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. 26 OF 1999

PARTIES: Bikramaditya Bouri

Vs

Management of Bejdih-Methani Collieries, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress

For the Management of ECL: (i) Mr. P. K. Goswami and
(ii)Mr. P. K. Das, learned Advocates

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 26/03/2025

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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-22012/301/98/IR(CM-II)** dated 26/05/1999 has been pleased to refer the following dispute between the employer, that is the Management of Bejdih-Methani Collieries of Eastern Coalfields Limited and their workmen for adjudication by this Tribunal.

THE SCHEDULE

"Whether the action of the management of Methani Colliery, ECL in dismissing Sh. Bikramaditya Bouri is legal and justified? If not, to what relief is the workman entitled?"

1. On receiving Order **No. L-22012/301/98/IR(CM-II)** dated 26/05/1999 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 26 of 1999** was registered on 07/06/1999 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.

2. Mr. S. K. Pandey, Chief General Secretary, Koyala Mazdoor Congress filed written statement on 05/12/2001. Management of ECL contested the case by filing written statement on 29/10/2001. Fact of the workman's case in brief is that, Bikramaditya Bouri was a regular employee at Methani colliery and was posted as Underground Loader having

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UM No. 128596. Due to his illness, workman was unable to attend duty from 23/10/1992 and he verbally intimated the management about the reason of his absence. Charge sheet was issued against the workman on 01/09/1993 for his unauthorised absence. Due to illiteracy and ignorance workman did not take proper step and management placed him under suspension. It is contended that charge sheet issued against the workman was illegal as it was not signed by the Disciplinary Authority. It is inter alia contended that allegation against the workman that he submitted fake and fraudulent documents in support of his illness is incorrect and a perfunctory enquiry was conducted where LTI of the workman was obtained. Further contention of the workman is that enquiry proceeding is void, illegal and inoperative as it was conducted in violation of the principles of Natural Justice and workman was not provided with the assistance of any co-worker of his choice. It is pointed out that enquiry proceeding was in English and contents of the proceeding were not explained to the charged workman. It is inter alia contended that no copy of enquiry report was handed over to the workman informing him about the findings of the Enquiry Officer. It is the case of the workman that Enquiry Officer did not examine witness in respect of second charge which prevented him from ascertaining the truth. Furthermore, the report was based on surmise and he has been victimized by adopting unfair labour practice. It is contended that the workman and his accredited union have not been given full opportunity to controvert the allegation about producing false documents. The workman was not allowed opportunity to cross-examine the Management Representatives at the time of enquiry. According to the workman documents produced as treatment papers in respect of his absence were handed over to him by the Kalla Central Hospital authority and only such authority could explain circumstances under which documents were issued. It is urged that workman has unblemished service record and his dismissal from service in terms of letter dated 22/04/1995 is illegal, harsh and disproportionate. It is inter alia contended that

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applications submitted by the union on 14/09/1996 and 27/08/1998 demanding reinstatement of the workman were not taken into consideration by the management for which the instant Industrial Dispute has been raised before the ALC (C), Asansol. It is prayed that necessary order be passed for setting aside order of dismissal of Bikramaditya Bouri and for his reinstatement in service and payment of back wages for the period of his idleness.

3. Management of ECL in their written statement disclosed about a charge sheet on the basis of which a second enquiry proceeding was conducted and the workman was dismissed from service. It appears that management remained confined to the first charge sheet issued against the workman bearing reference No. Methani/C-6/93/5/92 dated 01/09/1993. Some general statements have been made in support of the action taken by the management. It is further stated that Enquiry Officer found that the management had successfully proved all charges against the workman beyond doubt and after concluding the proceeding, submitted the report before the competent authority. There is no whisper as to what charges were levelled against the workman nor did the management make reference of the charge sheet dated 16/03/1995 which levelled a charge that medical treatment papers submitted by the workman for his absence from duty on medical ground were fake, false, fictitious and not genuine. It is claimed that dismissal of the workman is justified and based upon findings of the Enquiry Officer and the Industrial Dispute is liable to be dismissed.

4. Short point for consideration before this Tribunal is "Whether order of dismissal issued by the management against Bikramaditya Bouri is justified and legal? If not, what relief the workman is entitled to?"

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5. Dismissed workman filed his affidavit-in-chief and has been examined as Workman Witness – I. He was also cross-examined on 24/02/2016. Witness has supported his case disclosed in the written statement challenging his dismissal. No document was initially produced by the workman. In cross-examination he stated that he was appointed in service in April, 1990 and was dismissed from service on 25/10/1992. However, it is gathered from Exhibit W-5, the letter of dismissal that he was dismissed from service on 22/04/1995. Before raising the Industrial Dispute he did not apply for his reinstatement in service. Workman admitted that he received charge sheet and further stated that he participated in the enquiry proceeding. He also stated that he was treated at the Central Hospital, Kalla where some medicines were provided to him and he had to purchase some medicines from outside. He also deposed that he was unable to produce documents regarding his illness. He denied the suggestion that he was not sick or that he did not submit medical certificates before the Enquiry Officer. He also denied that he did not like to work or left his place of work voluntarily. After several years when the case was fixed up for hearing of argument, union examined Bikramaditya Bouri, WW-I on recall and he produced the following documents:

(i) Xerox copy of medical document in eight leafs is collectively marked as Exhibit W-1.

(ii) Copy of certificate issued by Dr. Sk. Nasiruddin is marked as Exhibit W-2.

(iii) Copy of charge sheet dated 16/03/1995 is marked as Exhibit W-3.

(iv) Copy of enquiry proceeding in fifteen pages is collectively marked as Exhibit W-4.

(v) Copy of order of dismissal dated 22/04/1995 issued by the Manager, Methani colliery is marked as Exhibit W-5.

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(vi) Copy of application praying for mercy is marked as Exhibit W-6.

It transpires from cross-examination of workman witness-I that he was absent from duty for one year and he was not performing duty for two months prior to receiving charge sheet. Witness stated that Dr. Sk. Nasiruddin of village- Majiara issued medical certificate to him for the entire period of his treatment. It is further gathered from his cross-examination that he went to the doctor after receiving charge sheet. Witness admitted that he was not treated at Kalla Central Hospital at any point of time and he collected medical documents from Central Hospital, Kalla which have been marked as Exhibit W-1. It also transpires that he collected medical papers from Central Hospital, Kalla on different dates as appearing on documents. Though the witness stated that he was not treated at Kalla Central Hospital, he contradicted by denying that he did not receive medical treatment at Kalla Central Hospital and documents produced by him were forged. Witness stated that he understood the contents of the charge sheet where it is stated that medical documents produced by him were manufactured. I find from the statements of Workman Witness-I that management of the company allowed him to join on 01/03/1995 on submitting medical documents. Subsequently on verification of medical documents from Kalla Central Hospital, employer company found them to be false and fabricated. He was charge sheeted for the second time on the ground of committing fraud, misconduct and absence from duty. Witness stated that he submitted mercy petition in the year 2012-13 i.e. seventeen years after his dismissal. Witness as usual denied the suggestion that the management was justified in dismissing him on the basis of such established charges.

6. Mr. Rahul Panwar, Asstistant Manager (P), BMP Group of collieries has been examined as Management Witness-I. An affidavit-in-chief is filed by Mr. Panwar wherein he stated that Bikramaditya Bouri was charge sheeted under reference No. Meth/C-

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6/5/95/192 dated 16/03/1995 for unauthorized absence from 23/10/1992 to 01/09/1993 and for producing fake treatment papers which he had submitted in support of his illness. A departmental enquiry was held against the workman and he was found guilty of the charges and after considering all materials, management dismissed the workman from service. Management Witness produced the following documents:

(i) Copy of charge sheet is marked as Exhibit M-1.

(ii) Copy of office order regarding appointment of the Enquiry Officer is marked as Exhibit M-2.

(iii) Copy of Notice of Enquiry addressed to the employee is marked as Exhibit M-3.

(iv) Copy of enquiry proceeding in fifteen pages is collectively marked as Exhibit M-4.

(v) Copy of reply dated 04/06.03.1995 issued by the Medical Superintendent of Central Hospital, Kalla is marked as Exhibit M-5.

(vi) Copy of letter of dismissal of the workman issued by the General Manager is marked as Exhibit M-6.

In cross-examination, management witness stated that there was no mention in the enquiry proceeding if the doctor of Central Hospital, Kalla who verified medical documents was summoned or examined. Witness admitted that no second show cause Notice was issued to the workman before his dismissal.

7. Mr. Rakesh Kumar, union representative, on behalf of the dismissed workman argued that first charge sheet was issued against the workman on 01/09/1993 over a charge of unauthorized absence from duty from 23/10/1992 to 01/09/1993. Workman participated in the enquiry proceeding where he disclosed that he could not attend duty due to his illness. Medical documents were submitted before the Enquiry officer and after

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considering all materials workman was allowed to join duty on 01/03/1995. After his reinstatement management of ECL issued a charge sheet against the workman for the second time bearing No. Meth/C-6/5/95/192 dated 16/03/1995 levelling a charge of producing false, fake and fictitious document in support of his illness from 23/10/1992 to 01/09/1993. Treatment papers were verified from office record of Central Hospital, Kalla by the appropriate authority and the same were found fictitious and not genuine. A charge of misconduct under section 17(i)(a) of Model Standing Order applicable to the workman was levelled against him. It is clearly stated in the charge sheet that 17(i)(a) reads as "Theft, fraud or dishonesty in connection with the employer's business or property." Workman was suspended by the Manager, Methani colliery. Mr. Rakesh Kumar argued that Manager, Methani Colliery is not the appropriate authority to issue a charge sheet. Furthermore, management in their written statement has made no reference to the charge sheet dated 16/03/1995 on the other hand it has referred to charge sheet bearing No. Meth/C-6/93/5/92 dated 01/09/1993. Mr. Kumar vehemently argued that management has not made any whisper regarding the enquiry proceeding which arose out of charge sheet dated 16/03/1995. It is inter alia argued that medical documents filed in relation to the period of absence is said to have been verified and the management produced a copy of letter dated 04/06.03.1995 (Exhibit M-5) issued by the Medical Superintendent, Central Hospital, Kalla wherein it is stated that with reference to letter dated 15/02/1995 issued by the General Manager it was informed that copy of treatment papers and pathology report of the concerned Underground Loader of Methani colliery enclosed with the letter under reference were verified from the hospital records and they were found to be false, fake, fictitious and not genuine. It is further stated that the hospital registration numbers, writings and signatures of doctors appearing on the documents were false and not genuine. Union representative argued that medical superintendent and doctors who verified treatment papers along with original have not been examined,

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therefore, workman cannot be held guilty for the charge of forgery and production of fake documents. Union representative further argued that no second show cause Notice was issued and no copy of enquiry report was served to the workman by the management. Therefore, workman was not given adequate opportunity to raise objection against findings of the Enquiry Officer. The workman having been dismissed without fulfilling procedural necessities, the order of dismissal is bad in law. The mercy petition (Exhibit W-6) dated 28/06/2012 addressed to the Director (Personnel) has not been considered. It is argued that workman is innocent and he has been illegally dismissed from service. Union representative prayed for setting aside order of dismissal passed on 22/04/1995 and prayed for reinstatement of the workman in service with back wages.

8. Mr. P. K. Das, learned advocate for ECL argued that Management Witness in his evidence has clearly referred to charge sheet dated 16/03/1995 which is the subject matter of this case and has produced all relevant documents relating to Notice of Enquiry, Enquiry proceeding, findings of the Enquiry Officer, letter issued by the Medical Superintendent after verification of treatment papers of Bikramaditya Bouri and letter of dismissal of the workman. Learned advocate for the management fairly admitted that no second show cause Notice was issued to the workman before his dismissal. According to the management, workman participated in the enquiry proceeding and he was suspended from work and ample opportunities were granted to him to refute the charges levelled. It is argued by Mr. Das that burden of proof lies upon the workman to produce treatment papers to establish that they were actually issued by some doctors at the Central Hospital, Kalla but no effort was made by him to meet serious charge of forgery. Since management after verification found that no such documents were issued from Central Hospital, Kalla, it did not have any scope or responsibility to examine any person as no positive evidence

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was adduced on behalf of the workman.

9. With reference to argument that no second show cause Notice was issued in compliance with observation of Hon'ble Supreme Court in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471]** and circular bearing No. CIL C-5A(vi)/50774/28 dated 12/05/1994 issued by the Director (P&IR), ld. advocate for the management argued that charge of forgery under section 17(i)(a) of Model Standing Order has been clearly established against the workman and the principle of Natural Justice has been followed by providing him with opportunity to participate in the enquiry proceeding and defend his case. Workman has not been able to demolish the charges levelled against him by adducing any better evidence. Under such circumstance non-issuance of Second Show Cause Notice would not prejudice the workman and violation of Rules is only in respect of procedural matters which does not prejudice to the employee. Learned advocate contended that no prejudice is caused to the workman and impugned order of dismissal does not call for any interference.

10. I have considered the rival contentions in light of pleading and evidence adduced. Admittedly workman was absent from duty for nearly one year i.e. from 23/10/1992 to 01/09/1993. On earlier occasion a charge sheet was issued against him on 01/09/1993 for his unauthorized absence. In the proceeding workman admittedly produced documents relating to medical treatment which were said to have been issued from Central Hospital, Kalla. On that occasion workman was absolved of the charge of unauthorized absence from duty and he was reinstated in service from 01/03/1995. Management referred the treatment papers submitted by the workman to the Medical Superintendent, Central

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Hospital, Kalla by letter No. ECL/GM/SA/25/832 dated 15/02/1995. Soon after reinstatement of workman in service on 01/03/1995, a reply was received from the Medical Superintendent, Central Hospital, Kalla vide letter No. CHA:ECL:CONF:MISC:VERFN:95:2539-43 dated 04/06.03.1995. In the letter it was clearly stated that the treatment papers and pathology report in the name of Bikramaditya Bouri, Underground Lader of Methani colliery have been verified from hospital records and they were found to be false, fake, fictitious and not genuine. Letter of Medical Superintendent has been admitted in evidence as Exhibit M-5. Workman participated in the second enquiry proceeding. In this case copy of enquiry proceeding has been produced as Exhibit M-4. In course of enquiry, Bikramaditya Bouri stated that he submitted medical certificate dated 02/09/1993 from private medical practitioner, Dr. Sk. Nasiruddin of Domohani Bazar covering the entire period of his illness from 25/10/1992 to 01/09/1993. Apart from the said document, dismissed workman during his examination by the Enquiry Officer stated that he personally visited Central Hospital, Kalla once and thereafter his wife used to visit as he was too weak and he claimed that treatment papers issued from Central Hospital, Kalla were genuine. Workman deposed that he was suffering from jaundice and took treatment from a private doctor from 25/10/1992 to 01/09/1993. Enquiry Officer in his findings stated that Bikramaditya Bouri was not under treatment of Central Hospital, Kalla and therefore treatment papers issued were not genuine and same finds its support from letter dated 04/06.03.1995 (Exhibit M-5). It was therefore found that period of absence of workman from 23/10/1992 to 01/09/1993 was unauthorized absence and he was held guilty of charge under section 17(i)(a) of Model Standing Order. Workman during his cross-examination stated that Dr. Sk. Nasiruddin issued medical certificate to him for the entire period of his absence and he was never treated at Central Hospital, Kalla. Workman made no effort to examine the Doctor of the Central Hospital, Kalla under whom he said to have received medical treatment. I find that workman did not discharge his onus and his clear

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admission that he was never treated at Central Hospital, Kalla goes to establish the charge of producing fictitious, fake and forge treatment papers. In my considered view there is no illegality or impropriety in the order of dismissal against the workman for having adopted fraudulent means in support of his unauthorized absence from duty.

11. In the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471]**, Hon'ble Supreme Court held that "*When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice.*" Coal India Limited in furtherance of Hon'ble Supreme Court's judgment issued a Circular No. CIL C-5A(vi)/50774/28 dated 12/05/1994 and directed its subsidiaries that a second show cause Notice is to be issued to the workman after enquiry proceeding is concluded in order to give opportunity to meet the findings of the Enquiry Officer. In the instant case though, there has been non-compliance of the mandate of Hon'ble Supreme Court it appears to me that workman participated in the enquiry proceeding, he was well aware about charge levelled against him and opportunity was extended to him to adduce evidence to meet the charge. Cross-examination of the workman witness reveals that he obtained a set of treatment papers from Dr. Sk. Nasiruddin for the entire period of his unauthorized absence and thereafter he collected medical papers from Central Hospital, Kalla though he was not treated at Central Hospital, Kalla at any point of time. Thus, evidence of WW-I proves that treatment papers produced were manufactured and fraudulent documents. Charge proved against the workman is serious in nature and he cannot be said to have

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been prejudiced by non-issuance of second show cause Notice. In the case of **State Bank of Patiala and Others Vs. S. K. Sharma; (1996) 3 Supreme Court Cases 364** it was held 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.*" In the present case adequate opportunity of hearing was given, therefore no prejudice was caused to the workman only for non-issuance of the second show cause Notice. In the case of **Sajila P. K Vs. Kerala Public Service Commission [2025:KER:5997]**, the Hon'ble High Court of Kerala held that "*When reviewing disciplinary actions against employees, Courts or Tribunals should consider whether violations of rules or regulations are substantive or procedural. Violation of substantive provisions, such as those related to the competency of the authority imposing punishment, typically requires strict compliance, and thus, the test of prejudice has no role. Procedural violations, on the other hand, should be examined to determine whether they prejudiced the employee's ability to defend himself. If prejudice is found, the order has to be set aside. Otherwise, no interference is necessary.*" Non-supply of second show cause Notice appears as a procedural violation. In this case workman participated in the enquiry proceeding. He was informed about charges levelled against him and he heard witnesses and examined documents produced against him. I am therefore satisfied to hold that no prejudice has been caused to the workman for non-issuance of second show cause Notice and non-supply of the enquiry proceeding. I find no reason to interfere with the Impugned Order dismissing the workman from service. There is no merit in the Industrial Dispute raised by the union and the same is liable to be dismissed.

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Hence,

O R D E R E D

that the Industrial Dispute raised by the union is dismissed on contest. Impugned Order calls for no interference and the dismissed workman is not found entitled to any relief. Let copies of the Award in duplicate be sent to the Ministry for information and Notification.

Sd/-
(Ananda Kumar Mukherjee)
Presiding Officer
CGIT-cum-LC, Asansol