

**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. 13 OF 2021

PARTIES: Sunil Kora
Vs.
Management of Monoharbahal Colliery of ECL and Another.

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mrs. Swapna Basu, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 31.07.2024

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-22012/31/2021-IR(CM-II)** dated 16.08.2021 has been pleased to refer the following dispute between the employer, that is the Management of Monoharbahal Colliery under Salanpur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the Management of M/s Eastern Coalfields Ltd. in relation to its Manoharbahal Colliery under Salanpur Area in dismissing the service of Shri Sunil Kora, UG Loader, U.M. No. 110169 vide their letter dated 29-03-2008 is just and legal? If not, to what relief the concerned workman is entitled to? ”

1. On receiving Order **No. L-22012/31/2021-IR(CM-II)** dated 16.08.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 13 of 2021** was registered on 16.08.2021 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 their witnesses.

2. Mr. Rakesh Kumar, Union representative on behalf of the aggrieved workman filed a written statement on 09.11.2021. In brief, the facts leading to this Industrial Dispute as disclosed in the written statement is that Sunil Kora

was posted as an Underground Loader bearing UM No. 110169 and was a permanent employee at Monoharbahal Colliery under Salanpur Area of Eastern Coalfields Limited (hereinafter referred to as ECL). His date of birth is 30.12.1969 and was appointed under ECL on 17.01.1995. Due to illness Sunil Kora could not attend his duty. A Charge Sheet was issued to him on 13.12.2006 for his unauthorized absence from 27.01.2004. Sunil Kora replied to the Charge Sheet, informing that due to his illness he was unable to attend duty and was under medical treatment during this period. In support of the same he submitted his treatment papers. Instead of allowing him to join his duty the management issued Notice for domestic enquiry on 14.02.2008, fixing 19.02.2008 for enquiry. The Enquiry Officer held ex-parte enquiry proceeding without ensuring service of Notice upon the workman. Report of enquiry was submitted without providing any opportunity to the workman to participate. No 2nd Show Cause Notice was served upon the workman and in violation to the mandate of the Hon'ble Supreme Court of India in the case of Md. Ramzan Khan as well as Circular of the Director (P&IR) of Coal India Limited, an order of dismissal was issued against the workman without any opportunity of submitting his representation against the findings of the Enquiry Officer. It is contended that the Hon'ble High Court in a catena of decisions made it incumbent upon the management to issue 2nd Show Cause Notice before awarding a punishment of dismissal. The union in support of such contention relied upon the decision of the Hon'ble High Court at Calcutta in the case of **Bagia Nayak Vs. Coal India Limited and Others [W.P. No. 2217 of 1995]**. It is further contended on behalf of the workman that the punishment of dismissal of Sunil Kora is disproportionate to the nature of misconduct alleged and lighter punishment should have been awarded. The union relied upon the Memorandum of Settlement dated 22.05.2007 signed by the representative of management of ECL and all functioning unions at ECL, wherein it had been agreed that a Mercy Appeal of the dismissed employee would be considered, if the workman is below forty-five years of age and the period of his absence from duty

is below nine months, but in the instant case the mercy petition of the workman has not been considered. Sunil Kora is without any employment to maintain himself and family. It has been urged that the order of dismissal passed against the workman without service of Charge Sheet, Notice of enquiry and 2nd Show Cause Notice is bad in law, punishment is disproportionate to the charge and the order is liable to be set aside with direction for reinstatement of the workman and payment of back wages and other consequential reliefs.

3. The management of Monoharbahal Colliery contested the Industrial Dispute by filing their written statement on 20.12.2022, wherein it is admitted that Sunil Kora was posted as Underground Loader at Monoharbahal Colliery bearing UM No. 110169 and his date of birth is 30.12.1969. According to the management of ECL, Sunil Kora was a habitual absentee and neglected his duty. His attendance was consecutively recorded as poor and it went down to only forty-eight days in a particular year. The specific charge against Sunil Kora is his unauthorized absence from service w.e.f. 27.01.2004 which resulted in issuance of Charge Sheet bearing letter No. MB/06/268 dated 13.12.2006. Workman was asked to submit his explanation for his unauthorized absence from work within a week but he submitted his reply only on 31.12.2007 which was not found satisfactory. Management issued Notice of enquiry bearing Ref. No. BMC/Agent/08/1064 dated 13/14.02.2008, directing Sunil Kora to appear before the Enquiry Officer on 19.02.2008. Reasonable opportunity of hearing was given to Sunil Kora but he did not participate in the Enquiry Proceeding. Enquiry was held on 19.02.2008, 07.03.2008 and 19.03.2008 after issuance of Notice to Sunil Kora but the workman did not participate nor did he make any communication with the Enquiry Officer. Finally, an ex-parte Enquiry Proceeding was held and the charge mentioned in the Charge Sheet was established against the workman. On the basis of the Enquiry Report, the Chief General Manager of Salanpur Area issued a letter dated 29.03.2008, dismissing Sunil Kora from

service of the company with immediate effect. According to the management the workman not only absented in unauthorized manner but he wilfully remained absent which adversely affected the work of the company. Management accordingly prayed for dismissing the Industrial Dispute.

4. In support of his case Sunil Kora examined himself as Workman Witness – 1 and filed an affidavit-in-chief. In course of his evidence, he produced the following documents:

- (i) Copy of his Identity Card has been produced as Exhibit W-1.
- (ii) Copy of the Appointment Letter dated 16.01.1995, as Exhibit W-2.
- (iii) Copy of the Letter of dismissal dated 29.03.2008, as Exhibit W-3.
- (iv) Copy of the Mercy application dated 20.01.2020, as Exhibit W-4.

The main contention in the affidavit-in-chief is that he did not receive any Charge Sheet. No Notice of enquiry was served upon him. the Enquiry Officer conducted the enquiry ex-parte without ensuring service of Notice and the management without issuing 2nd Show Cause Notice, in violation of natural justice imposed an extreme punishment against him, which is illegal and he should be allowed to join duty with back wages.

5. In course of cross-examination the workman admitted his signature on the reply to the Charge Sheet dated 13.12.2006. His signature has been marked as Exhibit M-1 and the reply submitted by him against the Charge Sheet, has been marked as Exhibit M-1/1. The workman denied the suggestion that he remained absent from duty intentionally till Charge Sheet was issued.

6. After closure of evidence of workman witness on 22.02.2023 opportunity was extended to the management of ECL to adduce evidence and also produce their documents. Mrs. Swapna Basu, learned advocate produced Mr. Devendra Kumar, Assistant Manager (Personnel), as Management Witness -1 but no affidavit-in-chief was filed. Mr. Devendra Kumar was examined-in-chief on oath.

He produced the following documents :

- (i) Signature of Sunil Kora on reply to the Charge Sheet is marked as Exhibit M-1
- (ii) Copy of the Chargesheet dated 13.12.2006 has been produced as Exhibit M-1/2.
- (iii) Copy of the reply against the Charge Sheet submitted by Sunil Kora, as Exhibit M-2 and Exhibit M-1/1.
- (iv) Copy of the Notice of enquiry dated 13/14.02.2008 issued to Sunil Kora fixing date for enquiry, as Exhibit M-3.
- (v) Copy of the Notice of enquiry dated 11.03.2008, as Exhibit M-4.
- (vi) Copy of the Notice of enquiry dated 01.03.2008, as Exhibit M-5.
- (vii) Copy of the Notice of Enquiry Proceeding in two pages, as Exhibit M-6.
- (viii) Copy of the findings of the Enquiry Officer dated 24.03.2008, as Exhibit M-7.
- (ix) Copy of the letter of dismissal dated 29.03.2008, as Exhibit M-8.

7. The witness was unable to give any clear answers and the case was adjourned to 17.10.2023 for further cross-examination of the management witness. In his cross-examination the witness stated that he was not able to produce any document to show that Notice of enquiry was served upon the dismissed workman. No evidence has been adduced by the management witness regarding service of Notice of enquiry upon the workman. Management witness also admitted that no 2nd Show Cause Notice was served upon Sunil Kora and that Sunil Kora had submitted a mercy petition. The matter was referred to the Headquarters of ECL but no reply was given to the concerned person. The witness denied that the workman was dismissed from service by keeping him in the dark about the Departmental Proceeding.

8. The moot question which arises for consideration in this case is whether the dismissal of Sunil Kora from service on 29.03.2008 is just and legal and whether the concerned workman is entitled to any relief.

9. Mr. Rakesh Kumar, Union representative assailing the order of dismissal argued that the management of ECL has initiated the Departmental Proceeding against the workman without service of copy of Charge Sheet, Notice of enquiry and 2nd Show Cause Notice accompanied with Enquiry Proceeding. It is vehemently argued that the entire proceeding against the workman is a manifestation of gross violation of natural justice in as much as no opportunity was given to Sunil Kora to participate in the Enquiry Proceeding or to raise his defence. It is argued on behalf of the dismissed workman that in his reply dated 13.12.2007 (Exhibit M-2), the workman informed that he was unable to attend his duty from 27.01.2004 due to his illness and he was under medical treatment at Kelejora BPHC but management initiated the Enquiry Proceeding in absence of the workman and without ensuring service of the Notice of enquiry upon him. Mr. Rakesh Kumar placed reliance upon a decision of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471]**, which laid down 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.”

It is argued that the principle of law laid down by the Hon'ble Supreme Court of India was resolved to be enforced by the Coal India Limited by way of issuing a Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994, wherein it has been clearly laid down that the charged employee had to be supplied with Enquiry

Proceeding and Enquiry Report and a 2nd Show Cause Notice had to be issued to him before taking any final decision of removing him from service. It is submitted that in the instant case the management of ECL violated the terms of their own Circular and the principle laid down by the Hon'ble Supreme Court of India. It is argued that due to such violation of natural justice and non-compliance of the mandatory provisions of law, the order of dismissal, which is improper and illegal, needs to be set aside and the workman should be reinstated in the service with full back wages.

10. Refuting the contention of the union representative, Mrs. Swapna Basu, learned advocate for the management argued that the union has taken a conflicting stand regarding service of Charge Sheet upon the workman. On one hand it is stated that he did not receive Charge Sheet but Sunil Kora in his cross-examination admitted his signature on reply to the Charge Sheet as Exhibit M-1. Learned advocate for the management referred Exhibit to M-3, M-4 and M-5 which are notice of the enquiry, issued in the name of Sunil Kora and argued that three Notice of enquiry were issued to the workman on 14.02.2008, 01.03.2008 and 11.03.2008 and thereby every effort was made to inform the absentee workman to attend the Enquiry Proceeding but he did not participate in the same, being aware of the fact that a Charge Sheet was issued against him for his habitual absence during the preceding three years and his unauthorized absence for more than ten days. Learned advocate argued that the management after giving every opportunity to the workman issued an order of dismissal against him for his unauthorized absence, which is a gross misconduct. It is submitted that he is not entitled to any relief and the Industrial Dispute is liable to be dismissed.

11. I have considered the rival arguments advanced on behalf of the union and management and also examined the materials on record and evidence adduced by both the parties. The workman initially was in a denial mode and claimed that

copy of Charge Sheet and Notice of enquiry were not served upon him, thereby he did not have any opportunity to participate in the Enquiry Proceeding. In his affidavit-in-chief Sunil Kora in paragraph-6 stated that he did not receive the Charge Sheet issued by the management. However, he admitted that he submitted a reply against the Charge Sheet, which has been marked as Exhibit M-1/1. The Charge Sheet produced by the management has been marked as Exhibit M-1/2, which bears an imputation that Sunil Kora absented from duty from 27.01.2004 without any leave or authorization and his absence amounted to misconduct under the provision of Clause 26.29 of Certified Standing Order. There is no reference to any charge under Clause 26.23 of Certified Standing Order, which relates to 'habitual absence'. The Charge Sheet also disclosed that his service would be terminated from the date of his unauthorized absence unless a satisfactory explanation was submitted within a week. The management of ECL has not been able to produce document to prove that Charge Sheet was served upon the workman within time. However, a delayed reply to the Charge Sheet by the workman dated 31.12.2007 amply proves that the workman was informed about the charge levelled against him for his unauthorized absence. It may be gathered from the reply dated 31.12.2007 that the workman was actually absent from duty for more than four years. The ground for absence is disclosed in his reply that he was suffering from serious disease and he was under medical treatment at Kelejora BPHC. It can well be assumed that a person suffering from serious ailment for four years, which allegedly prevented him from attending his work would have proceed to a higher centre for advance medical treatment. The workman did not disclose the nature of ailment and was far short of producing medical documents in support of his ailment. Even at this stage of the Industrial Dispute, when opportunity was given to the workman, he could not produce a single document relating to his medical treatment. The misconduct of the workman is abjectly disapproving.

12. Be that as it may, a misconduct however serious and grave it may be, the ultimate decision has to be arrived by following the principle established by law. It would now be appropriate to consider the mode and manner in which the management of ECL has dealt with the charged employee before dismissing him from service. The management in course of their evidence has produced a copy reminder of the Charge Sheet but the same bears the date of Charge Sheet as 13.12.2006. No evidence has been adduced by the management to prove the mode in which the Notice of enquiry dated 13/14.02.2008, 01.03.2008 and 11.03.2008 were transmitted to the workman and whether any of such notice was served upon the addressee. Exhibit M-6 reveals that the Enquiry Proceeding was taken up on 19.02.2008, 07.03.2008 and 19.03.2008. In order dated 07.03.2008 the Enquiry Officer has stated that reply of the Charge Sheet dated 02.01.2008 along with some treatment papers were submitted by the chargesheeted workman. No copy of reply to the Charge Sheet dated 02.01.2008 has been produced by the management before this Tribunal. On none of the dates fixed for enquiry the Enquiry Officer recorded his satisfaction about service of Notice of enquiry upon the workman. While recording the statement of the Management Representative on 19.03.2008 the name of the management representative has neither been recorded nor has he recorded the statement of M.R. in first person. In the Enquiry Report dated 24.03.2008, produced as Exhibit M-7, the Enquiry Officer did not consider the contents of the treatment papers admittedly been submitted by the workman along with the reply to the Charge Sheet. After concluding the Enquiry Proceeding admittedly no 2nd Show Cause Notice nor any copy of Enquiry Report was served upon the workman, seeking his explanation or representation. No formal charge was framed by the Enquiry Officer and in his report, there is no whisper as to the provision of the Clause under which the workman was found guilty. The Enquiry Proceeding appears to be an outcome of paperwork by the management. I further find that even in the letter of dismissal the Chief General Manager of Salanpur Area has not referred to the relevant Clause of the Certified Standing Order under which the accused workman was found guilty.

In the instant case Mr. B. N. Pandey, Enquiry Officer and the Competent authority are different persons. As such non-issuance of 2nd Show Cause Notice to the workman amounted to the violation of the principles of natural justice as well as the mandate of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471]**, which laid down that 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, which has been duly adopted by the Coal India Limited in their Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994.

13. The conduct of the workman who has remained absent for more than four years from his place of duty in unauthorized manner certainly deserves no sympathy and he has grossly abused his right contingent to service. Despite such fact I am unable to waive the legal necessities which were required to be fulfilled by the management before arriving at a decision of terminating the workman from his service. The procedure adopted by the management is itself violative of the principle of natural justice and hence the same is unacceptable and the order of dismissal dated 29.03.2008 is set aside. Sunil Kora, the dismissed workman is entitled to be reinstated in service more for the laches on the part of the management of ECL. The workman not having rendered any service to the company for several years and without any evidence on his part that he was not gainfully employed at any other place for his livelihood, I am not inclined to grant him the relief of any back wages during his period of absence. The period of absence from 27.01.2004 till the date of his joining shall be treated as dies non and he shall be entitled to the continuity of service. The Industrial Dispute is accordingly decided in favour of the workman.

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Hence,

ORDERED

that the Industrial Dispute is decided in favour of the workman on contest. The order of dismissal of Sunil Kora from service bearing Ref. No. C-6/36/P-2937 dated 29.03.2008 issued by the Chief General Manager of Salanpur Area of ECL is not sustainable under the law and is set aside. the management of ECL is directed to reinstate Sunil Kora within one (1) month from the date of communication of this Award. The workman shall not be entitled to any back wages. The period of absence from 27.01.2004 till the date of his joining shall be treated as dies non and he shall be entitled to continuity of service. Let 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.