

**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. 18 OF 2018**

**PARTIES:** Lakshmi Narayan Bouri  
**Vs.**  
Management of Gourandi Begunia Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.  
For the Management of ECL: Mr. P. K. Das, Adv.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 29.09.2023

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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-22012/39/2018-IR(CM-II)** dated 04.07.2018 has been pleased to refer the following dispute between the employer, that is the Management of Gourandi Begunia 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 Eastern Coalfields Ltd. in relation to its Gourandi Begunia Colliery under Salanpur Area in imposing the punishment of dismissal on Shri Laxminarayan Bouri, U G Loader vide order No. SLN/C-6/36/P-900 dated 11.07.2009 is just and legal? If not, to what relief the workman is entitled to? ”*

**1.** On receiving Order **No. L-22012/39/2018-IR(CM-II)** dated 04.07.2018 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 18 of 2018** was registered on 10.07.2018 and an order was passed issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.

**2.** After issuance of Notice to Lakshmi Narayan Bouri, the dismissed workman filed written statement on 23.11.2022. The case of the aggrieved workman is that he was a permanent employee of Gourandi Begunia Colliery under Salanpur Area

of Eastern Coalfields Limited (hereinafter referred to as ECL) bearing U.M. No. 221392. Due to his illness he could not attend his work from 09.10.2007. After recovery when Lakshmi Narayan Bouri, the workman, reported for his duty the management of the colliery did not permit him to join and issued Charge Sheet bearing No. G.B/C-6/C5/08/820 dated 02.06.2008. The workman replied to the Charge Sheet, explaining the circumstance under which he was unable to perform his duty but an Enquiry Proceeding was initiated and he was dismissed from service of the company vide Letter of Dismissal issued on 11.07.2009. The workman contended that the Enquiry Officer did not provide him reasonable opportunity to take the assistance of co-worker, thereby natural justice was denied. It is his case that a stereotype enquiry was held and the report was submitted by filling up blanks in a pre-typed report signed by the employee and the management representative. The workman contended that the punishment of dismissal imposed against him was harsh and disproportionate to the nature of charge. It is urged that the workman submitted a Mercy Petition consistent with the scope of a Memorandum of Settlement signed by ECL before the Regional Labour Commissioner (Central), Asansol on 22.05.2007, in which the management agreed to consider the mercy appeal of the employees who absented for a period up to nine months and are within the age of forty-five years. The workman further contended that in response to his mercy appeal the General Manager (P&IR) called him to appear with his family members and he was asked to submit an undertaking that he would be regular in attending his duty in future, but till date he has not been allowed to join his duty.

**3.** The workman thereafter raised an Industrial Dispute before the Assistant Labour Commissioner (Central), Asansol where the management agreed to consider his prayer for reinstatement on the basis of the Memorandum of Settlement but ultimately the prayer was not allowed. The dismissed workman contended that he is out of employment since October 2007, having no source of

income to maintain his family. The workman therefore, prayed for his reinstatement in service with back wages and other consequential benefits.

**4.** The management of Gourandi Begunia Colliery under Salanpur Area of ECL filed their written statement on 23.11.2022 refuting the claim of the workman on the ground that Lakshmi Narayan Bouri absented from his duty from 09.10.2007 without any intimation and he is also a habitual absentee. His attendance in the year 2005 was 79 days, in the year 2006 he attended duty for 35 days and in the year 2007 for 112 days. The workman was charge sheeted for his misconduct under Section 26.23 and 26.29 of the Certified Standing Orders applicable to the workmen of the company. The workman failed to submit any satisfactory report to the Charge Sheet for which a Domestic Enquiry was held by the Enquiry Officer after issuance of Notice. The workman participated in the Enquiry Proceeding, availing reasonable opportunity to defend himself in accordance with the principles of natural justice. The charge of misconduct was proved against the workman followed by issuance of the Second Show Cause Notice by the Disciplinary Authority and the workman was dismissed by order dated 11.07.2009. It is claimed that the order of dismissal of the workman was justified and the punishment of dismissal is proportionate to his misconduct. Management contended that the fairness of enquiry is to be adjudicated as preliminary issue and if it is found that the enquiry was unfair then the management should be given an opportunity to prove the said charges before the Tribunal by adducing evidence or independent proof thereof. The management on such contention urged that the dismissed workman is not entitled to get any relief in this Industrial Dispute.

**5.** The dismissed workman filed an affidavit-in-chief and adduced evidence as workman witness – 1. He produced the following documents in support of his case:

- (i) Photocopy of the Letter of Dismissal dated 11.07.2009 is marked as Exhibit W-1.
- (ii) Photocopy of the Mercy Petition for reinstatement, as Exhibit W-2.
- (iii) Photocopy of the Memorandum of Settlement dated 08.07.2013, whereby the case for reinstatement of Lakshmi Narayan Bouri was forwarded to headquarters for consideration and to report before the Assistant Labour Commissioner (Central), Asansol within thirty days from the date of settlement is produced as Exhibit W-3.
- (iv) Photocopy of the letter dated 26/27.05.2014 issued by the Sr. Officer, Gourandi Begunia Colliery asking the dismissed workman to appear before the General Manager (P&IR), ECL on 29.05.2014 for personal hearing along with his family members for disposal of the appeal, as Exhibit W-4.
- (v) Photocopy of the letter dated 22.01.2015 requesting the dismissed workman not to resort to any agitational programme, as Exhibit W-5.

In course of his cross-examination the workman stated that he cannot produce documents relating to his medical treatment during the period of his absence. He further deposed that he will examine Dr. Josh of Domohani Colliery from whom he received medical treatment.

**6.** Mr. Devendra Kumar, Senior Officer (Personnel) of Gourandi Begunia Group of Mines filed an affidavit-in-chief and was examined as Management Witness – 1. It has been stated in the affidavit-in-chief that the workman is a habitual absentee. He was chargesheeted for his misconduct under different sections of Certified Standing Orders applicable to the company. The witness disclosed that he workman participated in the Enquiry Proceeding and reasonable opportunity was given to him. The witness deposed that a Second Show Cause Notice was issued by the Disciplinary Authority and by order dated 11.07.2009 the Disciplinary Authority dismissed the workman from service. In course of evidence MW– 1 produced the following documents :

- (i) Photocopy of the Second Charge Sheet is marked as Exhibit M-1.
- (ii) Photocopy of the Reply to the Second Charge Sheet, as Exhibit M-2.
- (iii) Photocopy of the letter of appointment of Mr. Samir Kr. Sinha, as the Enquiry Officer as Exhibit M-3.
- (iv) Photocopy of the Notice of enquiry sent to the workman, as Exhibit M-4 and M-5.
- (v) Photocopy of the document relating to the Enquiry Proceeding, as Exhibit M-6.
- (vi) Photocopy of the Inquiry Report with findings dated 25.11.2008, as Exhibit M-7.
- (vii) Photocopy of the Second Show Cause Notice dated 30.12.2008/12.01.2009, as Exhibit M-8.
- (viii) Photocopy of the Reply to the Second Show Cause Notice, as Exhibit M-9.
- (ix) Photocopy of the Letter of Dismissal dated 11.07.2009 issued by the General Manager of Salanpur Area of ECL, as Exhibit M-10.

In course of cross-examination the witness admitted that the Enquiry Proceeding was prepared on a pre-typed format, which must have been a prevailing practice at the relevant time. A copy of Mercy Petition seeking reinstatement and a copy of the letter dated 22.01.2015 issued by Senior Manager (P)/IR, have been produced by the workman as Exhibit W-2 and W-5. The witness admitted that he has no document to show that proposal for reinstatement was dismissed by the headquarters of ECL.

**7.** Mr. Rakesh Kumar, Union representative for the workman argued that the management of the company has dismissed Lakshmi Narayan Bouri for his absence from duty only for a period of seven months and twenty-five days which was due to illness. It is argued that the punishment imposed against the workman is disproportionate, improper and liable to be set aside by reinstatement of the

workman and payment of back wages. It is further argued that the Enquiry Proceeding was held mechanically and the report in two pages was prepared on a pre-typed format without application of mind.

**8.** In reply Mr. P. K. Das, learned advocate for the management of ECL argued that the Charge Sheet was issued against the workman for his misconduct under Section 26.23 and 26.29 of the Certified Standing Orders applicable to the company. In the said Charge Sheet (Exhibit M-1) it was specified that the workman had performed 79 days of work in the year 2005, 35 days of work in the year 2006 and 112 days in the year 2007. The workman submitted his reply against the Charge Sheet disclosing that due to his illness of “nervous breakdown” from 12.10.2007 to 27.11.2008 it was not possible for him to attend duty from and that Notice of enquiry were issued to him on 05.08.2008 and 13.11.2008 but due to illness he was unable to attend before the Enquiry Officer.

**9.** The moot question before this Tribunal is whether the order of dismissal issued against Lakshmi Narayan Bouri from service is just and legal and what relief is the workman entitled to?

**10.** On a perusal of Exhibit M-1 and M-2 I find that the workman responded to the Charge Sheet and stated that he has submitting medical prescription as evidence of his illness and also fitness Certificate for resuming his duty from 28.11.2008. Notice of the enquiry have been produced as Exhibit M-4 and M-5. The workman participated in the enquiry and the copy of Enquiry Proceeding has been produced as Exhibit M-6 and the findings as Exhibit M-7. The Enquiry Officer recorded statement of Mr. N. D. Maji, the management representative. There is no indication in the Enquiry Proceeding if the workman was given any opportunity to cross-examine the witness. Similarly, Lakshmi Narayan Bouri, the delinquent workman was examined and he stated that he was suffering from mental agony and prayed for apology for his misconduct. The Enquiry Proceeding

appears to me to be irregular in nature as it has been prepared on some pre-typed format, without recording the statement of the witness in verbatim. No opportunity of cross-examination appears to have been given to the workman. Even the report of Enquiry Officer was pre-typed with provision to fill up the Names of employee, number of Charge Sheet, period of absence from duty without information and so forth. It is also stated that Lakshmi Narayan Bouri produced a medical certificate of his mental disorder. The management had issued a Second Show Cause Notice to the workman on 30.12.2008 / 12.01.2009 stating that number of days of his attendance in the year 2005 to 2007 and that he was a habitual absentee and liable for major penalty leading to dismissal from service. I find from the evidence on record that in the past due to his poor attendance there have been stoppage of increments / SPRA. The copy of Second Show Cause Notice has been produced as Exhibit M-8. The workman admitted receipt of the Second Show Cause Notice by way of submitting reply to the same, which has been marked as Exhibit M-9. The workman stated in his reply to the Second Show Cause Notice that he was suffering from mental illness and was under treatment for which he submitted medical treatment papers. The Disciplinary Authority i.e. the General Manager, Salanpur Area, ECL after having assessed the Enquiry Report and other report submitted by the Enquiry Officer held that the findings of Enquiry Officer in respect of charge levelled against the was proved beyond doubt and due to the misconduct and charges he awarded Lakshmi Narayan Bouri the punishment of dismissal from service of the company with immediate effect and was directed to collect all legal dues from the office.

**11.** From the documents produced, the Notice of enquiry (Exhibit M-4 and M-5) it is clear that full opportunity was given to the workman for producing and examining his witnesses and to cross-examine the prosecution witnesses i.e. management representative. In the instant case there was no cross-examination of the witness. However, it cannot be said that the opportunity was denied to the workman for defending himself with the help of co-worker. In Exhibit M-9, the



reply submitted against the Second Show Cause Notice the workman did not raise any objection that Enquiry Proceeding was vitiated for breach of natural justice. Therefore, the contention of the workman that he was not provided with reasonable opportunity in the Enquiry Proceeding is not tenable. It appears from the evidence on record that at all stage of Enquiry Proceeding the workman had participated and had full knowledge of the charge levelled against him. He has failed to provide any satisfactory explanation as to why he had remained absent for such a long period from duty without any prior intimation.

**12.** having considered the facts and circumstances of the case, evidence adduced by the parties and the argument advanced, I hold that there was no illegality on the part of the management in dismissing the workman from service for his long unauthorized absence without cogent reason. Consequently, the workman is not entitled to any relief. The Industrial Dispute is accordingly dismissed against the workman on contest.

Hence,

**ORDERED**

that the dismissal of Lakshmi Narayan Bouri, ex-employee of Gourandi Begunia Colliery under Salanpur Area of ECL w.e.f. 11.07.2009 suffers from no illegality and he is not entitled to any relief of reinstatement and back wages. The Industrial Dispute is dismissed against the workman on contest. 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.