

**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. 110 OF 2005**

**PARTIES:** Hadu Behara  
**Vs.**  
Management of Patmohna Colliery, B.M.P. Group of Mines, ECL

**REPRESENTATIVES:**

For the Union/Workman: Mr. H.L. Soni, Union Representative, Koyala Mazdoor Congress  
For the Management of ECL: Mr. P.K. Goswami, Advocate

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 03.02.2025

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**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-22012/379/2004-IR(CM-II)** dated 18.08.2005 has been pleased to refer the following dispute between the employer, that is the Management of Patmohna Colliery, B.M.P. Group of Mines of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of the management of Patmohna Colliery in dismissing Sh. Hadu Behara from services w.e.f. 26.2.97 is legal and justified? If not, to what relief the concerned workman is entitled to and from which date? ”*

1. On receiving Order **No. L-22012/379/2004-IR(CM-II)** dated 18.08.2005 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 22 of 2001** was registered on 09.09.2005 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 along with a list of witnesses.

2. Mr. H.L. Soni, Secretary, Koyala Mazdoor Congress filed written statement on behalf of Hadu Behara on 28.11.2005. Management of ECL contested the case by filing their written statement on 03.11.2006. The fact of the case as disclosed in the written statement of the workman is that Hadu Behara, a permanent

employee of Eastern Coalfields Limited was posted as U.G. Loader at Patmohna Colliery, Sodepur Area. Due to his continuous illness, he remained absent from duty from 25.10.1994 to 20.10.1995, which was beyond his control. He was undergoing medical treatment from a private medical practitioner at Raniganj. After recovery, he went to attend his duty but the management of Patmohna Colliery issued a Charge Sheet against him bearing number PMC/C-6/58/1060 dated 20.10.1995, levelling a charge of unauthorized absence from duty without notice or authorization. According to the version of the union, the management of ECL conducted a fake enquiry against Hadu Behara without serving any notice of enquiry upon the workman. It is contended that the workman was not aware about the appointment of any Enquiry Officer and Management Representative. The workman could not participate in enquiry to defend his case, resulting in violation of the principles of natural justice. It is inter alia contended that management conducted an ex parte enquiry and he was dismissed from service vide letter No. ECL/STA/C-6/44/539 dated 17.02.1997. The union further contended that the punishment of dismissal imposed against workman is illegal as no Second Show Cause notice was served upon the workman as directed by the Hon'ble Supreme Court of India. Furthermore, the order of dismissal is harsh and disproportionate to the alleged misconduct. It is prayed that the order of dismissal is liable to be set aside and Hadu Behara should to be reinstated in service and full back wages and other consequential benefits should be paid to him from the date of his dismissal till his reinstatement.

3. The management in their written statement disclosed that the union has no locus standi to agitate on behalf of the workman who was not a member of the union at the time of raising the dispute. It is further stated that the workman was dismissed vide letter No. ECL/STA/C-6/44/539 dated 17.02.1997 and the Industrial Dispute was raised by the union after lapse of seven years on 16.07.2004 without assigning any reason for such inordinate delay. It is the case

of the management that Hadu Behara was absent from duty from 25.10.1994 to 20.10.1995 without informing the management or obtaining any permission or leave. A Charge Sheet was issued against him. The workman did not submit any reply and an enquiry was held ex parte where the charge of unauthorized absence was proved against him. There was no reason to show any leniency to the workman as he willfully remained absent without any ground. He remained silent for seven years without submitting any representation before the management since his dismissal. It is urged that the workman is not entitled to any relief and the Industrial Dispute is liable to be dismissed.

4. The point for consideration before this Tribunal is whether the dismissal of Hadu Behara from service w.e.f. 26.2.97 is legal and justified and to what relief the workman is entitled to?

5. In order to prove the case of the workman, union filed an affidavit-in-chief of Hadu Behara where the workman has reiterated his case disclosed in the written statement. He has categorically stated that before awarding the maximum punishment of dismissal, a Second Show Cause notice should have been served upon him but the management did not comply the same and he should be reinstated in service with full back wages. In his cross-examination on 22.01.2013, the witness stated that he was medically treated for illness by a private doctor at Raniganj but he had no paper relating his treatment. He further deposed that he was dismissed from service in 1997 and the dispute was raised in 2004. During this intermediate period, he did not file any application before the authority against his dismissal. Management suggested to the witness that he was not suffering from any illness and that he never received any medical treatment during the period of his absence which the workman denied. The workman witness was re-examined on 19.06.2023 for the purpose of admitting

some documents in evidence which were not produced earlier. The witness produced the following documents in support of his case :

- (i) Copy of the Charge Sheet is produced as Exhibit W-1.
- (ii) Copy of Enquiry Report is produced as Exhibit W-2.
- (iii) Copy of Identity Card is produced as Exhibit W-3.
- (iv) Copy of purported medical certificate is produced as Exhibit W-4.

On his re-cross-examination, the workman admitted that he raised the Industrial Dispute ten years after his dismissal. The workman stated that he was suffering from jaundice and was unable to produce any medical document relating to his medical treatment for jaundice. It transpires from his cross-examination that during the period of his absence, he was residing at his native place in Village – Karatali, Dist. – Ganjam, Odisha. He further stated that he was medically treated by Dr. A.K. Sarkar and also admitted that he did not know the place of practice of the doctor. The witness stated that Kalu Swain, a co-villager had collected the medical document for him and identified the purported medical certificate as Exhibit W-4. Witness stated that he was unable to state the place where he met Dr. A.K. Sarkar even on a single occasion.

6. Smt. Mayuri Kar Verma has been examined as MW-1. She filed her affidavit-in-chief where she stated that the workman did not submit any reply to Charge Sheet for his unauthorized absence from 25.10.1994 to 20.10.1995. The management thereafter decided to hold departmental enquiry and had sent notice of enquiry to the workman. The charged workman did not appear to participate in the enquiry and the enquiry was held ex-parte. The workman was found guilty and a report in this regard was submitted. The management issued a Notesheet proposing dismissal of Hadu Behera. After getting approval from the competent authority Hadu Behara was dismissed. She further stated that the dismissal of the workman was proper and there was no illegality.

7. In support of their case Management produced the following documents :

- (i) Copy of Charge Sheet is produced as Exhibit M-1.
- (ii) Copies of notices of enquiry dated 14.08.1996 and 25.12.1996 issued to Hadu Behara under registered post are produced as Exhibit M-2 and Exhibit M-3.
- (iii) Copy of notice dated 02.05.1996 is produced as Exhibit M-4.
- (iv) Copy of Enquiry Proceeding and findings of Enquiry Officer is produced as Exhibit M-5.
- (v) Copy of Notesheet with proposal for dismissal and approval of the General Manager is produced as Exhibit M-6.
- (vi) Copy of letter of dismissal dated 17.02.1997 issued by Dy. Chief Personnel Manager is produced as Exhibit M-7.
- (vii) Copy of postal envelope sent under registered post with A/D through which notice of enquiry was sent to workman is produced as Exhibit M-8

The Management witness in her cross-examination deposed that she had no document to show that Charge Sheet was served upon Hadu Behara. It is stated that Enquiry Officer N.R. Mitra was appointed by Agent, BMP Group of Mines. She denied that only General Manager of the Area was the appropriate authority to appoint the Enquiry Officer. It transpires from her evidence that management was unable to produce any order of appointment of N.R. Mitra as Enquiry Officer. Witness admitted that management neither served copy of Enquiry Proceeding nor any Second Show Cause notice upon the workman after he was found guilty of the charge. Witness denied that management did not give opportunity to the workman to respond the charge levelled against him.

8. Mr. H.L. Soni advancing his argument on behalf of the dismissed workman submitted that Hadu Behara was suffering from illness and the Charge Sheet dated 20.10.1995 was not served upon him. The workman was absolutely in dark regarding any Enquiry Proceeding held against him during the period of his illness. It is contended that management failed to prove that notice of enquiry was served upon the workman or he was informed about the date of enquiry. The union representative pointed out that the workman was not provided with any opportunity to contest the charge nor any Second Show Cause notice accompanied by Enquiry Report was served upon him to meet the ex parte finding against him. Mr. Soni vehemently argued that management has deliberately violated the direction of Hon'ble Supreme Court of India in the case of Md. Ramzan Khan versus Union of India which was accepted by the management of Coal India Limited in circular No. CIL C-5A(VI)/50774/28 dated 12.05.1994. It is urged that the dismissal of a workman by an order issued by the Dy. Chief Personnel Manager, who is not the competent authority to dismiss a workman from service, is illegal. Therefore, the order of dismissal as per letter dated 17.02.1997 (Exhibit M-7) is liable to be set aside and the workman is entitled to be reinstated in service along with back wages from the date of his dismissal.

9. Mr. P.K. Goswami, learned advocate for the management of ECL harped upon the fact that the Industrial Dispute has been raised in the year 2004 after inordinate delay of seven years from the date of his dismissal and the same cannot be entertained. Referring to the cross-examination of workman witness, learned advocate argued that the story of the union that the workman suffering from illness during his absence is out and out false. In his cross-examination dated 21.02.2013, the witness stated that he was treated by a private doctor at Raniganj and he had no papers related to his treatment. At a later point of time, the workman in his re-cross-examination on 19.06.2023 stated that he could not

produce documents related to his medical treatment for jaundice and further deposed that at the relevant time he was residing at his native place Village – Karatali, District – Ganjam, Odisha and he was being medically treated by Dr. A.K. Sarkar. The witness failed to state the place where the doctor treated him. Regarding Exhibit W-4, a document purported to be a medical certificate, the witness stated that the document was collected by Kalu Swain, a co-villager. On perusal of the document (Exhibit W-4) it appears that A.K. Sarkar, the doctor who is said to have issued the medical certificate (Exhibit W-4) was having his chamber at Asansol and not at Raniganj. Learned advocate for the management argued that the purported medical certificate produced by Hadu Behara is a fabricated document which does not support his case of illness. Learned advocate argued that the workman actually remained absent not only upto 20.10.1995 but he was absent till 15.01.1997. After the workman was found guilty on the basis of domestic enquiry, a Notesheet was initiated and the General Manager who is the Competent Authority approved the proposal for his dismissal from service. It is submitted that the workman is not entitled to any relief and the Industrial Dispute raised by him is a stale one.

10. I have considered the arguments advanced by the union representative and learned advocate for the management. Perused the pleadings of the parties and evidence adduced. There is unflinching evidence regarding unauthorized absence of the workman from his duty for a long period from 25.10.1994 to 20.10.1995. It transpires from evidence that after issuance of notice under registered post at his native place at Village – Karatali, District – Ganjam, Odisha, the postal envelope was returned unserved with endorsement of the post man (Exhibit M-8). The workman witness stated in his re-cross-examination that he was staying at Village – Karatali, District – Ganjam, Odisha. Therefore, it is presumed that by sending the notice of enquiry to his native place of residence at Odisha is a proper

service and the workman avoided receiving the notice. His plea of being unaware about the departmental enquiry therefore cannot be accepted. In paragraph three (3) of his affidavit-in-chief, the workman stated that after being declared fit for resuming duty, he reported for duty on 18.10.1995 but he was not allowed to resume his duty and a Charge Sheet No. PMC/C-6/58/1060 dated 20.10.1995 was issued. Considering the proximity of time between his claim for reporting on 18.10.1995 and the date of issuance of Charge Sheet which is 20.10.1995, it clearly implies that the workman was aware about issuance of Charge Sheet against him. The workman however did not participate in the Enquiry Proceeding on a plea that he did not receive any notice of enquiry. The management in their turn produced Notice of enquiry dated 14.08.1996 (Exhibit M-2), 25.12.1996 (Exhibit M-3) and dated 02.05.1996 (Exhibit M-4). It is evident from Exhibit M-8, a xerox of the postal envelope sent under registered post with A/D addressed to the workman, that the notice of enquiry bearing number BP/Dy. PM/C-6/21/1250 dated 14.08.1996 had been sent to him at his place of residence which was returned unserved with postal endorsement that addressee had gone to Surat and his address was not known. This evidence is of great significance as it reveals that a person who had deserted his place of work under the management of ECL had ventured for greener pastures at Surat in Gujarat. If he was indisposed of due to any illness, he would not have left his place of residence. Therefore, this double standard of the workman cannot be trusted and accommodated in any manner. The Enquiry Officer after holding an ex parte enquiry found the charged employee guilty of the charge. The Enquiry Report (Exhibit M-5) reveals that notice was sent to the charged employee on various dates under registered post but he did not participate. The Charge Sheet may have been issued on 20.10.1995 but at the time of conclusion of enquiry on 15.01.1997, there was no whereabouts of the workman and he is certainly not entitled to any compassion. The workman knowing the consequence of long unauthorized absence did not suffer any prejudice due to ex parte enquiry proceeding held against him.

11. The subsequent course of action taken by the management reveal some lapse in procedure. Admittedly no Second Show Cause notice was issued to the workman. It appears from the facts and circumstances of the case that the workman had not only fled his place of work but also fled his native place and local people informed that he went to Surat. Under this special circumstance, the management of ECL cannot be a helpless spectator and wait to first find out the charged employee and then serve a Second Show Cause notice before dismissing him. A workman who himself exhibited lack of sincerity and accountability cannot claim any equitable relief. Under such special circumstance, I hold that the procedural deficit on the part of management in not serving any Second Show Cause notice before dismissing him from service ipso facto does not demolish the finding of the Enquiry Officer and the decision of the management to dismiss the workman from service for long absence of workman without information. After the Enquiry Officer found the workman guilty of the misconduct for long absence without any intimation, the Agent, B.M.P. Group of Mines initiated a Notesheet proposing dismissal of Hadu Behara from service. The competent authority i.e. General Manager after considering the proposal and finding of the enquiry officer approved the proposal for dismissal. Generally an order of dismissal is passed by the appropriate authority. In the instant case, decision was taken by the appropriate authority which was communicated by the Dy. Chief Personnel Manager, Sitarampur Area through letter No. ECL/STA/C-6/44/539 dated 17.02.1997 requesting the Agent, B.M.P. Group to communicate the order of dismissal to the person concerned and that the termination was to take place with immediate effect. I do not find any illegality in the procedure of dismissing the workman as there is no extenuating circumstance in his favour.

12. In this matter it would be appropriate to draw guidance from a decision Hon'ble High Court of Kerala, in the case of **P.N. Saji vs. Kerala Public Service**

**Commission (2025: KER: 5997)** where it was held *“When reviewing disciplinary actions against employees, Courts or Tribunals should consider whether violations of rules or regulations are substantive or procedural. Violation of substantive provisions, such as those related to the competency of the authority imposing punishment, typically requires strict compliance, and thus, the test of prejudice has no role. Procedural violations, on the other hand, should be examined to determine whether they prejudiced the employee's ability to defend himself. If prejudice is found, the order has to be set aside. Otherwise, no interference is necessary.”*

13. The workman has raised this Industrial Dispute seven years after his dismissal only in the year 2004. Though there is no period of limitation fixed for initiating an Industrial Dispute, the union/workman is under obligation to assign reasons for the delay in raising the Industrial Dispute after seven years of his dismissal and ten years from his attending duty for the last time at ECL. The workman appears wholly irresponsible in his conduct and his statements are contradictory in nature. In my considered view, I do not find any illegality in the order of dismissal. It appears that the workman has taken a chance after seven years, seeking reinstatement which is not to be entertained at this belated stage. In my view any concession to workman would amount to misplaced sympathy. The workman is not entitled to any back wages specially when there is no reason to interfere with the order of dismissal. The Industrial Dispute is bereft of merit and the same is dismissed on contest.

Hence,

**ORDERED**

that the Industrial Dispute is dismissed on contest. The workman is not entitled to any relief of reinstatement and back wages. Let an award be drawn up

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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.