

**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. 22 OF 2001

PARTIES: Krishna Kora
Vs.
Management of Satgram Project, ECL

REPRESENTATIVES:

For the Union/Workman: Smt. Debarati Konar, Advocate

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

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 30.12.2024

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-22012/198/2000-IR(C-II)** dated 14.06.2001 has been pleased to refer the following dispute between the employer, that is the Management of Satgram Project of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Satgram Project/Incline in dismissing the service of Sh. Krishna Kora, U.G. Trammer, with effect from 22.7.1999 is legal and justified? If not, what relief Sh. Krishna Kora is entitled to? ”

1. On receiving Order **No. L-22012/198/2000-IR(C-II)** dated 14.06.2001 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 22 of 2001** was registered on 02.07.2001/19.11.2001 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 along with a list of witnesses.

2. After issuance of notice, both parties appeared but did not file their written statement. Accordingly, the case was disposed of on 15.07.2002 by drawing up a No Dispute Award. On an Application filed by the aggrieved workman, on

27.01.2005 this Tribunal set aside the No Dispute Award and allowed the parties to contest the case by filing written statement. The Organising Secretary, Colliery Mazdoor Union (INTUC) filed their written statement on 24.03.2006 and the management of ECL filed their written statement on 25.11.2009. The fact of the case disclosed in the written statement of the union is that Krishna Kora was a permanent employee of Eastern Coalfields Limited and was posted as an Under Ground Trammer at Satgram Incline Colliery. Due to unauthorized absence of Krishna Kora, a Charge Sheet bearing No. ECL/SI/Manager/P/CS/99/602 dated 26/28.04.1998 was issued against the workman as per clause 17(i)(n) of the Model Standing Order applicable to ECL. It is the contention of the union that Model Standing Order ceased to be in existence at the time of issuance of Charge Sheet and the same was not binding upon the workman. In brief, the fact of the case as disclosed in written statement is that the workman submitted his reply against Charge Sheet on 03.05.1999 and disclosed that he was under medical during period of his absence from duty which was beyond the control of the workman. After his recovery, he was not allowed to join duty and no subsistence allowance was paid to him. Mr. R.K. Banerjee, Survey Officer, Satgram Project took up the role of Enquiry Officer on his own and asked the workman to attend the enquiry without issuance of any notice. The workman participated in the enquiry but he was not provided with assistance of any co-worker. LTI of the workman was obtained on the purported Enquiry Report without his being aware of its content which was written in English. Further case of the union is that the workman was under the treatment of Dr. Sugendra Singh who was never examined by Enquiry Officer to find out whether the medical certificate was genuine or not. It is contended that the Enquiry Officer did not supply any Enquiry Report to the workman. The General Manager, Satgram Area issued an order of dismissal against the workman on 17/22.07.1999. After receiving the order of dismissal, the workman prayed for his reinstatement in duty but the management did not extend any accommodation to him nor replied to his

representation. It is the case of the union that Krishna Kora has been illegally terminated from his service and prayed for his reinstatement by setting aside the order of dismissal of the workman, with full back wages and consequential reliefs.

3. Management contested the case and in their written statement categorically stated that Charge Sheet was issued to the workman for his misconduct by unauthorized absence from duty without information. The charged employee failed to give any satisfactory reply. As a result, a domestic enquiry was held in respect of the charges. The Enquiry Officer held enquiry and submitted his report holding the workman guilty of the charges. After careful consideration of the Enquiry Report and other relevant documents, Krishna Kora was dismissed from service by disciplinary authority by passing order bearing Ref. No. Sat/General Manager/Per/C/99/469(B) dated 17/22.07.1999. It is claimed that the order of dismissal is justified and there was no violation of natural justice at any stage. The management has denied the claim of workman that he had fallen ill, preventing him from attending his duty, for which he was medically treated by a doctor at his native place. The management claimed that the workman is not entitled to any relief and the Industrial Dispute is liable to be dismissed.

4. The point for consideration in this case, as reflected in the schedule, is whether the action of the management of Satgram Project/Incline in dismissing Krishna Kora, U.G. Trammer, from his service with effect from 22.7.1999 is legal and justified? If not, what relief Sh. Krishna Kora is entitled to?

5. The union has examined Krishna Kora as WW-1 and filed an affidavit-in-chief, affirming his case. The witness was initially cross-examined on 01.08.2013.

After passage of 10 years, Krishna Kora was re-examined on recall for the purpose of admitting his documents in evidence as the proceeding is based on documents. The following documents have been relied upon by the union:

- (i) Copy of the Charge Sheet dated 26/28.04.1999 is marked as Exhibit W-1.
- (ii) Copy of reply submitted by the charged employee, as Exhibit W-2.
- (iii) Copy of Enquiry Proceeding in three pages, as Exhibit W-3.
- (iv) Copy of Enquiry Report, as Exhibit W-4.
- (v) Copy of order of dismissal dated 17/22.07.1999, as Exhibit W-5.
- (vi) Copy of mercy petition dated 19.07.1999, as Exhibit W-6.

In his re-cross-examination, the workman admitted that he did not submit any document of medical treatment in support of his illness before the Enquiry Officer nor did he inform the company about his illness before absenting. He further deposed that he did not seek the assistance of any co-workers during enquiry and faced the enquiry alone.

6. The management of ECL examined Mr. Saleem Ahmed as MW-1. An affidavit-in-chief has been filed by the witness reiterating the management's case. It is also stated in the affidavit-in-chief that a second Show Cause Notice was issued to the workman but he failed to reply to the same. In support of the case, the management produced the following documents :

- (i) Copy of Charge Sheet, as Exhibit M-1.
- (ii) Copy of reply of workman, as Exhibit M-2.
- (iii) Copy of Enquiry Report and finding, as Exhibit M-3.
- (iv) Copy of second Show Cause Notice dated 08.07.1999, as Exhibit M-4.
- (v) Copy of order of dismissal, as Exhibit M-5.

In cross-examination, the management witness admitted that the Enquiry Officer had verbally informed Krishna Kora of holding of enquiry in respect of the Charge Sheet on 11.05.1999. A suggestion was put to the witness that no departmental enquiry was held against Krishna Kora and his LTI was obtained at the office for terminating him. The witness denied the suggestion. It transpires from the cross-examination of the witness that no order of appointment of Enquiry Officer was produced and no notice of Enquiry was issued.

7. Smt. Debarati Konar, learned advocate arguing the case for the workman submitted that Krishna Kora was suffering from illness and was under treatment at his native place in Champaran, Bihar. His absence from duty was beyond his control, therefore the workman can't be held guilty of the charge of unlawful absence which should be deliberate and willful. Learned advocate submitted that the workman participated in the enquiry and produced the medical certificates issued by Dr. Sugendra Singh, R.M.P. but the same was not considered by the Enquiry Officer and he did not issue any notice to the doctor for his examination. Learned advocate vehemently argued that the workman was not found guilty for unauthorized absence on earlier occasion and for the first time he was absent due to his illness but the management issued an order of dismissal which is disproportionate to the charge of absence for the first time. It is submitted that the General Manager passed an order of dismissal where he had taken into consideration the past conduct of the workman but no separate charge was framed against him for any past misconduct. It is urged that the order of dismissal passed by the General Manager, Satgram Area is liable to be set aside and the workman should be reinstated in service with back wages.

8. Mr. P.K. Das, learned advocate for the management of ECL argued that the workman is guilty of unauthorized absence for 106 days from 11.01.1999 to

26.04.1999 without any information to the employer company nor did he produce any medical certificate from any doctor in support of his medical treatment during that period. It is submitted that the Enquiry Officer intimated the workman about the date of holding Enquiry Proceeding. The workman participated in the Enquiry Proceeding where the charge was read over and explained to him in Bengali and the workman claiming to be suffering from back pain and under medical treatment did not examine the doctor to support his case. On the other hand, management representative adduced evidence against the workman in his presence but he did not raise any objection. Learned advocate for the management argued that the charge of unauthorized absence was proved against the workman and he was handed over with the Enquiry Report and finding of Enquiry Officer along with second Show Cause Notice (Exhibit M-4). The workman did not reply to second Show Cause Notice. Thereafter, the General Manager issued an order dated 17/22.07.1999 dismissing him from service. According to the management, the workman is not entitled to any relief as his misconduct has affected the service of the employer company adversely.

9. I have considered the arguments advanced by the learned advocate of the respective parties in the light of materials on record and evidence adduced by the witnesses. Admittedly, Krishna kora was an employee under Satgram Project of ECL who absented from duty for 106 days from 11.01.1999 to 26.04.1999 without any information to the management, either seeking leave or disclosing the reason for his absence from duty. The management issued a Charge Sheet against the workman dated 26/28.04.1999 for his unauthorized absence and charged him under clause 17 (i) (n) of the Model Standing Order applicable to Industrial Establishment in Coal Mines was issued. The workman received the Charge Sheet by affixing his LTI. A copy of Charge Sheet has been produced as Exhibit M-1.

Soon after, the workman submitted his reply to the charge sheet on 29.04.1999

disclosing that he was unable to attend his duty due to illness, but did not disclose the nature of illness in his reply. The management did not find the reply satisfactory and initiated a departmental enquiry. Mr. R.K. Banerjee, Survey Officer was appointed as the Enquiry Officer. He informed the workman to attend the enquiry on 11.05.1999. The workman participated in the Enquiry Proceeding and the charge was read over and explained to him in Bengali by the management representative. It appears from the enquiry proceeding, Exhibit M-3, that the charged employee disclosed that he was under medical treatment of Dr. Sugendra Singh for his backbone problem. Statements of Subir Chakraborty, Bablu Dutta and P.K. Roy, three Management Representatives were recorded by the Enquiry Officer. The workman admitted that he neither send any sick information to the management nor did he inform that he was under treatment of Dr. Sugendra Singh, R.M.P. The workman pleaded guilty to the charge of unauthorized absence. The workman did not produce any medical document or certificate issued by any doctor in support of his long absence from duty. In his written statement, the workman did not whisper about the nature of his ailment. Even at the time of adducing evidence before this Tribunal, the workman did not produce any medical certificate issued in his favour by Dr. Sugendra Singh. Learned advocate for the workman submitted that the workman was undergoing treatment at Champaran, Bihar. No satisfactory reason has been assigned as to why the workman employed at Satgram Incline under Raniganj P.S. in West Bengal would proceed all the way to Champaran, Bihar for his medical treatment. The ground of his absence therefore cannot be accepted in absence of evidence from the concerned doctor.

10. After the workman was found guilty of the charge, a Second Show Cause Notice dated 08.07.1999 was issued to him by the General Manager. In course of evidence, no objection was raised against admission of the Second Show Cause Notice in evidence. The management evidence was not assailed denying that no

Second Show Cause Notice was issued to the charged employee. On 27.07.1999, the appropriate authority after careful consideration of the report of Enquiry Officer and other relevant/connected papers accepted the findings of the Enquiry Proceeding and issued an order of dismissal of Krishna Kora with immediate effect. On a perusal of the order of dismissal, I find that it has reference to the issuance of second Show Cause Notice on 07/08.07.1999 which extended opportunity to the charged employee to submit his explanation. It may be gathered from materials on record that the Enquiry Proceeding was conducted in compliance with the principles of natural justice and proper opportunity was given to the workman to represent his case.

11. It is to be borne in mind that a person is employed in any establishment for rendering sincere, dedicated and steadfast service to the employer company. An employee cannot be allowed to cause disruption of service of the employer by proceeding on unauthorized leave for indefinite period. The management therefore has right and authority to take appropriate steps against the workman for his misconduct of long absence from duty. In the instant case, I do not find any illegality, impropriety or arbitrariness on the part of the management in awarding a punishment of dismissal against the workman for his misconduct. The punishment imposed against the charged employee is not found disproportionate to the nature of charge. I therefore hold that the workman is not entitled to any relief and the Industrial Dispute is dismissed on contest.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest. The order of dismissal issued by the management of ECL against Krishna Kora calls for no interference.

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The workman is not entitled to any relief of reinstatement or back wages. 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.