

**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 2023

PARTIES: Rabindranath Mukherjee
Vs.
Management of Patmohana Colliery, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. R. K. Tripathi, Gen. Secy., Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Goswami, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 21.01.2025

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-22012/10/2023-IR(CM-II)** dated 03.02.2023 has been pleased to refer the following dispute between the employer, that is the Management of Patmohana Colliery under Sodepur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the demand of General Secretary, Koyala Mazdoor Congress for payment of H.R.A. for the period from 01/01/2009 to 06/09/2012 in respect of Shri Rabindranath Mukherjee, Ex-Overman, U.M. No. 133560 to the management of Patmohana Colliery of M/s. Eastern Coalfields Limited is proper, legal and justified? If yes, to what relief Shri Rabindranath Mukherjee, Ex-Overman is entitled and what directions are necessary to the management in this respect? ”

1. On receiving Order **No. L-22012/10/2023-IR(CM-II)** dated 03.02.2023 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 14.02.2023 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 workman filed written statement on 03.04.2023 through Koyala Mazdoor Congress. In nutshell, the fact of workman's case is that Rabindranath Mukherjee, a permanent employee of Eastern Coalfields Limited (hereinafter

referred to as ECL), was posted at Patmohana Colliery under Sodepur Area as Overman bearing UM No. 133560. He came on transfer from West Kenda OCP and handed over his quarters to the management of West Kenda OCP under Kenda Area. The said quarters was allotted to Kishore Bouri, another employee vide Office Order No. Pers/WKOCPP/09/06 dated 15.01.2009. After joining Patmohana Colliery the workman attended his duty from his native village at Mithani, which is five kilometers from Patmohana Colliery and claimed payment of House Rent Allowance (hereinafter referred to as HRA) from the Manager, Patmohana Colliery by submitting his application dated 21.01.2009. The management of Patmohana Colliery initiated a Note Sheet bearing No. PMC/C-6/House Rent/09/448 dated 29.03.2009/13.04.2009. According to the guidelines of the employer company, an employee who is residing within a radius of five Kilometers should be paid HRA but in the present case the management neither allotted any quarters to Rabindranath Mukherjee, nor any HRA was paid to him for the period from 01.01.2009 to 06.09.2012. In course of time Rabindranath Mukherjee was declared medically unfit on 07.09.2012 and his service was terminated without paying him the HRA for the period from 01.01.2009 to 06.09.2012 i.e., during the tenure of his service. It is the case of the union that the workman is entitled to HRA from the management and in similar case the Headquarters of ECL had considered the representation submitted by the union and had paid HRA to the concerned employees.

3. Management contested the case by filing written statement on 03.04.2023. It is their case that Rabindranath Mukherjee was an employee of Patmohana Colliery and was declared medically unfit w.e.f. 06.09.2012 and he raised the Industrial Dispute after lapse of five years. Further case of the management is that the workman came on transfer from Kenda OCP to Patmohana Colliery which is near to his house. It is asserted that in Circular No. ECL/CMD/C-6/WBE-1/498 dated 28.06.2006 it is stated that in the event the workman vacated the

quarters after issuance of the circular, they shall not be entitled to HRA. According to the management the workman vacated his standard quarters at Kenda, in the year 2008, few years after issuance of circular, therefore he is not entitled to any HRA and the Industrial Dispute is liable to be dismissed.

4. In support of workman's case union examined Rabindranath Mukherjee, as Workman Witness No. 1, who reiterated the case in the pleading. The following documents have been produced by the witness :

- (i) Copy of the Office Order dated 15.01.2009 by which quarters at Krishna Nagar Colliery was allotted to Kishore Bouri has been produced as Exhibit W-1.
- (ii) Copy of Application dated 21.01.2009, claiming HRA is produced as Exhibit W-2.
- (iii) Copy of Order by which the workman was declared medically unfit from 06.09.2012, as Exhibit W-3.

The workman stated that he is entitled to get HRA for the period from 01.01.2009 to 06.09.2012, during his service at Patmohana Colliery, as no quarters of the company was allotted to him during the period.

5. The workman witness was not cross-examined by the management and he was discharged.

6. Record reveals that ample opportunity was granted to the management of the ECL for adducing evidence 08.10.2024 and hearing of argument. No step was taken by the management on 08.10.2024 which was the second consecutive date without any step by the management. The case was thereafter fixed up for hearing of argument on 17.12.2024.

7. It is argued on behalf of the union that the workman who has retired from

service was not allocated any quarters during his service at Patmohana Colliery and is entitled to receive the amount towards HRA for the period from 01.01.2009 to 06.09.2012. It is further submitted that the workman was earlier allotted a quarters at West Kenda OCP. At the time of his transfer to Patmohana Colliery Rabindranath Mukherjee handed over the quarters to the management and the same was thereafter allotted to Kishore Bouri by Office Order dated 15.01.2009 (Exhibit W-1). The workman was not allotted with any quarters at Patmohana Colliery and he attended his duty from his own house at Mithani. The workman submitted his application dated 21.01.2009 for payment of HRA (Exhibit W-2). The union representative argued that the workman was medically unfit and the Office Order bearing No. PMC/C-6/unfit/MGR/197 dated 06.09.2012 (Exhibit W-3) was issued whereby he was terminated from service on medical ground w.e.f. 07.09.2012 and he was directed to claim statutory benefit along with gratuity. It is argued that the workman cannot be deprived of his HRA on the basis of Circular dated 28.06.2006, which was issued in the individual capacity of the concerned officer, not based upon any collective decision and having no applicability. It is furthermore contended that in Chapter - VIII of National Coal Wage Agreement – VII, the provision of Clause 8.1.1 and 8.1.2 lay down that HRA will be paid to those employees who have not been provided with residential accommodation. It is argued that the Circular dated 28.06.2006 issued by the Dy. Chief Personnel Manager (Estd./MP) is an encroachment upon the entitlement of workman in respect of their claim for HRA. Such circular issued in individual capacity without any scope of collective bargaining is not enforceable under the law.

8. Mr. P. K. Goswami, learned advocate argued that as per Circular dated 28.06.2006 the workman is not entitled to any HRA and the workman was not entitled to any quarters as his own house was situated within a short distance from the place of work.

9. Having considered the rival contentions of the union and management, their respective pleadings and evidence, it appears to me that the stage is now set for adjudication as to whether the demand of HRA for Rabindranath Mukherjee from Patmohana Colliery of ECL is justified?

10. It is undisputed that Rabindranath Mukherjee was a permanent employee of ECL and was posted as an overman at West Kenda OCP before he was transferred to Patmohana Colliery on 15.12.2008 on the basis of his own request. On his transfer the workman handed over his quarters at Krishna Nagar Colliery to the management of West Kenda OCP, which was then allotted to Kishore Bouri vide Ref. No. Pers/WKOC/09/06 dated 15.01.2009 (Exhibit W-1). It is obvious that on transfer to Patmohana Colliery the workman was not under any obligation to attend his duty from his earlier quarters at Kenda Area, which was far away from his house. It is only reasonable and prudent for the workman to attend his duty from his native place at village - Mithani which was only five kilometers from his place of work. The workman was not provided with any quarters at his new place of posting at Patmohana and no evidence to that effect has been adduced. It is evident from Exhibit W-2 that the workman claimed HRA by submitting an application before the management. Management raised objection against claim of HRA by the workman on two counts. It is firstly contended that the workman was declared medically unfit and was terminated from his service on 07.09.2012 but the Industrial Dispute was raised after inordinate delay of nearly ten years. On considering such argument, I find that there is no period of limitation for raising any Industrial Dispute. A workman is always entitled to claim his dues. Therefore, I find no substance in the argument advanced on behalf of the management that delay in raising the claim would defeat the Industrial Dispute.

11. The second contention of the management is that a Circular has been issued by the management bearing Ref. No. ECL/CMD/C-6/WBE-1/498 dated

28.06.2006 which has clearly laid down that if any employee after standard quarters is allotted to him, vacated the same then he shall not be entitled to HRA. It is an axiomatic that the rights and liabilities of employees under ECL flows from the joint bipartite agreement between the representatives of management and union. It is gathered from Clause - 8.1.1 of Chapter - VIII of National Coal Wage Agreement – VIII that HRA will be paid to those employees who have not been provided with residential accommodation. Clause – 8.1.3 lays down that HRA for Employees in Urban Areas will be governed by Government notification/clarification on the subject as provided in the previous agreements and shall be applicable from 1.1.2009 on the revised basic. The other related issues will be discussed/decided in the Standardization Committee within a period of three months. It would transpire from Clause – 8.1.1 that HRA would be paid to the employees who have not been provided with any residential accommodation. In the present case no residential accommodation was provided to Rabindranath Mukherjee at the place of his transfer at Patmohana Colliery. This provision of Clause – 8.1.1 cannot be stretched to include a situation where HRA would not be granted to the employees in the event of vacating of company's accommodation. By the term “provide” it means to make available for occupation. Imaginative interpretation and extension of provision of National Coal Wage Agreement by the management is not legally tenable and cannot be accepted. If for argument's sake the provision of circular dated 28.06.2006 is given primacy over the provision of HRA in National Coal Wage Agreement, it would amounts to recession and alteration of the previous agreement in the Joint Bipartite Committee for the Coal Industry or a novation of the agreement, which cannot be the objective of laying down such bipartite agreement in writing. Having considered the core of the dispute involved in this case, I have no hesitation to hold that the workman, Rabindranath Mukherjee is entitled to his HRA for the period from 01.01.2009 to 06.09.2012, as he had not been provided and not in occupation of any quarters of ECL. At the time of assessing the HRA, the

management shall take into consideration the terms of O.M No. 2(70)/08-DPE(WC)-GL-XVI/08 dated 26.11.2008 and OM No. 2(70)/08-DPE(WC)-GL-VII dated 02.04.2009 from Government of India, Ministry of Heavy Industries and Public Enterprises for payment of HRA to the employees of Central Public Sector Enterprises on population basis for cities classified as 'Y' category. The city of Asansol has been declared as 'Y' category city with effect from 29.08.2008. It is undisputed that village – Mithani is situated within the limits of Ward No. 74 of Asansol Municipal Corporation. Accordingly, the HRA of the aggrieved employee be assessed for the said period on the basis of such Office Memorandum, applicable to the locality where the workman was posted. The Industrial Dispute is accordingly allowed on contest in favour of the workman / union.

Hence,

ORDERED

that the Industrial Dispute is allowed on contest, in favour of the workman Rabindranath Mukherjee. It is ordered that the Management of Patmohana Colliery, ECL shall pay the workman House Rent Allowance from the management of Patmohana Colliery under Sodepur Area of Eastern Coalfields Limited for the period from 01.01.2009 to 06.09.2012. The House Rent Allowance shall be paid to the workman within three months from 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.