

**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. 23 OF 2019

PARTIES: Sikandar B.P.
Vs.
Management of Khas Kajora Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Sudarsan Roy and Mr. Khokon Mukherjee, Advocates
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 24/10/2024

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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-22012/83/2018-IR(CM-II)** dated 05/11/2018 has been pleased to refer the following dispute between the employer, that is the Management of Khas Kajora Colliery of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“Whether the action of the management of Khas Kajora Colliery of Eastern Coalfields Ltd. in rejection of mercy petition for reinstatement of service in respect of dismissed employee Sri Sikandar B.P. is justified. If not, to what relief the workman is entitled?”

1. On receiving Order **No. L-22012/83/2018-IR(CM-II)** dated 05/11/2018 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 23 of 2019** was registered on 02/04/2019 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. Workman filed written statement on 29/05/2019 and the management of Khas Kajora Colliery filed their written statement on 04/01/2023. In gist, factual matrix of the workman's case disclosed in the written statement is that Sikandar B.P. was posted as an Underground Loader at Khas Kajora colliery under ECL, having UM No. 116276. Due to absence from duty he was dismissed from service w.e.f. 18/06/1999. Being aggrieved with the order of dismissal Sikandar B.P. filed a Writ Petition before the Hon'ble High Court at Calcutta bearing W.P. No. 7744 of 2001 which was disposed of on 20/06/2005 with a direction that the petitioner should be allowed to resume his duty immediately after communication of order and the petitioner shall be entitled to get back wages in full. Management filed an Appeal challenging the order of Hon'ble Singh Bench dated 20/06/2005 and the Hon'ble Division Bench dismissed the Writ Application on the ground of maintainability and observed that matter requires adjudication under Industrial Disputes Act. Aggrieved workman preferred a Special Leave Petition before the Hon'ble Supreme Court of India bearing S.L.P. No. 9782 of 2010 but the same was dismissed on 16/08/2011 on the ground of delay and merits.

3. During pendency of Special Leave Petition workman submitted a mercy petition before the Dy. General Manager (P&IR), ECL Head Quarter on 27/12/2010 in accordance with the Memorandum of Settlement dated 22/05/2007. Management on 08/03/2013 replied that the matter has attained finality after exhausting due process of justice up to the Apex Court, as such the same cannot be reviewed. It is contended in written statement that Hon'ble Supreme Court by dismissing Special Leave Petition did not restrict Right of the workman to get justice and it is incorrect on the part of the management to state that matter attained finality. Due to dismissal of the Special Leave Petition by the Supreme Court, it is contended by the workman that the management of ECL did not consider his mercy petition although in similar conditions workmen were reinstated in service during

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pendency of Special Leave Petition before the Supreme Court. Workman thereafter submitted application before the Dy. CLC (C), Asansol on 29/06/2016. The Conciliation Officer took up the matter under reference No. 1(37)/2016 on different dates and finally on 13/07/2017 the conciliation failed and the case has been referred to this Tribunal by the Ministry of Labour & Employment for adjudication. It is contended by the workman that charge sheet was not served upon him and he did not have the opportunity to represent his case. It is alleged that management has dismissed the workman without providing him opportunity to defend his case. It is urged that procedures adopted by the management in the enquiry was illegal and improper and violative of the principles of Natural Justice. It is inter alia contended that no second show cause Notice was served upon the workman before issuance of the order of dismissal on the basis of ex-parte enquiry, as such charge of unauthorized absence of ten months and twenty five days levelled against him is unjustified and he is entitled to be reinstated in service with full back wages for the period of his idleness.

4. Management contested the Industrial Disputes by filing written statement wherein it is stated that Sikandar B.P. was appointed as Underground Loader under ECL on 06/11/1997. After joining his work he had served for forty eight days in the year 1997 and thirty three days in the year 1998. Thereafter for his unauthorized absence warning letters were issued to him on three occasions by letters dated 06/04/1998, 04/08/1998 and 08/09/1998. Workman continued to remain absent without any information or authorization w.e.f. 16/08/1998. He was charge sheeted on 24/11/1998 under section 17 (i)(d) and (n) of Model Standing orders applicable to the coal mines at the relevant time. Sikandar B.P. failed to submit reply to the charge sheet as a result matter was referred for

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domestic enquiry and three Notices of Enquiry were issued to him on 30/01/1999, 12/02/1999 and 17/04/1999, fixing dates for enquiry proceeding. Workman did not attend the enquiry nor did he send any information on any of these three dates as such enquiry was held ex-parte. Enquiry was proceeded following the principles of Natural Justice and full opportunity was given to the workman to defend his case but he did not participate and he was found guilty of the charges of unauthorized and habitual absence.

5. A Second show cause Notice was issued to the workman vide letter No. KA/PM/C-6/10/784 dated 12/19.05.1999 but no cause was shown by the concerned workman and the Competent Authority issued a letter No. KA/PM/C-6/10/1097/3180 dated 09/14.06.1999 dismissing him from the service of the company. According to the management, Sikandar B.P. has been found guilty of unauthorized absence from 16/08/1998 without any information and permission of the Competent Authority. It is the case of the management that due to such unauthorized absence, work of the employer and production process was hampered. Workman did not improve his performance in his attendance after sufficient opportunities provided to him and it is due to gross negligence on the part of the workman the management could not maintain his name in the pay roll of the company. Referring to the decision of Hon'ble Supreme Court in the case of **Union of India and Ors Vs. Bishamber Das Dogra**, it is submitted that the Hon'ble Court observed that habitual absence means gross violation of discipline. Management relied upon the decision of Hon'ble High Court of Calcutta in the case of **Dayanand Paswan Vs Coal India Ltd and Ors**, where the High Court upheld the action of Eastern Coalfields Limited in dismissing the workman concerned as justified and held that "... *The conduct and attitude*

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of the petitioner appears to have been extremely casual and cavalier. In the judgement and order dated 28th April, 2016 delivered on W.P. No. 800 of 2014 (Some Majhi-vs-Coal India Ltd.) this court emphasized 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 and employee should adhere to discipline not only for personal excellence but also for the collective good of the organization which he serves.” It is asserted in the written statement that punishment awarded to the ex-workman is proportionate to the misconduct and it is not an arbitrary decision. It is argued before the Tribunal that the management is justified in dismissing the workman from service and he is not entitled to any relief.

6. The case was fixed up for evidence of parties on 15/03/2023, 22/03/2023, 27/06/2023 and 04/12/2023. In his affidavit-in-chief dated 22/03/2023, Sikandar B.P. reiterated the facts stated in his written statement and specifically averred that he did not receive charge sheet prior to 13/07/1999 and enquiry Notice was not served upon him and no enquiry was ever held. It is stated that the procedure adopted by the company for his dismissal was arbitrary and resulted in miscarriage of justice. He is entitled to be reinstated in service with back wages. In his examination-in-chief workman deposed that during his absence from duty he was suffering from jaundice and was under medical treatment of Dr. S. K. Mondal of Nirsha and he had filed documents before the colliery. Workman has been examined as WW-I. He stated that he submitted application regarding his illness and disclosed reasons for his inability to attend duty. A copy of Identity Card of the workman has been produced as Exhibit W-1 and copy of charge sheet dated

24/11/1998 has been produced as Exhibit W-2. Witness stated that no second show cause Notice was served upon him before order of dismissal was issued. A copy of letter dated 27/07/1999 issued by the Personnel Manager refusing to reconsider the case of his dismissal on merit has been produced as Exhibit W-3. In cross-examination workman witness deposed that he has filed a medical certificate issued by Dr. S. K. Mondal which has been produced as Exhibit W-4. Witness stated that he will examine Dr. S. K. Mondal in this case. It may be gathered from evidence of workman witness that he did not receive copy of Notice of Enquiry. He also denied the charge of habitual absence in respect of his work. Cross-Examination reveals that an Appeal was preferred before the Hon'ble Division Bench of High Court at Calcutta bearing FMA 1905 of 2006 with MAT 611 of 2007 arising out of Writ Petition No. 7744(W) of 2001 wherein the order passed by the Hon'ble Single Bench was set aside and Writ Application was dismissed. The Hon'ble Court observed that for effective adjudication the dispute should be raised under the Industrial Disputes Act. Witness admitted that Special Leave Petition No. 9782 of 2010 was dismissed by the Hon'ble Supreme Court. Witness in his evidence denied that he was not suffering from illness or was not under medical treatment of Dr. S. K. Mondal. Witness failed to produce documents that he had informed management regarding his illness or his inability to attend duty at any point of time during his absence. Workman denied suggestion that he violated rules of the company and acted irresponsibly or that he was not entitled to be reinstated in service.

7. Mr. Proloy Dasgupta, Management Representative has been examined as MW-I. He

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filed an affidavit-in-chief on 04/12/2023. In his affidavit he has averred that Sikandar B.P. absented himself from duty from 16/08/1998 without any information and permission for which he was charge sheeted on 24/11/1998 under section 17 (i)(d) and (n) of Model Standing Orders applicable to coal mines at the relevant time. Workman had been given ample opportunity to improve his performance in respect of his attendance but he did not pay any heed. Workman did not participate in the enquiry and the Domestic Enquiry held ex-parte, Sikandar B.P. was found guilty of charges of habitual and unauthorized absence from duty. It is claimed that the punishment awarded is proportionate to the nature of his misconduct and he is not entitled to any relief. In course of evidence management produced following documents in support of their case:-

- (i) Copy of charge sheet is produced as Exhibit M-1
- (ii) Copy of Notice of Enquiry dated 30/01/1999 is produced as Exhibit M-2
- (iii) Copy of Notice of Enquiry dated 12/02/1999 is produced as Exhibit M-3
- (iv) Copy of Notice of Enquiry dated 17/04/1999 is produced as Exhibit M-4
- (v) Copy of Enquiry Proceeding including Enquiry Report in eight pages is collectively marked as Exhibit M-5
- (vi) Copy of Second show cause Notice dated 12/19.05.1999 is produced as Exhibit M-6
- (vii) Copy of letter of termination dated 09/14.06.1999 is produced as Exhibit M-7
- (viii) Copies of three warning letters issued to the workman for his unauthorized absence are collectively produced as Exhibit M-8

- (ix) copy of judgment passed by Hon'ble Single Bench of the Calcutta High Court is produced as Exhibit M-9
- (x) Copy of judgment passed by the Hon'ble Division Bench of Calcutta High Court in seventeen pages is collectively produced as Exhibit M-10
- (xi) Copy of order passed by the Hon'ble Supreme Court in SLP No. 9782 of 2010 is produced as Exhibit M-11

During cross-examination of MW-I, witness deposed that management was unable to produce application received from Sikandar B.P. which had been marked in Exhibit W-3. Witness denied that workman reported for duty on 13/07/1999 or that he was not allowed to join. Witness also denied the suggestion that charge sheet and Notice of Enquiry were served upon the workman after passing the order of dismissal.

8. The point for consideration before this Tribunal as laid down in schedule of the reference is 'Whether the action of the management of Khas Kajora Colliery of Eastern Coalfields Ltd. in rejection of mercy petition for reinstatement of service in respect of dismissed employee Sri Sikandar B.P. is justified? If not, to what relief the workman is entitled?'

9. Mr. Sudarshan Roy, learned advocate for the dismissed workman advancing his argument submitted that Sikandar B.P. was unable to attend his duty from 16/08/1998 due to his illness. Management of the company without serving any copy of charge sheet initiated a departmental enquiry against workman alleging unauthorized absence for ten

months and twenty five days. No intimation was given to the workman by serving Notice of Enquiry and the entire departmental enquiry was conducted keeping the workman in dark and without serving any second show cause Notice to the workman, he was dismissed by order dated 09/14.06.1999 on the ground of his habitual absence and long continuous absence for more than 'ten days'. Learned advocate took me through the evidence of workman witness who filed medical certificate issued by Dr. S. K. Mondal which has been produced as Exhibit W-4. Learned advocate relied upon a decision of Hon'ble Supreme Court of India in the case of **State Bank of Patiala and Others Vs. S. K. Sharma; (1996) 3 Supreme Court Cases 364** wherein it has been held by the Hon'ble Supreme Court that *'Where, however, there are no rules/regulations/statutory provisions incorporating the principles of Natural Justice, but those principles are implicit in the very nature of the action/order, if there is total violation of those principles i.e. no opportunity/hearing was given, then the action/order would be invalid but if there is violation of only a facet of the principles i.e. no adequate opportunity/no fair hearing was given, test of prejudice should be applied and if no prejudice caused, no interference would be called for.'* It is inter alia argued that workman submitted a mercy petition before the management of the company praying for his reinstatement in service on the basis of Memorandum of Settlement dated 22/05/2007 reached between Management of the company and various Trade Unions functioning under the coal mines. Since the management did not consider the mercy petition, it is urged that the order of dismissal passed against the workman is illegal, violative of the principles of Natural Justice and is liable to be set aside as the management ought to have considered the mercy petition submitted by the workman on 27/12/2010.

10. Mr. P. K. Das, learned advocate appearing for the management of Khas Kajora

Colliery under ECL in reply argued that Industrial Dispute has been raised after a period of twenty years from dismissal of the workman as such the proceeding is stale and needs to be dismissed in limine. It is argued that workman joined his service in November, 1997 as Underground Loader. He worked for only forty eight days in the year 1997 and thirty three days in the year 1998. Being a habitual absentee, workman was warned on three occasions and letters dated 06/04/1998, 04/08/1998 and 08/09/1998 were issued to him as warning for his unauthorized absence. Workman did not improve his attendance and as a result charge sheet was issued to him on 24/11/1998 for his unauthorized absence as well as habitual absence in the previous two years. Ld. Advocate vehemently argued that the workman had served only for eighty one days under the company and he is not entitled to get any relief. It is further argued that after charge sheet was issued to the workman, he did not participate in the enquiry due to which an ex-parte Departmental Enquiry was held against the workman where the charges were proved against him beyond doubt. Learned advocate produced copy of charge sheet, Notice of Enquiry as well Enquiry Proceeding along with Enquiry Report in eight pages which has been collectively marked as Exhibit M-5. It is argued that second show cause Notice was issued to the workman by letter dated 12/19.05.1999 (Exhibit M-6) but the workman did not submit any reply and ultimately was dismissed from service by letter dated 09/14.06.1999 issued by the General Manager who is the Competent Authority. Learned advocate for the management argued that the workman challenged the order of dismissal before the Hon'ble High Court at Calcutta and the Hon'ble Division Bench set aside the order of Single Bench passed in Writ Petition No. 7744 (W) of 2001 where the Hon'ble Court relying upon a decision in the case of **Webel Video Devices Ltd. Vs Prasanta Kumar Das and others reported in 2007 (3) CHN 8** observed that all disputes relating to workman to be raised

under Industrial Disputes Act for effective adjudication which is beneficial not only for the workman concerned but also for the employer. Hon'ble Division Bench was pleased to hold that the Impugned Judgment passed by the Single Bench was not legally sustainable and set aside and quashed the same and observed that the matter required adjudication under the Industrial Disputes Act. Ld. Advocate submitted that in the instant case, Industrial Dispute has been raised not against the order of dismissal but regarding rejection of mercy petition filed by the dismissed workman for his reinstatement in service. It is urged that question of dismissal is not the subject matter of consideration and the Tribunal is not required to enter into the question of dismissal of workman but should hold adjudication of the scheduled dispute.

11. I have perused the pleading, evidence adduced in light of the scheduled reference and also considered the argument advanced on behalf of the dismissed workman and the management of Eastern Coalfields Ltd. Admitted position in this case is that Sikandar B.P., Ex-Underground Loader at Khas Kajora colliery under ECL was appointed in service of the colliery on 06/11/1997. He was charge sheeted on 24/11/1998 for his unauthorized absence from 16/08/1998 and for his habitual absence. It transpires from the evidence of workman witness that he received a letter dated 27/07/1999 issued by the Personnel Manager (IC), Kajora Area admitted as Exhibit W-3, wherein he was informed that his application against order of dismissal dated 09/14.06.1999 was examined by the management and found that workman remained absent from duty from 16/08/1998 without any authorization also that he had attended duty only for forty eight days in the year 1997 and thirty three days in the year 1998. The application was not found satisfactory and that the workman did not appear in the enquiry proceeding to defend

his case for which his appeal against the order of dismissal was found to be without merit.

12. Dismissed workman instead of raising an Industrial Dispute, preferred a Writ Petition bearing No. 7744 (W) of 2001 before the Hon'ble High Court at Calcutta and by order dated 13/06/2005 and 20/06/2005 (Exhibit M-9) the Hon'ble Single Bench directed reinstatement of the workman with full back wages. The order of single Bench was challenged by ECL before the Division Bench in FMA 1905 of 2006 with MAT 611 of 2007 and order passed by the Single Bench was set aside with a direction that dispute relating to workman should be raised under Industrial Disputes Act for effective adjudication. Matter did not stop there and a Special Leave Petition was preferred before the Hon'ble Supreme Court of India bearing SLP No. 9782 of 2010. Hon'ble Supreme Court disposed of the same with an observation that there was no ground for interference with the Impugned judgement and the Special Leave Petition was dismissed on the ground of delay as well as on merits. It is clear from the decisions of Hon'ble Division Bench of the High Court at Calcutta as well as the Hon'ble Supreme Court of India that an Industrial Dispute had to be raised before the Tribunal for adjudication. From the evidence on record, it is crystal clear that management of ECL has not been able to prove that charge sheet, Notice of Enquiry and second show cause Notice were served upon the workman before imposing the punishment of dismissal from service. Evidence reveals that workman was dismissed from service on 09/14.06.1999. Therefore, his claim of reporting for duty on 13/07/1999 is inconsequential as he could not have joined after termination. It is the case of the workman that he has not received any charge sheet, Notice of Enquiry and Second show cause Notice before his dismissal. Management Witness in his turn failed to produce any document to prove that charge sheet, Notice of Enquiry or second show cause

Notice were issued and served upon the workman through registered post or personal messenger. In absence of such evidence, I have no hesitation to hold that workman was not provided with reasonable opportunity to defend himself in respect of charges levelled against him to substantiate any plausible reason for his long absence from service before the Enquiry Officer. From the facts and circumstances of the case, it emerges that there has been violation of the principles of Natural Justice by the management in holding the enquiry proceeding. Outcome of such enquiry proceeding is therefore, not sustainable under law. Management charged the workman for unauthorised absence from duty from 16/08/1998 till issuance of charge sheet on 24/11/1998. The period of absence of the workman as per charge sheet is three months and nine days. Workman claimed to have submitted a mercy petition on 27/12/2010 i.e. after a period of more than ten years from his dismissal. The Special Leave to Appeal before the Hon'ble Supreme Court was dismissed on 16/08/2011 and order of Hon'ble Division Bench of High Court at Calcutta remained uninterfered. Under such circumstances workman had right and capacity to raise dispute even after a lapse of ten years. According to the provisions of the Memorandum of Settlement dated 22/05/2007, if an employee was less than forty five years of age on the date of dismissal and had remained absent for less than nine months, management was enjoined with the duty to consider the mercy petition. In the present case, it has come to fore that the enquiry proceeding was held without providing opportunity to the workman resulting in violation of the principles of Natural Justice. On applying the test of prejudice, it is clear that the workman has been terminated from service without being heard and the same has caused prejudice to him. The decision relied on behalf of the workman in the case of **State Bank of Patiala and Others Vs. S. K. Sharma; (1996) 3 Supreme Court Cases 364** is therefore applicable to the present case.

13. Bearing in mind the law laid down by Hon'ble High Court at Calcutta in the case of **Axis Bank Vs Union of India and Others; (2022) (175) FLR 2571** wherein it is held that "The Labour Tribunal under the Industrial Dispute Act has a limited authority and jurisdiction to proceed only with the reference arose from the conciliation proceeding and cannot travel beyond the scope of reference." I am of the view that Tribunals do not have any jurisdiction to adjudicate validity, correctness and legality of the reference. This Tribunal therefore cannot adjudicate the validity of the enquiry proceeding nor the legality of the order of termination from service as the same have not been included in the schedule of the reference. Therefore, it is just and appropriate on the part of this Tribunal to hold that action of the management of Khas Kajora Colliery in rejection of mercy petition for reinstatement of Sikandar B.P. in service is improper. Management of the company is duty bound to consider such application/mercy petition on merit. No order of reinstatement or back wages can be passed at this stage, as it is contingent upon consideration of the mercy petition submitted before the management of ECL.

14. Accordingly the Industrial Dispute is decided in favour of Sikandar B.P. on contest. Management of Khas Kajora colliery shall reconsider the representation/mercy petition of the workman dated 27/12/2010 regarding his reinstatement in service in terms of the Memorandum of Settlement dated 22/05/2007 on examining various facts relating to effective service of charge sheet, Notice of Enquiry and Second show cause Notice upon the workman. The entire procedure shall be completed within a period of one month from the date of communication of Award and the result shall be communicated to the workman within fifteen days thereafter.

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Hence,

ORDERED

that Industrial Dispute is allowed on contest in favour of Sikandar B.P. Management of Khas Kajora Colliery, Eastern Coalfields Ltd. is directed to reconsider the representation/mercy petition of the workman dated 27/12/2010 seeking his reinstatement in service in terms of Memorandum of Settlement dated 22/05/2007. Management shall examine the facts relating to effective service of charge sheet, Notice of Enquiry and Second show cause Notice upon the workman. The entire procedure shall be completed within a period of one month from the date of communication of Award. At the time of examination, management shall ensure that charge sheet, Notice of Enquiry and Second show cause Notice have been served upon the workman before passing the order of dismissal. Findings of the management shall be communicated to the workman within fifteen days thereafter. Let copies of Award be sent to the Ministry for information and Notification.

Sd/-

(Ananda Kumar Mukherjee)

Presiding Officer

CGIT-cum-LC, Asansol