

**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. 11 OF 2019**

**PARTIES:** Kadna Majhi  
**Vs.**  
Management of Dalurband Colliery of 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:** 14.06.2024

**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-22012/10/2019-IR(CM-II)** dated 04.02.2019 has been pleased to refer the following dispute between the employer, that is the Management of Dalurband Colliery under Pandaveswar Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of the management of Dalurband Colliery, Pandaveswar Area of Eastern Coalfields Ltd. in dismissing Shri Kadna Majhi, Ex-Line Helper from the services of the company vide letter ref. no. 06 SF/P-382(382) dated 02-05-2015 is legal and fair? If not, to what relief the workman concerned is entitled to? ”*

1. On receiving Order **No. L-22012/10/2019-IR(CM-II)** dated 04.02.2019 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 11 of 2019** was registered on 18.02.2019 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 dismissed workman filed his written statement on 14.02.2023 through Mr. Rakesh Kumar, President, Koyala Mazdoor Congress. The management contested the scheduled dispute by filing their written statement on 14.02.2023.

In gist, the fact of workman's case is that Kadna Majhi, Lineman (U.M. No. 197022) was posted at Dalurband Colliery under Pandaveswar Area of Eastern Coalfields Limited (hereinafter referred to as ECL) was a permanent employee of ECL. He could not attend his duty from 13.10.2012 to 22.01.2013 due to his illness. After recovery from illness the workman reported for his duty. Management considered his request and issued a letter bearing No. 0658/1285 dated 25/26.02.2013 allowing him to join his duty. Thereafter, the Manager (Personnel), Dalurband Colliery issued an order bearing No. DC/PD/47/2399 dated 01.03.2013 addressed to Kadna Majhi asking him to join his duty. At the relevant time Kadna Majhi was residing at Belbaid Colliery as he was not having any quarters at Dalurband Colliery and the management did not communicate the joining order to him as a result he was unaware about the same and failed to join his duty. Subsequently, when he came to know about the order of joining, he went to the Colliery but he was not allowed to join and the management issued another Charge Sheet bearing No. DC/PD/47/13/143 dated 22/24.04.2013 for his absence from 13.10.2012. Kadna Majhi was never served with the 2<sup>nd</sup> Charge Sheet and the Enquiry Proceeding was held ex-parte. On conclusion of ex-parte proceeding the workman was dismissed from his service. It is contended that no 2<sup>nd</sup> Show Cause Notice was issued to the workman and the punishment imposed against him was disproportionate to the charge. Kadna Majhi denied that he was a habitual absentee and that the period of his absence was for six months and ten days from 13.10.2012 to 22.04.2013 and contended that he should not have been awarded the extreme punishment of dismissal for such absence as there was non-communication of the joining order. The workman prayed for setting aside the order of dismissal and for his reinstating him in service.

3. The management of ECL in their written statement has submitted that Kadna Majhi absented from his duty from 13.10.2012 without any authorization or leave or any information to the management. A Charge Sheet bearing Ref. No.

DC/PD/47/13/143 dated 22/24.04.2013 was issued to him as per Certified Standing Order. Kadna Majhi did not reply to the Charge Sheet for which a Domestic Enquiry was held. The Enquiry Officer issued Notice of Enquiry, calling upon the workman to attend the Enquiry Proceeding. As the workman did not attend the Enquiry Proceeding, the same was held ex-parte and the charge of unauthorized absence was fully established. According to the management principles of natural justice was followed in course of the Enquiry Proceeding and a 2<sup>nd</sup> Show Cause Notice was issued to Kadna Majhi vide Ref. No. 0642/P-696 dated 12/15.11.2014 which was sent to his home address under registered post. It is the case of the management that the 2<sup>nd</sup> Show Cause Notice was also published in the daily newspaper "Sambad" dated 16.02.2015 but there was no response from Kadna Majhi. after giving full opportunity to the workman to join his duty he did not turn up and an order of termination was issued bearing Ref. No. 06 SF/P-382 dated 02.05.2015. According to the management Kadna Majhi was a habitual absentee and even after several opportunities he did not make effective endeavor to continue his service. The management contended that the punishment imposed upon the ex-workman is justified and is proportionate to the gravity of misconduct. It is urged that the action of the management is justified and the Industrial Dispute is required to be dismissed.

4. The workman filed an affidavit-in-chief, reiterating the facts stated in the written statement and examined himself as Workman Witness - 1. He has also produced some documents as follows:

- (i) Copy of the Charge Sheet dated 22/24.04.2013 has been marked as Exhibit W-1.
- (ii) Copy of the order of termination dated 02.05.2015, as Exhibit W-2.
- (iii) Copy of the Mercy Petition dated 27.03.2017, as Exhibit W-3.
- (iv) Copy of the Appointment Letter dated 29.03.2011, as Exhibit W-4.

5. In cross-examination the workman witness stated that he had no document to show that he was suffering from Jaundice during his absence. He stated that he received all his letter at his village address noted in his service record. The workman also admitted that he had remained absent for more than one year and did not attend the enquiry.

6. Management examined Mr. Dilip Kumar Samal, Assistant Manager (Personnel), Dalurband Colliery as Management Witness – 1. The witness filed an affidavit-in-chief. In his evidence the witness stated that Kadna Majhi was absenting from 13.10.2012 without any sanctioned or authorized leave or any information to the management. Due to such absence, Charge Sheet dated 24.04.2013 was issued to him but no reply was submitted by Kadna Majhi. The workman did not participate in the Enquiry Proceeding and the charge of unauthorized absence was fully proved against the workman. It is averred that 2<sup>nd</sup> Show Cause Notice was issued to Kadna Majhi vide Ref. No. 0642/P-696 dated 12/15.11.2014 and the same was sent to his home address but no reply was received. It is further stated that the 2<sup>nd</sup> Show Cause Notice was also published in the daily newspaper, “Sambad” dated 16.02.2015 but no reply was received from the workman. According to the management Kadna Majhi was a habitual absentee and the Disciplinary Authority allowed him time to join his duty but he did not join his duty and continued to remain absent and an order of termination was issued on 02.05.2015. It is urged that the action of the management is totally justified in dismissing the workman from service and the workman is not entitled to any relief. In support of his case management witness produced the following documents :

- (i) Copy of the Charge Sheet dated 22/24.04.2013 has been marked as Exhibit M-1.
- (ii) Copy of the Notice of enquiry dated 04.04.2014, as Exhibit M-2.
- (iii) Copy of the Enquiry Proceeding and findings, as Exhibit M-3.

- (iv) Copy of the 2<sup>nd</sup> Show Cause Notice dated 12/15.11.2014, as Exhibit M-4.
- (v) Copy of the order of dismissal dated 02.05.2015, as Exhibit M-5.

7. The short question for consideration is whether the dismissal of Kadna Majhi by the management is justified, if not to what relief the workman is entitled?

8. Mr. Rakesh Kumar, Union representative argued that Kadna Majhi had absented from duty due to illness from 13.10.2012 to 22.01.2013. After recovery from illness, he reported before the management for allowing him to join duty and the management after considering his case issued a letter dated 25/26.02.2013, permitting him to join his duty. Another order was issued by the colliery management on 01.03.2013 but these orders were not communicated to Kadna Majhi. As a result, he was unable to join his duty. Without communication of such decision of the management a 2<sup>nd</sup> Charge Sheet dated 22/24.04.2013 (Exhibit W-1) was issued to the workman. Management without service of such Charge Sheet initiated an ex-parte enquiry proceeding against the workman. The union representative vehemently argued that without service of the order of reinstatement, 2<sup>nd</sup> Charge Sheet, notice of enquiry and 2<sup>nd</sup> Show Cause Notice, the workman was dismissed from his service and all these actions were taken behind his back violating the principles of natural justice. It is submitted by Mr. Rakesh Kumar that the workman is forty-five years of age and the order of dismissal (Exhibit W-4) should be set aside and the workman reinstated in the service.

9. Mr. P. K. Das, learned advocate for the management of ECL submitted that the management cannot prove the service of Charge Sheet, Notice of enquiry, Enquiry Report and the 2<sup>nd</sup> Show Cause Notice to the workman. It is contended that the workman has absented from his work from 13.10.2012 till issuance of

2<sup>nd</sup> Charge Sheet dated 22/24.04.2013 and there is no denial of the fact that the workman has absented from duty without leave or authorization. It is urged that the order of dismissal issued against Kadna Majhi is proportionate and he is not entitled to any relief.

10. I have considered the arguments advanced on behalf of both parties and materials in record. The 2<sup>nd</sup> Charge Sheet issued by the management bearing Ref. No. DC/PD/47/13/143 dated 22/24.04.2013 has clearly stated that Kadna Majhi (UM No. 197022) had absented from his duty from 13.10.2012 to 22.01.2013 and considering his age, management had taken a lenient view and allowed him to resume his duty after approval of the competent authority by letter No. 0658/1285 dated 25/26.02.2013 and subsequently a joining order bearing No. DC/PD/47/2399 dated 01.03.2013 was issued by the Manager (Personnel), Dalurband Colliery but from the office records it was found that Kadna Majhi did not report for his duty and his period of absence continued from 13.10.2012 till Charge Sheet was issued on 22/24.04.2013 alleging serious misconduct and indiscipline under Clause 26.5 and 26.29 of the Certified Standing Order applicable to ECL. It transpires from the content of the Charge Sheet that after considering the prayer of the workman, his first span of absence was condoned, the management allowed him to resume his duty on the basis of the letter dated 25/26.02.2013 followed by a joining letter dated 01.03.2013. It is not the case of the management that the workman was allowed to join his duty straight away on his recovery from illness. The competent authority of the management took time to consider the prayer. There is no evidence on record, adduced by the management to establish that the letters issued by the competent authority dated 25/26.02.2013 and subsequent joining letter dated 01.03.2013 issued by the Deputy Manager (Personnel), Dalurband Colliery were actually issued and communicated to the workman. Keeping the workman in the dark the management proceeded to issue the 2<sup>nd</sup> Charge Sheet alleging willful neglect of

work and absence from duty beyond ten days, starting from the same time i.e. 13.10.2012 which had already been considered and the workman was reprieved by allowing him to resume his duty. Mr. Dilip Kumar Samal, the management witness in his evidence-in-chief admitted that he has no document to show that Charge Sheet, Notice of enquiry and 2<sup>nd</sup> Show Cause Notice were served upon the workman. In the paragraph - 8 of his affidavit-in-chief, MW-1 averred that 2<sup>nd</sup> Show Cause Notice was also published in the daily newspaper "Sambad" dated 16.02.2015 but no copy of the publication has been filed by the management witness in support of his claim.

11. Now let us consider the legality of the Enquiry Proceeding conducted against the workman before his dismissal. The management witness stated that Mr. D. Sutradhar, Sr. Manager (Min.) was the Enquiry Officer in this case. No document has been filed to establish that the competent authority had appointed Mr. D. Sutradhar as Enquiry Officer in this case. On considering the contents of Exhibit M-3, which is a copy of Enquiry Proceeding dated 09.08.2014, I find that the Domestic Enquiry was held on a single date i.e. on 09.08.2014. There is no reference to the fact that the Charge Sheet and Notice of enquiry were served upon the workman. It is gathered from the Enquiry Proceeding that only Mr. D. Sutradhar, the Enquiry Officer and Mr. T. Chatterjee, management representative were present. Kadna Majhi the charged employee was absent. There is no reflection in the Enquiry Report that the charge levelled against the workman was communicated to him. The Enquiry Officer simply read the Charge Sheet on his own and recorded the statement of Mr. T. Chatterjee, management representative. Finally, it was concluded that the charge levelled against the workman was established and the Enquiry Report was submitted to the Senior Manager (Min.), Manager, Senior Manager (Personnel). On a perusal of the Enquiry Report I find that the Enquiry Officer has not recorded his satisfaction about service of the Charge Sheet and Notice of enquiry to the workman. Therefore, the ex-parte proceeding held against the workman without service of Charge Sheet and Notice



of enquiry is grossly illegal and in violation of principles of natural justice. The Enquiry Proceeding as well as 2<sup>nd</sup> Show Cause Notice, a copy of which has been produced as Exhibit M-3 and M-4 respectively are the documents which have no relevance in the eye of law unless they are actually served upon the employee. To my mind the Enquiry Report and the dismissal of the workman has been vitiated due to the arbitrary mode of proceeding conducted against the workman without having no knowledge of such proceeding.

12. Non-service of enquiry notice and copy of enquiry proceeding to the workman has been compounded by the fact that the management of ECL has not issued 2<sup>nd</sup> Show Cause Notice to the workman, providing him opportunity to make his representation against the findings of the Enquiry Officer. Formal production of Ex-parte Enquiry Report and copy of 2<sup>nd</sup> Show Cause Notice without proof of their service upon the workman cannot be any assistance to the case of the management. It is explicit that the management of ECL has failed to comply the legal mandate 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]**, the Hon'ble Supreme Court of India 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 ratio 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 2<sup>nd</sup> Show Cause Notice had to be issued to him before taking any final decision of removing him from service. The management has not complied

the direction in their own company's circular, therefore the order of dismissal of Kadna Majhi from service is found improper, illegal and violative of the principles of natural justice. The order of dismissal of Kadna Majhi from his service, dated 02.05.2015 issued by the General Manager of Pandaveswar Area (Exhibit M-5) is found not tenable under the facts and circumstances of this case.

13. The order of dismissal of Kadna Majhi from his service dated 02.05.2015 issued by the General Manager of Pandaveswar Area (Exhibit M-5) is hereby set aside. The management is directed to reinstate the workman to his original post within one month from the date of communication of the Award. The period of his absence shall be treated as dies non and he shall be entitled to his consequential benefits. Considering the fact that the workman has not rendered any service to the employer company since 13.10.2012 till date and there being no evidence that he was not engaged for any gainful employment, he shall not be entitled to any back wages for the entire period. His only relief in this case is reinstatement in service for gross violation of natural justice by the employer company in the process of dismissing.

Hence,

**ORDERED**

that the Industrial Dispute is allowed in favour of the workman on contest. the order of dismissal dated 02.05.2015 issued by the General Manager of Pandaveswar Area is illegal and set aside. The management is directed to reinstate the workman to his original post within one month from the date of communication of the Award. 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.