

**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. 27 OF 2018

PARTIES: Shib Pujan Gowala
Vs.
Management of Bankola 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: 29.07.2024

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-22012/138/2017-IR(CM-II)** dated 29.10.2018 has been pleased to refer the following dispute between the employer, that is the Management of Bankola Colliery under Bankola Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Eastern Coal Fields Ltd. (E.C.L) by not providing employment to the dependent of Shri Shibpujan Gwala, Ex-employee of Bankola Colliery, Bankola Area, who was retired on the medical ground, is justified? If not, what relief his dependent is entitled to? ”

1. On receiving Order **No. L-22012/138/2017-IR(CM-II)** dated 29.10.2018 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 27 of 2018** was registered on 19.11.2018 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. Shib Pujan Gowala filed his written statement on 19.12.2022 through, Mr. Rakesh Kumar, President, Koyala Mazdoor Congress. The case disclosed in the written statement is that Shib Pujan Gowala was a permanent employee, posted as an Underground Loader having UM No. 602598 at Bankola Colliery under

Bankola Area of Eastern Coalfields Limited (hereinafter referred to as ECL). Due to his illness, he was unable to perform his duty and applied for voluntary retirement on medical ground according to the provisions of Clause 9.4.3 of National Coal Wage Agreement – IV (hereinafter referred to as NCWA-IV). He was asked to appear before Medical Board of the employer company constituted for this purpose. On 26.02.1994 after examining Shib Pujan Gowala, the Medical Board declared him medically unfit for job. Management of ECL in the letter Ref. No. BK:PD:15(11)/58 Yrs/79 dated 11.03.1994 terminated the service of Shib Pujan Gowala on medical ground along with other workmen. On his termination due to physical debility, one dependent member of his family is entitled to get employment. The management directed the workman to submit necessary document for processing the employment of his son. Relevant documents, consisting of Attestation Form, Relationship Certificate, No Objection by other dependent family members, Indemnity Bond were submitted before the management. A screening was conducted at the Colliery level and the dependent son was referred for medical examination by the Initial Medical Examination Board (hereinafter referred to as IME Board) at the Area level, which found him fit for duty.

3. After lapse of time the Headquarters of ECL issued a direction not to process the employment proposal of the dependent on the ground that some complain had been received against the Medical Board, which held the medical examination of the employee and the management decided to cancel the result of the Medical Board, which was however not communicated to Shib Pujan Gowala. Some of the worker namely, Kishori Mohan Chakraborty and others filed a case before the Hon'ble High Court, Calcutta and after hearing the matter, the Hon'ble High Court passed an order, directing the management to provide employment to the dependent of the medically unfit employee and the management provided employment to some of the dependent of the medically unfit persons. On

19.09.1994 the Director (Personnel), Coal India Limited issued a direction to offer employment to dependent of all those who were found medically unfit. It is contended that since Shib Pujan Gowala was declared medically unfit, under the provision of Clause 9.4.3 of NCWA-IV his dependent should be provided with employment. According to the union the ex-workman and his son are not having any income to maintain their livelihood, as such the son of Shib Pujan Gowala should be provided with employment and adequate compensation should be provided to the employee due to inordinate delay in considering prayer and all other consequential benefits.

4. The management of ECL contested the Industrial Dispute by filing their written statement on 19.12.2022. The points on which the claim for employment was denied by the management inter-alia are that the provisions of Clause 9.4.3 of NCWA-IV for employment of the dependent of the disabled employee have been grossly misused by some unscrupulous officials of ECL, unions and employees for the purpose of ensuring employment from generation to generation in the public sector undertaking, which is a violation of the basic fabric of the Article 16 of the Constitution of India. The result of medical examination held at Bankola Area was manipulated with vested interest and the management of ECL was not inclined to accept the findings of the Medical Board. It was also found on enquiry that the concerned workman was not suffering from any incurable disease, resulting in permanent incapacity of the workman. The concerned workman is aware about such manipulation and he did not raise any dispute within a span of two decades after such findings and stoppage of employment to his dependent son. It is contended that the demand raised by the union for employment of the dependent of Shib Pujan Gowala on the ground of partial debility and it was never accepted as full and final. The management of ECL had issued direction for holding fresh medical examination of the person who had appeared before the Medical Board on earlier occasion and Shib Pujan Gowala finally not declared as

medically unfit. Consequently, the question of providing employment to his dependent son does not arise. It is urged on behalf of the management that the claim raised by the union is absurd and the dependent of Shib Pujan Gowala is not entitled to get any employment.

5. In order to establish his case in this Industrial Dispute Shib Pujan Gowala submitted his affidavit-in-chief. He examined himself as Workman Witness – 1 and faced cross-examination. In his affidavit-in-chief the main case projected by him is that on 26.02.1994 he was declared medically unfit for duty. Thereafter management terminated his service on medical ground under the provision of Clause 9.4.3 of NCWA-IV by issuing letter bearing Ref. No. BK:PD:15(11)/58 Yrs/79 dated 11.03.1994. On the basis of the direction passed by the management on 11.03.1994, employees declared medically unfit were asked to submit application for employment of their dependent as per Clause 9.4.3 of NCWA-IV. Shib Pujan Gowala submitted an application for employment of Prakash Gwala (Yadav), his son. Documents called for by the management were also submitted. After screening at the colliery level his son was sent for medical examination by the IME Board and he was found fit for duty. In course of his evidence the workman produced the following documents :

- (i) Copy of the Identity Card of Shib Pujan Gowala is produced as Exhibit W-1.
- (ii) Copy of the Office Order 11.03.1994 by which he was terminated from service for being medically unfit for duty and asked to submit application for employment of his dependent son is produced as Exhibit W-2.

6. In course of cross-examination Shib Pujan Gowala admitted that the competent authority did not accept that the recommendation of the Medical Board. He further stated that the name of his son Prakash Gwala (Yadav) is

recorded in his Service Record as a dependent and his said son was thirty years old at the time he appeared before the Medical Board. The witness further deposed that at present his son is forty years old and denied that he is not entitled to the benefit of employment on the ground of his voluntary retirement on medical ground.

7. Management examined Dibyendu Ghosh, Manager (Personnel), Bankola Colliery as Management Witness – 1. He filed his affidavit-in-chief in support of the stand taken by the management. It is admitted that Shib Pujan Gowala was a permanent employee of ECL. He was declared medically unfit for duty by the Medical Board on 13.03.1994 and he was terminated from service on the ground of medical unfitness. Later on, due to detection of some malpractice the findings of the Medical Board was not approved by the higher authority and the workmen were requested to appear for a fresh medical examination which was held on 21.01.1995, but the workman never appeared before the said Medical Board. It is further stated that compassionate appointment under NCWA-IV is provided to the eligible dependent of the workman found permanently incapacitated due to disease or on his death and a certificate of such disablement or debility had to be issued by the coal company. Unscrupulous officials and unions have gravely misused the benevolent clause for employment in public sector, violating the principles of Article 16 of the Constitution of India. The witness stated in his affidavit-in-chief that during enquiry it was found that the concerned workman was not suffering from any incurable disease resulting in permanent incapacity to work and the union and the workman fully aware about such manipulation, did not raise any Industrial Dispute for more than two decades. The management denied employment to the dependent of Shib Pujan Gowala on the ground of his medical debility. The witness produced the following documents in course of evidence :

- (i) Copy of the Office Order 11.03.1994 by which Shib Pujan Gowala

was terminated from service and his work was stopped from 13.03.1994 has been produced as Exhibit M-1.

- (ii) Copy of the order dated 02/03.03.1994 relating to termination of service of Shib Pujan Gowala on medical ground, as Exhibit M-2.
- (iii) Copy of the letter dated 29.04.1994 issued by the Director (Personnel) addressed to the General Manager of Bankola Area, as Exhibit M-3.

8. In cross-examination the witness admitted that by order dated 02/03.03.1994 (Exhibit M-2), the competent authority of Bankola Area has approved termination of service of the enlisted persons including Shib Pujan Gowala on medical ground. Management witness admitted that they have no record from which it can be made out that Shib Pujan Gowala had made any representation before the company for employment of his dependent on the ground that he had been declared medically unfit. The witness further stated that the chairman of the Medical Board was competent to declare somebody as medically unfit but he was unable to state that on whose recommendation Shib Pujan Gowala and other persons were declared medically unfit. It transpires from the evidence of MW-1 that the General Manager of Bankola Area had requested to inform the Director (Personnel) if service of the employees, declared unfit by the said Medical Board had been terminated and whether the cases for employment of their dependent have been processed. The witness failed to produce any document or copy of the letter to show that Shib Pujan Gowala was asked to appear before any fresh Medical Board thereafter. It also appears that no letter was issued to Shib Pujan Gowala asking him to join his service on the ground that the decision of Medical Board declaring him unfit was incorrect and improper. The management witness stated that no Initial Medical Examination of any dependent was held for providing employment.

9. The sole question formulated for adjudication is whether it is justified and

proper in providing employment to the dependent of Shib Pujan Gowala on his retirement on medical ground. If not, what relief the dependent is entitled to?

10. Mr. Rakesh Kumar, Union representative for the aggrieved workman, in his argument submitted that the Medical Board examined Shib Pujan Gowala on 26.02.1994 and declared him unfit for duty according to the provisions of Clause 9.4.3 (ii) of NCWA-IV. At the relevant time the workman was fifty-six years of age and had four years left in service for his superannuation. By letter dated 11.03.1994 (Exhibit W-2) Shib Pujan Gowala, whose name appeared against serial no. 16 of the Office Order, was declared medically unfit for duty on debility ground and was stopped from duty w.e.f. 13.03.1994. Relying upon Exhibit M-2, a letter dated 02/03.03.1994 issued by the Personnel Manager (Incharge), Bankola Area it is argued that the service of Shib Pujan Gowala was terminated and the same was approved by the competent authority. It is argued that though the management has taken a plea that there was manipulation in the findings of the Medical Board, the same was not accepted by the company, no letter was issued to the terminated workman, informing him about the decision of management, any subsequent medical examination or asking him to resume office by setting aside or recalling the order of termination approved by the competent authority. Mr. Rakesh Kumar argued that some of the employees who were declared medically unfit and no employment was provided to their dependents had preferred Writ Petition bearing No. 23 of 1996 before the Hon'ble High Court at Calcutta, wherein the Hon'ble High Court observed that :

"..... the adverse vigilance report does not stand in the way in giving suitable employment to the petitioners dependent, as the petitioners were declared medically unfit. In the event the petitioner's dependants are found eligible their cases shall be considered for employment in the suitable post. Therefore I direct that the respondents and / or each of them to take steps with regard to employment

of the respective petitioners' defendant in terms of 9.4.3 of the said Agreement.”

It is further argued on behalf of the workman that the findings of the Medical Board by which Shib Pujan Gowala was declared medically unfit for duty has not been set aside by subsequent order. Therefore, according to the provisions of Clause 9.4.3 (ii) of NCWA-IV, which was applicable to the workman until coming into force of NCWA-V, signed by the Joint Bipartite Committee for the Coal Industry on 19.01.1996, entitles Prakash Gwala (Yadav), the dependent son to be considered for employment.

11. Mr. P. K. Das, learned advocate for the management of ECL argued that the Medical Board, which was functioning in connivence of the union and workman, declared several workmen medically unfit for duty, despite the fact that they were not suffering for debilitating disease. The Office Order dated 11.03.1994 by which Shib Pujan Gowala was declared medically unfit for duty was stopped from duty w.e.f. 13.03.1994, as they had proceeded on leave and no order of termination was issued to Shib Pujan Gowala. The management by confidential enquiry found that good number of persons were declared medically unfit by the Medical Board on 26.02.1994 and wanted to know if the service of such persons were already terminated and employment of the dependents were processed. The General Manager of Bankola Area was also requested to ensure that no employment of the dependent was processed or forwarded till the same was approved by the Director (Personnel) (Exhibit M-3). In respect of the direction passed by the Hon'ble High Court at Calcutta in the Writ Petition to give suitable employment to the dependent of the employee found medically unfit, it is argued that the present petitioner did not approach the Hon'ble High Court and the management of the company had no responsibility to consider his case for employment of his dependent according to the provisions of NCWA-IV. It is vehemently argued by Mr. P. K. Das that after long lapse of twenty years Shib Pujan Gowala had

approached the Industrial Tribunal, raising a dispute, which is not bona fide and his prayer for employment to his dependent is not sustainable.

12. I have considered the argument advanced by both the parties and the evidence on record. The admitted case is that Shib Pujan Gowala was a permanent employee of Bankola Colliery, who applied for voluntary retirement on medical ground. His prayer had been considered and the Disability Medical Board of the company setup for the purpose, held medical examination on 26.02.1994 and found Shib Pujan Gowala medically unfit for duty according to Clause 9.4.3 (ii) of NCWA-IV. The Office Order dated 11.03.1994 (Exhibit W-2) was issued by the Agent of Bankola Colliery on the basis of letter No. BA/PD/A-II(28)/632 dated 02/03.03.1994 of Personnel Manager (Incharge) of Bankola Area. On the basis of such order the duty of concerned workman was stopped from 13.03.1994. It transpires from the pleadings of both the parties and the evidence of the workman as well as management that till date the provisions of Clause 9.4.3 (ii) of NCWA-IV has not been complied by the management of the company and dependent of the concerned employee was not provided with employment.

13. Learned advocate for the management of ECL contended that the Chairman of the Medical Board is competent to certify that the employee is medically unfit on the ground of debility but in the instant case no such certificate has been issued. In my considered view it goes without saying that the management of the company having issued office order dated 11.03.1994 on the basis of approval of the competent authority for termination of service of the enlisted employees is presumed to have taken into the consideration the relevant report of the Medical Board, authorized to certify such medical debility or disablement. The management of the company has produced a copy of letter dated 02.03.1994 issued by Personnel Manager (Incharge) of Bankola Area, informing the Agent of Bankola Colliery regarding termination of service of several employees of the

company on medical ground. The said letter dated 02/03.03.1994 (Exhibit M-2) precedes the letter bearing No. ECL/HQ/D(P)/02/1935 dated 29.04.1994 issued by the Director (Personnel) addressed to the General Manager of Bankola Area, wanting to know if the service of the employees declared unfit by the Medical Board have been terminated. It was also directed that that no employment should be processed till the same was approved by the Director (Personnel). At this juncture it may be safely be deduced that the termination process had already been made by issuing the Office Order dated 11.03.1994, which in clear terms referred to letter Ref. No. BA/PD/A-II(28)/632 dated 02/03.03.1994 of Personnel Manager (Incharge) of Bankola Area, disclosing approval of termination of employees. There is no case of the management that any order was issued by the management for setting aside or revoking its office order dated 11.03.1994, based on the Medical Board's findings or asking them to resume their duty from any particular date. The management led no evidence to prove that Shib Pujan Gowala was asked to appear before any Medical Board constituted on 21.01.1995 for re-assessment of his medical condition and extent of his debility. Due to non-fulfilment of such responsibility the management is duty bound under the provisions of Clause 9.4.3 (ii) of NCWA-IV to consider the claim for employment of the dependent son of Shib Pujan Gowala. In the instant case Shib Pujan Gowala has not produced any document to show that any application was made by him before the management to provide employment to his dependent son, Prakash Gwala (Yadav). The stand taken by the management is not justified. Therefore, the management of ECL is directed to process the prayer for employment of the dependent son of Shib Pujan Gowala within a period of one month from the date of communication of the Award in accordance with the provisions of NCWA-IV, providing full opportunity to the party to place all materials and communicate their decision to Shib Pujan Gowala within a fortnight thereafter. In default the management of the company shall be liable to compensate Shib Pujan Gowala by paying him a sum equivalent to his wages and all consequential benefits which

would have fallen due in favour of the employee from 13.03.1994 till the date of his superannuation, had he not been terminated from his service by the office order dated 11.03.1994. The compensation amount shall be paid within a period of one (1) month from the date of default in providing the employment to the dependent. Any delay in paying such compensation will be accompanied by an interest of nine percent (9%) per annum on the sum till repayment. The Industrial Dispute is accordingly allowed in favour of the workman on contest.

Hence,

ORDERED

that the Industrial Dispute is allowed in favour of Shib Pujan Gowala on contest. The management of Bankola Colliery of ECL is directed to process the employment proposal of the dependent son of Shib Pujan Gowala under the provision of Clause 9.4.3 (ii) of NCWA-IV and communicate the decision to Shib Pujan Gowala within a fortnight. In default of providing employment to the dependent son (Prakash Gwala (Yadav)) of the employee the management shall compensate Shib Pujan Gowala by paying him a sum equivalent to his wages and all consequential benefits from 13.03.1994 till the date of his superannuation, as if Shib Pujan Gowala was not terminated from his service on the ground of his debility. The compensation amount shall be paid within a month from the default of providing the employment to the dependent. Any delay in paying such compensation shall accrue an interest of nine percent (9%) per annum on the sum till payment is made. 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.