

**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. 09 OF 2015

PARTIES: Ramjee Bhuia
Vs.
Management of Bankola Colliery of ECL

REPRESENTATIVES:

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

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 28.05.2024

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-22012/61/2015-IR(CM-II)** dated 15.09.2015 has been pleased to refer the following dispute between the employer, that is the Management of Bankola Colliery under Bankola Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action taken by management in dismissing Sri Ramjee Bhuia, Ex-EIMCO Helper, U.M.No. 249815 is legal and justified? If not, what relief is entitled to by the workman ”

1. On receiving Order **No. L-22012/61/2015-IR(CM-II)** dated 15.09.2015 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 09 of 2015** was registered on 29.09.2015 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. The management contested the case by filing their written statement on 07.06.2016. The workman filed written statement on 10.01.2018 through Mr. Rakesh Kumar, Union representative. Fact of the case delineated in the written statement of the workman is that Ramjee Bhuia was a permanent employee under Eastern Coalfields Limited (hereinafter referred to as ECL) bearing U.M. No.

249815. Due to his absence from duty from 16.07.1999 a Charge Sheet was issued to the workman bearing No. BK:PD:15(10):286 Dated 27.08.1999. The workman replied to the charge levelled against him, informing that due to illness he was unable to attend his duty from 16.07.1999 to 27.08.1999. The management initiated a Departmental Enquiry and Notice of enquiry was issued to the workman but due to short notice it was not delivered to the workman in time and he was unable to have any information regarding the date fixed for enquiry. As a result, the workman could not appear before the Enquiry Officer. The enquiry was held ex-parte and report was submitted by the Enquiry Officer, holding the workman guilty of the charge. The colliery management submitted a proposal for dismissal of the workman and forwarded the same to the General Manager of the Area. The competent authority of the company in an illegal manner, without exercising its discretion imposed a harsh punishment of dismissal. According to the worker's union the punishment awarded should be proportionate to the nature of misconduct. In the instant case the management awarded disproportionate punishment for absenting from duty for a period of 1 month and 11 days. It is contended that the past record of the workman was good and he was regular in his attendance. Ramjee Bhuia submitted Mercy Petitions before the management of the company for being considered in terms of Memorandum of Settlement dated 22.05.2007 but the same were not taken into consideration. Though Ramjee Bhuia was a young man below 45 years of age and his period of absence was less than 9 months, the period of his absence in fact was only for 1 month and 11 days. It is the case of the workman that in the past several mercy petitions were considered and thousands of workers were allowed to join their duty. According to the aggrieved workman he has no source of income to maintain his livelihood and is facing hardship along with his family members.

3. It is contended on behalf of the workman that the management did not issue any 2nd Show Cause Notice and the documents related to the Enquiry

Proceeding was not issued to him before his dismissal. It is urged that the dismissal of the workman without service of 2nd Show Cause Notice and not providing him with the Enquiry Report is violative to the law 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]** and Circular issued by the Director (P & IR) of Coal India Limited bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994. It is urged that in the case of Bagia Nayak of Chora Colliery and Damu Dakua of Khas Kajora Colliery, the Hon'ble High Court directed to issue 2nd Show Cause Notice and set aside the order of dismissal of the workman. It is urged that in the instant case the workman should be issued 2nd Show Cause Notice and the order of dismissal should be declared illegal and workman should be allowed to join his duty with full back wage.

4. The management in their written statement submitted that Ramjee Bhuia is a habitual absentee and on earlier occasion he was punished several times. In the year 1993 he was allowed to join duty after stoppage of 1 increment, in the year 1995 the workman was warned and 1 increment was stopped, in the year 1997 he was punished by stoppage of 3 increments, in the year 1998 he was suspended for 2 days, and in the year 1999 there have been stoppage of three increments for his misconduct of unauthorized absence. The management contended in their written statement that attendance of the workman during last 4 years was not good. In the year 1996 he did not attend his duty even for a single day, in the year 1997 he attended work only on 144 days, in the year 1998 his attendance went down to only 78 days and in the year 1999 up to June his attendance was only 27 days. Management appointed the Enquiry Officer and three Notice of enquiry dated 27.09.1999, 01.11.1999 and 18.1.1999 were issued to the workman for attending the Enquiry Proceeding. The workman did not reply to the Charge Sheet. The Enquiry Proceeding was held ex-parte and the General Manager, Bankola Area by his letter bearing No. BA/PD/Dis/301 dated

20.01.2000 sent the photocopies of Enquiry Proceeding and findings to the charged employee, asking him to reply. Finally, the service of the workman was terminated w.e.f. 16.02.2000. The workman raised an Industrial Dispute on 24.08.2012 after lapse of 12 years from his dismissal, without assigning any reason for such delay. The management strongly asserted that the dismissal of Ramjee Bhuia is legal and he is not entitled to any relief.

5. The point in controversy between the parties is whether the dismissal of Ramjee Bhuia, from services of the company is legal and justified. If not what relief the dismissed workman is entitled to?

6. In order to substantiate his case Ramjee Bhuia examined himself as Workman Witness – 1. He filed an affidavit-in-chief and faced the cross-examination. The workman produced three documents which are three Mercy Petitions dated 22.03.2012, 28.03.2012, and 29.03.2012, which are marked as Exhibit W-2, W-1, and W-3 respectively. In his affidavit-in-chief the workman stated that he replied to the Charge Sheet but management decided to appoint Enquiry Officer for enquiry. This goes to establish that management had served copy of Charge Sheet upon the workman disclosing the charge. At the time of his examination-in-chief the workman stated that he was absent from duty for 2 to 3 months in the year 1999, for which he was chargesheeted. He also stated that he did not remember anything regarding the Charge Sheet, enquiry and dismissal. The workman stated that he could not attend duty due to inconvenience as his place of residence was far away from his place of work.

7. In cross-examination the workman denied having received the 2nd Show Cause Notice and order of dismissal through registered post at his native place. The witness deposed that he will produce medical documents to prove that he was suffering from illness during his absence from duty but no such document was produced by him.

8. Mr. Dibyendu Ghosh, Deputy Manager (Personnel), Bankola Colliery was examined as Management Witness – 1. He filed an affidavit-in-chief wherein he disclosed that Ramjee Bhuia absented from duty from 16.07.1999 to 27.08.1999 without any intimation or prior leave, for which he was chargesheeted on 27.08.1999. In his examination-in-chief the witness stated that he has no document to show that the Charge Sheet was served upon the concerned employee. Three Notice of enquiry were sent to the workman under registered post and the same have been produced as Exhibit M-6 Series. The witness admitted that the Postal Envelope and Notice which have been produced as Exhibit M-1 and M-2 were not related with present proceeding and further admitted that the management had no record to show that the Charge Sheet and Notice of enquiry were served upon the workman. Apart from Exhibit M-1 and M-2, which are not related to the present proceeding management produced the following documents :

- (i) Photocopy of Service Excerpt of Ramjee Bhuia has been marked as Exhibit M-3.
- (ii) Photocopy of the Service Register of Ramjee Bhuia in two pages has been collectively marked as Exhibit M-4.
- (iii) Photocopy of the Chargesheet dated 27.08.1999, as Exhibit M-5.
- (iv) Photocopy of the Three Notice of enquiry, as Exhibit M-6 series.
- (v) Photocopy of the Enquiry Proceeding and findings in four pages has been collectively marked as Exhibit M-7.
- (vi) Photocopy of the 2nd Show Cause Notice dated 20.01.2000, as Exhibit M-8.
- (vii) Photocopy of the Postal Receipt under which the 2nd Show Cause Notice was sent to the workman, as Exhibit M-9.
- (viii) Photocopy of the letter of dismissal dated 15.02.2000, as Exhibit M-10.

9. Mr. Rakesh Kumar, Union representative advancing his argument on behalf of the dismissed workman submitted that the workman was absent for one month and eleven days from 16.07.1999 to 27.08.1999 only due to his illness but the management without serving any Charge Sheet, initiated an Enquiry Proceeding against the workman and imposed a disproportionate punishment of dismissal for a minor misconduct of absence, though the workman was not a habitual defaulter. It is further argued that at the time of dismissal the workman was only thirty-six years of age and he submitted mercy petitions which were not considered. Mr. Rakesh Kumar, Union representative strongly contended that the dismissal of the workman was arbitrary, unjust and the order of dismissal is liable to be set aside and the workman should be reinstated in service.

10. Mr. P. K. Goswami, learned advocate for the management of ECL argued that his Industrial Dispute is not maintainable. The workman had remained absent for a long period without any information or prior permission and that he was a habitual absentee and violated the provisions of Section 17(i)(n) of the Model Standing Orders applicable to the company. Learned advocate referring to Paragraph – 4 of the affidavit-in-chief submitted by Ramjee Bhuia, the workman admitted receipt of the Charge Sheet and submitted a reply against the same. Learned advocate argued that sufficient opportunity was given to the workman to participate in the Enquiry Proceeding and three Notice of enquiry were sent to him one after another at his home address under registered post but the workman chose to remain away. Though it has been claimed by the workman that he was suffering from illness, no medical document has been produced. In course of the Departmental Enquiry management representatives were examined who stated that Ramjee Bhuia was a habitual absentee and in the preceding three years he attended duty for only 48 days in the year 1998, 144 days in the year 1997 and in the year 1996 his attendance was nil. Learned advocate submitted that in the written statement management has categorically stated about habitual absence

of the workman from duty but the workman has not denied the same. After the charge was proved against the workman a 2nd Show Cause Notice was issued to him by the General Manager of Bahula Colliery on 20.01.2000 (Exhibit M-8) providing him an opportunity to submit representation against the findings of Enquiry Officer. Learned advocate submitted that the 2nd Show Cause Notice was communicated to the workman under registered post and the postal receipts have been marked as Exhibit M-9. The competent authority thereafter observing the principles of natural justice passed an order of dismissal of Ramjee Bhuia in his letter dated 15.02.2000, which was sent to him under registered post at his home address at Vill: Barhara Bartara, PO: Barhara, Dist.: Munghyer (Bihar). After twelve years the workman raised this Industrial Dispute which in a futile attempt for his reinstatement. Learned advocate urged that there is no merit in the Industrial Dispute and the same is liable to be set aside.

11. I have carefully considered the facts and circumstances, and evidence adduced by both parties and the argument advanced on behalf of the contending parties. The admitted fact is that Ramjee Bhuia is a permanent employee under ECL and hailed from Vill: Barhara Bartara, PO: Barhara, Dist.: Munghyer (Bihar). He was absent from duty from 16.07.1999 to 27.08.1999 without any information and was chargesheeted for his unauthorized and habitual absence from duty without information. The union representative argued that the Charge Sheet was not served upon the workman but in Paragraph – 4 of the written statement as well as in the affidavit-in-chief it is admitted that the workman replied to the Charge Sheet but the management decided to initiate an enquiry. Ordinary prudence would suggest that a person who is chargesheeted would try to find out the ultimate outcome of the reply he submitted. In the instant case the workman feigned not to have received the Notice of enquiry which were sent to him under registered post at his permanent address. In Paragraph – 6 of the written statement of the workman it is stated that the Enquiry Officer has served the

Notice of enquiry to the workman through post but sufficient time was not given for which the letter did not reach the destination and he could not get the information about the date of enquiry. This statement implies that the Notice did not reach in time. From the evidence of management witness it transpires that three Notice of enquiry (Exhibit M-6 Series) addressed to the workman were issued on 27.09.1999, 01.11.1999, and 18.12.1999. At the Notices were issued during a period of three months, providing reasonable time to the charged employee to appear. Non-participation in the enquiry therefore speaks volume about the nonchalant conduct of the workman and his disinclination to respond to the Enquiry Proceeding. Copy of Enquiry Proceeding and findings has been produced as Exhibit M-7. The workman appears to have been found guilty the of charge for unauthorized and habitual absence, which have gone unrefuted. The controlling authority thereafter issued a 2nd Show Cause Notice along with a photocopy of the Enquiry Proceeding and findings, calling upon the charged employee for submitting his objection, if any, within three days from the receipt of the letter. The 2nd Show Cause Notice which has been produced as Exhibit M-8 was transmitted to the workman under registered post and the postal receipt has been marked as Exhibit M-9. The statement of the workman in cross-examination that he did not receive the 2nd Show Cause Notice is therefore not acceptable. The competent authority after considering the materials available to him decided to dismiss the workman and issued a letter of dismissal on 15.02.2000, which has been produced as Exhibit M-10. The order of dismissal was sent to the workman through registered post and the same is binding upon the charged employee. After passage of twelve year the workman submitted three representations under the guise of Mercy Petition for his reinstatement. The petition dated 22.03.2012, 28.03.2012, and 29.03.2012 have been produced as Exhibit W-1, W-2, and W-3. There is no rhyme and reasons as to why such application has to be entertained by the management of ECL after twelve years from the date of dismissal. The workman remained absent for several days and

took a plea of his illness. Till date he has not disclosed the nature of illness or the place he has received the medical treatment. No medical document has been produced by him. In his examination-in-chief the workman has come out with the truth by deposing that he could not attend duty as his place of residence was far away from the place of work.

12. Having considered aforesaid facts and circumstances I hold that the order of dismissal of Ramjee Bhuia issued by the management suffers from no illegality, impropriety or irregularity and the same calls for no interference. The dismissed workman therefore is not entitled to any relief in this case and the Industrial Dispute is dismissed on contest.

Hence,

ORDERED

that the order of dismissal of Ramjee Bhuia from his service suffers from no illegality and there is no reason for interfering with the same. The Industrial Dispute is dismissed. Let an award be drawn up 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.