

**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. 111 OF 1999

PARTIES: Kedar Bind
(represented by the dependant family members)

Vs.

Management of Madhabpur 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: 24.04.2024

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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-22012/456/98/IR(CM-II)** dated 30.07.1999 has been pleased to refer the following scheduled dispute between the employer, that is the Management of Madhabpur Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Madhabpur Colliery of Kajora Area of M/s. ECL in dismissing Sh. Kedar Bind, Underground Loader from service is legal and justified? If not, to what relief is the workman entitled? ”

1. On receiving Order **No. L-22012/456/98/IR(CM-II)** dated 30.07.1999 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 111 of 1999** was registered on 18.08.1999 / 21.09.2001 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. A written statement was filed by the workman on 12.11.2002 through Mr. Rakesh Kumar, Union representative. The case of the workman as disclosed in the written statement is that Kedar Bind was a permanent employee of the company and while he was posted at Madhabpur Colliery under Kajora Area of Eastern Coalfields Limited (hereinafter referred to as ECL) was facing some

problem to attend duty due to pressure created on him by money lenders at the colliery. The workman applied for his transfer to some other colliery. The management considered his prayer and issued an order of transfer vide Ref. No. KA/PM/C-6/2(c)/2468 dated 06.11.1995. While the proposal for transfer was being processed Kedar Bind absented from duty w.e.f. 15.04.1995 to 14.09.1995 and the management of Madhabpur Colliery issued a Charge Sheet against him for his unauthorized absence from duty without information. The workman replied to the charges levelled against him and prayed before the management to allow him to join duty. The management of ECL instead of permitting Kedar Bind to join his duty, held a Domestic Enquiry. The workman participated in the Enquiry Proceeding and he was found guilty of the charge for which an order of dismissal bearing No. Madh/P&IR/Dismissal/96/667 dated 11/18.06.1996 was issued, whereby Kedar Bind was dismissed from service w.e.f. 17.06.1996. Subsequently the Manager of Madhabpur Colliery issued a Corrigendum on 20.06.1996 and changed the date of termination to 30.05.1996 instead of 17.06.1996. It is contended on behalf of the workman that Manager of the colliery cannot change the order passed by the General Manager in respect of date of dismissal.

3. According to the union the punishment of dismissal meted out to the workman is harsh, extreme and disproportionate to the nature of the misconduct alleged to have been committed. It is contended on behalf of the workman that he is in the clutches of money lenders who snatches his salary for which he is facing starvation. He used to be beaten up and threatened by anti-socials if he protested against them. To avoid such unbearable situation, he applied for his transfer. The management being aware about the crisis agreed to transfer the workman but dismissed him from service. It is claimed that the management did not serve any 2nd Show Cause Notice to the workman in accordance with the Circular of Coal India Limited or in compliance with the law laid down by the Hon'ble Supreme

Court of India. It is urged that the dismissal of Kedar Bind, an Underground Loader at Madhabpur Colliery is illegal and the dismissal order is liable to be set aside and full back wages be paid to him with all consequential benefits.

4. The management of Madhabpur Colliery of ECL contested the case by filing written statement on 05.09.2007. According to the management there is no reason for initiating this Industrial Dispute. The specific case of the management as contended in their written statement is that, Kedar Bind, ex-workman, absented from his duty from 15.04.1995 continuous for more than ten days without any leave or permission. Accordingly, a Charge Sheet was issued to him under Clause 17(i)(n) of the Model Standing Order applicable to the establishment. The workman submitted a reply denying the charges but the management not finding the explanation satisfactory initiated a Domestic Enquiry on the said charge. The workman participated in the enquiry along with co-worker and was afforded reasonable opportunity to defend his case. The Enquiry Proceeding was held observing the principles of natural justice. The workman admitted the charge framed against him and prayed for taking a lenient view. The Enquiry Officer submitted his report before the Appointing Authority, holding that the charge was fully established. After careful consideration of the Charge Sheet, Enquiry Proceeding and Enquiry Report the Disciplinary Authority ordered dismissal of Kedar Bind from his service w.e.f. 30.05.1996 for his misconduct of unauthorized absence. The management claimed that the punishment of dismissal imposed against the workman is proportionate and justified, and the workman is not entitled to any relief as prayed for. The management alternatively prayed that a preliminary issue regarding fairness of the enquiry may be decided by the Tribunal and if it is found that the enquiry was unfair, then management may be given an opportunity to establish the charge by leading independent evidence.

5. In the written statement the workman never claimed that he had been suffering from any illness during the period of his absence from duty. Therefore, the denial on the part of the management that the workman was sick is not a subject matter of this case. The management further denied that the workman was not given adequate opportunity to defend his case or that he was deprived of natural justice. According to the management the order of dismissal passed against the workman is justified.

6. During pendency of the Industrial Dispute the workman died on 02.11.2014. Kauli Devi (Bind), the wife and Santosh Bind, son of the deceased workman were substituted on 29.12.2015 in place of the deceased workman.

7. The union adducing evidence on behalf of the substituted heirs of Late Kedar Bind filed affidavit-in-chief of Santosh Bind, Gita Devi Bind, Kauli Devi (Bind) and Dewanti Mahato, married daughter of Late Kedar Bind were filed. For the first time Kauli Devi (Bind) in her affidavit-in-chief stated that her husband could not attend duty from 15.04.1995 due to his illness. No document has been produced by the witness in support of illness of Kedar Bind. It transpires from the cross-examination of the Kauli Devi (Bind) that she had two sons and one of them Jokhan Bind had expired. In support of the same she filed a Death Certificate of her son. She denied that dismissal of her husband from service was proper or that she was not entitled to any Back wages on account of dismissal of her husband.

8. Management examined Mr. Ashish Mohan, Deputy Manager (Personnel), Madhabpur Colliery as Management Witness – 1. The witness has filed an affidavit-in-chief. In course of his evidence the witness deposed that Kedar Bind was dismissed due to his unauthorized absence. The witness failed to produce Charge Sheet on a plea that the same is not available with the company. A

photocopy of the order of appointment of the Enquiry Officer dated 19/26.10.1995 has been marked as Exhibit M-1. A copy of the Notice of enquiry dated 08.11.1995, as Exhibit M-2. A copy of the Enquiry Proceeding and Enquiry Report, in four pages is collectively marked as Exhibit M-3. A copy of the letter of dismissal dated 30.05.1996 issued by the General Manager of Kajora Area has been marked as Exhibit M-4.

9. In course of cross-examination of MW-1 it appears that the workman participated in the Enquiry Proceeding and during pendency of the Enquiry Proceeding, Kedar Bind was transferred to Lachipur Colliery by Office Order dated 06.11.1995. The copy of the Transfer Order has been marked as Exhibit W-1. The Corrigendum regarding effective date of dismissal of Kedar Bind has been produced as Exhibit W-2. He has denied that the punishment awarded to the workman was improper or illegal.

10. I have carefully considered the Industrial Dispute referred to this Tribunal along with the facts and circumstances highlighted by workman and management in their respective written statements and evidence adduced by both the parties. Considered argument advanced by Mr. Rakesh Kumar, Union representative and Mr. P. K. Das, learned advocate for the management. The crux of the issue is whether the dismissal of Kedar Bind from service is legal and justified.

11. Mr. Rakesh Kumar, Union representative advancing his argument in favour of the workman submitted that only charge levelled against the workman is absenting from duty for a period from 15.04.1995 to 14.09.1995, as the workman was suffering from illness. After receiving the Charge Sheet the workman submitted his reply and participated in the Enquiry Proceeding. It is claimed that during pendency of the Enquiry Proceeding the workman was transferred to Lachipur Colliery from Madhabpur Colliery, under the same Area, by Office Order

dated 06.11.1995 (Exhibit W-1). My attention is drawn to the Enquiry Proceeding marked as Exhibit M-3 and argued that in page 3 the co-worker (Bijoy Shankar Singh) requested the Enquiry Officer to take lenient view as Kedar Bind was transferred to Lachipur Colliery. Mr. Rakesh Kumar argued that on one hand the management issued a transfer order and simultaneously dismissed the workman, which is an extremely harsh punishment where the management had no other charge against the workman except absence for five months due to illness. It is argued that the workman was dismissed from service w.e.f. 17.06.1996 but a Corrigendum was issued by the Manager of the Colliery (Exhibit W-2), whereby the date of dismissal of the workman was preponed to 30.05.1996. It is argued that the order of dismissal passed by an Officer subordinate in rank is not legal nor binding. Further case of the union is that no 2nd Show Cause Notice was issued to the workman before issuance of order of dismissal. It is vehemently argued that non-issuance of 2nd Show Cause Notice before dismissal is violative of the mandate of the Hon'ble Supreme Court of India as well as the circular of Coal India Limited dated 12.05.1994. Mr. Kumar urged that the workman having expired during pendency of the Industrial Dispute, the lacuna of non-issuance of the 2nd Show Cause Notice cannot be cured. Therefore, it is claimed that the order of dismissal without issuance of 2nd Show Cause Notice is liable to be set aside and the dependant family members of dismissed workman are entitled to back wages of Kedar Bind from the date of enquiry i.e. 11.11.1995 till the date of his superannuation.

12. Mr. P. K. Das, learned advocate for the management argued that the proposal of transfer of the charged employee was under consideration of the management prior to initiation of the Domestic Enquiry and the transfer order was in respect of a different colliery within the same area. It is argued that such order of transfer had no connection with the Enquiry Proceeding. Learned advocate of the management argued that the workman was guilty of misconduct

by absenting from duty for a period of five months without intimation. The charge of the unauthorized absence was proved against the workman, which would be evident from the Enquiry Report at page 4 of the Enquiry Proceeding. Learned advocate fairly submitted that no 2nd Show Cause Notice was issued to the workman before issuance of the order of dismissal but the workman had been given fair opportunity to examine his witnesses on which charge was levelled against him and on the findings of the Enquiry Officer the charge under Clause 17(i)(n) of the Model Standing Order stood proved against him. The management considering the unauthorized absence to be gross misconduct, dismissed him from service by letter dated 30.05.1996 (Exhibit M-4). It is argued that a fair Enquiry Proceeding was held in which the workman participated and failed to demolish the charge. Accordingly, the punishment by order of dismissal is proportionate to the gravity of the misconduct committed by the workman.

13. At the outset it is pertinent to observe that none of the parties before this Tribunal could produce a copy of the "Charge Sheet" for the purpose of considering the exact charge levelled against the workman. In course of evidence of management witness several opportunities were given to him to produce a copy of the Charge Sheet and Enquiry Report. Instead of producing a copy of the Charge Sheet, Mr. A. Mohan (MW-1) informed this Tribunal that a General Diary Entry No. 387 dated 07.01.2023 has been lodged at Andal Police Station to the effect that the Charge Sheet which was kept in the case file of Kedar Bind is missing. A Writ Petition bearing W.P.A. No. 22472 of 2023 has been filed before the Hon'ble High Court at Calcutta challenging order dated 06.06.2023 wherein the management of ECL was directed to produce the Charge Sheet and Enquiry Report. In absence of such vital document the contents of the Charge Sheet has to be reconstructed from the pleadings and evidence of the parties. From the written statement of the union and management, I find that Charge Sheet bearing No. Madh/P&IR/CS/95/3075 dated 11/14.09.1995 for continuous absence of

the workman from 15.04.1995 was issued under Clause 17(i)(n) of the Model Standing Order. No other charge appeared to have been levelled against the workman. It would be appropriate to consider the genuineness of the charge in the backdrop of available facts and circumstances of the case. In the written statement the workman stated that he was facing problem due to pressure created upon him by the money lenders for which he sought for transfer to some other place. In paragraph 3 of the written statement the workman categorically spelt out that he was absent from duty from 15.04.1995 because he was facing problem at Madhabpur Colliery due to money lenders. There is no whisper in the written statement that he was prevented from attending his duty due to illness. A person having remained absent from work for five months without any intimation cannot be taken lightly as it erodes the discipline of work and disrupts the activity of the company. In course of Enquiry Proceeding management representative stated that Kedar Bind remained absent from duty continuously on and from 15.04.1995 to 28.09.1995 without any information and without permission of the colliery management. The charged workman on being examined by the Enquiry Officer stated that due to illness he could not attend duty and was under treatment of Dr. A. K. Mukherjee at Andal, Burdwan, a Registered Medical Practitioner (Patna). This statement of the workman does not find any reflection in the written statement. It is unconscionable as to why a person would be under the medical treatment of a Registered Medical Practitioner for such a long duration without being able to name the ailment he was suffering from. In such view of the matter, I am of the considered view that the Enquiry Officer did not commit any error in finding the workman guilty of the charge under Clause 17(i)(n) of the Model Standing Order for being absent for more than ten days. The Enquiry Officer submitted his report dated 25.11.1995 before the Manager of Madhabpur Colliery. The General Manager of Sripur Area having considered the report of the Enquiry Officer and after considering the record and report agreed with the findings of the Enquiry Officer and due to such gross misconduct dismissed the workman from his service by letter dated 30.05.1996 (Ext. M-4).

14. From the facts and circumstances of the case and the materials on record there is no doubt that the charge against Late Kedar Bind has been well proved beyond shadow of doubt. The only lapse on the part of the management is non-issuance of any 2nd Show Cause Notice to the charged employee and not providing any enquiry report to him which has been mandated by the Hon'ble Supreme Court of India and resolved by Coal India Limited in their Circular No. CIL C-5A(vi)/50774/28 dated 12.05.1994, which clearly indicated that the law laid down by the Hon'ble Supreme Court of India in Mohd. Ramzan Khan's case would operate prospectively to the orders of punishment passed after 20.11.1990. The Enquiry Report therefore should have been supplied to the charged employee inviting his response and while communicating the final order it must be mentioned that the representation of the employee was taken into consideration by the Disciplinary Authority.

15. 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.”

In the instant case the Enquiry Officer and the Disciplinary Authority are different persons. Before imposing penalty by the Disciplinary Authority, it was essential to supply copy of Enquiry Report and findings to the concerned workman for obtaining his response and after granting such opportunity to the workman the Disciplinary Authority stood competent to impose any penalty which was deemed appropriate by him. Non-compliance of the mandatory requirement amounts to breach of the principles of natural justice and vitiates the order of dismissal

passed by the management against Kedar Bind. Admittedly, Kedar Bind has died on 02.11.2014 during pendency of the Industrial Dispute. Therefore, there is no scope for the management to remove the illegality and irregularity by issuing any 2nd Show Cause Notice, seeking explanation from the workman. Due to such non-compliance, I hold that the letter of dismissal dated 30.05.1996 issued by the General Manager of Kajora Area (Exhibit M-4) is not sustainable under the law and fact and the same is set aside. The question of reinstatement of Late Kedar Bind does not arise as he has died on 02.11.2014. The workman did not render service due to his absence. Therefore, under no circumstance his dependants would be entitled to full back wages. However, it would be just, proper and reasonable if the wife and dependant family members of Late Kedar Bind are paid 20% of the back wages from the dated of dismissal i.e. 30.05.1996 till the date of his superannuation. The wife of the dismissed workman is also entitled to consequential reliefs.

Hence,

ORDERED

that the Industrial Dispute is allowed on contest against the management. The letter of dismissal dated 30.05.1996 issued by the General Manager of Kajora Area is set aside. the workman shall be presumed to be in service until his superannuation for the purpose of calculating his consequential reliefs. In view of the fact that he did not perform any work during this entire period, the dependant family members of Kedar Bind are entitled to only 20% of his back wages. 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.