

**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. 21 OF 2022**

**PARTIES:** Suku Majhi  
**Vs.**  
Management of Central Kajora Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: Mr. Milan Kumar Bandyopadhyay, Adv.  
For the Management of ECL: Mr. P. K. Das, Adv.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 29.01.2024

**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-22012/48/2022-IR(CM-II)** dated 18.05.2022 has been pleased to refer the following dispute between the employer, that is the Management of Central Kajora Colliery under Kajora Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of the management of Central Kajora Colliery, Kajora Area of M/s. E.C.Ltd. in not accepting the demand of Shri Suku Majhi S/o Late Baleshwar Maji, Ex-General Mazdoor Helper, U.M. No. 126207 for reinstatement in service (who was dismissed vide letter No. E.C.L./KA/APM/C-6/10/955 dated 07.06.2017) is proper, legal and justified? If not, to what relief the workman concerned entitled to? ”*

- 1.** On receiving Order **No. L-22012/48/2022-IR(CM-II)** dated 18.05.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 21 of 2022** was registered on 24.05.2022 / 01.07.2022 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 witnesses.
- 2.** Initially a written statement was filed on behalf of the workman by Mr. Naren Chandra Das, President, Bharatiya Mazdoor Sangh, Union on 29.08.2022.

On 26.09.2022 Mr. Milan Kumar Bandyopadhyay, learned advocate appeared on behalf of Suku Majhi and sought accommodation for filing a fresh written statement on the ground that the workman was unaware about the contents of the written statement filed on his behalf. Subsequently, a fresh written statement was filed by the workman on 13.12.2022. The fact of the case in brief, as delineated in the written statement is that Suku Majhi, a General Mazdoor bearing U.M. No. 126207 was posted at Central Kajora Colliery under Kajora Area of Eastern Coalfields Limited (hereinafter referred to as ECL). Due to his absence from duty a Charge Sheet was issued to him on 04.04.2017 on the charge of unauthorized and habitual absence from his duty from 27.02.2017 to 04.04.2017. An enquiry was held in respect of the charge without considering the explanation submitted in respect of the Charge. The workman was not allowed to take the assistance of any co-worker or to produce any defence witness. He was not aware that he had signed any document during to the Enquiry Proceeding. A Second Show Cause Notice was issued to him and Suku Majhi submitted his explanation but the same was not considered and he was finally dismissed from the service of the company by office order no. ECL/KA/APM/C-6/10/955 dated 07.06.2017 issued by the General Manager of Kajora Area.

3. According to the aggrieved workman the Enquiry Proceeding was held in a biased manner, disregarding the principles of natural justice. Further case of Suku Majhi is that his date of birth is 26.07.1974 and he is forty-eight (48) of age. The management entered into a Memorandum of Settlement on 22.05.2007 to accommodate its workmen who had absented for a period of nine months and were below forty-five (45) years of age so that they could be reinstated on the basis of the merit of their case. It is urged that in the present case the aggrieved petitioner has a good case as he was absent only for one month and seven days and that the Enquiry Officer had arrived at a finding by relying upon the evidence of a single witness. The contention of the workman is that the copy of Enquiry

Proceeding is not supplied to him and he was compelled to sign on the document on direction of the Enquiry Officer. It is therefore urged that the punishment of dismissal imposed against the workman is illegal and void. It is contended that in the Departmental Proceeding the disciplinary authority is required to prove that the delinquent was willfully absented from duty and in absence of such findings the charge of misconduct against the workman cannot be established. The workman claimed to have been absent from duty due to his illness and he stated the same in his reply to the Charge Sheet. The dismissed workman prayed for his reinstatement along with his full back wages by setting aside the order of termination from service.

4. The management of ECL filed their written statement on 13.12.2022. It is undisputed that Suku Majhi was a permanent employee and posted as a General Mazdoor at Central Kajora Colliery. His date of birth is 26.07.1974 and date of appointment is 24.01.1997. The specific case of the employer is that as per record of the employer company Suku Majhi was a habitual absentee and on the last occasion he was absent for more than ten (10) days without any information or sanction of leave. The management issued a Charge Sheet dated 04.04.2017 to Suku Majhi under Clause 26.23 of the Certified Standing Order applicable to the coal industry for a charge of habitual absence from duty without sufficient cause and under Clause 26.29 for absence from duty beyond 10 days without sanctioned leave or sufficient cause or overstaying beyond sanction of leave without valid reasons. The matter was referred for holding Domestic Enquiry and the workman participated in the Enquiry Proceeding which was held on 13.04.2017. During Domestic Enquiry opportunity of hearing was provided following the principles of natural justice. In course of proceeding charge of habitual and unauthorized absence were proved beyond doubt. The management then issued a Second Show Cause Notice vide reference no. ECL/CKC/Mgr/2017/145 dated 15.04.2017. The employee submits his reply to

the Second Show Cause Notice which was not found satisfactory and thereafter on the findings of the Enquiry Proceeding the General Manager of Kajora Area vide letter no. ECL/KA/APM/C-6/10/955 dated 07.06.2017 dismissed Suku Majhi from service. The management established that Suku Majhi was a habitual absentee and he had attended work for 83 days in the year 2014, 79 days in the year 2015, 122 days in the year 2016, and 17 days in 2017 (up to 25.02.2017). The management asserted that absenteeism is a serious offence and it hampers the work of the employer and production process. Ample opportunity was provided to the workman to improve his performance in the previous three years but he did not make any amend nor did he improve his performance. The management urged that their action in dismissing the workman from his service is justified and he is not entitled to any relief.

5. Suku Majhi filed an affidavit-in-chief and examined himself as workman witness – 1. He has produced a photocopy of his reply to the Charge Sheet dated 06.04.2017 which is admitted as Exhibit W-1. He claimed for reinstalment in service and that he was absent for only 37 days due to his illness. It transpires from his evidence that he did not inform the company about the cause of his absence and he also asserted that he did not receive any Second Show Cause Notice after the enquiry. In course of his cross-examination the workman admitted that he attended duty for 83 days in the year 2014, 79 days in the year 2015, and 122 days in the year 2016. He further admitted that he could not attend his duty regularly for five years prior to dismissal. The witness however, failed to produce any medical document relating to his medical treatment in support of his illness. Though in the written statement it has been contended by the workman that he was not given the assistance of co-worker in the Enquiry Proceeding, in his cross-examination, he stated that he did not ask for help of co-worker during examination. On one had the workman stated that he did not receive Second Show Cause Notice after enquiry but in his cross-examination, he

stated that on 19.04.2017 he submitted a reply to the Second Show Cause Notice requesting the authority to absolve him of the charges on the ground of illness.

6. Management examined Mr. Proloy Dasgupta, Manager (Personnel), Central Kajora Colliery as Management Witness – 1 and filed his affidavit-in-chief. In course of his evidence management has produced several documents as follows :

- (i) Photocopy of the Charge Sheet dated 04.04.2017 has been produced as Exhibit M-1.
- (ii) Photocopy of the reply submitted by Suku Majhi against the Charge Sheet on 06.04.2017, as Exhibit M-2.
- (iii) Photocopy of the Letter of Appointment of the Enquiry Officer, as Exhibit M-3.
- (iv) Photocopy of the letter of appointment of the Management Representative, as Exhibit M-4.
- (v) Photocopy of the Notice for enquiry dated 07.04.2017, as Exhibit M-5.
- (vi) Photocopy of the Enquiry Proceeding and Enquiry Report, as Exhibit M-6.
- (vii) Photocopy of the 2<sup>nd</sup> Show Cause Notice dated 15.04.2017, as Exhibit M-7.
- (viii) Photocopy of the reply of Suku Majhi against the 2<sup>nd</sup> Show Cause Notice, as Exhibit M-8.
- (ix) Photocopy of the letter of termination from service dated 07.06.2017 issued by the General Manager, Kajora Area as Exhibit M-9 and 9/1.
- (x) Photocopy of the Medical Certificate dated 20.03.2017, as Exhibit M-10.

7. In his cross-examination the witness deposed that Senior Manager (Min) of the colliery does not decide whether a 2<sup>nd</sup> Show Cause Notice should be issued to the charged employee or not. He admitted that 2<sup>nd</sup> Show Cause Notice was issued to Suku Majhi on 15.04.2017 and the report of Enquiry Proceeding was sent to

the Senior Manager (Min), Central Kajora Colliery, which was received on 20.04.2017. On 19.04.2017 Senior Manager (Min) endorsed on the reply to the 2<sup>nd</sup> Show Cause Notice that it was not satisfactory and proposed for further action. The witness deposed that the proposal for further action against Suku Majhi was submitted before the General Manager of Kajora Area in the form of Note Sheet which he was unable to produce at the time of evidence. The witness however stated that he was not in a position to state that if the order of dismissal was issued by the General Manager of Kajora Area on the basis of proposal of the Note Sheet by the Agent. The witness admitted that the workman had submitted a mercy petition after six months from his dismissal but the company did not reply the Mercy Petition as it was not accepted. The witness urged that Suku Majhi should not be reinstated in the service.

8. Mr. Milan Kumar Bandyopadhyay, learned advocate argued that the Enquiry Proceeding held against the workman was biased and in violation of natural justice as the workman was not given the opportunity to avail the assistance of co-worker. It is further argued that the workman was absented for only 37 days, for the period from 27.02.2017 to 04.04.2017 due to illness and the absence from duty was not willful. Therefore, it did not constitute the charge of misconduct. Learned advocate in support of his argument relied upon a decision of the Hon'ble Supreme Court of India in the case of **Krushnakant B. Parmar vs Union of India and Another [(2012) 3 SCC 178]** wherein it was observed that :  
*“Absence from duty without any application or prior permission may amount to unauthorised absence, but it does not always mean wilful. There may be different eventualities due to which an employee may abstain from duty, including compelling circumstances beyond his control like illness, accident, hospitalisation, etc., but in such case the employee cannot be held guilty of failure of devotion to duty or behaviour unbecoming of a government servant.”*

Learned advocate for the workman argued that in his reply to the Charge Sheet

(Exhibit W-10) the workman stated that he was suffering from illness and was under treatment of a private physician whose medical certificate was already submitted. The Enquiry Officer did not consider the medical document and held him guilty of the charge. Referring to the 2<sup>nd</sup> Show Cause Notice dated 15.04.2017 (Exhibit M-7) learned advocate argued that the Senior Manager (Min), Central Kajora Colliery has issued 2<sup>nd</sup> Show Cause Notice prior to receiving the Enquiry Proceeding and findings of the Enquiry Officer. It is submitted that the entire proceeding is biased and the management was predetermined to terminate the services of the workman. It is argued that management failed to produce the copy of the Note Sheet to prove that there was any proposal for dismissing the workman before issuance of the order of terminating by the General Manager of Kajora Area (Exhibit M-9). It is finally contended that even if letter of termination has been issued to the workman, the punishment imposed for being absent for only thirty-seven (37) days is disproportionate to the charge and the workman should be reinstated in the service on the basis of Memorandum of Settlement dated 22.05.2007.

9. Mr. P. K. Das, learned advocate for the management of ECL refuting the argument advanced on behalf of the workman, submitted that the workman deliberately remained absent from duty and in the previous years he was habitually absent citing different reasons. His attendance in work was meagre and on the last occasion he remained absent for 37 days without any leave, information or prior sanction. It is argued that no treatment paper was produced by the workman in support of his illness. It is pointed out that the workman participated in the Enquiry Proceeding where he admitted that he did not take any leave nor did he inform the management about his absence. In his cross-examination the workman deposed that he had only one medical certificate dated 20.03.2017 and no document relating to his medical treatment nor could he produce document to show he purchased medicine during the period of absence.



Learned advocate argued that adequate opportunity was given to the workman to defend his case but he failed to give any proper and cogent reason for his absence from duty. The workman confessed his misconduct in course of Departmental Enquiry and he was found guilty of charges levelled against him as per Clause 26.23 and 26.29 of the Certified Standing Order of ECL. Learned advocate submits that though the 2<sup>nd</sup> Show Cause Notice (Exhibit M-7) appears to have been issued on 15.04.2017 which is prior to the date of submission of Enquiry Report to the Senior Manager (Min), Central Kajora Colliery on 20.04.2017, it is undisputed that Suku Majhi had opportunity to submit explanation against the charges proved against him in his reply dated 15.04.2017 (Exhibit M-8). The letter of termination dated 07.06.2017 (Exhibit M-9) was thereafter issued by the competent authority, the General Manager of Kajora Area after submission of the Enquiry Report, issuance of 2<sup>nd</sup> Show Cause Notice and providing opportunity to the charged employee to submit his reply. It is argued that there was no violation of natural justice in holding the Enquiry Proceeding against the workman. Therefore, there is no reason for interreference with the decision of the management and order of termination issued against the workman. Learned advocate for the management in support of his argument relied upon a decision of the Hon'ble Supreme Court of India in the case of **Delhi Transport Corporation vs Sardar Singh [(Civil) No. 960 of 2003]** wherein it was observed that :  
*"Habitual absence is a factor which establishes lack of interest in work."*

10. Learned advocate further relied upon a decision of the Hon'ble High Court at Calcutta in the case of **Dayanand Paswan vs Coal India Limited and others [W.P. No. 874 of 2014]** where it was held that :  
*".....The conduct and attitude of the petitioner appears to have been extremely casual and cavalier. In the judgment and order dated 20 April, 2016 delivered on WP No. 800 of 2014 (Some Majhi -vs- Coal India Ltd.) this court emphasised that an employee must take his duty seriously. He cannot take his employment for granted."*

*He must follow the rules and regulations of the employer company. He must conduct himself in a disciplined manner. He must perform his duties with responsibility. An employee should adhere to discipline not only for personal excellence but also for the collective good of the organization which he serves.....”*

Learned advocate argued that the management had provided ample opportunity to the workman to represent his case. Consequently, there is no reason for interfering with the Order of Termination.

11. I have carefully considered the facts and circumstances of the case, the material evidence adduced by the parties and arguments advanced by the learned advocates. It is evident from the materials on record that Suku Majhi was habitually absent from his duty in the preceding years prior to the Domestic Enquiry initiated against him. He admittedly performed duty on 83 days out of 305 normal working days in the year 2014, 79 days out of 305 normal working days in the year 2015, 122 days out of 305 normal working days in the year 2016, and 17 days in 2017 (up to 25.02.2017). Instead of improving his attendance he was found to remain absent for 35 days without information or applying for any leave. After Charge Sheet was issued to the workman on the ground of habitual and long unauthorized absence (Exhibit M-1) the workman submitted a reply (Exhibit M-2) where he stated that he was suffering from some illness. It is worthwhile to note that he did not mention the nature of illness or the doctor under whom he received medical treatment. The management of the company initiated a Domestic Enquiry against Suku Majhi and Mr. Sayak Goswami, then Dy. Manager (Personnel), Central Kajora Colliery was appointed as the Enquiry Officer. Notice of enquiry was issued fixing 13.04.2017 for enquiry at the office of Dy. Manager (Personnel), Central Kajora Colliery. Suku Majhi participated in the enquiry proceeding and had put his signature on all the pages of enquiry proceeding (Exhibit M-6). In cross-examination the workman witness – 1, deposed that he made statement before the Enquiry Officer and did not ask for assistance

of any co-worker at the time of Enquiry Proceeding. It is manifestly clear that the workman participated in the Enquiry Proceeding without raising objection nor did the Enquiry Officer turned down his prayer for taking assistance form any co-worker. The workman witness further deposed that he was not in a position to file any medical document before the Tribunal in support of his illness. He also did not want to examine any doctor relating his medical treatment. The workman witness admitted having received a 2<sup>nd</sup> Show Cause Notice and requested the authority to absolve him of the charges on the ground of his illness. I find that no satisfactory evidence has been adduced by the workman to establish his illness during his absence except a verbal plea. The charge of misconduct against him therefore stands proved and the management did not find any reason to extend further accommodation to the workman who disrupted work by his frequent absence from duty.

12. It is true that the 2<sup>nd</sup> Show Cause Notice issued by the Senior Manager (Min), Central Kajora Colliery on 15.04.2017 precedes the date of his perusal of Enquiry Report submitted before him on 20.04.2017. It may be borne in mind that the workman submitted a reply to the 2<sup>nd</sup> Show Cause Notice on 15.04.2017 and no objection was raised therefore there can be no denial of the fact that the 2<sup>nd</sup> Show Cause Notice was served upon the workman. From the endorsement on the reply to the 2<sup>nd</sup> Show Cause Notice I find that the Senior Manager (Min), Central Kajora Colliery have noted that reply was not found satisfactory and a report to be submitted to the competent authority for further action. The endorsement of Senior Manager (Min), Central Kajora Colliery was made on 19.04.2017 and the Order of Termination was issued by the General Manager of Kajora Area on 07.06.2017 stating that the service was terminated w.e.f. 06.06.2017. To my mind a single discrepancy in the date of submission of the Enquiry Report to the Senior Manager (Min), Central Kajora Colliery and his issuance of 2<sup>nd</sup> Show Cause Notice does not destroy the case materially so long

as opportunity had been granted to the charged employee to explain the findings against him. The competent authority has issued the order of termination of service which explicitly reasoned out why the service of the charged employee was being terminated. I do not find any violation of natural justice in holding the Enquiry Proceeding, nor any illegality in the decision of terminating the employee who found to be habitually absent from his duty which was contrary to the discipline he was required to adhere. The punishment imposed against the workman therefore does not appears to be disproportionate as he was a habitual absentee and often absented without intimation, hampering the production process and the work of employer. In view of my discussion, I find no reason to interfere with the order of termination passed against the workman and hold that the workman is not entitled to any relief against the management. The Industrial Dispute is accordingly dismissed on contest.

Hence,

**ORDERED**

that an Award be drawn up to the effect that the Industrial Dispute raised by Bharatiya Mazdoor Sangh on behalf of Suku Majhi is dismissed on contest. 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.