enquiry Proceeding, initiated against him but he did not attend the Enquiry Proceeding on the ground of illness.

12. On a perusal of the Enquiry Report (Exhibit M-6) it reveals that on the second date of enquiry management representative attending the proceeding produced an undelivered Notice of enquiry with postal comment "Refused". The enquiry was postponed due to non-participation of the charged workman. Notice of enquiry dated 28/29.07.1995 was again sent at the home address of the

delinquent under registered post fixing 04.08.1995 as the date for enquiry at the office of the Senior Personnel Officer, Chinakuri Mine No. III. On 04.08.1995 the workman did not participate in the enquiry and the Enquiry Proceeding was held ex-parte. There is no reflection in the Enquiry Proceeding whether the Notice of enquiry dated 28/29.07.1995 was either served or refused by the workman. In course of enquiry the Enquiry Officer took into consideration a medical certificate issued by Dr. Manoranjan Maiti. He found that the workman was declared fit for duty from 17.02.1995 but he did not report for duty nor did he inform any reason for his continued absence. It appears to me that ample opportunity was given to the workman and the Enquiry Proceeding held against him was consistent with the principles of natural justice and I do not find any violation of principles of natural justice, causing prejudice to the workman till the stage of enquiry.

13. It is an admitted fact that no second Show Cause Notice was issued to the workman and findings of the Enquiry Officer was not communicated to him inviting his response. I find from the materials on record that the workman had remained absent for a considerable period on the ground of illness. He had communicated about his illness to the colliery management. At the time of examination-in-chief of the workman witness, medical documents have been produced as Exhibit W-3 to W-8, which are related to the period between 13.09.1994 to 06.10.1997. The charge disclosed against the workman was for his unauthorized absence from 12.09.1994 to 22.09.1994. Exhibit W-4 is a medical prescription of Dr. Manoranjan Maiti dated 13.09.1994 who happens to be a Physician Surgeon at Mahishadal, Midnapur. The workman on the very next date i.e. 14.09.1994 claims to have been examined as an outdoor patient at Central Hospital, Kalla. It cannot be reconciled as to how a patient appearing at Mahishadal, Midnapur on 13.09.1994 with ailment could make himself available for his medical examination and treatment at Central Hospital, Kalla on the very

next date on 14.09.1994. Be that as it may, no objection has been raised by the management against the medical documents place on record as Exhibit W-3 and W-4. I find that due to prolong illness the workman was unable to attend his duty which was beyond his control. The management tried to contact the workman and directed him to appear before the Medical Officer of Chinakuri 1 and 2 Pits Colliery to find out the actual position of his health but the workman did not turn up. Opportunity was not given to the workman to respond to the findings of the Enquiry Officer as no second Show Cause Notice was issued to him though the Enquiry Officer and the Disciplinary Authority issuing the order of dismissal were different person. The Hon'ble Supreme Court of India in the case of **Union of India and Others Vs. Mohd. Ramzan Khan [AIR (1991) SC 471]**, laid down the principle of law in following words :

“When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer’s report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer’s report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice.”

The principle laid down by the Hon'ble Supreme Court of India was enforced by the Coal India Limited by way of issuing a Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994, wherein it has been clearly laid down that the charged employee had to be supplied with Enquiry Proceeding and Enquiry Report and a 2nd Show Cause Notice had to be issued to him before taking any final decision of removing him from service. In the instant case I find a clear violation of the principles of natural justice by the management of ECL by non-compliance of the ratio laid down by the Hon'ble Supreme Court of India and the provision of the Circular dated 12.05.1994 issued by the Coal India Limited. The Competent Authority, General Manager of Sodepur Area in his letter bearing No. Pd/C-6/95/CS/2093 dated 21.09.1995 (Exhibit M-7) has ordered dismissal of

the workman with immediate effect. The communication of dismissal was made to Angshu Prakash Das by the Manager, Chinakuri Mine No. I in his letter dated 26/27.09.1995 (Exhibit W-2) is only a compliance of the order of Competent Authority, which has been mentioned in the letter itself. However, such order of dismissal is not tenable for violation of the substantive provision of law i.e., by non-issuance of the second Show Cause Notice despite holding the Enquiry Proceeding ex-parte. The order of dismissal dated 21.09.1995 issued by the General Manager, Sodepur Area (Exhibit M-7) and the letter of communication dated 26/27.09.1995 issued by the Manager, Chinakuri Mine No. I (Exhibit W-2) are found arbitrary in nature and I hold that the Enquiry Proceeding held was not fair. The order of dismissal passed against Angshu Prakash Das not being legally tenable is set aside.

14. The workman has challenged the order of dismissal before this Tribunal in the year 2003. It is only in October, 2023 that the workman filed his affidavit-in-chief and produced relevant documents in support of his case. Since time and tide waits for no person, Angshu Prakash Das has crossed the age of superannuation in the meantime and there is no scope for his reinstatement in service. The charged employee seeking relief before this Tribunal is guilty of contributory negligence by delaying the matter. It also appears from the relevant evidence on record that even after his absence from duty for more than one year, the management issued letter to him asking him to appear for his medical examination but the workman preferred to remain away from his workplace. A person who is unable to attend his duty for indefinite period is also not entitled to any remuneration for the period of his idleness. In the present case it would be just and proper to grant a lumpsum compensation of Rs. 1,00,000/- (Rupees one lakhs only) to the workman for his illegal termination. The workman appears to have served the employer company from 14.07.1981 to 12.09.1994. Therefore, he is entitled to his legal dues, if any, which has accrued in his favour for his past service.

Hence,

O R D E R E D

that the Industrial Dispute is allowed in part on contest. The order of dismissal issued against Angshu Prakash Das is not found legally tenable and the same is set aside. The workman having crossed the age of superannuation is not entitled to reinstatement in service. He is granted a relief of lumpsum compensation of Rs. 1,00,000/- (Rupees one lakh only) for his illegal and premature termination from service, to be paid within one month from communication of the Award. In the event the amount is not paid within the stipulated time, the management of Eastern Coalfields Limited will pay an interest on the said sum at the rate of eight percent (8%) per annum till payment is made. He is also entitled to his legal dues on account of his service rendered to the company since July 1981 till 12.09.1994. 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.