

**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 2021

PARTIES: Nirmal Majhi
Vs.
Management of Nimcha Colliery under Satgram Area, ECL

REPRESENTATIVES:

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

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 20.01.2025

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-22012/19/2021-IR(CM-II)** dated 21.06.2021 has been pleased to refer the scheduled Industrial Dispute between the employer, that is the Management of Nimcha Colliery under Satgram 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 Nimcha Colliery under Satgram Area in imposing a punishment of dismissal on Shri Nirmal Majhi, Ex- U.G. Loader (UM No.115433), Nimcha Colliery w.e.f. 25-11-2002 is just and legal? If not, to what relief the workman is entitled to? ”

1. On receiving Order **No. L-22012/19/2021-IR(CM-II)** dated 21.06.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 08.07.2021 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 dismissed workman, represented by Koyala Mazdoor Congress, filed written statement on 10.11.2021. The management of Nimcha (R) Colliery of Eastern Coalfields Limited (hereinafter referred to as ECL) filed written statement on 14.12.2022. Brief fact of the case as disclosed in the written statement filed

on behalf of the workman is that Nirmal Majhi was posted as an Underground Loader at Nimcha Colliery under Satgram Area of ECL, bearing U.M. No. 115433. Due to his illness, he could not attend his duty from 13.07.2000. After he recovered from his illness, he reported for duty at his place of work but the management did not allow him to join his duty. A Charge Sheet bearing No. NC/CS/Persl/225 dated 26.08.2000 was issued against him on the ground of his unauthorized absence. The workman participated in the enquiry and stated that due to his illness he could not attend his duty and also submitted the documents relating to his medical treatment. After completion of the enquiry the management awarded a major punishment of dismissal for his absence for a period of 1 month and 12 days only. An order of dismissal was passed on 25.11.2002. The workman submitted mercy petition before the management for his reinstatement in accordance with the Memorandum of Settlement signed before the Regional Labour Commissioner (Central), Asansol dated 22.05.2007. It is the case of the union that Nirmal Majhi is a young man and fulfills all the conditions of the Memorandum of Settlement dated 22.05.2007. He was less than forty-five years of age at the time of his dismissal for his absence for less than nine months but the management did not allow him to join his duty. Further grievance of the workman is that he was not allotted any quarter at Nimcha Colliery and was compelled to attend his duty from his native place due to which he fell ill and was unable to attend duty in proper manner. According to the workman a disproportionate punishment was imposed against him in illegal manner. The workman was not provided with the assistance of co-worker to defend himself during enquiry, resulting in violation of natural justice. It is prayed that the order of dismissal passed against Nirmal Majhi should be set aside and the workman should be reinstated in his employment with full back wages and all other consequential benefits.

3. Management of ECL contested the case by filing written statement. The rival contention of the management is that Nirmal Majhi was dismissed from service

due to his long absence from duty in unauthorized manner without any information to the employer company the period from 13.07.2000 to 26.08.2000. It is the case of the management that the workman did not respond to the Charge Sheet and continued to be absent till 11.09.2002. He did not participate in the enquiry without any reason. The charged employee participated in the enquiry, after the Enquiry Officer issued Notice dated 29.08.2002. The Charge levelled against the workman was proved beyond doubt and enquiry was held following principles of natural justice. A second Show Cause Notice was issued to the workman dated 28.09.2002 / 21.10.2002. No extenuating circumstance was found to exist in favour of the charged workman and the Competent Authority dismissed him by issuing letter dated 25.11.2002. Before awarding punishment the management of the company had considered the gravity of the misconduct, available records and extenuating circumstance, if any. Further case of the management is that as per office record the workman is a resident of Vill- Layek Dhawra, PO- Chelod, PS- Raniganj but in his pleading he has stated that he was residing at his native place village at Damra. It is inter-alia contended that the workman did not turn up for two years and ultimately after receiving the enquiry notice dated 29.08.2002 he turned up for participating in the domestic enquiry held on 12.09.2002. According to the management onus lies upon the employees to abide the rules and regulations as per Certified Standing Orders applicable to them. In the instant case Nirmal Majhi could not be traced for nearly two years. There is no extenuating circumstance in his favour and from the records it appears that the workman was awarded punishment of stoppage of three SPRA at Kalidaspur Project of ECL, his previous place of posting. The management further urged that the mercy petition has been filed by the workman ten years after his dismissal in the year 2012, which reveals extreme disinterest of the workman in service. In this context management has placed reliance upon a decision of the Hon'ble High Court at Calcutta, in the case of **Some Majhi Vs. Coal India Limited and Others** which inter alia observed that one must take his duties seriously, perform his function with honesty and sincerity and must

conduct himself in disciplined manner. An employee / workman who did not think it necessary to sent even one intimation to the employer during the period of absence, deserves no sympathy. Management of ECL further asserted that the Industrial Dispute has been raised after sixteen years, in December 2018, in this regard reliance has been placed upon a dispute of the Hon'ble Supreme Court of India in the case of **Nedungadi Bank Ltd. Vs. K. P. Madhavankutty and Others [C.A. 638 of 2000]**, where the hon'ble court observed that the Government should exercise the power of referring under the provision of the I.D. Act, 1947 in reasonable and rational manner and it should not accept the case referred for adjudication after a laps of seven years as no Industrial Dispute existed or even said to have been apprehended. Such dispute which is stale one, could not be a subject of Reference under Section 10 of the I.D. Act, 1947. The management of ECL urged that the order of dismissal passed by the management against Nirmal Majhi is totally justified and he is not entitled to any relief.

4. Nirmal Majhi has been examined as Workman Witness No. 1. He filed his affidavit-in-chief and produced the following documents :

- (i) Copy of Charge Sheet dated 26.08.2000 has been produced as Exhibit W-1.
- (ii) Copy of the Enquiry Proceeding and Findings, as Exhibit W-2.
- (iii) Copy of dismissal Letter dated 25.11.2002, as Exhibit W-3.
- (iv) Copy of Mercy petition dated 22.12.2012, as Exhibit W-4.
- (v) Copy of second Mercy petition dated 16.01.2017, as Exhibit W-5.

5. In his cross-examination the witness admitted that he was unable to produce medical documents. The witness denied the suggestion that he intentionally remained absent from duty or he is not entitled to any relief.

6. Management examined Mr. Sumit Choudhury as Management Witness No. 1. He filed an affidavit-in-chief in support of the case of the management. The

witness produced the following documents:

- (i) Copy of Charge Sheet dated 26.08.2000, as Exhibit M-1.
- (ii) Copy of letter dated 28.08.2002 regarding appointment of the Enquiry Officer, as Exhibit M-2.
- (iii) Copy of Notice of enquiry dated 29.08.2002, as Exhibit M-3.
- (iv) Copy of Enquiry Proceeding and Findings of the Enquiry Officer, as Exhibit M-4.
- (v) Copy of the second Show Cause Notice dated 28.09.2002 / 21.10.2002, as Exhibit M-5.
- (vi) Copy of letter of dismissal dated 25.11.2002, as Exhibit M-6.

7. In course of cross-examination the witness deposed that there was no charge of habitual absence in the Charge Sheet. He also stated that at the time of enquiry assistance of co-worker was extended to Nirmal Majhi, which is mentioned in the Notice of enquiry. Though the second Show Cause Notice dated 28.09.2002 / 21.10.2002 has been produced as Exhibit M-5, the witness deposed that he has no knowledge that the second Show Cause Notice was served upon the charged employee. The management witness supported the dismissal of the workman by denying that the punishment of dismissal was disproportionate to the charge of unauthorized absenteeism.

8. The crux of the Industrial Dispute is whether the punishment of dismissal imposed upon Nirmal Majhi for his absence from duty is legally tenable? If not, whether the workman is entitled to any relief.

9. It is gathered from the pleading of the parties that the workman posted as an Underground Loader at Nimcha Colliery stopped attending his duty from 13.07.2000 to 26.08.2000 without any information to the management of the employer company. The management issued a Charge Sheet against him for his

unauthorized absence as per Clause 26.29 of the Certified Standing Orders, copy of the same has been produced as Exhibit W-1 / M-1. The workman did not submit any reply to the Charge Sheet nor did he deny that the Charge Sheet was not served upon him within time. The management issued a letter dated 28.08.2002 to Nirmal Majhi regarding appointment of the Enquiry Officer (Exhibit M-2). A Notice of the enquiry dated 29.08.2002 was issued at the home address of the employee at Layek Dhawah (Exhibit M-3). It is apparent that the Notice of enquiry was issued two years after issuance of the Charge Sheet. The long intervening period of two years clearly indicates that the workman did not respond to the Charge Sheet nor did he turn up for his duty for a period of two years from his admitted date of unauthorized absence from 13.07.2000. The workman eventually participated in the Enquiry Proceeding held on 12.09.2002. In his statement before the Enquiry Officer, he admitted his absence from duty and stated that he was suffering from illness and went to his native village – Damra and did not send any intimation to the management of Nimcha Colliery. It is gathered from the statement of Mr. Laxmikant Jha, Management Representative, that the workman joined Nimcha Colliery on 26.08.2000 and within a span of five months he started absenting from duty. In the entire year of 2000, he performed his duty only for forty-five days. The charged employee did not produce any medical document in respect of his treatment at any point of time. The Enquiry Officer submitted his Report and findings, holding that the charge stood proved (Exhibit M-4). Mr. Rakesh Kumar, Union representative, on behalf of the workman argued that the workman was not given the opportunity to be represented by any co-worker and there is no proof of issuance of any second Show Cause Notice to the workman before his dismissal. Mr. P. K. Das, learned advocate for the management of ECL, in reply, argued that the charged employee was provided opportunity to be assisted by a co-worker during the enquiry and the same was clearly notified in the Notice of enquiry (Exhibit M-3). The workman did not take the assistance of any co-worker on his own accord and did not venture to cross-

examine the management representatives, who deposed against him. Regarding the second Show Cause Notice it is submitted that after the Enquiry Officer held the charged employee guilty of the charge under Clause 26.29 of Certified Standing Orders, a second Show Cause Notice dated 28.09.2002 / 21.10.2002 was issued to him under registered post, directing him to submit his reply within seventy-two hours of receipt. It is submitted that the second Show Cause Notice was transmitted to the charged workman under registered post with A/D and a copy of the same has been produced as Exhibit M-5. It is submitted that no objection was raised by the union at the time of admission of second Show Cause Notice. Learned advocate for the management argued that the Mercy petition has been submitted by the workman for the first time on 22.12.2012 (Exhibit W-4) and for the second time on 16.01.2017 (Exhibit W-5) which are long ten years after his dismissal. It is contended that the Industrial Dispute raised after a lapse of sixteen years from his dismissal of the workman after his participation in the enquiry is a stale one and the order of dismissal passed against the workman is appropriate and consistent to the nature of misconduct which calls for no interference.

10. Having considered the materials on record, pleadings of the parties and the argument advanced on behalf of the union and management, it is crystal clear that the workman not only absented for the period of one month and twelve days but he absented beyond the date of Charge Sheet issued to him and ultimately the domestic enquiry was held two years after the issuance of Charge Sheet. The workman failed to produce any medical document to establish that he was suffering from any type of ailment, which prevented him from joining his duty. The workman having joined Nimcha Colliery in February, 2000, started absenting from 13.07.2000. It appears from his affidavit-in-chief that he joined Nimcha Colliery on 26.02.2000 and the job of an Underground Loader being hazardous, he could not adjust himself and fell ill and could not attend his duty. Failing to

perform his duty was admitted by him but he was unable to adduce any evidence in support of his illness. The charge is well established against the workman and the management has also submit a copy of second Show Cause Notice issued to Nirmal Majhi at the same address at Vill- Layek Dhawra, PO- Chelod, PS- Raniganj, where the Notice of enquiry was served upon him. The Enquiry Officer has followed the principles of natural justice at the time of holding the domestic enquiry. The Competent Authority after issuing the second Show Cause Notice dismissed the workman for his unauthorized absence. An employee is required to perform his duty under the employer in a sincere and dedicated manner so that his participation contributes to the benefit of the employer establishment. For this purpose, the employee is required to follow the rules and regulations of the company and maintain a disciplined conduct. In the instant case it is evident that the workman, had absented from duty for a long period but he did not have any responsibility to inform the management the reason of his absence. In my considered view, I find no illegality in the order of dismissal passed against the workman. The punishment of dismissal is the outcome of long unauthorized absence which demonstrates lack of accountability of the workman. The Mercy petition were filed after a decade from the time of his dismissal and the Industrial Dispute is raised even after a longer period. The same therefore has no merit under the emerging facts and circumstances of the case. I therefore hold that Nirmal Majhi, the dismissed workman is not entitled to any relief of reinstatement nor any back wages.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest. I find no tangible reason to interfere with the order of dismissal. Nirmal Majhi, the dismissed workman is

not entitled to any relief of reinstatement or back wages. The management of the company is directed to disburse his dues, if not paid earlier. 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, Government of India, New Delhi for information and Notification.

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