

**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. 15 OF 1998**

**PARTIES:** Management of Nakrakonda Colliery of ECL  
**vs.**  
Gouri Nath Banerjee

**REPRESENTATIVES:**

For the Management of ECL: Mr. P. K. Das, Adv.

For the Union/Workman: Mr. Pradip Kumar Goswami, Adv.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 24.11.2023

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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-22012/258/97/IR(CM-II)** dated 12.06.1998 has been pleased to refer the following dispute between the employer, that is the Management of Nakrakonda Colliery under Bankola Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of the management of Nakrakonda Colliery of M/s. ECL in dismissing Sh. G. N. Banerjee from service w.e.f. 23.1.96 is legal and justified? If not, to what relief is the workman entitled? ”*

- 1.** On receiving Order **No. L-22012/258/97/IR(CM-II)** dated 12.06.1998 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 15 of 1998** was registered on 25.06.1998 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.** Parties to the dispute appeared before the Tribunal and filed their respective written statement along with documents.
- 3.** A brief profile of the workman’s case as disclosed in his written statement is that he was a permanent employee, initially posted at Ajoy-II Colliery of Eastern

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Coalfields Limited (hereinafter referred to as ECL) as a Fitter Helper and was appointed as a General Mazdoor on 22.03.1982. He was transferred from Ajoy-II Colliery under Sripur to Nakrakonda Colliery under Bankola Area on the basis of a Transfer Order No. ECL/CMD/C-6B(R)/84/1129 dated 17.02.1984. On being released from Ajoy-II Colliery vide letter No. ECL/AJ/C-6B/84/1190 dated 22.02.1984 he reported to Nakrakonda Colliery and have worked there for ten (10) years and granted two (2) promotions at Nakrakonda Colliery on 07.03.1989 and 16/24.01.1994. The Coal Mines Provident Fund (hereinafter referred to as CMPF) account number of the workman mentioned in the Last Pay Certificate (hereinafter referred to as LPC) issued at the time of transfer is not correct and his CMPF account number is BKR/4/348. It is the case of the workman that management issued a Charge Sheet bearing No. NKR/PER/94-95/1184 dated 15.07.1994 under Clause 17(i)(a)(o)(u) of Model Standing Order, on receipt of an anonymous complaint, without any verification, alleging theft, fraud or dishonesty in connection with the employer's business. The employer alleged that there was misconduct on the part of the workman who fabricated documents showing his transfer from Ajoy-II Colliery, Sripur Area to Nakrakonda Colliery, Bankola Area though the workman was never posted at Ajoy-II Colliery. On the basis of said fabricated documents the workman fraudulently managed a posting at Nakrakonda Colliery as a transferred employee w.e.f. 02.03.1984 and continued to work and enjoy regular promotions and benefits. The workman submitted a reply to the Charge Sheet and preferred a Writ Petition before the Hon'ble High Court at Calcutta against the vague Charge Sheet issued to him. The Writ Petition was disposed of in favour of the petitioner workman and the Charge Sheet was set aside with a liberty to the management to issue fresh Charge Sheet describing the alleged misconduct. On 01.10.1994 the management of Nakrakonda Colliery issued fresh Charge Sheet bearing No. NKR/PER/94-95/1904 dated 01.10.1994 and a Domestic Enquiry was initiated. The workman was dismissed from service vide Order No. 23 dated 30.01.1996 without giving opportunity to the workman to present his case.

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4. The case of the petitioner workman is that the Enquiry Officer was biased and based his findings on conjecture and surmise and shifted the entire burden of proof upon the him instead of placing the same upon the management by holding that he defence has failed to disprove the charge and the prosecution has got no duty to establish the charge. Further contention of the workman is that the Enquiry Officer did not enquire about the original Transfer Order, Release Order, and the LPC, which should have been produced by the management as the same were under the custody of management. The workman categorically stated that the CMPF account number mentioned in the LPC was not his and his CMPF account number is BKR/4/348 but the Enquiry Officer did not consider to verify the said statement. The Enquiry Officer also failed to consider that the salary of March, 1984 has been paid to the concerned workman which could not be done in absence of LPC and the original LPC has been sent in official course prior to March, 1984. On transfer of the workman at the time of joining his new place of posting at the colliery the management has verified the Transfer Order but the Enquiry Officer failed to consider the same. The Enquiry Officer did not take into consideration the documents which were checked and verified by the responsible Officers of the company. It is claimed that non-examination of the officers having personal knowledge about the matters and non-production of the original papers before the Enquiry Officer amounts to withholding the best evidence and the Enquiry Officer ought to have drawn adverse presumption against the management. The vigilance enquiry was started by the management against the workman in respect of the aforesaid charges but report of the vigilance officer was not produced by the Enquiry Officer. The workman urged that punitive action cannot be taken against the workman on the basis of perverse findings. Regarding the order of dismissal, the delinquent contended that the punishing authority has not recorded any independent finding while passing the order of major punishment and has acted mechanically without applying mind. Besides, copy of Enquiry Proceeding and Enquiry Report were not served upon the workman

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before dismissing him from service. It is claimed that the impugned order of dismissal dated 23/30.01.1996 issued against Gouri Nath Banerjee is liable to be set aside and the workman should be reinstated in service with back wages.

**5.** The management of Nakrakonda Colliery in their written statement submitted that on the basis of the complaint received by the management of Nakrakonda Colliery on 31.05.1994 and two other complaints thereafter, alleging that the workman Gouri Nath Banerjee by using false and fabricated documents like LPC, Transfer order, Joining Order had joined Nakrakonda Colliery as a transferred employee. The allegation in the complaints were verified by the management and the Personnel Manager of Ajoy-II Colliery confirmed that the documents were not issued by them. Charge Sheet was accordingly issued against the workman for committing fraud for the purpose of joining as a Fitter Helper at Nakrakonda Colliery. The First Charge Sheet was set aside by the Hon'ble High Court at Calcutta in a writ petition filed by the workman and a fresh Charge Sheet was issued bearing No. NKR/PER/94-95/1904 dated 01.10.1994 and suspended from service. The reply submitted by the workman was not found satisfactory and a Domestic Enquiry was held by Senior Personnel Officer of Jhanjra Area. Workman participated in the Enquiry Proceeding. On completion of the enquiry the workman was found guilty of the charge and was dismissed from service by a order issued by the Chief General Manager of Bankola Area vide letter dated 23.01.1996 (Exhibit W-33). It is urged that the dismissal of the workman is proper and there is no necessity for interfering with the order of dismissal.

**6.** An Industrial Dispute has been raised by the aggrieved workman. Initially only documentary evidence was produced by the parties and no effective evidence was adduced. On the basis of available materials and evidence an Award was passed by this Tribunal on 10.03.2010, where the action of the management of Nakrakonda Colliery of ECL dismissing the workman Gouri Nath Banerjee w.e.f.

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23.01.1996 was not found legal and justified. A direction was given for reinstatement of the workman in his service from the date of his dismissal along with back wages and all consequential benefits due to him as if he was in service since then. An order was made for disbursement of the dues within two months from the date of Notification of the Award.

7. The management of ECL being aggrieved with the Award, preferred a Writ Petition bearing No. 15750(W) of 2010 before the Single Bench of the Hon'ble High Court at Calcutta. Learned Judge of the Single Bench upheld the decision of the Central Government Industrial Tribunal -cum- Labour Court and also allowed a cost of Rs. 50,000/- (Rupees fifty thousand only) to the workman in addition to his entitlement in the impugned order.

8. The aggrieved employer preferred a Mandamus Appeal bearing MAT No. 1375 of 2018. Learned counsel for the appellant contended before the Hon'ble High Court at Calcutta that the Industrial Tribunal passed the Award without giving opportunity to the management of ECL to prove the charge by leading evidence before the Tribunal. It was further contended that the Tribunal was required to decide the validity of the Enquiry as a preliminary issue and if Tribunal held that the charges against the respondent no. 1 could not be established in the Domestic Enquiry, opportunity should be given to the management of ECL to prove the charges by leading evidence. Learned counsel placed his reliance upon the decision of the Hon'ble Supreme Court of India in the cases of **Delhi Cloth and General Mills Co. vs Ludh Budh Singh [(1972) 1 SCC 595]** and **Shankar Chakravarti vs Britannia Biscuit Company and another [AIR (1979) SC 1652]**. The Hon'ble Division Bench of the High Court allowed the appeal by holding that :

*".....that the finding of the tribunal insofar as the validity of the domestic enquiry is concerned calls for no interference as the same was based on materials*

*available in the records and the learned single judge was justified in not interfering with such finding.”*

The Hon'ble High Court granted ECL the opportunity to prove the misconduct by adducing evidence in the case. The appeal was allowed and the order dated 27.08.2018 passed by the learned Single Judge in W.P. No. 15750(W) of 2010 as well as the last part of the Award dated 10.03.2010 passed by the Tribunal in Reference No. 15 of 1998, directing reinstatement with consequential and monetary benefits were also set aside. On remitting the matter this Tribunal has been directed to decide the Reference case no. 15 of 1998 afresh from the stage of decision on the preliminary issue in accordance with law and in the light of the observations made in the decision after giving an opportunity to the employer to cite additional evidence as well as to the respondent no. 1 to lead contrary evidence. This Tribunal has been further directed to take a decision on the dispute referred to it for adjudication on the basis of the evidence adduced by the parties in terms of the order and without being influenced by the fact that the Award has been set aside directing reinstatement with consequential and monetary benefits. The entire exercise was required to be completed within a period of six months from communication of the order. The order of the Hon'ble High Court passed by the Division Bench was communicated to this Tribunal on 12.07.2022, when the Tribunal was lying vacant.

**9.** Opportunity was given to the management to adduce evidence in support of their case and Mr. Anuj Lakra was examined on 21.09.2022 and 16.12.2022 as Management witness – 1. He filed his affidavit-in-chief and produced some documents as follows :

- (i) Photocopy of the letter dated 04/05.07.1994 issued by the Dy. Personnel Manager, Girmint Colliery addressed to the Agent of Girmint (R) Colliery informing that Gouri Nath Banerjee was not in the roll of Ajoy-II Colliery (document is marked as Exhibit M-1).

- (ii) Photocopy of the purported LPC dated 09.04.1984 on the basis of which Gouri Nath Banerjee joined Nakrakonda Colliery (document is marked as Exhibit M-2).
- (iii) Photocopy of the letter issued by the General Manager (Personnel), Head Quarters, ECL dated 08.02.1995 addressed to the Personnel Manager of Jhanjra Area informing that no letter bearing No. ECL/CMD/C-6B(R)/84/1129 dated 17.02.1984 regarding transfer of Gouri Nath Banerjee has been issued from the HQ, ECL (document is marked as Exhibit M-3).
- (iv) Photocopy of the letter issued by the Regional Commissioner- I (SG), CMPF dated 03.12.2018 addressed to General Manager of Bankola Area informing that Gouri Nath Banerjee was allotted with different Provident Fund number at Ajoy-II Colliery (document is marked as Exhibit M-4).
- (v) Photocopy of the Members' Account Ledger of CMPF (document is marked as Exhibit M-5).

**10.** The witness was cross-examined on behalf of the workman. In paragraph – (10) of his affidavit-in-chief the MW-1 stated that the Regional Commissioner- I (SG) has confirmed that BKR/4/348 is the CMPF account number of Gouri Nath Banerjee but his Form-H is not available at CMPF Office. In course of cross-examination the Management Witness deposed that Gouri Nath Banerjee worked at Nakrakonda Colliery from 1984 to 1994, till his dismissal. It transpires from the evidence of MW-1 that an anonymous complaint was made against the workman in the year 1994 and not through any official authority. On 16.12.2022 the witness in his further cross-examination deposed that Gouri Nath Banerjee was never appointed under the company and no transfer order could be found at Nakrakonda Colliery. He could not state if Gouri Nath Banerjee himself produced any Transfer order from Ajoy-II colliery. Furthermore, no verification of such Transfer Order was done by the management to find out if it was genuine or not.



MW-1 deposed that no Service Book of Gouri Nath Banerjee was transmitted to Nakrakonda colliery on his purported transfer and his Service Book was prepared for the first time at Nakrakonda Colliery. It is noteworthy that even at this stage the management witness did not produce the Service Book of Gouri Nath Banerjee from Nakrakonda Colliery to prove on what basis it was prepared. Witness deposed that he could not state on what basis the entries were made at Nakrakonda Colliery. The witness in cross-examination disclosed that the normal rule is that when a person is transferred from one Area to another Area, a Transfer Order is issued and copy of the same is communicated to the Area which he is supposed to join. In a normal case Transfer Order should reach Bankola Area where Nakrakonda Colliery is situated. At the time of joining no such query was made from the Colliery to the Area Office. MW-1 identified a letter dated 05.08.1994 produced by the workman as Exhibit W-21, issued by the Dy. CME/Agent, Nakrakonda Colliery requesting the Dy. CPM, Bankola Area to verify whether Gouri Nath Banerjee was transferred from Ajoy-II Colliery under Sripur Area to Nakrakonda Colliery under Bankola Area, and to send the connected papers regarding such transfer for necessary action. The witness deposed that the Dy. CPM, Bankola Area in his reply dated 25/26.08.1994 (Exhibit W-22) informed that the Transfer record of Gouri Nath Banerjee was not traceable in their office which was confirmed by the dealing clerk of the office. The witness could not state the date of joining of the delinquent at Nakrakonda Colliery. He admitted that he has not verified the Last Pay Certificate and the Transfer Order of Gouri Nath Banerjee, nor could he disclose the name of the person who permitted Gouri Nath Banerjee to work at Nakrakonda Colliery on the basis of the purported Transfer Order. It is gathered from the cross-examination of the management witness that no complaint was made before the Police against Gouri Nath Banerjee after revelation of the alleged fraudulent act of joining service of ECL on the basis of forged documents. The witness deposed that the matter was referred to the Vigilance Cell of ECL. However, the Vigilance Report has not been

placed before the Tribunal nor any Transfer Order or LPC. The witness admitted that in the ledger maintained by the CMPF the date of appointment of Gouri Nath Banerjee at Ajoy-II Colliery appears as 22.03.1982 and the copy of the same has been marked as Exhibit M-5. The witness admitted that according to the letter of the Regional Commissioner- I (SG) dated 03.12.2018 (Exhibit M-4), as per Allotment Register of Ajoy-II Colliery (BKR/4) CMPF account no. BKR/4/348 was allotted to Gouri Nath Banerjee, son of Radhanath Banerjee. So far as LPC is concerned the witness deposed that the same bears the signature of the issuing authority of Ajoy-II Colliery (Exhibit M-2). The management witness deposed that when a person comes on transfer from any other colliery, general practice is that LPC and Transfer Order are checked and verified at the place of his transfer before release of its salary and he admitted that CMPF account number appeared in the purported LPC (Exhibit M-2) produced by the management is not the CMPF account of Gouri Nath Banerjee.

**11.** Opportunity was granted to the workman to lead contrary evidence. On earlier occasion the workman had produced some documents as follows:

- (i) Photocopy of the Chargesheet NKR/PER/94-95/1184 dated 15.07.1994, identified as Ext-W1.
- (ii) Photocopy of the written reply by the workman to the Dy. CME/Agent of Nakrakonda Colliery dated 22.07.1994, identified as Ext-W2.
- (iii) Photocopy of the Chargesheet NKR/PER/94-95/1904 dated 01.10.1994, identified as Ext-W 3.
- (iv) Photocopy of the written reply by the workman to the Agent of Nakrakonda Colliery dated 04.10.1994, identified as Ext-W 4.
- (v) Photocopy of the written reply of the workman to the Enquiry Officer dated 04.10.1994, identified as Ext-W 5.
- (vi) Photocopy of the Dismissal Order dated 23.01.1996, identified as Ext-W6.

- (vii) Photocopy of the Appel against the Dismissal Order dated 02.02.1996, identified as Ext-W7.
- (viii) Photocopy of the letter of the Agent, Nakrakonda Colliery issued to the Agent of Ajoy-II Colliery dated 07.06.1994, identified as Ext-W8.
- (ix) Photocopy of the letter of Dy. Personnel Manager, Girmint Colliery issued to the Agent Girmint (R) Colliery dated 04/05.07.1994, identified as Ext-W9.
- (x) Photocopy of the letter by the General Manager (Personnel) issued to the Personnel Manager, Jhanjra Area dated 08.02.1995, identified as Ext-W10.
- (xi) Photocopy of the LPC /Service Particulars of Gouri Nath Banerjee, identified as Ext-W11.
- (xii) Photocopy of the letter of the Manager, Ajoy-II Colliery issued to the Project Officer, Nakrakonda Colliery dated 11.04.1984, identified as Ext-W12.
- (xiii) Photocopy of the Office Order dated 29.02.1984/01.03.1984, identified as Ext-W13.
- (xiv) Photocopy of the Identity Card, identified as Ext-W14.
- (xv) Photocopy of the letter of Dy. CME/Agent, Nakrakonda Colliery issued to the Dy. CPM, Bankola Area dated 05.08.1994, identified as Ext-W15.
- (xvi) Photocopy of the letter of Dy. CPM, Bankola Area issued to the Dy. CME/Agent, Nakrakonda Colliery dated 25/26.08.1994, identified as Ext-W16.
- (xvii) Photocopy of the Pay Sheet of CMPF Account of Gouri Nath Banerjee, identified as Ext-W17.
- (xviii) Photocopy of the Transfer Certificate of Gouri Nath Banerjee, identified as Ext-W18.
- (xix) Photocopy of the Gram Panchayat Certificate dated 26.07.1994, identified as Ext-W19.

(xx) Photocopy of the Court's Order dated 09.09.1994, identified as Ext-W20.

**12.** An affidavit-in-chief has been filed by Gouri Nath Banerjee on 21.02.2023 and he was cross-examined at length on behalf of the management of ECL. Further documents produced by the workman are as follows:

(xxi) Photocopy of the letter of the Dy. CME/Agent, Nakrakonda Colliery addressed to the Dy. CPM, Bankola Area dated 05.08.1994, marked as Exhibit W-21 (same as Ext-W15).

(xxii) Photocopy of the reply of the Dy. CPM, Bankola Area to the Dy. CME/Agent, Nakrakonda Colliery dated 25/26.08.1994, marked as Exhibit W-22 (same as Ext-W16).

(xxiii) Photocopy of the Office Order dated 29.02.1984 / 01.03.1984, marked as Exhibit W-23.

(xxiv) Photocopy of the Identity Card of Gouri Nath Banerjee, marked as Exhibit W-24 (same as Ext-W14).

(xxv) Photocopy of the Pay Slip of Gouri Nath Banerjee issued from Nakrakonda Colliery, marked as Exhibit W-25.

(xxvi) Photocopy of the Office Order dated 07/09.03.1989, marked as Exhibit W-26.

(xxvii) Photocopy of the Office Order dated 16/24.01.1994, marked as Exhibit W-27.

(xxviii) Photocopy of the CMPF Pass Book bearing name and account number of the employee, marked as Exhibit W-28.

(xxix) Photocopy of the General Diary dated 27.07.1994 lodged at Barjora Police Station, marked as Exhibit W-29.

(xxx) Photocopy of the First Charge Sheet dated 15.07.1994, marked as Exhibit W-30 (same as Ext-W1).

(xxxi) Photocopy of the Second Charge Sheet dated 01.10.1994, marked as Exhibit W-31 (same as Ext-W3).

(xxxii) Photocopy of the Enquiry Report dated 11.12.1995, marked as Exhibit W-32.

(xxxiii) Photocopy of the letter dated 23.01.1996 communicating dismissal of Gouri Nath Banerjee, marked as Exhibit W-33.

**13.** Mr. Pradip Kumar Goswami, learned advocate for the charged employee argued that Gouri Nath Banerjee was a permanent employee of ECL and initially joined at Ajoy-II Colliery under Sripur Area on 22.03.1982 and was allotted a CMPF Account No. BKR/4/348. He was subsequently transferred to Bankola Area on the basis of Office Order dated 29.02.1984/01.03.1984 and on 02.03.1984 he was posted as a Fiter Helper at Nakrakonda Colliery. At that time of transfer he was asked to deposit his Identity Card of Ajoy-II Colliery to get a New Identity Card at Nakrakonda Colliery. During his posting at Nakrakonda Colliery the workman was granted two promotions to upper grade on 07.03.1989 and 16/24.01.1994. During his service at Ajoy-II Colliery he received his Service Record Excerpt, which he lost for which a General Diary bearing No. 748 dated 27.07.1994 (Exhibit W-29) was lodged at Barjora Police Station. Learned advocate argued that the management has not produced the anonymous complaint, on the basis of which this vicious proceeding was initiated against the petitioner workman. The Vigilance Report after the enquiry has not been produced to establish that there was any misconduct on the part of the workman. Learned advocate of the charged employee urged that at the time of transfer of any workman from one office to another office of employer's establishment, an order of transfer, a Last Pay Certificate and an order of release were issued and the same were communicated to the place of transfer officially. At the time of joining the place of transfer, the transferee office verifies all such documents and thereafter permits the workman to join. Admittedly Gouri Nath Banerjee joined Nakrakonda Colliery and in course of his ten (10) years in service, until his suspension he was promoted on two occasions. It is emphatically argued that the

documents filed by the management (Exhibit M-4 and M-5) would reveal that the office of the Regional Commissioner- I (SG), CMPF in their letter dated 03.12.2018 informed the General Manager, Bankola Area that as per report received from custodian official and the Allotment Register of Ajoy-II Colliery (BKR/4), Gouri Nath Banerjee, son of Radhanath Banerjee was allotted CMPF Account No. BKR/4/348. Both these documents have been filed by the management which reveal that according to the Allotment Register of Ajoy-II Colliery, Gouri Nath Banerjee was a beneficiary of CMPF with Account No. BKR/4/348 and Allotment Register reveals that his date of joining was 22.03.1982. Mr. Goswami argued that the documents filed by the management supports the case of the workman that he was in the service of the company since his appointment at Ajoy-II Colliery and the Management witness miserably failed to discharge their onus of proving the charge by leading evidence. It is urged that the order of dismissal of Gouri Nath Banerjee from service is illegal and arbitrary, the same is required to be set aside and considering the fact that the employee has already attained his age of superannuation and there is no scope for his reinstatement, the management should pay the back wages and all consequential benefits.

**14.** In reply Mr. P. K. Das, learned advocate for the management of ECL argued that the charged employee participated in the Domestic Enquiry held against him but he could not prove that he was appointed at Ajoy-II Colliery at any point of time or that he was transferred to Nakrakonda Colliery by any order of the management. It is contended that the charge of misconduct through fraud has been well established against the delinquent and the order of dismissal passed against him is appropriate, just and proper and does not require any interference.

**15.** In the earlier Award of the Tribunal dated 10.03.2010 it was held that action of Nakrakonda Colliery in dismissing the workman Gouri Nath Banerjee w.e.f. 23.01.1996 was not legal and justified. The Hon'ble Division bench of the

High Court at Calcutta in MAT NO. 1375 of 2018 held that the finding of the Tribunal in so far as the validity of the domestic enquiry is concerned should be tread to be a finding on the preliminary issue and it has been made clear that such findings is not to be interfered with by this court. However, as the Tribunal did not afford any opportunity to ECL to prove the charges on merit by adducing evidence in spite of a specific prayer made in the pleadings, the Hon'ble Court was of the considered view that the part of the Award dated 10.03.2010 declaring the dismissal to be illegal and unjustified and the consequential direction for reinstatement in service with back wages and all consequential benefits and monetary benefits are required to be set aside and thereby allowed the appeal.

**16.** On a conspectus of evidence adduced by the Management witness (MW-1), it appears that he is not acquainted with the fact of the case. In cross-examination he admitted that management could not find any Transfer order of Gouri Nath Banerjee at Nakrakonda Colliery and he could not state, if any such Transfer order was issued by Ajoy-II Colliery. The Witness further deposed that no verification of such Transfer order was done by the management to find out if it was genuine or not. It is undisputed that Gouri Nath Banerjee worked at Nakrakonda Colliery from 1984 to 1994, till his dismissal. It is abundantly clear from the admission of MW-1 that the Transfer order and the LPC which are the vital documents on the basis of which the delinquent joined Nakrakonda Colliery have not produced by ECL, the custodian of records and no verification of such documents were made to ascertain whether they were fake or genuine. Furthermore, a letter issued by Dy. Chief Personnel Manager of Bankola Area to the Dy. CME/Agent, Nakrakonda Colliery dated 25/26.08.1994 (Exhibit W-22), reveals that the Transfer file of Gouri Nath Banerjee was not traceable in his office. Therefore, the management has not been able to prove that the documents related to transfer of Gouri Nath Banerjee are fake. On a close examination of the contents of the letter dated 04/05.07.1994 (Exhibit M-1) issued by the

Dy. Personnel Manager, Girmint (R) Colliery, it appears that after enquiry it was communicated that *“there is no such person by name of Sri Gourinath Banerjee working at Ajoy-II Colliery. Also, no such name is available in B.Form register.”* The management of ECL thereafter produced Exhibit M-4, a letter dated 03.12.2018, issued by the Regional Commissioner-I (SG), CMPF, which demolishes the management’s own case that Gouri Nath Banerjee did not work at Ajoy-II Colliery. It transpires from the communication made to the General Manager, Bankola Area that as per the Allotment Register of Ajoy-II Colliery Sri Gouri Nath Banerjee, S/o- Radhanath Banerjee was allotted CMPF Account No. BKR/4/348. There is nothing to disbelieve Exhibit M-4 and Exhibit M-5, which originate from an independent source, the Coal Mines Provident Fund authority, over which the charged employee has no control or influence. The unescapable conclusion therefore is that the employer failed to discharge their onus of proving the charge of misconduct by fraud against Gouri Nath Banerjee under Clause 17(i)(a), 17(i)(o), and 17(i)(u) of the Model Standing Order applicable to the management.

**17.** Admittedly the charged employee was a permanent employee at Nakrakonda Colliery from 1984 till his order of suspension on 01.10.1994. From Exhibit W-26 it appears that by Order dated 07/09.03.1989 the workman was promoted from the post of Fitter Helper at Nakrakonda Colliery to the post of Fitter in Category-IV. After five (5) years he was again promoted from the post of Fitter in Category-IV to the post of Fitter in Category-V by order dated 16/24.01.1994 (Exhibit W-27). No objection was raised by the management at the time of admitting the documents in evidence nor any suitable explanation has been provided as to how after verification of all records such promotions could have been granted to such employee if his entry in the service is illegal and based on fabricated documents. The management has produced a copy of letter from the Regional Commissioner- I (SG), CMPF dated 03.12.2018 (Exhibit M-4) wherein it is stated that the CMPF account number of Gouri Nath Banerjee is BKR/4/348



as per Allotment Register of Ajoy-II Colliery. In the relevant page of Allotment Register of Ajoy-II Colliery the date of appointment of Gouri Nath Banerjee was recorded as 22.03.1982. The management of the company by producing the document has accepted the fact that on the basis of Allotment Register of Ajoy-II Colliery CMPF account number was allotted to the charged employee. The management of ECL could not explain how the name of the charged workman appeared in the Allotment Register of Ajoy-II Colliery.

**18.** In the instant case Gouri Nath Banerjee failed to produce any document in his favour or in support of his claim that he was initially appointed at Ajoy-II Colliery under Sripur Area. It is strange to find that only after issuance of the Charge Sheet against him on 15.07.1994 (Exhibit W-30) to the effect that he never worked at Ajoy-II Colliery at any point of time and fraudulently fabricated or caused to be fabricated some documents and papers, to show that he has been transferred from Ajoy-II Colliery, the workman lodged a General Diary bearing No. 748 dated 27.07.1994 at Barjora Police Station claiming that on 25.07.1994 while he was proceeding from his house for his duty at the Colliery all his Service Records, LPC and other documents of Ajoy-II Colliery got lost in a bus. Apparently, to escape the onus of discharging his burden of proof, the charged employee took a plea that his documents were lost. It is natural and prudent that after such a charge levelled against him, he would carefully maintain custody of his documents which would help to support his claim of service. In the present case the delinquent has endeavored to justify non-production of documents by lodging a General Diary with Police that his documents were lost in a bus.

**19.** The other part of the story is that the management of Nakrakonda Colliery of ECL miserably failed to discharge their burden of proof by not producing the Transfer file containing the order of transfer, LPC and release order of the workman. The purported LPC issued to Gouri Nath Banerjee has been produced

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as Exhibit M-2. No document has been produced to show as to what steps the management have taken to identify the person who issued the documents and specifically those who acted upon it by allowing Gouri Nath Banerjee to join at Nakrakonda Colliery and paid wages on the basis of such LPC. The CMPF account number of the charged employee which appears from Exhibit M-4 is the only reliable document which establishes the relationship of Gouri Nath Banerjee with Ajoy-II Colliery as the CMPF account number was allotted on the basis of the Allotment Register forwarded by Ajoy-II Colliery to the Office of the Regional Commissioner- I (SG), CMPF, Region-1.

**20.** From the aforesaid facts and circumstances I hold that amidst non-availability of several important missing links and material relating to appointment of Gouri Nath Banerjee at Ajoy-II Colliery under Sripur Area, the transfer order, LPC, and release order by which he joined at Nakrakonda Colliery under Bankola Area, the only sustainable evidence which surfaced in favour of the charged employee is his CMPF Account Ledger bearing his CMPF account number, issued on the basis of the Allotment Register of Ajoy-II Colliery (Exhibit M-5). Weighing the evidence on record, the balance tilts in favour of the workman who has admittedly served the company for ten years at Nakrakonda Colliery, where he was granted two promotions and also has a CMPF account. The evidence adduced on behalf of the management could not dislodge the material in support of the workman. The denial of the management simpliciter that the workman never worker at Ajoy-II Colliery does not help them to establish the charge. Accordingly, I hold that the charge levelled against the workman in Charge Sheets dated 01.10.1994 could not be established against him. The Enquiry Report and Second Show Cause Notice were not served upon the workman in compliance with the principle laid down in the 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]** and the Circular of Coal India Ltd. bearing No. CIL C-5A(VI)/50774/28

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dated 12.05.1994. The order of dismissal dated 23.01.1996 (Exhibit W-33) passed by the Chief General Manager of Bankola Area against Gouri Nath Banerjee is not sustainable under the law and the same is set aside.

**21.** The workman having superannuated from service during pendency of the Reference case, it is found appropriate to direct the management of Nakrakonda Colliery of ECL that Gouri Nath Banerjee be treated to be in service from the date of his dismissal i.e. 23.01.1996. He shall be entitled to his back wages along with consequential benefits. The management of the company shall disburse his dues within six (6) months from the date of Notification.

Hence,

**ORDERED**

that the Industrial Dispute is decided in favour of the workman against the management on contest. The dismissal of Gouri Nath Banerjee from his service by order dated 23.01.1996 is set aside. He shall be treated to be in service w.e.f. the date of his dismissal till the date of his normal superannuation. He shall be entitled to his back wages for the said period along with consequential benefits. The management of the company shall disburse his dues within six (6) months from the date of Notification. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

*S/d*  
**(ANANDA KUMAR MUKHERJEE)**  
Presiding Officer,  
C.G.I.T.-cum-L.C., Asansol.