

**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. 12 OF 2022

PARTIES: Sidhanta Murmu
(son of Late Bablu Murmu)

Vs

Management of Naba Kajora Colliery, 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: 28/02/2025

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-22012/37/2022-IR(CM-II)** dated 25/04/2022 has been pleased to refer the following dispute between the employer, that is the Management of Naba Kajora Colliery, Kajora Area of Eastern Coalfields Limited and their workmen for adjudication by this Tribunal.

THE SCHEDULE

“Whether the demand raised by Koyala Mazdoor Congress (the union) against the Management of Kajora Area of M/s. Eastern Coalfields Ltd. for providing employment on compassionate ground to Shri Siddhant Murmu, dependent son of Late Bablu Murmu, Ex-Timber Mazdoor of Nav Kajora Colliery under Kajora Area of ECL, who died on 14/03/2017 while in service, is proper, legal and justified? If yes, to what relief Shri Siddhant Murmu, dependent son of Late Bablu Murmu is entitled to?”

1. On receiving Order **No. L-22012/37/2022-IR(CM-II)** dated 25/04/2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 12 of 2022** was registered on 26.04.2022/01.07.2022 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.

2. Management of ECL filed written statement on 14/11/2022. Koyala Mazdoor Congress filed written statement on behalf of Sidhanta Murmu, dependent son of Late Bablu Murmu on 26/04/2023. Fact of the case disclosed in written statement of the union is that Bablu Murmu, Ex-Timber Mazdoor bearing UM No. 537444 was posted at Naba Kajora Colliery under Eastern Coalfields Limited (hereinafter referred as ECL). Bablu Murmu died in harness on 14/03/2017 leaving behind Lakhi Rani Murmu, his wife, Sidhanta Murmu his son, Sundari Murmu and Dulali Murmu, his two daughters and Kamali Murmu his mother. It is the case of the union that according to the provision of clause 9.3.2 of NCWA, a dependent of the workman who died in harness is entitled to get employment. Wife of the deceased submitted an application dated 11/04/2017 informing death of Bablu Murmu and also claimed employment for the son of the deceased. It is stated that on the date of death of the employee, Sidhanta Murmu was less than thirty five years of age. Management arranged for "screening" at the colliery and area level and referred the dependent son for holding his medical examination by Initial Medical Examination Board. Medical Examination by IME Board was held on 22/02/2019 and age of the dependent son was assessed as thirty four to thirty nine years as on 22/02/2019 i.e. thirty six years six months as on 22/02/2019, which is the mean of the assessed age ranging from thirty four to thirty nine years. Sidhanta Murmu was also declared medically fit for employment. On the basis of age assessed by Initial Medical Examination Board on 22/02/2019, age of dependent son was thirty four years six months and twenty days on the date of death of Bablu Murmu i.e. on 14/03/2017 and on the date of application for employment his age was thirty four years seven months and nineteen days. It is further stated that as per School Certificate date of birth of Sidhanta Murmu is 01/04/1985 as

:- 4 :-

such he was less than thirty five years on the date of death of his father. Proposal for employment was sent to ECL, Head Quarters with recommendation of General Manager of the Area but the management at Head Quarters did not consider the proposal for his employment on the ground that Sidhanta Murmu was above thirty five years of age on the date of submission of documents. Dependent son prayed for review of decision and he was referred to the Apex Medical Board for his age determination. Apex Medical Board increased the age of the dependent son by further six years than what was decided by Initial Medical Examination Board and regretted his prayer for employment. The dependent son claimed for his employment and monetary compensation to his mother till employment is provided to him under NCWA.

3. Management in written statement admitted the fact that Bablu Murmu was a permanent employee of ECL and he was admitted to Central Hospital, Kalla before death on 14/03/2017. Sidhanta Murmu submitted an application on 24/04/2018 claiming employment. His screening was done at Unit level on 27/11/2018 and Initial Medical Examination was held on 22/02/2019. Initial Medical Examination Board assessed his age between thirty four years to thirty nine years as on 22/02/2019 and he was found fit for job but due to overage, Sidhanta Murmu was not found eligible for employment as per the provision of NCWA. It is further stated in written statement that according to NCWA minimum age for employment of dependent son/legally adopted son is eighteen years on the date of death of the employee and maximum age is thirty five years as on the date of application. According to the management date of birth of Sidhanta Murmu was assessed as 22/08/1982 and on the date of death of employee, he was thirty four years six months and twenty two days of age and age of the claimant on date of submission of application

was thirty five years eight months and two days. As claimant has exceeded maximum age stated in NCWA his application for compassionate appointment was not considered. Sidhanta Murmu applied for his age assessment by the Apex Medical Board which was held on 05/03/2021 and the Apex Medical Board assessed his age between forty to forty five years as on 05/03/2021 so age of the claimant on the date of death of the employee was thirty eight years six months and nine days. Furthermore, it is contended that in Service Record Excerpt age of dependent son was recorded as five years as on 01/04/1987, therefore, it is apparent that claimant was more than thirty five years on the date of death of his father. Management referred to the decision of ***Hon'ble High Court at Calcutta in the matter of Nemai Kumar Vs. CIL and Others***, wherein the Hon'ble Court upheld decision of ECL in rejecting the claim of dependent on the ground of delay. It is inter alia contended that Hon'ble Supreme Court disapproved employment on compassionate ground after passage of long year. Management urged that in order to provide employment on compassionate ground claimant needs to fulfil eligibility and it cannot be granted in the form of concession. Management urged that there is no merit in the Industrial Dispute and the same is required to be dismissed.

4. Short point for consideration before this Tribunal is "Whether the demand raised by Koyala Mazdoor Congress (the union) against the Management of Kajora Area of Eastern Coalfields Ltd. for providing employment on compassionate ground to Shri Sidhanta Murmu, dependent son of Late Bablu Murmu, Ex-Timber Mazdoor of Naba Kajora Colliery under Kajora Area of ECL, who died on 14/03/2017 while in service, is proper, legal and justified? If yes, to what relief Shri Sidhanta Murmu, dependent son of Late Bablu Murmu is entitled to?"

:- 6 :-

5. In order to prove their case, union filed an affidavit-in-chief of Sidhanta Murmu and examined him as Workman Witness-I. Witness reiterated his case disclosed in written statement and produced the following documents:

- (i) Copy of death certificate of his father issued by Central Hospital, Kalla is produced as Exhibit W-1.
- (ii) Copy of Death Registration Certificate of his father is produced as Exhibit W-2.
- (iii) Copy of service record of Bablu Murmu is produced as Exhibit W-3.
- (iv) Copy of application dated 11/04/2017 submitted by Lakhi Rani Murmu, his mother for providing employment to him is produced as Exhibit W-4.
- (v) Copy of proposal form issued by the management of Naba Kajora Colliery in two pages is collectively produced as Exhibit W-5.
- (vi) Copy of Transfer Certificate issued by Gourangdi R.K.S. Institution (H.S.) is produced as Exhibit W-6.
- (vii) Copy of letter dated 11/08/2020 issued by the Agent, Naba Kajora Colliery is produced as Exhibit W-7.
- (viii) Copy of Medical Examination Report (IME) dated 22/02/2019 is produced as Exhibit W-8.
- (ix) Copy of application dated 25/08/2020 addressed to the Agent, Naba Kajora Colliery is produced as Exhibit W-9.
- (x) Copy of letter regretting employment, issued by the Chief Manager (Personnel) is produced as Exhibit W-10.

- (xi) Copy of application requesting the management for review of the decision is produced as Exhibit W-11.
- (xii) Copy of death certificate of his mother is produced as Exhibit W-12.
- (xiii) Copy of circular dated 25/07/2003 is produced as Exhibit W-13.
- (xiv) Xerox copy of Aadhar Card is produced as Exhibit W-14.
- (xv) Xerox copy of PAN card is produced as Exhibit W-15.

In cross-examination, witness stated that an application was submitted on 11/04/2017 by his mother, within one month from date of death of his father. He stated that according to Initial Medical Examination report his age was calculated as more than thirty five years and he was found overage. Witness admitted that he was referred to the Apex Medical Board on 05/03/2021 and on examination by the concerned Medical Board, a report was prepared which has been identified as Exhibit M-1. Witness denied that on the date of death of his father, his age was thirty eight years six months and nine days. It was admitted by WW-I that he submitted another application dated 20/04/2018 for his employment and denied suggestion that application dated 11/04/2017 (Exhibit W-4) was a manufactured document or it was not submitted before any representative of ECL. He denied suggestion that he was not entitled to get employment due to death of his father in harness.

6. Mr. Ramjee Tripathi has been examined as Management Witness-I. He filed an affidavit-in-chief supporting the case of management that Sidhanta Murmu crossed the upper age limit as per clause 9.3.4 of NCWA. It is further stated that on 11/08/2020, Agent, Naba Kajora Colliery issued a letter informing Sidhanta Murmu that he was not eligible for

employment for being overage. A copy of letter is produced as Exhibit M-2. Witness stated that after receiving regret letter, the claimant submitted an application dated 25/08/2020 addressed to the Agent, Naba Kajora Colliery for reviewing prayer for employment by referring him to the Apex Medical Board. A copy of letter is produced as Exhibit M-3. Witness deposed that Apex Medical Board submitted its report which has been produced as Exhibit M-4 and by letter dated 07/05/2021 (Exhibit M-5) issued by the Chief Manager (Personnel) addressed to the General Manager, Kajora Area it has been informed that Sidhanta Murmu is not eligible for employment as per NCWA for being overage and the Competent Authority regretted his claim for employment. Service Excerpt of Bablu Murmu in two pages is collectively produced as Exhibit M-6 and a copy of application submitted by Sidhanta Murmu seeking employment is produced as Exhibit M-7. Copy of Initial Medical Examination report dated 22/02/2019 is produced as Exhibit M-8 and copy of Death Registration Certificate of Bablu Murmu is produced as Exhibit M-9.

In cross-examination, witness deposed that Sidhanta Murmu submitted his first application on 24/04/2018. In course of evidence he admitted that first application was submitted by the wife of the deceased on 11/04/2017 (Exhibit W-4) and in the said letter she had claimed employment for her son. Witness could not state the date on which management issued letter to Sidhanta Murmu asking him to submit documents. Witness also produced a report of screening test held on 27/11/2018 and it has been admitted in evidence as Exhibit M-10. Witness denied suggestion that on 11/04/2017 Sidhanta Murmu, son of the deceased was thirty four years seven months and seventeen days of age or that he was less than thirty five years of age. Witness also denied suggestion that age of Sidhanta Murmu assessed by the Apex Medical Board after two years was increased by four years.

7. Mr. Rakesh Kumar, union representative referring to clause 9.3.4 of NCWA argued that dependent of the deceased employee who is physically fit should not be more than thirty five years of age as on date of death of employee. In the instant case Bablu Murmu died on 14/03/2017 and death information and claim for employment was submitted by Lakhi Rani Murmu on 11/04/2017 i.e. within one month from the date of death of employee. It is argued that Management Representative received a copy of application and Management Witness admitted in cross-examination that first application informing death of Bablu Murmu was submitted by his wife on 11/04/2017 (Exhibit W-4). Therefore, in suggestion put to workman witness in his cross-examination that application dated 11/04/2017 (Exhibit W-4) is a manufactured document or that it was not submitted before the representative of the company was unfounded and a futile attempt to disown responsibility. Mr. Rakesh Kumar argued that there is no dispute that Sidhanta Murmu is the son of Bablu Murmu, which would be evident from the service record excerpt of the employee. He appeared before the screening committee and was referred for medical examination by Initial Medical Examination Board on 22/02/2019 (Exhibit W-8). Initial Medical Examination Board found him fit for job and on the basis of appearance, the Medical Board assessed his age between thirty four years to thirty nine years on the date of assessment. According to the union on the date of death of his father, the claimant was thirty four years six months and twenty days of age, that is below thirty five years of age and he satisfied the eligibility criteria for employment. Mr. Kumar urged for passing of necessary direction upon the management of ECL to provide employment to the dependent son without further delay. It is inter alia argued that management cannot take advantage of their own fault by denying employment to the dependent son of the employee on the ground of delay as it is the management who committed delay by not considering the prayer made in April, 2017 and by sending regret later on 07/05/2021

(Exhibit M-5). Union representative also claimed for payment of Monetary Compensation to the wife of the deceased till employment is provided to their dependent son.

8. Mr. P. K. Das, learned advocate for the management argued that Sidhanta Murmu is not entitled to get employment on the ground of delay as he has crossed the maximum age for getting employment to a male dependent.

9. I have considered the rival arguments in light of the facts and circumstances of the case and the evidence adduced by both parties. From the cross-examination of MW-I it is gathered that for the first time application informing death of the employee was submitted on 11/04/2017 (Exhibit W-4) by the wife of the deceased and she also claimed employment for their dependent son. After the employment process has been set in motion, it is the responsibility of the management to take step within time and decide upon the claim for employment raised by the dependent family members of the deceased. In the instant case management arranged for screening of family members of the deceased, Bablu Murmu on 27/11/2018. Screening report has been admitted in evidence as Exhibit M-10. Dependents of the deceased employee were identified and their signatures and left thumb Impressions were obtained. Medical Examination of the dependent son was held on 22/02/2019 where his age was assessed as thirty four years to thirty nine years on the basis of his appearance which implied that on the date of death of his father, age of the dependent son was thirty four years six months and twenty days and on the date of submitting application on 11/04/2017 for employment his age was thirty four years seven months and nineteen days. Clause 9.3.4 of NCWA is silent about time of reckoning of the maximum age of the dependent for his employment. It is neither stated that age should be considered on the date of death of the employee nor on the

date of submission of application. Union has produced a copy of circular dated 25/07/2003 issued by the Director (Pers. & IR) addressed to the Director (P), ECL, Sanctoria (Exhibit W-13), wherein it is mentioned that NCWA has prescribed the age limit for appointment of eligible dependents. Hon'ble Minister replying to the question raised by the Hon'ble Members before the Consultative Committee meeting held on 23/05/2003 has clarified that *"the age on the date of application would be reckoned for offering employment on compassionate ground so that candidates are not debarred on the ground of age at the time of appointment."* It is therefore clear that for the purpose of reckoning eligibility, age of a person on date of application claiming employment would be considered in all subsidiaries of Coal India Limited and not the age at the time when appointment is given. Under such circumstance, the date of submitting application for employment by the wife of deceased on 11/04/2017 claiming legal dues and employment to their son is the date for reckoning the date for application. I find that on that date age of Sidhanta Murmu on the basis of age assessed by the Medical Board on 22/02/2019 was less than thirty five years and he was also found fit for employment. In case of **Bhawani Prasad Sonkar vs Union of India and Others (2011) 4 SCC 209**; the Hon'ble Supreme Court of India has held that *"Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy*

of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.”

10. In order to maintain a fair labour practice, company is duty bound to honour the terms and conditions it has agreed upon in NCWA. It is absolutely clear that when an employee dies in harness management of the company has to provide an employment to one dependent of the deceased who shall be within age limit of eighteen years to thirty five years of age and in case of female spouse, forty five years as provided in clause 9.5.0 and in so far male spouse is concerned, there would be no age limit in providing employment. Clarification has been provided for reckoning age of the claimant i.e. date of submission of application. From report of Initial Medical Examination, I find that Sidhanta Murmu was less than thirty five years of age and he was found medically fit for employment. There is no provision in NCWA to consider financial viability of candidate as a prerequisite for providing employment. Therefore, management cannot be allowed to harp upon any extraneous issue for debarring the dependent from getting benefit of employment. It also appears to me that delay caused in providing employment is attributable to the tardigrade approach of the management to deal with employment proposal and keep the same pending for several years without any communication to the claimant. Management cannot derive benefits for their own wrong. In the instant case family of the deceased had to wait without any employment for over seven years. In my considered view this is an appropriate case to allow Monetary Compensation to the female dependent i.e. wife of the deceased employee from 14/03/2017 till employment is granted to their dependent son or Lakhi Rani Murmu, widow attains sixty years of age,

:- 13 :-

whichever is earlier. Management shall take appropriate step to provide employment to Sidhanta Murmu within three months from date of communication of the Award and also pay arrear of Monetary Compensation to the widow of the deceased employee.

Hence,

ORDERED

that the Industrial Dispute is allowed on contest in favour of Sidhanta Murmu, dependent son of Late Bablu Murmu. Management of Naba Kajora Colliery shall provide employment to Sidhanta Murmu within three months from the date of communication of Award and shall also pay Monetary Compensation to Lakhi Rani Murmu, widow of the deceased from the date of death of Bablu Murmu, the employee till she attains sixty years of age or till employment is provided to their son, whichever is earlier. Let an Award be drawn up in light of my above findings. Let copies of Award be communicated to the Ministry for information and Notification.

Sd/-

(Ananda Kumar Mukherjee)

Presiding Officer

CGIT-cum-LC, Asansol