

**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. 130 OF 2005**

**PARTIES:** Shibu Das  
**Vs.**  
Management of 1 and 2 Incline, Jhanjra Area, ECL

**REPRESENTATIVES:**

For the Union/Workman: None.  
For the Management of ECL: Mr. P. K. Das, Advocate.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 28.03.2025

**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-22012/240/2004-IR(CM-II)** dated 28.11.2005 has been pleased to refer the following dispute between the employer, that is the Management of 1 and 2 Incline, Jhanjra Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“Whether the action of the Management of 1 & 2 Incline under Jhanjra Area of M/s Eastern Coalfields Limited in dismissing Sh. Sibud Das, Under Ground Loader from services is legal and justified? If not, to what relief the workman is entitled to?”*

1. On receiving Order **No. L-22012/240/2004-IR(CM-II)** dated 28.11.2005 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 23.12.2005 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.

2. Mr. S. K. Pandey, then General Secretary of Koyala Mazdoor Congress filed written statement on behalf of the workman on 08.05.2006. The fact of the case, as disclosed in the written statement of the union is that Shibud Das was posted as an Underground Loader at 1 and 2 Incline under Jhanjra Area of Eastern Coalfields Limited (hereinafter referred to as ECL). He absented from duty from

24.04.1993 on the ground of his illness. After he was declared medically fit for work, he reported for duty but he was not allowed to join. Management issued a Charge Sheet bearing No. AGT/JNR/1&2/P/CS/94/959 dated 01.02.1994 on the charge of unauthorized and habitual absence. The workman was subsequently dismissed from service of the company w.e.f. 23.06.1994 on the basis of a dismissal order bearing No. GM/JNR/PER/08/94/1587 dated 23/24.06.1994. The specific case of the workman is that he did not receive any Charge Sheet nor any Notice of enquiry and he was terminated from service without providing any opportunity to defend himself. It is contended that no second Show Cause Notice was issued to the workman before awarding him the extreme punishment of dismissal from service on the basis of an invalid Enquiry Report. The union urged that the principles of natural justice has been violated by holding ex-parte enquiry without providing opportunity to the workman. It is prayed that the order of dismissal passed against Shibu Das is required to be set aside and he is entitled to be reinstated in service under ECL and payment of back wages for the period from 23.06.1994 till date.

3. Management contested the Industrial Dispute by filing written statement on 22.12.2006. According to the management Shibu Das was dismissed from service as he used to remain absent without any leave or permission of the management and he was punished on several occasions. It is stated that he was absent from duty from 24.04.1993, for which he was chargesheeted under Clause 17(i)(d) of the Model Standing Orders for habitual absence without sufficient cause and Clause 17(i)(n) of the Model Standing Orders for unauthorized absence without satisfactory cause for more than ten days. A Charge Sheet dated 01.02.1994 was issued against him. Shibu Das did not reply to the Charge Sheet and did not participate in the Enquiry Proceeding held against him. The Enquiry Officer after holding ex-parte enquiry found him guilty of the charges. Management provided sufficient opportunity to the workman but he did not mend himself and the management was not in a position to show leniency to the

workman. The Competent Authority finally dismissed him from service by issuing letter dated 23/24.06.1994. It is further urged that the union has no locus standi to raise the dispute as Shibu Das was not a member of the union. Management relied upon the decision reported in the **1999 LAB.IC page 671 Andh.** and contended that the unreasonable and unexplained delay in raising the dispute cannot be considered. It is specified that the concerned workman attended duty for seventy-five days in the year 1990, sixty-five days in the year 1991, seventy-six days in the year 1992, and seventy-three days in the year 1993. Under the above circumstances the dismissal of Shibu Das from his employment is justified and legal and the workman is not entitled to any relief.

4. In support of his case Shibu Das filed an affidavit-in-chief where he did not mention his age or year of birth. It is stated in his affidavit-in-chief that he was absent from duty from 24.04.1993 to 24.01.1994 due to his illness. A Charge Sheet was issued for his unauthorized absence from duty from 24.04.1993 to 24.01.1994 and he was dismissed from service of the company without giving him any opportunity to appear in the enquiry.

5. The workman in his cross-examination stated that he was under the treatment of doctors and filed medical papers in support of his illness. The witness denied the suggestion that he was not suffering from illness and that he wilfully remained absent from duty.

6. Mr. Alaric Oneal Lyndem filed his affidavit-in-chief for ECL and was examined as Management Witness No. 1. In his affidavit-in-chief he stated that the Notice of enquiry were sent to Shibu Das at his home address appearing in the Service Register i.e., Village: Beko, District: Purulia (WB). It is further stated that the Enquiry Proceeding was held ex-parte and after conclusion of enquiry the Enquiry Officer submitted his report. The General Manager thereafter terminated Shibu Das on the basis of order dated 23/24.06.1994. In his

examination-in-chief the management witness deposed that he is posted as Deputy Manager (Personnel) at Jhanjra Project. The Charge Sheet was sent to the workman at his home address and the copy of Charge Sheet is produced as Exhibit M-1. Management issued three (3) Notice of enquiry, informing the workman about holding of the Enquiry Proceeding and copy of the same have been exhibited in the evidence as Exhibit M-2, M-3 and M-4. the witness deposed that the workman did not appear after Notice to participate in the enquiry and the enquiry was held ex-parte. Copy of the Enquiry Proceeding in four pages have has been admitted in the evidence as Exhibit M-5 and the Enquiry Report has been marked as Exhibit M-6. Witness admitted that no second Show Cause Notice was issued to the workman. The order of dismissal dated 23/24.06.1994 has been marked as Exhibit M-7.

7. In course of cross-examination the management witness deposed that Charge Sheet (Exhibit M-1) was served upon Shibu Das from office. Thereafter, he exhibited a postal envelope under which Charge Sheet to Shibu Das was sent. The envelope along with the endorsement has been marked as Exhibit M-8. Witness deposed that Charge Sheet sent to the workman was returned unserved. Witness also admitted that without service Notice of enquiry and Charge Sheet to the workman an ex-parte enquiry proceeding was held and management dismissed the workman. The witness however, denied that the termination of the workman is illegal.

8. The moot question for consideration is whether the dismissal of Shibu Das from service is just and legal and what relief the workman is entitled to?

9. It would transpire from the materials on record that Shibu Das was dismissed from service w.e.f. 24.06.1994. The Industrial Dispute has been raised after more than ten years i.e., 28.11.2005. Initially Mr. S. K. Pandey, union representative, appeared for the workman as General Secretary of Koyala Mazdoor

Congress. Thereafter Mr. Bipul Banerjee, learned advocate appeared for the workman. The case was fixed up for hearing on 03.03.2025 as a special campaign for disposing old cases. Notice was issued to the parties under registered post but none appeared for Shibu Das.

10. Mr. P. K. Das, learned advocate for the management argued that Shibu Das was absent from his duty from 24.04.1993 without any information or authorization. His past performance and conduct in service was very poor and he had been punished on several occasions but did not rectify his conduct. A Charge Sheet was issued to the workman under Clause 17(i)(d) and 17(i)(n) of the Model Standing Orders but he did not respond. Management decided to hold Enquiry Proceeding against him. The Enquiry Officer sent three Notice of enquiry at his residential address but he did not appear. The Enquiry Officer was compelled to hold ex-parte enquiry following the principles of natural justice. The Enquiry Proceeding in four pages has been produced as Exhibit M-5. Findings and Report of Enquiry Officer has been produced as Exhibit M-6. Learned advocate submitted that Shibu Das was found guilty for both the charges i.e., unauthorized and habitual absence. Admittedly no second Show Cause Notice was issued to the workman and the General Manager of the Area, the Competent Authority issued the letter dated 23/24.06.1994 to Shibu Das, dismissing him from service. It is submitted that the workman was fully aware about his dismissal but he did not make any representation against his dismissal. Only after lapse of more than ten years this Industrial Dispute has been raised by the union, challenging the dismissal of Shibu Das. It is argued that the case projected by the union thus has no merit and the same is liable to be dismissed.

11. I have considered the pleadings by the parties, evidence adduced by Shibu Das (Workman Witness No. 1) and Mr. Alaric Oneal Lyndem (Management Witness No. 1), considered the argument advanced by the learned advocate for the management of ECL. It is crystal clear from the pleading of the workman that

he was absent from duty from 24.04.1993 without any information to the management of the employer. The workman pleaded that he was unable to attend his duty due to his illness but no medical certificate or papers related to medical treatment was produced by the workman at the time of hearing of the Industrial Dispute. There is no denial by the union that the workman was not a habitual absentee in the previous years. In paragraph no. 5 of the written statement, it has been categorically stated that the workman neither receive any Charge Sheet nor Notice of enquiry and he has been dismissed without any opportunity to defend himself. The onus of proof therefore shifts upon the management to establish that the Charge Sheet and Notice of enquiry were served upon the workman but he did not turn up to participate in the Enquiry Proceeding. In the affidavit-in-chief Mr. Alaric Oneal Lyndem (Management Witness No. 1) stated that Charge Sheet and Notice of enquiry were sent at his home address i.e., Village and Post Office: Beko, District: Purulia (WB). In his evidence-in-chief the management witness reiterated that Charge Sheet was sent to the workman at his home address. In his cross-examination Management Witness No. 1 stated that Charge Sheet was served upon Shibu Das from their office, which is contrary to his earlier statement. Though the witness has produced an envelope marked as Exhibit M-8 and stated that the Charge Sheet was sent to the defaulting workman at his home address he also admitted that it was returned without service. No second attempt was made by the management to serve the Charge Sheet upon the workman. It transpires from the evidence of management witness that three Notice of enquiry were sent to Shibu Das and Notice of enquiry have been admitted in evidence as Exhibit M-2, M-3 and M-4. There is no material on record to prove that the Notice of enquiry were actually sent to the workman under registered post at his home address or they were served upon him before initiation of the enquiry. At the concluding portion of the evidence management witness admitted that enquiry was started without serving Notice of enquiry and Charge Sheet upon the workman. In the Enquiry Proceeding the Enquiry Officer did not record his satisfaction about service of Charge Sheet and Notice of enquiry upon

the workman. He disclosed the imputation of charge against the workman in his absence and recorded the statement of management representative. The Enquiry Officer stated that Notice of enquiry were sent to his home address as mentioned in the Form 'B' Register but he has not reflected in the report or Enquiry Proceeding if the Charge Sheet and Notice of enquiry were served or refused by the workman. The ex-parte enquiry held by the Enquiry Officer without recording satisfaction of service of Charge Sheet and Notice of enquiry, therefore appears of be a mechanical exercise on the part of the Enquiry Officer which violates the principles of natural justice. The findings of such enquiry is therefore unfair and violative of Natural Justice. In the Enquiry Report (Exhibit M-6) the Enquiry Officer stated that Shibu Das did not reply to the Charge Sheet however, he did not mention whether the Charge Sheet was at all served upon Shibu Das or not. He was stated mechanically that after affording sufficient opportunity and keeping in view the principles of natural justice he held ex-parte domestic enquiry on 06.06.1994. Finally, after all his discussion the Enquiry Officer failed to arrive at any opinion, for or against the workman. It has been observed by him in the concluding portion as follows :

*“ In view of above, I opined that the charge levelled against Sri Shibu Das vide Charge Sheet No. AGT/JNR/1&2/P/CS/94/959 dated 01.02.1994. ”*

In the light of the above discussion, I hold that the findings of the Enquiry Officer is inchoate and he did not hold the concerned employee guilty of the charge.

12. It is an admitted fact that no second Show Cause Notice along with the Enquiry Proceeding and Findings of the Enquiry Officer were served upon the workman. According to the principle laid down by the Hon'ble Supreme Court of India in the case of **Union of India and Others Vs. Mohd. Ramzan Khan [AIR (1991) SC 471]** :

*“ 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."*

The principle laid down by the Hon'ble Supreme Court of India was enforced by the Coal India Limited under which the employer establishment is a subsidiary by way of issuing a Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994. According to the ratio of the discussion and circular of Coal India Limited it is mandatory on the part of the Competent Authority to issue a second Show Cause Notice to the charged employee to submit his response against the findings of the Enquiry Officer. It is only after such opportunity is granted the Competent Authority can pass appropriate order in respect of the charged employee for the misconduct committed by him. In this instant case letter of dismissal bearing No. GM/JNR/PER/94/1587 dated 23/24.06.1994 (Exhibit M-7) was issued by the General Manager of Jhanjra Area which states that on going through the Enquiry Proceeding and Findings of the Enquiry Officer he was of the view that the charge levelled against the workman was fully established and he ordered dismissal of the workman from service with immediate effect. In my considered view the Enquiry Proceeding appears to be invalid due to violation of principles of natural justice i.e., for holding an ex-parte enquiry without proof of service of Charge Sheet and Notice of enquiry upon the workman. Therefore, the order of dismissal based upon such invalid and defective enquiry is not found tenable and the same is set aside. The workman, Shibu Das has not mentioned his year of birth in his affidavit-in-chief or evidence. If the workman has not crossed his age of superannuation, the management is directed to reinstate him in service within two (2) months from the date of communication of the Award. Since the workman has absented from duty for whatever reason, I do not find him entitled to receive any back wages for the period he did not render any service. It also appears from the materials in record that after remaining absent for over nine months, he did not participate in the enquiry and raised the Industrial Dispute in the year 2005, after eleven (11) years from his dismissal. Therefore,

the workman cannot be entitled to any wages for the period he did not render work. It would be appropriate only to allow reinstatement and consequential relief to the workman by maintaining continuity of his service. In the event if he has crossed the age of superannuation and he is not entitled to reinstatement he shall only receive consequential benefits of his past service.

Hence,

**ORDERED**

that the Industrial Dispute is allowed on contest in part. The Enquiry Proceeding held against the workman and order of dismissal bearing No. GM/JNR/PER/08/94/1587 dated 23/24.06.1994 passed by the General Manager, Jhanjra Area, Eastern Coalfields Limited, dismissing Shibu Das from service is not found justified and tenable under the law and the same is set aside. The dismissed workman be reinstated in service within two (2) months from the date of communication of the Award, if he has not crossed the age of superannuation. In the event if the workman has already crossed the age of superannuation he shall be entitled to consequential relief and other dues on account of his past service under Eastern Coalfields Limited. 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.

Sd/-

**(ANANDA KUMAR MUKHERJEE)**

Presiding Officer,  
C.G.I.T.-cum-L.C., Asansol.