

**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. 31 OF 2005

PARTIES: Hareram Paswan

Vs

Management of Kuardih Colliery, ECL

REPRESENTATIVES:

For the Union/Workman: Smt. Debarati Konar, learned Advocate
For the Management of ECL: Mr. P. K. Das, learned Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 23/09/2025

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-22012/104/2004-IR(CM-II)** dated 11/05/2005 has been pleased to refer the following dispute between the employer, that is the Management of Kuardih Colliery, Satgram Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“Whether the action of the management of Kuardih Colliery of M/s Eastern Coalfields Limited in dismissing of Sh. Hareram Paswan from service vide letter No.SAT/GM/PER/LAB-C/2002/542(E) dated 28.9.2002 is legal and justified? If not, to what relief he is entitled?”

1. On receiving Order **No. L-22012/104/2004-IR(CM-II)** dated 11/05/2005 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 31 of 2005** was registered on 31/05/2005 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. Management of ECL filed their written statement on 18/11/2005 and the dismissed workman after his appearance before the Tribunal filed his written statement on 02/02/2010. In gist, fact of the workman's case is that Hareram Paswan was appointed in

service of ECL on 01/06/1995 bearing U.M. Number 118812. He was charge sheeted on 01/02/2001 for his unauthorized absence from duty for more than ten days from 03/07/2001 and for his habitual absence on earlier occasions. He was posted at Kuardih colliery at the time of issuance of charge sheet. Charge sheet under clauses 26.23 and 26.29 of Certified Standing Order of the company was served upon him. Workman submitted reply to the charge sheet and stated that the absence was beyond his control due to his illness and during the period of absence he was under medical treatment at Sub-Divisional Hospital, Asansol. After recovery from illness, he went to join duty but he was not allowed to join and no subsistence allowance was paid to him. It is contended that Sr. Personnel Officer, Kuardih Colliery declared himself to be the Enquiry Officer and initiated a departmental enquiry without authority. Workman never received Notice of Enquiry at any point of time. He was not informed about the appointment of Enquiry Officer and Management Representative. Subsequently, signature of the workman was obtained on some documents before the Enquiry Officer. It is contended that the Enquiry Report was manufactured and workman was not allowed to take any assistance of co-workers. Workman produced medical documents in support of his absence from duty but without challenging the genuinity of medical certificates, the Enquiry Officer admitted the medical certificates in the enquiry and without supplying any copy of enquiry report, the General Manager, Satgram Area dismissed the workman from service on 25/11/2002. It is contended that the General Manager is not the Competent Authority to dismiss the workman from service and the order of dismissal dismissing the workman from service is illegal. Workman after dismissal prayed for allowing him to resume his duty but the management did not pay heed to the prayer of the workman. It is contended that management enhanced the charge by considering his past record which is totally unlawful and the same is liable to be set aside. Further case of the workman is that Disciplinary Authority issued order of dismissal without application of his mind in a rigid manner

and action taken by the management was harsh and disproportionate to the alleged charge. Workman prayed for setting aside the Impugned Order and for his reinstatement in service along with back wages and consequential benefits.

3. Management in support of the enquiry proceeding and order of dismissal stated that the concerned workman was charge sheeted on 01/02/2001 for the act of his unauthorized absence as well as habitual absence. Charge sheet was issued under clauses 26(23) and 26(29) of the Certified Standing Order of the company. It is claimed that workman appeared before the Enquiry Officer and opportunities were granted to him to defend his case. Management admitted that the workman produced certificates from Sub-Divisional Hospital, Asansol but failed to explain the reasons for not informing the colliery authority about his absence. It is asserted that the Enquiry Officer after hearing the parties concluded the enquiry proceeding and held the workman guilty of the arraignments. Further case of the management is that the Competent Authority after perusing the enquiry report and the gravity of misconduct found no ground to show any leniency to the workman and punished him by way of dismissing him from service in accordance with provision of standing order effecting the dismissal from 25/11/2002. It is inter alia submitted that past performance of the workman was poor and he attended duty for only ninety three days in the year 1995, Nil in the year 1996 and 1997, sixty three days in the year 1998, Nil in the year 1999 and sixteen days in the year 2000. It is further asserted that total attendance of the workman from the year 1995 to 2000 was only one hundred seventy two days. On earlier occasion punishment of stoppage of four annual increments was passed against him for his unauthorized absence from duty but he did not rectify his conduct. According to the management, the workman has been rightly dismissed from service and he is not entitled to any relief.

4. Point for consideration before this Tribunal is whether the action of the management in dismissing Hareram Paswan from service vide order dated 28/09/2002 is legal and justified and what relief he is entitled to.
5. In support of the case workman filed affidavit-in-chief wherein he stated that he did not receive Notice of Enquiry and no enquiry was at all held. It is contended that Enquiry Officer decided upon the charge on the basis of extraneous factors without proper enquiry. It is further asserted that he produced medical certificates which were accepted by the Enquiry Officer. The enquiry proceeding and enquiry report were not supplied to him and he has been illegally dismissed from service.
6. In cross-examination the witness stated that he will submit treatment papers and further stated that he had produced documents from government hospital. It transpires from his cross-examination that his residence is about one and a half to two kilometers away from the colliery where he was working and the hospital is about five kilometers away from his residence. Witness further stated that he went to the hospital three to four times for treatment. Suggestion was put to the workman that he never went to the hospital for treatment, which he denied. Witness could not disclose the name of the disease he was suffering from. He further stated that he was admitted in the hospital and was thereafter discharged. Workman subsequently did not produce any documents in support of his medical treatment nor did he produce any material to establish that he was admitted to the hospital on account for the purpose of any medical treatment during the period of his long absence.
7. Mr. Kalyan Roy, Management Representative has been examined as Management Witness-I. He filed an affidavit-in-chief wherein he disclosed that charge sheet was served

upon Hareram Paswan under clauses 26.23 and 26.29 of the Certified Standing Order for habitual late attendance and absence from duty without reasons beyond ten days, respectively. Management Witness stated that the workman participated in the enquiry. In course of enquiry, the Enquiry Officer found the workman guilty of charge and submitted his report. During his evidence, MW-I produced the following documents in support of their case:-

- (i) Copy of charge sheet dated 01/02/2001 is produced as Exhibit M-1.
- (ii) Copy of certificate dated 16/03/2001 issued by the Superintendent, Sub-Divisional Hospital, Asansol certifying that Hareram Paswan of Kuardih Colliery was under treatment at their hospital as OPD patient on 02/07/2000 with a history of chest pain, occasional fever, cough and cold and on 16/03/2001 he was examined and found fit for duty is produced as Exhibit M-2.
- (iii) Copy of Notice of Enquiry issued to Hareram Paswan is produced as Exhibit M-3.
- (iv) Copy of enquiry proceeding along with findings is produced as Exhibit M-4.
- (v) Copy of second show cause Notice dated 09/10/2002 is produced as Exhibit M-5.
- (vi) Copy of letter dated 25/11/2002 dismissing the workman from service is produced as Exhibit M-6.

In course of cross-examination witness deposed that the workman absented from 03/07/2000 to 01/02/2001 without prior intimation. Witness denied the suggestion that dismissal of the workman was not legal and justified.

8. On the date fixed for hearing of argument neither the workman nor did the advocate appear before the Tribunal even though Notice was issued at his address. Mr. P. K. Das, learned advocate for the management argued that conduct of the workman

was extremely bad and he had been a habitual absentee for several years, thereby disrupted the production process and work of the company. It is argued that charge sheet was issued to the workman on 01/02/2001 with a clear charge under clause 26.29 of the Certified Standing Order of the company that he was absent from duty without information from 03/07/2000. Workman tried to make misleading statements in his written statement and affidavit-in-chief by stating that he was absent from 03/07/2001. It is further contended that workman participated in the enquiry proceeding and admitted that he was unable to attend duty. Workman Witness deposed that Doctor of Sub-Divisional Hospital, Asansol declared him fit on 16/03/2001 and he reported for duty. Ld. Advocate referring to enquiry proceeding (Exhibit M-3) submitted that workman made false statement before the Tribunal by representing that no departmental enquiry was held though the workman has put signature on enquiry proceeding after his statement and cross-examination. Ld. Advocate for the management submitted that second show cause Notice along with enquiry proceeding were served upon the workman for his response and the workman did not deny receipt of the second show cause Notice. It is argued that enquiry proceeding was held by the Enquiry Officer by following the principle of Natural Justice and the Disciplinary Authority after considering all materials, issued an order dated 28/09/2002, dismissing the workman with immediate effect. It is argued that the enquiry proceeding carried out is consistent with the principle of Natural Justice and the punishment imposed upon the workman is justified. Management urged that they had no option but to dismiss the workman due to his continuous indisciplined and absenting nature.

9. I have considered materials on record, evidence adduced by both parties and the argument advanced on behalf of the management. Charge sheet dated 01/02/2001 is clear of the fact that the workman was absent from duty from 03/07/2000 and not

from 03/07/2001. There are two ingredients of charge levelled against him. Workman duly participated in the enquiry held on 16/03/2001. It appears from evidence of Management Representative that the workman did not inform the management about his illness and did not apply for any leave. Management Representative stated that on previous occasion there were stoppage of three SPRA from 30/04/1999 to 05/06/2000 and warning was given for his unauthorized absence from 10/03/1997 to 05/05/1997. It also appears that attendance of the workman in the year 1998 and 1999 was Nil and in the year 2000 he attended duty for sixteen days. The charged employee did not cross-examine the Management Representative during enquiry. Therefore, the allegation of habitual absence of workman was unrebutted and the same was clearly established against him. In his statement before the Enquiry Officer, charged employee stated that he was having severe chest pain on 02/07/2000 and he was taken to the Sub-Divisional Hospital, Asansol. Medical certificate was issued on 16/03/2001. No document relating to medical treatment was produced by the workman to establish that he actually received medical treatment at the hospital. On a perusal of Exhibit M-2, a certificate said to have been issued by the Superintendent, Sub-Divisional Hospital, Asansol, I find that signature of the patient has not been attested by the Doctor which is contrary to the medical jurisprudence. Certificate has not been issued on the letter head of Sub-Divisional Hospital, Asansol and it is only a typed document. It is stated in the certificate that the workman was treated as OPD patient. There was no certificate to the effect that patient was under treatment from 02/07/2000 to 16/03/2001, therefore, the statement made in the certificate is not found reliable and do not serve any extenuating purpose.

10. Workman in his cross-examination deposed that he would produce documents related to medical treatment issued by the hospital. He further stated that he was admitted in the hospital and thereafter was discharged. In Exhibit M-2, such relevant

fact regarding admission and discharge of patient has not been mentioned. On the contrary, content of certificate clearly contradicted the statement of the workman in his cross-examination since the patient claimed that he was admitted in the hospital. It transpires from the cross-examination of workman witness that his place of work was within two kilometers from his residence. In a span of seven months of absence from duty, workman made no effort to inform the management of the employer company about his illness and inability to attend duty. In this context, it would be appropriate to refer to a decision of Hon'ble High Court of Punjab and Haryana in the case of **Nav Bharat Industries Vs. Presiding Officer and another [2018 LLR 439]**, wherein it was held that if a workman remained absent unauthorizedly for a long time, even due to his illness without informing the management about it, termination of his service by invoking conditions as stipulated in the Certified Standing Orders, is not illegal. It was further held that when the workman does not inform the management about his illness, remaining absent for a long time, presumption drawn by the management that workman has abandoned his job of his own is justified. From the settled position of law, it would emerge that unauthorized absence compounded with non-communication of the reason of absence to the management are unacceptable and workman cannot derive any benefit of doubt. In the instant case it appears to me that the workman habitually remained absent during the previous three years and the management after warning and stopping his annual increments had no option but to initiate a domestic enquiry for his subsequent unauthorized absence. The workman did not rectify his conduct. Reasonable opportunity was given to the workman to represent the case properly and the management produced sufficient evidence to establish their case. Management also issued a second show cause Notice to the workman before taking the ultimate decision of dismissing him from service of the company. Employer company cannot be accepted to bear such mischievous activity of employee for an indefinite period. Therefore, punishment of dismissal of the workman appears to

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be proportionate to the nature of misconduct of the workman. In my view, the workman is neither entitled to reinstatement in service nor any benefit of back wages or consequential benefits.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest against the workman. Dismissed workman is not entitled to any relief of reinstatement in service. Management company is directed to disburse all dues to the workman on account of his past service, if any. Let copies of Award be communicated to the Ministry for information and Notification.

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