

**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 1999

PARTIES:

1. Arjoon Mistry,
2. Baijnath Shaw,
3. Kuldip Yadav,
4. Bachha Swain, and
5. Prakash Singh

(Represented by Koyala Mazdoor Congress)

Vs.

Management of Bankola Area, ECL

REPRESENTATIVES:

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

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 28.01.2025

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-22012/53/98-IR(CM-II)** dated 21.01.1998 has been pleased to refer the scheduled dispute between the employer, that is the Management of Bankola Area of Eastern Coalfields Limited and their workmen for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Bankola Colliery of M/s. ECL in not providing employment to the dependents of five employees namely S/Sh. Bachcha Swai, Bijnath Saw, Kuldip Yadav, Arjun Mistry and Prakash Singh as per provision of NCWA-IV is legal justified? If not, to what relief the workmen are entitled? ”

1. On receiving Order **No. L-22012/53/98-IR(CM-II)** dated 21.01.1998 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 02.02.1999 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 as General Secretary, Koyala Mazdoor Congress filed a written statement on 08.01.2002 on behalf of the five terminated workmen of Bankola Colliery under Bankola Area of Eastern Coalfields Limited (hereinafter referred to as ECL). In gist, the fact of the case disclosed in the written statement is that P. G. Ghosh, Senior Overman of Shankarpur Colliery along with fourteen

others of Bankola Colliery were permanent employees under ECL. According to the provision of Clause 9.4.3 of National Coal Wage Agreement (hereinafter referred to as NCWA) – IV these said fifteen employees appeared before a Medical Board of the company on 26.02.1994 and were declared medically unfit. Accordingly they were terminated from service on the basis of letter bearing No. PA/PD/B-II(28)/632 dated 02/03.03.1994. It is the claim of the union that as per provision of Clause 9.4.3 of NCWA-IV one dependant of the employee is entitled to get employment. It is provided in the NCWA that the dependant for this purpose means the wife / husband as the case may be, unmarried daughter, son and legally adopted son. If no such direct dependant is available for employment, younger brother, widowed daughter / widowed daughter-in-law or son-in-law residing with the employee and almost wholly dependent on the earnings of the employee would be considered. It is further provided in NCWA that the dependant to be considered for employment should be physically fit and suitable for employment, whose age shall be not more than thirty-five years provided the age limit in case of employment of female spouse would be forty-five years as stated in Clause 9.5.0 and in case of male spouse there would be no age limit regarding provision of employment.

3. The concerned union further contended that in spite of such provisions in NCWA, the workmen who were declared permanently disabled were not provided with any employment and on 21.07.1997 the union approached the Chairman of Coal India Limited for redressal of their grievances. A Notice of Strike was served upon the management of Bankola Area proposing a strike from 01.09.1997. On intervention of the Assistant Labour Commissioner (Central) a conciliation proceeding was held. The management of ECL in their representation before the Assistant Labour Commissioner (Central) admitted that the workmen had been declared medically unfit but the Director (Personnel), ECL Headquarters advised them to ensure that no employment is processed till the same is approved by him. Out of fifteen persons declared unfit ten preferred writ petition before the Hon'ble

High Court at Calcutta and the management did not submit further comment. The Assistant Labour Commissioner (Central), Raniganj did not recommend for any reference. The management of ECL suggested to all the persons to reappear before the Medical Board but in the Area JCC all the representatives of the operating unions disagreed to the proposal. On 08.11.1997 a Failure of Conciliation was issued by the Assistant Labour Commissioner (Central) which was sent to the Ministry and the Ministry in turn referred the Industrial Dispute to this Tribunal for adjudication. According to the union the Hon'ble High Court passed favorable order in favour of the ten writ petitioners and directed the respondent company to take steps for providing employment to the dependants of the respective petitioners in terms of Clause 9.4.3 of NCWA-IV and that such employment should be given to the writ petitioners within the four corners of the aforesaid provisions and that the decision to be taken within eight weeks from the date of communication of the order. The union demanded employment of the dependants in line with the decision of the Hon'ble High Court passed in the Writ Petition.

4. A rejoinder was submitted by the union on 10.03.2003, stating that the Headquarters of ECL issued a letter for stopping the process for providing employment to the dependants of the employees found medically unfit. It is contended that once Medical Board declared an employee medically unfit and Competent Authority approved the result of the Medical Board then no question can arise for further approval. It is also contended that the management cannot direct the workers to appear before the Medical Board once again. It is their case that union asked for providing employment to the dependants of the workmen found medically unfit for work. Referring to the contents of paragraph (5) of the written statement filed by the management it is urged out that the management admitted the fact that the persons who appeared before the Apex Medical Board were again found medically unfit. The decision of the Medical Board was correct

as such the management of ECL is not justified in stopping the employment process. In response to the contention of the management that no employment can be provided to the dependants of the workmen unless it is proved that they are suffering from acute financial crisis cannot arise, the union has urged that the workmen are claiming employment not on compassionate ground but as per the provisions of NCWA. Further case of the union is that if the management cancelled the result of the Medical Board, then the workmen should be allowed to join their duty and the order of termination should be withdrawn but in the instant case management neither provided employment to the dependants of the workmen as per the provisions of NCWA nor did they allow the terminated workmen to resume their duty resulting in financial loss. It is urged that the workmen who were declared medically unfit should be allowed to join their duty and they should be paid wages from the date of their termination till their date of superannuation. It is prayed that the management of Bankola Area, ECL should be directed to provide employment to the dependants of the five terminated employees who were declared medically unfit and adequate compensation be paid to them for the period from 1994 till the date employment is given.

5. Management filed their written statement on 31.10.2002. It is stated by the management that the concerned workmen were permanent employees of different collieries under Bankola Area of ECL and were declared medically unfit by the Medical Board and their services were terminated. Some complaints were received regarding holding of Medical Board and assessment of disability of the concerned persons. Accordingly, the Director (Personnel), ECL Headquarters in his letter dated 29.04.1994 (Exhibit M-3) intimated that no employment to dependant of medically unfit person should be processed till such matter was approved by the appropriate authority. It was intimated by the Chief General Manager (Personnel), ECL Headquarters by letter dated 16.03.1995 that the employees should appear again before the Medical Board at Sanctoria for their medical examination and

the matter will be finalized thereafter. After holding meeting by the Area Joint Consultation Committee on 22.03.1995 the management requested the union to advise the workmen to appear before the fresh Medical Board as per the direction of the Competent Authority for consideration of their voluntary retirement under Clause 9.4.0 of NCWA-V but the union representative refused to comply the direction. It is further stated that amongst the employees terminated pursuant to the letter dated 03.03.1994 when some of them appeared before the Apex Medical Board at Sanctoria on 22.01.1996 they were once again declared medically unfit. Regarding Writ Petition preferred by Kishori Mohan Chakraborty and nine others before the Hon'ble High Court at Calcutta vide W.P. No. 23 of 1996 it is stated that the management preferred an appeal against order dated 24.02.1998 passed by the Hon'ble Single Bench. The Hon'ble Division Bench by disposing the appeal directed ECL authority to consider the prayer for employment of the petitioners on compassionate ground within a period of four weeks from the date and the management complied the direction by passing a reasoned order. The concerned petitioners failed to satisfy that the family of the workmen suffered from economic hardship and acute financial crisis. It was decided that employment could not be provided to them on compassionate ground as a matter of legal right. The management urged that their action in not providing employment to the dependants of the five concerned workmen is appropriate and totally justified.

6. At the time of hearing of the case union produced one Aditya Mistry as the son of Arjoon Mistry, one of the terminated workmen. None of the dependants of Baijnath Shaw, Kuldip Yadav, Bachha Swain, and Prakash Singh turned up claiming employment. Union examined Aditya Mistry as Workman Witness No. 1 and filed his affidavit-in-chief. In his affidavit-in-chief Aditya Mistry state that his father Arjoon Mistry applied for voluntary retirement due to illness. His father appeared before the Medical Board and was declared medically unfit and terminated from his service under the provision of Clause 9.4.0 of NCWA as per

letter dated 02/03.03.1994. It is claimed that one dependant of his father is entitled to get employment and his father submitted application for employment along with relevant documents. In the meantime, the management of ECL Headquarters issued direction not to process employment of the dependants of the medically unfit employees. The witness stated that nether employment was provided to him nor his father was allowed to join his duty. It is the contention of the workman witness that if the result of the Medical Board was not approved and the management decided to cancel the result of the Medical Board in that event management should allow the workmen to join duty by withdrawing the termination order but in the present case the management neither provided employment to him nor reinstated his father in the service of the company.

7. In cross-examination the witness denied that his father was asked to appear before the Medical Board once again for re-examination or that he did not appear deliberately. The dependant son admitted that he did not submit any document regarding any financial hardship due to non-employment. In the year 2014 the witness stated before the Tribunal that he was forty-two (42) years old and at the time his father was declared unfit for job he was twenty years old. No document has been produced by the workman witness in support of his claim.

8. Mr. Dibyendu Ghosh, Manager (Personnel), Bankola Colliery has been examined as Management Witness No. 1. In course of his evidence witness stated that the General Manager of Bankola Area was directed by the Director (Personnel), ECL Headquarters that no employment for dependants of medically unfit persons should be processed till it was approved by him. The following documents were produced by the management witness :

- (i) Copy of the Office Order dated 11.03.1994 by which the workmen named in the Schedule of the Industrial Dispute were declared medically unfit for duty and were stopped from duty w.e.f. 12.03.1994 was produced as Exhibit M-1.

- (ii) Copy of order of termination of service on medical ground dated 02/03.03.1994, as Exhibit M-2.
- (iii) Copy of letter dated 29.04.1994 issued by the Director (Personnel), ECL Headquarters for stopping the employment process, as Exhibit M-3.

9. In course of cross-examination the witness deposed that no application was submitted by Bachha Swain for providing employment to Prafulla Swain. Nor any application was submitted by Arjoon Mistry for employment of Aditya Mistry. The witness deposed that the termination order dated 02/03.03.1994 was not cancelled by the management. Furthermore, persons found medically unfit were not reinstated in service thereafter witness admitted that they were not paid wages from the date of termination till superannuation. The witness deposed that he had no knowledge if enquiry was held to find out the genuineness of the medical examination held on 26.02.1994 nor could he state if any action was taken against the Chairman of the Debility Medical Board. The witness lastly stated that no letter was issued to the employees informing that their medical examination held by the Medical Board on 26.02.1994 was not proper or that they were required to report for resuming duty. The witness however stated that claim for employment of the dependants of the five employees is not proper in terms of provisions of NCWA.

10. Mr. Rakesh Kumar, Union representative arguing the case on behalf of the five employees terminated on medical ground submitted that according to the provision of Clause 9.4.3 of NCWA-IV one dependant of the workman, declared medically unfit for job and terminated from service, is entitled to get an employment and such employment is not contingent upon the employee or his family facing financial crisis. It is argued that after five workmen were declared medically unfit, by issuance of an Office Order dated 11.03.1994 (Exhibit M-1)

they were stopped from their work w.e.f. 12.03.1994 and they were also terminated from their service on the basis of order dated 02/03.03.1994 (Exhibit M-2). The management has not been able to produce any document to establish that the result of the Debility Medical Board, held on 26.02.1994, was set aside or vacated by the Competent Authority or that the workmen were asked to appear before any Medical Board on any particular date or that the order of the Medical Board not been found acceptable by the Competent Authority, the five workmen were reinstated in service. It is urged that the dependants of the five terminated workmen are entitled to employment and they are also entitled to compensation for the period from their termination till the date of superannuation.

11. Mr. P. K. Das, learned advocate for the management argued that on the basis of a complaint received regarding assessment made by the Debility Medical Board, the Director (Personnel), ECL Headquarters issued a letter dated 29.04.1994 (Exhibit M-3) requesting the General Manager, Bankola Area not to process employment of the dependants of the employees declared unfit without approval by him. It is argued that subsequently an Apex Medical Board was setup at Sanctoria where the employees were asked to appear for their re-assessment but the operating union disagreed the proposal for re-examination by the Medical Board. It is argued that the union has failed to examine the dependants, seeking employment in place of Baijnath Shaw, Kuldip Yadav, Bachha Swain, and Prakash Singh and no applications were made by their dependants. According to the management of ECL no evidence has been adduced by the union, providing particulars about the dependants of the workmen seeking employment nor have they been able to substantiate that their families are facing financial crisis and hardship.

12. The short question before this Tribunal for adjudication is whether the dependant of five employees named in the Schedule are entitled to get

employment on termination of service of the employees on medical ground and to what relief the families of the employees are entitled to?

13. I have considered the pleadings of the parties in the light of scheduled Industrial Dispute referred for adjudication and the evidence garnered on record. The concerned employees were examined by Medical Board of ECL on 26.02.1994 and were terminated from service on and from 12.03.1994. Therefore, the provisions of NCWA-V will apply to the employees declared unfit for work. It is gathered from the argument of the union representative that all the five workmen terminated on medical ground have passed away except Aditya Mistry, son of Arjoon Mistry. There is no evidence on record to establish that the dependants of Bajinath Shaw, Kuldip Yadav, Bachha Swain, and Prakash Singh have applied for their employment according to Clause 9.4.0 (iii) of NCWA-V, applicable to them at the time of issuing the order of termination dated 02/03.03.1994. As per Clause 9.4.0 (ii) of NCWA-V an employee is entitled to the benefit under this Clause if disablement arises out of general physical disability so certified by the Coal Company and the employee is up to fifty-eight years of age. It may be gathered from Exhibit M-2 that all the five employees were declared medically unfit as per Clause 9.4.0 of NCWA-V. Therefore, it may be derived that at the relevant time the said employees were below the age of fifty-eight years and they had at least two more years of employment left under the company. Soon after their termination and discontinuation from service the management issued a letter dated 29.04.1994 through the Director (Personnel), ECL Headquarters (Exhibit M-3) expressing his intention not to process the employment of the dependants of the employees declared medically unfit by the Board till the same was approved by him. The management arranged for re-assessment of the employees by a Medical Debility Board. The union in paragraph (3) of their rejoinder to written statement contended that ECL Headquarters issued a letter for stoppage of employment to the dependants of the medically unfit persons and

argued that no further approval for debility was necessary once the Medical Board declared them unfit, which was approved by the Competent Authority. In paragraph (4) it is stated that the decision of the management directing the workmen to appear again before the Medical Board was wrong and not justified and that all unions did not accept the decision of the management. It is evident from such averment that the unions and their workmen were fully aware about the decision of the management to hold fresh Medical Board for re-assessment but they did not appear. I am of the view that under such circumstances the workmen cannot reap the benefit of the provisions of Clause 9.4.0 of NCWA-V by taking a unilateral decision in the mode of assessment by the Medical Board. In such view of the matter, I find and hold that the dependants of the concerned five workmen are not entitled to employment on the ground of termination due to medical unfitness.

14. After issuance of letter to termination (Exhibit M-2) management appeared to be doubtful about the finding of the Medical Board due to which the Director (Personnel), ECL Headquarters issued a letter to the General Manager, Bankola Area, ECL not to process the employment of the dependants until the same was approved by him. It is found from the materials on the record that the management of ECL did not issue any letter cancelling the Office Order dated 11.03.1994 issued by the Dy. CME/Agent, Bankola Colliery, ECL (Exhibit M-1) for stoppage of work of the medically unfit workmen. The management did not decide to withdraw the order of termination of service on medical ground of the five workmen issued by the Personnel Manager (Incharge), Bankola Area, ECL dated 02/03.03.1994 (Exhibit M-2) nor did the management of Bankola Area thought it necessary to issue any order of reinstatement of the five employees in service who according to them could not have been terminated on medical ground. In this backdrop the management is under the obligation to compensate the family of the five terminated employees by paying them an amount equivalent to

their pay last drawn, for the remaining period of their service, taking account of their normal date of superannuation as per their Service Record. The management is therefore directed to pay a compensation amount and all other dues to the dependants of the five employees within two (2) months from the date of communication of the Award.

Hence,

ORDERED

that the Industrial Dispute is decided against the management of Bankola Area of Eastern Coalfields Limited on contest, in part. The management is directed to compensate the dependant family members of the five employees namely, Bachha Swain, Baijnath Shaw, Kuldip Yadav, Arjoon Mistry and Prakash Singh, who have suffered premature termination on the ground of medical debility. The management is directed to pay the compensation amount equivalent to their Pay from the date of their termination up to the date of their actual superannuation, to be computed on the basis of their last Pay drawn. The compensation amount and all other dues be paid to the dependants of the employees within two (2) months 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.