

**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. 28 OF 2021

PARTIES: Nebu Kora
Vs.
Management of Khas Kajora Colliery, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 25.04.2025

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-22012/63/2021-IR(CM-II)** dated 10.12.2021 has been pleased to refer the following dispute between the employer, that is the Management of Khas 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 Khas Kajora Colliery, Kajora Area, M/s. E.C.Ltd. in non-reinstatement in service of Sri Nebu Kora, Ex-U.G.Loader, U.M. No. 118957 is justified or not? If not, what relief the workman is entitled to? ”

1. On receiving Order **No. L-22012/63/2021-IR(CM-II)** dated 10.12.2021 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 10.12.2021 / 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.

2. The President of Koyala Mazdoor Congress on behalf of Nebu Kora and the management of Khas Kajora Colliery under Kajora Area of Eastern Coalfields Limited (hereinafter referred to as ECL) filed their respective written statement on 06.01.2023. In gist, the fact of the union's case is that Nebu Kora was employed as Underground Loader at Khas Kajora Colliery, with U.M. No. 118957. He was appointed on 17.07.1995 and was unable to perform his job and fell ill as the

underground working condition was hazardous. He was under medical treatment from 30.09.1995. After recovery from illness, he went to join his duty but the management of ECL issued a Charge Sheet against him on 17.04.1996 for his absence from 04.10.1995. Nebu Kora submitted a reply against the Charge Sheet disclosing that he was unable to work due to illness and was treated at the Colliery and thereafter under private practitioner at Kajoragram. The workman submitted his treatment papers to the management along with the reply to the Charge Sheet. Management initiated a domestic enquiry against the workman in which he participated. According to the union the period of his absence from duty was six months and twelve days due to illness and the employee had worked only for fifty-one (51) days before he became ill. It is asserted that there was no charge of habitual absence against the workman and it was the first Charge Sheet issued against him for unauthorized absence and in a disproportionate way highest punishment of dismissal was awarded. It is further contented that management did not issue any second Show Cause Notice to the workman before his dismissal as such the punishment awarded is arbitrary and liable to be set aside. Union has prayed for setting aside the order of dismissal bearing No. KA:PM:C-6:10:3347/8989 dated 22/23.12.1997. It is inter-alia contended that the management entered into a Memorandum of Settlement before the Regional Labour Commissioner (Central), Asansol on 22.05.2007 in which management agreed to consider all mercy petitions of the dismissed employees if their period of absence from duty was less than nine (9) months and were up to forty-five (45) years of age at the time of dismissal. It is urged that the dismissed workman who was well within the said age group and fulfilled the other condition should be reinstated in service. According to the dismissed workman the Enquiry Officer did not give adequate opportunity to the workman to represent his case and violated the principles of natural justice by not allowing the co-worker to participate in the enquiry. It is further prayed that Nebu Kora should be allowed to join his duty with payment of back wages and all other consequential benefits.

3. Management contested the case against Nebu Kora by filing their written statement. Management claimed that Nebu Kora worked only for 51 days and thereafter he remained absent from 04.10.1995 to 04.05.1996 for more than seven months without any information or permission of the employer company. Charge Sheet was accordingly issued against him bearing No. KKC/P&IR/C-6/19/96 dated 17.04.1996 under Clause 17(i)(n) of Model Standing Orders applicable to the coal mining industry at that time. A domestic enquiry was held against the workman, who participated along with his co-worker. The enquiry was held on 14.05.1996 following principles of natural justice and full opportunity was given to the workman to defend himself. The charge levelled under Clause 17(i)(n) of Model Standing Orders was proved against the workman. On the basis of the findings of the Enquiry Officer, the General Manager of Kajora Area vide order no. KA:PM:C-6:10:3347/8989 dated 22/23.12.1997 dismissed the workman from service. It is the case of the management that absenteeism is a serious offence and it hampers the work of the employer as well as production process. Further case of the management is that the instant dispute against dismissal was raised before the Assistant Labour Commissioner (Central), Raniganj at Durgapur in the year 2018 i.e., more than 21 years from the date of dismissal of the workman who worked for only 51 days and it has been referred to this Tribunal in the year 2021 i.e., after passage of 24 years. Therefore, the dispute has no merit for consideration. Referring to Section 2A of the Industrial Disputes Act, 1947, read with amendment Act of 2010 it is stated that the workman was entitled to raise a dispute regarding his termination before the expiry of a period of 3 years from the date of said termination. In the instant case the workman has raised the dispute after lapse of long twenty-one years, hence he is not entitled to any relief. Referring to a decision of the Hon'ble High Court at Calcutta in the case of **Smt. Swapna Adhhikari vs The State of West Bengal and Others [Writ Petition No. 22991(W) of 2013]**, management urged that the High Court in the judgement dated 20.03.2014 observed that with the

amendment of Section 2A by the Industrial Dispute Amendment Act, 2010 (Act 24 of 2010), the Section 10(1) of the Act stands abridged and laid down as follows :
“ in respect of all cases as specified in Section 2A, the period stands abridged now even in a proceeding under Section 10 of the Industrial Disputes Act by reason of amendment to Section 2A and the said period of limitation would apply in proprio vigore.”

Management contended that in view of the judgement the dispute did not exist for a period of twenty-one years and the punishment awarded against the ex-workman is proportionate and in no way an arbitrary decision on the part of the management. Management urged that the dismissed workman is not entitled to any relief.

4. Shri Nebu Kora has been examined as Workman Witness No. 1. He filed an affidavit-in-chief reiterating his case stated in the written statement. The following documents have been admitted on behalf of the union :

- (i) Copy of the Charge Sheet dated 17.04.1996 has been produced as Exhibit W-1.
- (ii) Copy of the reply to the Charge Sheet, as Exhibit W-2.
- (iii) Copy of the application of Nebu Kora submitted before the Manager of Khas Kajora Colliery, to allow him to join his duty, as Exhibit W-3.
- (iv) Copy of three medical prescriptions and one fitness certificate issued by Dr. R. R. Paul of Kajora Bazar have been marked as Exhibit W-4, W-4/1, W-4/2 and W-4/3.
- (v) Copy of the Note Sheet dated 27.05.1996 proposing dismissal by the General Manager, as Exhibit W-5.
- (vi) Copy of letter dated 12.11.1997 issued by the Personnel Manager, Kajora Area addressed to the Agent, Khas Kajora Colliery asking him to finalize the case relating to absenteeism, as Exhibit W-6.

- (vii) Copy of the letter dated 17.11.1997 issued by the Agent, Khas Kajora Colliery in reply to Exhibit W-6, as Exhibit W-7.
- (viii) Copy of the letter of dismissal dated 22/23.12.1997 issued by the General Manager, Kajora Area, as Exhibit W-8.

5. In cross-examination the workman deposed that after his appointment he worked only for two months, thereafter he remained absent from duty till issuance of Charge Sheet. His evidence reveals that he did not receive any medical treatment from the Colliery Hospital nor did he inform the management about his illness or the reason of his absence.

6. Management examined Mr. Proloy Dasgupta, Manager (Personnel), Khas Kajora Colliery as Management Witness No. 1. Witness stated that the concerned workman remained absent from duty from 04.10.1995 to 04.05.1996, for a period of seven months without information and permission of the Competent Authority. Charge Sheet was issued to the workman under Clause 17(i)(n) of Model Standing Orders. The workman submitted his reply on 25.04.1996. The matter was thereafter referred for domestic enquiry, in which the workman participated accompanied by co-worker. The enquiry was held on 14.05.1996 and charge was proved against Nebu Kora. The General Manager, Kajora Area by his letter dated 22/23.12.1997 dismissed the workman from service. The following documents have been produced by the management in support of their case :

- (i) Copy of the Charge Sheet dated 17.04.1996 has been produced as Exhibit M-1.
- (ii) Copy of the reply to the Charge Sheet, as Exhibit M-2.
- (iii) Copy of the Enquiry Proceeding dated 14.05.1996, as Exhibit M-3.
- (iv) Copy of the Enquiry Report along with findings of the Enquiry Officer, as Exhibit M-4.
- (v) Copy of the letter of termination dated 22/23.12.1997, as Exhibit M-5.

7. It is gathered from the cross-examination the witness that no second Show Cause Notice was issued to the workman and the enquiry was completed on 14.05.1996. A Note Sheet was prepared by which the workman was proposed to be dismissed. The workman submitted a mercy appeal but the same was not considered. Management Witness denied that the punishment of dismissal from service is disproportionate to the nature of misconduct.

8. The matter in controversy in this case is whether the management of Khas Kajora Colliery is justified in not reinstating Nebu Kora in service and to what relief the workman is entitled to? In order to consider the scheduled Industrial Dispute it is necessary to find out if the dismissal of Nebu Kora was justified. The relief of reinstatement is contingent to the finding as to whether the dismissal of the concerned workman is legal and justified?

9. It transpires from the pleadings of the parties as well as affidavit-in-chiefs of Nebu Kora and Mr. Proloy Dasgupta that the workman was appointed in the service of the company on 17.07.1995 as an Underground Loader. After working for only fifty-one days the workman absented from duty from 04.10.1995 till issuance of the Charge Sheet on 17.04.1996. The workman was found absent without authorization by the management for long seven months. He did not have the primary responsibility to inform the management about the reason of his absence from duty. The management was kept in the dark about absence of the workman. Admittedly, a Charge Sheet was issued against the workman under Clause 17(i)(n) of the Model Standing Orders for unauthorized absence from duty for more than ten days.

10. The workman submitted a reply against the Charge Sheet which has been marked as W-2. In the reply, the workman claimed that he was suffering from severe jaundice and was under the treatment of Dr. R. R. Paul of Kajora Bazar.

Medical papers produced by the workman have been marked as Exhibit W-4 series. A Certificate was issued to Nebu Kora to the effect that he was under the treatment of Dr. R.R. Paul from 30.09.1995 to 04.05.1996 for pyrexia with unknown origin followed by recurrent jaundice. The Enquiry Proceeding has been produced by the management as Exhibit M-3. On a perusal of the Enquiry Proceeding, I find that Mr. Sunil Kumar Bhattacharyya was examined as Management Representative and the charge employee was also examined. In his cross-examination the charged employee admitted that he did not take permission nor inform the Competent Authority about his absence from duty. The findings of the Enquiry Officer has been produced as Exhibit M-4. The Enquiry Officer found that the charge against Nebu Kora was proved. Admittedly, no Second Show Cause Notice was issued to the workman and he was dismissed from service by the General Manager, Kajora Area who issued the letter of dismissal bearing No. KA:PM:C-6:10:3347/8989 dated 22/23.12.1997, which has been produced as Exhibit M-5. After dismissal the workman did not file any mercy petition for his reinstatement. Instant Industrial Dispute has been raised on behalf of the workman after lapse of twenty-one (21) years from the date of dismissal of the workman and on failure of conciliation the Industrial Dispute has been referred to this Tribunal after twenty-four (24) years.

11. Learned advocate for the management referred to a decision of the Hon'ble High Court at Calcutta in the case of **Smt. Swapna Adhhikari vs The State of West Bengal and Others [Writ Petition No. 22991(W) of 2013]** and argued that after amendment of the I.D. Act, 1947 in the year 2010, the time limit for raising an Industrial Dispute is three (3) years from the date of termination from service and the Hon'ble High Court held that with the amendment of Section 2A of the Industrial Dispute Amendment Act, 2010 (Act 24 of 2010) the Section 10(1) of the Act also stands abridged and the period of limitation of three years should be counted. On going through the said decision I find that the Hon'ble High Court held that :

“ However, in respect of all cases as specified in Section 2A, the period stands abridged now even in a proceeding under Section 10 of the Industrial Disputes Act by reason of amendment to Section 2A and the said period of limitation would apply in proprio vigore.”

12. From the facts and circumstances of the case and the law laid down by the Hon'ble High Court, I find and hold that the Industrial Dispute raised by the union on behalf of Nebu Kora after lapse of 21 years from the date of dismissal is stale and cannot be entertained at this stage. I also find that the management of the company had issued a Charge Sheet against the workman for proper reasons and the Enquiry Officer held the Enquiry Proceeding after providing reasonable opportunity to the charged employee, following the principles of natural justice. A workman is not found justified in enjoying leave at his own volition without informing the management. It is unreasonable on the part of the workman to remain absent for long seven months without finding time to inform the employer company about his absence until issuance of the Charge Sheet. The Medical Certificate produced for the period from 30.09.1995 to 04.05.1996 (Exhibit W-4) states that Nebu Kora was treated for “Pyrexia” that is ‘fever’ and jaundice. The certificate is neither supported by treatment papers nor does it specify the period and the nature of illness suffered during such time span. Therefore, such claim of illness is not acceptable. The punishment imposed for long unauthorized absence is also found just and appropriate. Under the facts and circumstances of the case, I find that the workman is not entitled to any relief of reinstatement and the question of payment of back wages and consequential benefits does not arise.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest. The workman, Nebu

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Kora is not entitled to any relief of reinstatement. 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.