

**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 2018

PARTIES: Haripada Majhi
Vs.
Management of Jhanjra 3 and 4 Incline, 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: 29.08.2025

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-22012/132/2017-IR(CM-II)** dated 14.11.2018 has been pleased to refer the following dispute between the employer, that is the Management of Jhanjra 3 and 4 Incline under Jhanjra Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Jhanjra ¾ Incline, Jhanjra Area, M/s. E.C.Ltd. in dismissal of Sri Haripada Majhi, Ex-Haulage Operator of Jhanjra ¾ Incline on the charge of absence due to illness is justified or not? If not, what relief the workman is entitled to? ”

1. On receiving Order **No. L-22012/132/2017-IR(CM-II)** dated 14.11.2018 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 20.11.2018 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.

2. Union filed their written statement on 15.09.2021. Management contested the Industrial Dispute by filing their written statement on 23.12.2022. The fact of the workman's case, in gist is that Haripada Majhi bearing U.M. No. 146804 was employed as Haulage Operator at Jhanjra 3 and 4 Incline under Jhanjra Area of

Eastern Coalfields Limited (hereinafter referred to as ECL). Due to his illness, he was unable to attend his duty. After recovery from illness, he reported for duty and submitted a medical certificate issued by a Doctor at Laudoha Block Primary Health Centre (hereinafter referred to as BPHC). The management of ECL did not allow him to join duty but issued a Charge Sheet against him under Clause 26.29 of the Certified Standing Orders for unauthorized absence beyond ten days. On behalf of the workman, union contended that Haripada Majhi was unable to attend his duty due to his serious illness which was beyond his control. The Haripada Majhi submitted his reply enclosing a copy of Medical Certificate but the management did not consider the same and without giving him ample opportunity to defend his case dismissed him from service. It is contended that the punishment imposed is harsh and disproportionate to the nature of misconduct alleged in the Charge Sheet. It is prayed that the management of employer company be directed to reinstate the workman with full back wages.

3. Management in their written statement submitted that Haripada Majhi was absenting from duty from 16.04.2014 without any information or permission of the competent authority. He did not have any satisfactory cause for his unauthorized absence and the management was compelled to issue a Charge Sheet against him bearing No. AGT/JPC/JNR/3&4/P/2014/268 dated 14.06.2014 for his absence beyond ten days without any sanctioned leave or sufficient cause. Workman submitted his reply and the date for enquiry was fixed upon 22.08.2014. Notice of enquiry was sent to the workman at his home address on the basis of address recorded in the Form 'B' Register but the workman did not appear to take part in the enquiry proceeding. In the meantime, the chargesheeted employee submitted an application with a Medical Certificate before the management on 11.09.2014. the Medical Certificate was issued by the Additional Medical Officer, Laudoha BPHC. The reply was not found satisfactory as he neither submitted any document in support of his treatment nor any prior

information about his absence. The Enquiry Officer held enquiry and found the chargesheeted employee guilty of charge. A second Show Cause Notice was issued bearing No. GM/JNR/PERS/2015/322 dated 18.05.2015 / 01.06.2015, which was sent to the charge employee under registered post with A/D along with Enquiry Proceeding and Enquiry Report to submit his explanation / comments. The reply submitted by the workman against the second Show Cause Notice was not found satisfactory. There was no extenuating circumstance in favour of Haripada Majhi and the management dismissed the workman from service. It is asserted that the charge was duly proved against him and the punishment is proportionate. Management contended that if it is found that the enquiry proceeding was not fair then the same may be decided as a preliminary issue and the management may be granted an opportunity to establish the charge once again.

4. Haripada Majhi filed his affidavit-in-chief and was examined as Workman Witness No. -1. In his affidavit-in-chief he admitted that he was unable to attend his duty from 16.04.2014 and the Charge Sheet dated 14.06.2014 was issued against him. He was absent from duty for one (1) month and twenty-eight (28) days due to illness and after recovery he reported for duty. Original Medical Certificate issued by the Additional Medical Officer, Laudoha BPHC was produced in support of his illness. It is averred that the workman submitted reply to the Charge Sheet but the management without considering the same and permitting the workman to resume duty, initiated a Departmental Proceeding. The workman stated that due to serious illness he was absent from duty and he replied to the second Show Cause Notice along with his mercy application dated 05.06.2015. He also stated that he submitted an undertaking on 07.06.2015 that he will not commit such offence in future. It is further stated that he was dismissed from service in an illegal manner, ignoring the Medical Certificate and the undertaking submitted by him. Workman contended that the principles of natural justice was

violated and claimed that he may be reinstated in service. The workman has produced the following documents during his evidence :

- (i) Copy of the Charge Sheet dated 14.06.2014 has been produced as Exhibit W-1.
- (ii) Copy of the Reply of the workman dated 05.06.2015 to the second Show Cause Notice, as Exhibit W-2.
- (iii) Copy of the Undertaking submitted by the workman, as Exhibit W-3.
- (iv) Copy of the order of dismissal dated 21/27.07.2015, as Exhibit W-4.
- (v) Copy of the Mercy Appeal dated 09.01.2016, as Exhibit W-5.

In his evidence-in-chief the witness deposed that he participated in enquiry held against him for unauthorized absence.

5. In course of cross-examination the witness deposed that he was absent from duty from 16.04.2014 to 14.06.2014. At the time of submitting his reply to the Charge Sheet he attached a medical certificate as a proof of his medical treatment during the period of his absence. Cross-examination of Workman Witness No. 1 reveals that he was diagnosed with liver ailment due to alcohol consumption. The witness admitted that he did not inform the management of ECL that he was absent from duty due to his suffering from illness. It may be derived from his testimony that he did not report to the doctors in the colliery. He denied that his dismissal from service is justified or that he has been dismissed by the management on proper ground.

6. Management examined Mr. Alaric Oneal Lyndem, Manager (Personnel), Jhanjra Project Colliery as Management Witness No. 1. In support of their case the witness filed an affidavit-in-chief wherein it is stated that Haripada Majhi was chargesheeted for his unauthorized absence from 16.04.2014. Initially, he did not submit any reply to the Charge Sheet and a domestic enquiry was initiated. Notice of enquiry was duly sent to the workman at his home address but he did not turn

up before the Enquiry Officer on 22.08.2014. A second Notice of enquiry was issued on 01.09.2014 fixing 26.09.2014 as the date of enquiry. The workman appeared on 11.09.2014 with a reply to the Charge Sheet along with medical certificate issued by the Additional Medical Officer, Laudoha BPHC. The reply of the workman was not found satisfactory and the same did not bear the Registration number of the Doctor nor was it accompanied by any treatment paper. The workman participated in the enquiry held on 26.09.2014, where the workman was found guilty of charge of unauthorized absence. A second Show Cause Notice was issued to the workman along with a copy of Enquiry Proceeding and Report, seeking his comments on findings of the Enquiry Officer. The workman submitted his reply. The Disciplinary Authority after considering the materials and the and the Enquiry Report dismissed the workman by Office Order dated 21/27.07.2015. In course of his evidence the management witness produced the following documents :

- (i) Copy of the Medical Fitness Certificate dated 10.09.2014 issued to Haripada Majhi by the Additional Medical Officer, Laudoha BPHC, Burdwan has been produced as Exhibit M-1.
- (ii) Copy of the Charge Sheet dated 14.06.2014, as Exhibit M-2.
- (iii) Copy of the Notice of enquiry dated 26.07.2014, as Exhibit M-3.
- (iv) Copy of the Notice of enquiry dated 01.09.2014, as Exhibit M-4.
- (v) Copy of the Reply to the Charge Sheet, as Exhibit M-5.
- (vi) Copy of the Enquiry Proceeding, as Exhibit M-6
- (vii) Copy of the Enquiry Report dated 26.09.2014, as Exhibit M-7.
- (viii) Copy of the Note Sheet with details of the employee, prepared after completion of enquiry proceeding, as Exhibit M-8.
- (ix) Copy of the second Show Cause Notice dated 18.05.2015 / 07.06.2015, as Exhibit M-9.
- (x) Copy of the Reply of the workman dated 05.06.2015 against the second Show Cause Notice, as Exhibit-M10.

- (xi) Copy of the order of dismissal dated 21/27.07.2015, as Exhibit M-11.

7. In cross-examination the management witness gave out that the charge was in respect of unauthorized absence of the workman and not for his habitual absence. It is admitted that the workman submitted an undertaking to the General Manager, Jhanjra Area on 07.06.2015 that he will perform his duty faithfully and regularly. On 09.01.2016 the workman submitted a Mercy Appeal which was not considered by the management. The witness denied the suggestion that the punishment imposed is disproportionate to the nature and extent of misconduct.

8. The moot point for consideration is whether the dismissal of the workman on the charge was justified and if the workman is entitled to any relief.

9. Mr. Rakesh Kumar, Union representative, advancing his argument submitted that the workman was absent only for one (1) month and twenty-eight (28) days due to his illness. On being chargesheeted the workman submitted his reply along with a copy of medical certificate issued by a doctor at Laudoha BPHC but without considering the same the Enquiry Officer found him guilty of the charge of unauthorized absence and the Disciplinary Authority dismissed him from service. It is argued that the workman who was compelled to remain absent due to illness cannot be held guilty or punished for his absence which was beyond his control. The union representative contended that there is no charge of habitual absence against the workman and the order of dismissal issued against him is disproportionate to the alleged misconduct. It is urged that the order of dismissal passed against the workman is liable to be set aside and the mercy appeal for reinstatement dated 09.01.2016 (Exhibit W-5) should be considered and the workman reinstated in his service on payment of back wages.

10. In reply Mr. P. K. Das, learned advocate for ECL argued that the workman did not file any treatment papers in support of long and unauthorized absence affecting the work of the employer company. It is argued that the Enquiry Officer and management of ECL had provided reasonable opportunity to the workman to defend his case but no extenuating circumstance was established by the union to justify that the employee was prevented from informing the management about his inability to attend duty. It is argued that a workman remaining absent in unauthorized manner for a long time even due to his illness without informing the management about it, could be terminated from service and the same is just and proper.

11. I have considered the rival contentions of the parties, argument advanced on behalf of the employer and the workman and evidence adduced by the parties. Admittedly, Haripada Majhi, an employee of 3 and 4 Jhanjra Incline, was absent from duty from 16.04.2014 till Charge Sheet was issued to him on 14.06.2014. Copy of the Charge Sheet was sent to the workman at his home address under registered post. The workman admitted receipt of the Charge Sheet and also participated in the enquiry proceeding. It is gathered from the uncontroverted evidence of Management Witness that the workman replied to the Charge Sheet only on 11.09.2014 (Exhibit M-5). In his reply the workman stated that he was seriously ill and received his medical treatment at Laudoha BPHC. He also attached a medical certificate along with his application. The enquiry proceeding had started and the second date for enquiry was fixed on 26.09.2014. The workman did not participate in the enquiry which was initially fixed on 22.08.2014. This implies that the workman actually continued to remain absent for five months till he submitted his reply on 11.09.2014. The enquiry proceeding has been placed in evidence as Exhibit M-6. On a perusal of the same it appears that a management representative was examined and he proved the charge of unauthorized absence against the workman. It was stated by Mr. C. K. Das, the

management representative that the workman submitted sick certificate from 16.04.2014 to 19.04.2014 issued by a private Doctor. The chargesheeted employee did not dislodge the evidence of management representative and did not venture to cross him. During his evidence before the Enquiry Officer the charged employee stated that he was under treatment of Laudoha BPHC from 16.04.2014 to 10.09.2014 due to alcoholic liver disease and could not attend duty as per the advice of the Doctor. The workman did not explain how he received medical treatment simultaneously from a private doctor from 16.04.2014 to 19.04.2014 and from the doctor at the Government Health Centre at Laudoha from 16.04.2014 to 10.09.2014. In cross-examination the workman witness admitted that he did not give any information about his absence. Enquiry Report reveals that the workman attended duty for forty-seven (47) days in the year 2013 and forty-three (43) days in the year 2014. Since no charge of habitual absence was levelled against the workman the Enquiry Report regarding attendance of the workman during 2013 and 2014 is inconsequential. The Enquiry Officer in his report dated 26.09.2014 (Exhibit M-7) held that the charge of unauthorized absence under Clause 26.29 of the Certified Standing Orders was established against the workman. Management issued a second Show Cause Notice (Exhibit M-9) seeking his comments about the findings of the Enquiry Officer. The charged employee submitted his reply to the second Show Cause Notice on 05.06.2015 (Exhibit M-10). The management having considered relevant materials issued an Office Order dated 21/27.07.2015 (Exhibit M-11), whereby the reply submitted by Haripada Majhi was not found satisfactory as he did not submit any treatment paper in proof of his serious illness and the workman was dismissed from service due to his unauthorized absence. The enquiry proceeding was held complying the principles of natural justice. The Disciplinary Authority granted reasonable opportunity to the charged employee to establish his defense case and justify his absence from duty for a long period. It appears to me that there was no irregularity or illegality in the manner of holding the enquiry proceeding. In the case of

Madhya Pradesh Electricity Board vs Jagdish Chandra Sharma [2005 (3) SCC 401], the Hon'ble Supreme Court of India observed that when an employee breaches such discipline and the employer terminates his services, it is not open to a Labour Court or an Industrial Tribunal to take the view that the punishment awarded is shockingly disproportionate to the charge proved unless the findings of the Enquiry Officer are perverse, without any evidence and is based on erroneous consideration of the evidence and materials available on record. In the present case the Enquiry Officer observed the principles of natural justice at the time of holding the enquiry proceeding and held the charged employee guilty of the charge of unauthorized absent from more than ten days on the basis of evidence and materials available. Therefore, by no stretch of imagination the findings of Enquiry Officer can be said to be perverse or liable to be set aside. It is true that Haripada Majhi produced a medical certificate purportedly issued by the Additional Medical Officer, Laudoha BPHC (Exhibit M-1). In course of cross-examination of the workman witness, no suggestion was put to him that the workman did not undergo medical treatment at BPHC or that the document produced by him along with the reply to the Charge Sheet was a forged document. At this juncture it is necessary to consider whether the workman can be reprieved for his unauthorized absence on a plea that absenting from duty was beyond his control. To deal with this issue it would be pertinent to refer to a decision of the 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 the workman is duty bound to

inform the management about his remaining absent even on account of his illness if the circumstance does not create any justified hurdle in it. In the case under consideration the workman remained absent for a long time without any information. The workman under such condition loses his reliability and predictability to the employer. Turning up with a medical certificate after issuance of Charge Sheet cannot entitle the workman to any benefit. It appears to me that the management committed no illegality by passing order of dismissal to the workman. I, therefore hold that the decision of the management is appropriate and legal and the same calls for no interference and the Industrial Dispute is liable to be dismissed.

Hence,

ORDERED

that the Industrial Dispute raised on behalf of the Haripada Majhi is dismissed on contest. The workman is not entitled to be reinstated in service. The management of Eastern Coalfields Limited is directed to disburse all legal dues to the dismissed workman for his past service within two (2) months from the date of communication of the Award. 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.