

**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. 17 OF 2021

PARTIES: Prabir Bouri
Vs.
Management of 1 and 2 Incline, Jhanjra Area of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Basudev Choudhury, Advocate.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 18.07.2024

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, the Government of India through the Ministry of Labour, vide its Order **No. L-22012/35/2021-IR(CM-II)** dated 08.09.2021 has been pleased to refer the following dispute between the employer, that is the Management of 1 and 2 Incline Under Jhanjra 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 1 & 2 Incline under Jhanjra Area in imposing a punishment of dismissal on Shri Prabir Bouri, Cat-I Mazdoor (Man No. 74801), vide ref. No. GM/JNR/PERS/2013/1648 dated 19-03-2013 is just and legal? if not, to what relief the workman is entitled to? ”

1. On receiving Order **No. L-22012/35/2021-IR(CM-II)** dated 08.09.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 17 of 2021** was registered on 20.09.2021 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. The workman filed his written statement on 24.07.2023. The fact of the case as disclosed in his written statement is that Prabir Bouri, the workman was a permanent employee at Jhanjra Project Colliery under Jhanjra Area of Eastern

Coalfields Limited (hereinafter referred to as ECL) bearing U.M. No. 747801. He was appointed on 19.09.1985 and had remained absent from duty from 18.04.2012 due to his illness. He informed the management about the reason of his absence. Despite such information management illegally issued a Charge Sheet to him bearing No. AGT/JNR/1&2/P/CS/12/789 dated 30.04.2012. A Domestic Enquiry was held against him on 24.07.2012. The workman participated in the Enquiry Proceeding and disclosed the reason of his absence and also submitted Medical Certificate in support of his illness. No 2nd Show Cause Notice was issued by the management nor any copy of Enquiry Proceeding was supplied to him before dismissing him from service, violating the principles of natural justice. It is contended that a major punishment has been imposed against the workman, disproportionate to the alleged charge. He has been made jobless and forced to a starving condition. The dismissed workman prayed for setting aside the order of dismissal, seeking reinstatement in service and payment of back wages.

3. The management of ECL contested the case by filing their written statement on 23.01.2023. It is stated that Prabir Bouri, General Mazdoor, Category – I, was absenting from his duty at Jhanjra Project Colliery since 18.04.2012 without any information. A Charge Sheet was issued to Prabir Bouri for misconduct vide Charge Sheet No. AGT/JNR/1&2/P/CS/12/789 dated 30.04.2012 under Clause 26.23 of Certified Standing Order for his habitual absence from duty without cause and under Clause 26.29 of Certified Standing Order for unauthorized absence for more than ten days. The Charge Sheet was received by the delinquent by putting his signature. The reply submitted against the Charge Sheet was not satisfactory and a Domestic Enquiry was initiated. Enquiry was held against Prabir Bouri on 24.07.2012, following the principle of principles of natural justice and the charges were well established against him. Management issued a 2nd Show Cause Notice to the charged employee bearing Ref. No. GM/JNR/PERS/

2013/1355 dated 16/19.01.2013. Copy of Enquiry Proceeding and Enquiry Report were supplied to him with the 2nd Show Cause Notice and the workman submitted his written reply. The reply of the workman was not found satisfactory by the Disciplinary Authority as his past record in service was poor. The management having no other alternative, dismissed the workman from service of the company vide Office Order bearing Ref. No. GM/JNR/PERS/2013/1648 dated 19.03.2013. It is claimed that the Industrial Dispute is liable to be dismissed.

4. The dismissed workman has examined himself as Workman Witness – 1 and filed his affidavit-in-chief, wherein he has averred that he informed the management the reason of his absence but the management illegally and arbitrarily issued Charge Sheet against him. A Domestic Enquiry was held in respect of the charge and he participated in the enquiry. In the Enquiry Proceeding the workman disclosed that he was suffering from illness but management did not consider the document. No 2nd Show Cause Notice was served upon him and the management illegally terminated him from service violating the principles of natural justice. During the evidence the workman witness produced a copy of his order of dismissal dated 19.03.2013 as Exhibit W-1.

5. During cross-examination workman witness denied the suggestion that he worked for thirty-two days in the year 2009, sixteen days in the year 2010 and forty-one days in the year 2011. He further denied that due to his unauthorized absence his annual increments were stopped or that he did not remain absent for his illness. The witness also disowned the signature appearing on the reply to the 2nd Show Cause Notice and on the copy of the Charge Sheet. The witness however admitted the signature appearing in the Enquiry Report, and the same has been marked as Exhibit M-1.

6. Mr. Alaric Oneal Lyndem, Manager (Personnel), Jhanjra Project Colliery has been examined as Management Witness – 1. In the affidavit-in-chief the witness stated that Prabir Bouri was chargesheeted on 30.04.2012 under Clause 26.29 of Certified Standing Order for being absent from duty beyond ten days without sanctioned leave or sufficient cause and under Clause 26.23 for habitual low attendance or absence from duty without sufficient cause. It is stated that the Charge Sheet was received by the workman by putting his signature on the office copy of the same. As his reply was not found satisfactory and for his antecedents of habitual absence a Domestic Enquiry was held. It is also stated that the charge against Prabir Bouri was proved and on the basis of the findings of the Enquiry Officer management issued 2nd Show Cause Notice to the workman along with his Enquiry Proceeding. The delinquent employee submitted reply to the 2nd Show Cause Notice but it was not found satisfactory and he was dismissed from service by order dated 19.03.2013. In course of his evidence the management witness produced the following documents:

- (i) Signature of Prabir Bouri on the Enquiry Proceeding is marked as Exhibit M-1.
- (ii) Copy of the Charge Sheet dated 30.04.2012 has been produced as Exhibit M-2.
- (iii) Copy of the reply to the Charge Sheet, as Exhibit M-3.
- (iv) Copy of the Notice of enquiry dated 21.07.2012, as Exhibit M-4.
- (v) Copy of the Enquiry Proceeding dated 24.07.2012 in three pages has been collectively marked as Exhibit-5.
- (vi) Prabir Bouri has put his signature on all the pages of Enquiry Proceeding. The signature on page no. 1 and 2 of the Enquiry Proceeding has been marked as Exhibit M-5/1 and M-5/2 and signature on page no. 3 has already been marked as Exhibit M-1.
- (vii) Copy of the Enquiry Report dated 24.07.2012, as Exhibit M-6.

- (viii) Copy of the 2nd Show Cause Notice dated 16/19.01.2013 has been produced as Exhibit M-7.
- (ix) Copy of the reply to the 2nd Show Cause Notice, as Exhibit M-8.
- (x) Copy of the order of dismissal dated 19.03.2013, as Exhibit M-9.

7. In cross-examination the witness denied that the punishment of dismissal of Prabir Bouri from service was improper or it was illegal.

8. The point for consideration before this Tribunal is whether the punishment of dismissal imposed against Prabir Bouri is just and legal. If not, whether he is entitled to any relief?

9. Mr. Basudev Choudhury, learned advocate for the workman argued that Prabir Bouri was serving the company as a permanent employee since 1985. He has rendered satisfactory service all through, but the management of ECL in an arbitrary manner issued a Charge Sheet against the workman for his absence from duty for a period of only twelve days and imposed a disproportionate punishment without service of Charge Sheet, 2nd Show Cause Notice and Enquiry Report. It is further argued that the workman participated in the Enquiry Proceeding and produced his medical certificate in support of his absence from 18.04.2012 to 18.07.2012 but the Enquiry Officer did not consider the Certificate, covering the period of his absence on the ground that he did not receive medical treatment from colliery Hospital. Learned advocate argued that the Enquiry Proceeding was held in violation of principles of natural justice without providing any opportunity to the workman and by way of rejecting his defence without any plausible cause. Learned advocate asserted that the order of dismissal passed against the workman is illegal, improper, arbitrary and is liable to be set aside. It is urged that the workman merits reinstatement in service and payment of back wages till his reinstatement.

10. Mr. P. K. Das, learned advocate for the management argued that copy of Charge Sheet, Enquiry Report and 2nd Show Cause Notice were served upon the charged workman who received the same by putting his signatures. In his cross-examination the workman witness admitted his signatures appearing in the Enquiry Proceeding, which goes to establish that he was well informed about the Charge Sheet against him as well as the Enquiry Proceeding conducted by the Enquiry Officer. It is argued that the workman is a habitual absentee and attended his duty for thirty-two days the year 2009, sixteen days in the year 2010 and forty-one days in the year 2011. Due to his previous absence the workman was earlier punished by stoppage of one increment in the year 1996, stoppage of two increments in the year 1997 and final warning in the year 1999. Once again, he was punished by stoppage of three increments in the year 2000 and stoppage of one increment in the year 2001. He was demoted to the post of Cleaning Mazdoor, Category – I in the year 2005. Again, he was demoted to the initial Basic of Category – I as a last chance in the year 2006. Stoppage of one increment in the year 2010 and thereafter stoppage of three increments in the year 2011. It is submitted by the learned advocate that the workman did not rectify his conduct and continued to remain absent without informing the management of the company and thereby caused disruption in service, being absolutely unpredictable in his attendance. Learned advocate took me through the Charge Sheet dated 30.04.2012 (Exhibit M-2) which bears the signature of the workman. The workman submitted a reply to the Charge Sheet on 20.07.2012 i.e. after two months and twenty days after the issuance of Charge Sheet, wherein he prayed for allowing him to join duty on the ground that he was under medical treatment and was then found fit to join his duty. Learned advocate drew my attention to the Notice of enquiry, a copy of which was also served upon the workman. Copy of the Enquiry Proceeding and Enquiry Report have been produced as Exhibit M-5 and Exhibit M-6. Regarding issuance of 2nd Show Cause Notice, the learned advocate pointed out that a 2nd Show Cause Notice dated 16/19.01.2013 was

issued to Prabir Bouri, which has been produced as Exhibit M-7. Though the workman has denied having received the 2nd Show Cause Notice, the learned advocate for management referred to the reply submitted by Prabir Bouri dated 31.01.2013 against 2nd Show Cause Notice, where he has reiterated his earlier statement that he was under medical treatment at Khandra BPHC from 18.04.2012 to 18.07.2012. It is argued that the reply to the 2nd Show Cause Notice goes to prove that the 2nd Show Cause Notice was served upon the workman and he had been provided with reasonable opportunity to meet the charge levelled against him under Clause 26.23 and 26.29 of the Certified Standing Order. It is vehemently argued that there is no illegality on the part of the management in issuing the Charge Sheet against a habitual absentee who had no responsibility towards his work. It is urged that the Industrial Dispute raised by the workman eight years after his dismissal has no merit and is liable to be dismissed.

11. I have considered the rival contentions of the parties in the backdrop of facts and circumstances of the case. The evidence on record is rife to establish that the workman had actually remained absent from duty for more than three months from 18.04.2012 to 18.07.2012 and he submitted his application, seeking permission to join his duty only from 20.07.2012 (Exhibit M-3). Nowhere in the application he disclosed the nature of the ailment or the place where he received the medical treatment. Only after the Enquiry Proceeding was started, he made an endeavour to defend the case raising a plea that he was absent from duty due to illness. The Enquiry Officer in his Report (Exhibit M-6) has stated that the workman did not report to the company's dispensary and also failed to produce the papers related to his medical treatment. Besides, the charge of unauthorized absence for more than ten days under Clause 26.29 of the Certified Standing Order, the Enquiry Officer has found the workman a habitual absentee who performed work for thirty-two days in the year 2009, sixteen days in the year 2010 and forty-one days in the year 2011 and till 18.04.2012 he performed

work for only fourteen days. These facts have not been controverted by the workman. Simple denial of such facts in course of cross-examination does not disprove the charge of misconduct under Clause 26.23 of the Certified Standing Order. It is evident that previously the workman had been subjected to minor punishment on nine occasions from December 1996 to August 2011. The workman did not mend his conduct nor did he care to attend his work after so many occasions of warning and punishments meted out to him. The workman submitted his reply to the 2nd Show Cause Notice which has been produced as Exhibit M-8. The controlling authority finally issued the Office Order dated 19.03.2013, dismissing him from his service in exercise of power conferred to him under Clause 27 of the Certified Standing Order applicable to the workman and the establishment.

12. In my considered view the management having provided reasonable opportunity to the workman has initiated a Departmental Proceeding against him for his misconduct and after following the principles of natural justice the Enquiry Officer found the workman guilty of the charge. The workman failed to satisfy the Disciplinary Authority by submitting his explanation to the 2nd Show Cause Notice and the General Manager of Jhanjra Area, ECL, being the competent authority dismissed him from service. I find no illegality, impropriety or irregularity in the proceeding and the final outcome. The workman having faced nine minor punishments in earlier occasions, failed to rectify his conduct. Therefore, there is no extenuating circumstance for him to avoid the punishment of dismissal from service. I do not find any illegality in the Enquiry Proceeding nor the order of dismissal passed against Prabir Bouri. Therefore, the Industrial Dispute is dismissed on contest.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest against the workman. I find no reason to interfere with the order of dismissal passed against Prabir Bouri. 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.