

**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. 10 OF 2006

PARTIES: Pritam Singh
(represented by his dependent wife Charan Kaur)
Vs.
Management of Poniati Workshop 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: 26.04.2024

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-22012/98/2005-IR(CM-II)** dated 12.06.2006 has been pleased to refer the following dispute between the employer, that is the Management of Poniati Workshop of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Poniati Workshop, M/s ECL, Jamuria of dismissal of Shri Pritam Singh is legal & justified? If not, to what relief the workman is entitled to? ”

1. On receiving Order **No. L-22012/98/2005-IR(CM-II)** dated 12.06.2006 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 10 of 2006** was registered on 19.06.2006 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. Mr. Rakesh Kumar, Union representative for the workman and Mr. P. K. Goswami, learned advocate for the management of ECL have appeared and filed their written statement on 02.12.2009. In gist the fact of the case as per the written statement of the workman is that Pritam Singh, was a permanent employee of Eastern Coalfields Limited (hereinafter referred to as ECL) and posted

as a Driver at Ratibati Workshop. He was wrongly and illegally dismissed from his service by the company. Pritam Singh was chargesheeted vide Charge Sheet No. ECL/PW/Chargesheet/91/1387 dated 30.12.1991 on an allegation of theft of company's property. Pritam Singh submitted his reply but the management of the company ordered a domestic enquiry. The Enquiry Officer conducted an enquiry and held the workman guilty of the charge. During pendency of the proceeding management issued an order of transfer of Pritam Singh bearing order no. ECL/CMD/C-6B/Trf/62 dated 08.01.1992 on his transfer he joined at Rajmahal Project. The management simultaneously lodged an FIR before police and a specific case of theft was registered before the Learned Judicial Magistrate at Asansol Court. On the basis of Departmental Proceeding management dismissed Pritam Singh from service and communicate the order of dismissal to him vide Ref No. ECL/PW/Displ.action/94/2006 dated 03.10.1994. According to the union, management awarded three punishments; firstly, an FIR was lodged at Police Station and police arrested the workman who was subsequently released on bail, secondly, an order of transfer from Poniati Workshop to Rajmahal was issued and thirdly, an extreme punishment of dismissal from service was imposed.

3. It is contended that, at the end of court proceeding Pritam Singh was not found guilty of the charge and he was acquitted from the case. However, in the Departmental Proceeding the Agent of Poniati Workshop issued an order dated 03.10.1994 dismissing Pritam Singh from his service, when the workman was already transferred to Rajmahal. It is urged that a workman who is not on the roll of Poniati Workshop cannot be dismissed by the Agent of Poniati Workshop and the order of dismissal required to be issued by the Agent of Rajmahal, where Pritam Singh was posted.

4. During pendency of the criminal case before the Hon'ble Court at Asansol,

the union did not raise any dispute. After an order of acquittal was passed an Industrial Dispute was raised before the Assistant Labour Commissioner (Central), Asansol and the matter was thereafter referred to this Tribunal for adjudication as to whether dismissal of Pritam Singh from his service is just and proper. The union urged that the aggrieved workman was not served with the Enquiry Proceeding and report of the Enquiry Officer before his dismissal. It is contended that the management should not have taken any action before disposal of the criminal case. It was open for the management to take recourse to one course of action, either by issuance of Charge Sheet or by lodging FIR. The management further did not follow the guidelines of the Hon'ble Supreme Court of India by not issuing the 2nd Show Cause Notice to the workman before issuing order of dismissal. It is the case of the union is that Pritam Singh died on 22.12.2006 and his wife requested the management of the company to pay her the legal dues like gratuity. According to the union dismissal from service is an extreme punishment and the same is not awarded to anyone without enquiring the fact carefully. According to the union the service of Pritam Singh under the company was unblemished and the order of dismissal passed against him is liable to be set aside and Pritam Singh should be considered to be in service of the company from 31.09.1994 by declaring the order of dismissal as illegal and his legal heir should be paid full back wages during the period of his idleness from 03.10.1994 till the date of superannuation from the company i.e. 01.07.2000.

5. The Management of ECL contested the case by filing their written statement. The specific case of the management is that Pritam Singh was chargesheeted on 30.12.1991 under Clause 17 (i)(a)(q)(r) of the Standing Order applicable to him. He replied to the charge levelled against him and a Domestic Enquiry was held in which the workman participated and availed reasonable opportunity to defend himself. The Enquiry Officer submitted his report holding him guilty and on the basis of such enquiry Pritam Singh, who was posted at

Rajmahal OCP was dismissed from service. It is their case that there has been undue delay of ten years in raising the Industrial Dispute and the same is liable to be dismissed. Management has urged that the union has no locus standi to represent the workman as he was not a member of the union.

6. Further case of the management is that the workman committed an offence of theft of property of ECL which is a serious offence and there is no scope of exhibiting leniency. It is urged that due to such misconduct the workman was transferred to Rajmahal OCP under Rajmahal Area and an FIR was lodged against the workman at Jamuria Police Station, giving rise to a specific case under Section 379 and 411 of the Indian Penal Code, which ultimately ended in acquittal. The management urged that the Industrial Dispute is not maintainable and the same is liable to be dismissed.

7. On the death of Pritam Singh a petition was filed on 29.05.2013 for substitution of Charan Kaur, as his legal heir. Union filed a rejoinder on 06.02.2017 reiterating the facts. Charan Kaur, wife of Late Pritam Singh was examined as Workman Witness – 1. She filed an affidavit-in-chief on 10.02.2016 and adduced evidence on behalf of her deceased husband. It is stated in her affidavit-in-chief that the management issued a Charge Sheet against Pritam Singh on 30.12.1991 and he submitted his reply and the management thereafter appointed an Enquiry Officer who conducted the enquiry in respect of the charge. The management also lodged an FIR before police. On holding the Enquiry, management dismissed her husband and an order of dismissal was communicated to him on 03.10.1994. The witness claimed that her husband was wrongfully dismissed from service and his dismissal should be declared as illegal and full wages should be paid to the dependent from the date of dismissal to the date of superannuation with other consequential benefits. During evidence the following documents were produced :

- (i) Photocopy of Charge Sheet was produced as Exhibit W-1.
- (ii) Photocopy of order of dismissal issued by the Agent of Poniat Workshop, as Exhibit W-2.
- (iii) Photocopy of Death Registration Certificate of Pritam Singh, as Exhibit W-3.

8. From the cross-examination of WW-1 it transpires that the Charge Sheet and the order of dismissal in respect of Pritam Singh were issued from Poniat Workshop. She denied the suggestion that her husband was dismissed in proper manner. Mangal Singh, Satnam Singh, Rajendra Singh @ Raju Singh, the three sons of Late Pritam Singh and Balbinder Kour and Lakhbinder Kour, two married daughters of Late Pritam Singh have filed their affidavit-in-chief, wherein they have stated that they authorized Charan Kaur to receive all financial benefits of their father.

9. Management of ECL examined Mr. Pragyanand Pandey, Assistant Manager (Personnel), Poniat Workshop as Management Witness – 1. In course of his evidence he has produced the following documents in support of management's case :

- (i) Photocopy of the Charge Sheet dated 30.12.1991 has been produced as Exhibit M-1.
- (ii) Photocopy of the Reply dated 15.01.1992, in three pages, as Exhibit M-2.
- (iii) Photocopy of the Notice of Enquiry dated 27.03.1992 and 02.04.1992 issued by Mr. D. K. Banerjee, Enquiry Officer, as Exhibit M-3 and M-3/A respectively.
- (iv) Photocopy of the Enquiry Proceeding, as Exhibit M-4.
- (v) Photocopy of the Enquiry Report dated 27.07.1993 and 26.07.1993, as Exhibit M-5 and 5/A (in three pages collectively).

- (vi) The witness admitted that no 2nd Show Cause Notice was issued to the workman. The witness also averred that the Agent of Poniati Workshop passed an order of dismissal with approval of competent authority of ECL. Photocopy of the dismissal order dated 03.10.1994 has been marked as Exhibit M-6.
- (vii) Photocopy of the dismissal order dated 25.10.1996 issued by the Agent of Rajmahal OCP is produced as Exhibit M-7.

10. In his cross-examination MW-1 deposed that an FIR was lodged on 20.12.1991 giving rise to G. R. Case No. 1734/91 under Section 379 and 411 of the Indian Penal Code. Tinu Khan, Md. Afjal, Imtiaz Mia, Ram Kishna Sarma, Chemilal Show, Brijbehari Singh and Lala Nunia were the co-accused persons. The witness stated that there must be a seizure list in this case supporting charge under Section 411 of the Indian Penal Code which relates to recovery of stolen property from the possession of the accused. The management witness could not state the reason of delay in issuing Charge Sheet and deposed that the content of the Charge Sheet regarding place of recovery of stolen goods were correct. Witness deposed that Mr. N. I. Khan, Presenting Officer, stated in his report that on 20.12.1991 when he went to Poniati Workshop at 07.00 a.m., he received information from the Foreman In-charge of Electrical Department that some Secondary Coil of Transformer had been stolen by the miscreants in the night of 19.12.1991 along with other material. The witness admitted that the Presenting Officer did not examine any witness nor did he produced document to substantiate the charge. The management witness admitted that no 2nd Show Cause Notice was issued to the charged employee and in course of enquiry on 10.01.1992 the workman was transferred to Rajmahal OCP. According to MW-1 after acquittal from criminal case Pritam Singh was never reinstated under ECL and Gratuity and Provident Fund dues have not been disbursed. The witness at the end however, denied that dismissal of Pritam Singh was unjustified and illegal.

11. On 21.11.2023 Mr. Pragyand Pandey (MW-1) was further examined and he stated before the Tribunal that he has not been able to produce the document of competent authority regarding dismissal of Pritam Singh. He also stated that in G. R. Case No. 1734/91 at Asansol Court, Pritam Singh was acquitted from the charge of theft and a copy of the judgement was produced as Exhibit M-8. The management witness admitted that after acquittal of Pritam Singh from the charge, the management preferred no appeal against the judgement of acquittal nor did it take any step for reinstatement of Pritam Singh. Management witness denied that the punishment imposed against the charged employee was disproportionate or that he was illegally dismissed from service.

12. Mr. Rakesh Kumar, representing the dependent wife of the deceased employee argued that Mr. N. I. Khan, the Presenting Officer stated before the Enquiry Officer that on 20.12.1991, when he reported for duty at Poniati Workshop at 7.00 a.m., he received information from the Electrical Department through Foreman Incharge that Secondary Coil of Transformer had been taken away by miscreants on the night of 19.12.1991 along with other materials. Thereafter Mr. Khan lodged an FIR at Jamuria Police Station to the effect that the Transformer Coil with approximate weight of 200 Kilograms along with other materials were stolen. Mr. Khan stated that the Officer in charge of Jamuria Police Station went to Jamuria Bazar along with police personnels to search out the stolen materials. The Police Officer met the agent of Poniati Workshop on the same day and asked him to call the Security Guards and Armed Guard namely, Md. Afzal Hussain, Tinu Khan, Imtiaz Mia, and Ram Kishna Sarma. The materials which were recovered from the shop of Chunnilal Shaw of Jamurai Bazar were asked to be identified and Mr. N. I. Khan identified the recovered materials. It is stated by Mr. Khan that on 23.12.1991 the O.C. Jamuria Police Station also recovered 200 Kilograms of Copper Coil from the compound of the quarters of Pritam Singh. The charged employee was arrested. Mr. Rakesh Kumar referred to

the judgment passed by the Judicial Magistrate, First Class, Fifth Court, Asansol in G. R. Case No. 1734/91, wherein all eight accused persons including Pritam Singh were acquitted on the ground that prosecution did not examine Mr. N. I. Khan, the FIR maker. Mr. Kumar inter alia argued that apart from Pritam Singh other accused persons who were also employees of ECL were not chargesheeted and no proceeding was initiated against them. The union representative vehemently argued that the statement of Mr. N. I. Khan before the Enquiry Officer has no force as it was hearsay evidence and he has no direct information regarding occurrence and alleged recovery of the stolen property. Accordingly, the order of dismissal passed against Pritam Singh without issuance of any 2nd Show Cause Notice is bad in law and the order of dismissal without compliance of mandatory provision, based upon hearsay statement is illegal, arbitrary and is liable to be set aside. Mr. Kumar argued that Pritam Singh should be deemed to be in service from the date of his dismissal on 03.10.1994 till the date of his superannuation i.e. 01.07.2000. It is urged that full back wages for the entire period along with all other consequential retirement benefits may be paid to Charan Kaur, the wife of the deceased employee.

13. Mr. P. K. Goswami, learned advocate for the management of ECL submitted that a case of theft in the workshop was reported in the night of 19.12.1991 and Mr. N. I. Khan, company's representative also lodged an FIR before Jamuria Police Station on the basis of which a specific criminal case was initiated. During investigation Police recovered some stolen property of the employer company from the premises of Pritam Singh and after holding enquiry, he was found guilty and accordingly dismissed him from service. Learned advocate argued that a Departmental Proceeding was held independent of the criminal proceeding, therefore despite acquittal of the charged employee in the criminal case due to lack of evidence, there was sufficient material before the Enquiry Officer to hold the charged employee guilty and there was no error in dismissing the charged employee, even after his transfer.

14. I have perused the scheduled reference, written statement submitted by the union and management, also considered the evidence on record, report of Enquiry Proceeding as well as copy of the judgment passed by the learned Judicial Magistrate, Fifth Court, Asansol, in G. R. Case No. 1734/91 under Section 379 and 411 of the Indian Penal Code. On a close reading of the Enquiry Proceeding and the Judgment passed by the learned Judicial Magistrate, stemming from the same offence / misconduct of theft, I find that Mr. N. I. Khan, Manager, Poniati Workshop performed the duty of the Presenting Officer in the Departmental Enquiry. From the statement made by the Presenting Officer on 16.04.1992, it transpires that on 20.12.1991, when he reported at Poniati Workshop at 07.00 a.m. for his duty he received information from the Electrical Department via Foreman Incharge that Secondary Coil of Transformer had been stolen by the miscreants along with other materials in the night of 19.12.1991. He rushed to the Police Station along with the Security Incharge and lodged an FIR in the Police Station. The Officer-in-Charge, Jamuria Police station visited Poniati Workshop on 20.12.1991 and examined the Security Guards and Armed Guard and recorded their statements. Some recovery was made from the shop of Chunnilal Shaw of Jamuria Bazar which were identified as the properties of Poniati Workshop. Mr. N. I. Khan further stated before the Enquiry Officer on 23.12.1991 that Officer-in-Charge, Jamuria Police Station recovered 200 Kilograms of Copper Coil from the quarter compound of Pritam Singh, the driver and arrested the driver.

15. It further appears that during cross-examination of Mr. N. I. Khan by Pritam Singh, as to on what basis he stated that the Transformer Coil was recovered from his quarters, the Presenting Officer stated that the police had told him about the same. This statement gives us a clear view of the matter that Mr. Khan had no personal knowledge except the reporting made to him by the Police regarding recovery. In course of Enquiry Proceeding no witness of seizure or recovery was

examined by the Enquiry Officer. Pritam Singh, the charged employee in his statement deposed that he did not know that there was an incident of theft at Poniati Workshop on 19.12.1991. He was in his quarters at 08.00 a.m. on 20.12.1991 when he learnt about the incident which took place in the previous night. The police arrested him on 23.12.1991 on an allegation that material was recovered from the compound of his quarters. Pritam Singh denied the charge of such recovery from his possession. The Enquiry Officer in his report dated 27.07.1993 (Exhibit M-5) stated that the Enquiry Report dated 26.07.1993 in three pages was being produced. On a close scrutiny, I find the Enquiry Report dated 26.07.1993 has been marked as Exhibit M-5/A collectively in three pages.

16. On a close reading of the Enquiry Report I find that the allegation which made by Mr. N. I. Khan against the charged employee are hearsay in nature which is not tenable under the law for holding the workman guilty of charge. The Enquiry Officer stated that the charged worker neither produced any document nor examined any witness in his defence during enquiry proceeding. The Enquiry Officer observed that from the statement of the Presenting Officer it was found that the charged workman was arrested by the police in connection to recovery of stolen materials from compound of his quarters on 23.12.1991. This observation of the Enquiry Officer based upon arrest of Pritam Singh without any evidence of recovery does not support the management case for holding the charged employee guilty of the offence of theft. In the Enquiry Proceeding Hardeo Yadav, Security Guard was examined on 16.04.1992. He stated that he was on duty at the main gate of Poniati Workshop. In the midnight between 19.12.1991 to 20.12.1991, Pritam Singh, Driver, Tinu Khan, Ram Kishna Sarma, and Lala Nunia, Security Guards snatched the key of the main gate from him forcibly and entered the workshop by opening the main gate. They took out the key of the Electrical Shop from Key Board, opened the door of the Electrical Shop and took out Transformer Coil and took the same in the Jeep driven by Pritam Singh, the driver. He tried to

resist them but they threaten to kill him, if he reported the matter to anybody. Hardeo Yadav further stated that Ram Kishna Sarma showed his revolver and threatened him that he would shoot him if he resisted them.

17. The Enquiry Proceeding reveals that the statement made by Hardeo Yadav, Security Guard was in connection with a Charge Sheet dated 30.12.1991 issued to Hardeo Yadav. Therefore, it is apparent that statement made by Hardeo Yadav was not in connection with the enquiry arising out of Charge Sheet No. ECL/PW/Chargesheet/91/1387 dated 30.12.1991, issued to Pritam Singh. The statement of Hardeo Yadav cannot be used against Pritam Singh as he did not have the opportunity to cross-examine the witness. The settled principle of law is that the statement of a co-accused against accomplice in the same procedure would be relevant if the accused makes confession affecting such other person and himself. In the commission of the offence no such statement is made by Hardeo Yadav implicating himself and Pritam Singh. Furthermore, in matter of grave allegation I find no corroborative evidence from any other witness. In my considered view Mr. D. K. Banerjee, Enquiry Officer has failed to appreciate the legal evidence in its true spirit. He has misplaced the burden of proof upon the charged employee to the effect that he did not adduce any evidence and based his findings on an isolated statement of another charged employee made in a separate proceeding where he disowned his involvement. It is also evident from the statement of the management witness that no 2nd Show Cause Notice was issued to the charged employee before issuance of order of dismissal. The order dated 03.10.1994 issued by the Agent of Poniati Workshop refers to an order of dismissal bearing No. ECL/CMO/C-60/94/DA/SPL/3265 dated 27/30.09.1994 as approved by the Director (Personnel), ECL. No such copy of order was produced by the management. It appears to me that the order of dismissal was not passed by the competent authority i.e. the Disciplinary Authority in this case. The management of the company appears to have violated the principle 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]**, laid down the law as follows:

“ 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 my considered view such mandatory procedures have not been complied and the Enquiry Officer appears to have reached his conclusion on the basis of information and hearsay evidence without making any effort to find out the truth as to from whose custody the stolen materials have been recovered.

18. It would now be apposite to consider the contents of the judgment dated 07.03.2000 passed in G. R. Case No. 1734/91 under Section 379 and 411 of the Indian Penal Code, which arose out of the selfsame occurrence. From the findings of the learned Magistrate, it is gathered that Mr. N. I. Khan, the de-facto complainant was not examined in the case. The contents of FIR were not proved. Kashmir Singh, PW-1, and Ranglal Sharma, PW-2, said to be seizure witnesses did not adduce any evidence that any seizure was made in their presence from the possession of any of the accused persons. Learned Magistrate held that there was no material on record to establish that the seized articles were identified by the complainant at any point of time. It was held that the accused persons were

found not guilty and they were acquainted from the case. Since alamsats (seized goods) were not identified or claimed by Poniat Workshop, they were confiscated to the state. With such materials on record, I find that the order of dismissal passed by the management against Pritam Singh is without any base, the same is arbitrary, improper, unjustified and is not sustainable under law. In the light of my above discussion, I am of the considered view that the order of dismissal passed against Pritam Singh on 03.10.1994 (Exhibit M-6) and 25.10.1994 (Exhibit M-7) are set aside. Pritam Singh, the aggrieved workman having died on 22.12.2006 shall be deemed to have been in service of the company from 03.10.1994 till the date of his notional superannuation on 01.07.2000. Charan Kaur, wife of the deceased employee shall be entitled to receive all the retiral and consequential relief. It appears that Pritam Singh did not render any service to the company during this long period of nearly six years. There is no evidence on record that he did not work for any gain. Under such circumstances I find it appropriate to allow fifty percent (50%) of back wages of Pritam Singh from 03.10.1994 to 01.07.2000 in favour of Charan Kaur, the widow of the deceased workman. The management of the company is directed to make payment of outstanding dues to the wife of the deceased employee within one month from the date of communication of the order.

Hence,

ORDERED

that the Industrial Dispute is decided in favour of the petitioner on contest against the management of ECL. The impugned orders of dismissal of Pritam Singh dated 03.10.1994 and 25.10.1994 are set aside. He shall be deemed to have been in service from 03.10.1994 till the date of his notional superannuation (01.07.2000). Charan Kaur, the wife of the deceased workman shall be entitled to

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receive fifty percent (50%) of the back wages of the workman from 03.10.1994 till 01.07.2000 along with consequential relief and retiral dues. The entire amount shall be paid to the widow of the deceased within one month from the date of communication of the Award. 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, Government of India, New Delhi for information and Notification.

(ANANDA KUMAR MUKHERJEE)

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