

**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 2022

PARTIES: Dilip Bouri
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: 27.01.2025

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-22012/61/2022-IR(CM-II)** dated 28.06.2022 has been pleased to refer the scheduled 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 M/s. Eastern Coalfields Ltd. in relation to its Khas Kajora Colliery under Kajora Area in imposing a punishment of dismissal on Shri Dilip Bouri, Ex-U.G. Dresser (U.M.553468) Khas Kajora Colliery under Kajora Area w.e.f. 31.07.2017 is proper, justified and legal? If not, to what relief the workman is entitled to? ”

1. On receiving Order **No. L-22012/61/2022-IR(CM-II)** dated 28.06.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 11.07.2022 / 01.08.2022 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 and a list of witnesses.

2. The aggrieved workman being represented by the President, Koyala Mazdoor Congress, filed written statement on 25.10.2022. Mr. P. K. Das, learned advocate for the management of ECL filed written statement on 06.01.2023. In a

nutshell, the fact of the case disclosed in the written statement of the union is that Dilip Bouri was posted as an Underground Dresser bearing U.M. No. 553468 at Khas Kajora Colliery under Kajora Area of Eastern Coalfields Limited (hereinafter referred to as ECL). He was unable to attend his duty from 01.10.2016 due to his illness and was under medical treatment at a Health Centre at Kahndra run by West Bengal Government. He was unable to inform the management about his absence from duty. After recovery from his illness, he reported for duty to the Manager of the Colliery but he was not allowed to join. A Charge Sheet was issued to him on 03.02.2017 on the charge of unauthorized and habitual absence. The workman replied to the Charge Sheet and submitted documents related to his treatment at the Health Centre. The management not finding the same satisfactory decided to conduct a Domestic Enquiry. The workman participated in the Enquiry Proceeding, where he disclosed that he had no intention to remain absent but had failed to attend his duty due to illness, thus his absence was beyond his control. The Enquiry Officer found him guilty of misconduct and on the recommendation of the colliery management, the General Manager imposed a punishment of dismissal against him by Order bearing Reference No. ECL/KA/APM/C-6/10/1319 dated 31.07.2017. After receiving the order of dismissal, the workman submitted an application and prayed for mercy but the same was not considered by the management and he was not allowed to join his duty.

3. It is inter-alia stated in the written statement that the workman had remained absent from duty for a period of three months and two days i.e., from 01.10.2016 to 03.02.2017 but he was awarded a disproportionate punishment of dismissal for his misconduct. Further case of the workman is that while working as Underground Dresser he was required to perform hazardous job which involves dressing of roof and side of the coal face after blast. Due to such dangerous nature of job the workman requested the management for deploying him in other job

according to his physical condition but the management did not consider his prayer and he started suffering from illness for which he was unable to attend his duty properly. The workman contended that he has no source of income for sustaining his family and his case should be considered sympathetically and on humanitarian ground. The management of ECL in their Memorandum of Settlement before the Regional Labour Commissioner (Central), Asansol dated 22.05.2007 had agreed to consider the mercy appeals of the dismissed employees who absented from duty up to nine months and were below the age of forty-five years on the date of dismissal. It is urged that the management should consider the mercy petition submitted by Dilip Bouri and prayed for his reinstatement with full back wages with all consequential benefits.

4. Management contested the case by filing a written statement. It is admitted that Dilip Bouri was a permanent employee at Khas Kajora Colliery under ECL and was designated as Underground Dresser and his date of birth is 28.02.1972. According to the management Dilip Bouri was a habitual absentee and he remained absent from duty on various pretexts. The workman was reprimanded on several occasion but he did not improve his conduct. The workman had remained absent from his duty from 01.10.2016 without any information or authorized leave. The management accordingly issued a Charge Sheet against the workman, bearing Ref. No. KKC/P&IR/C-6/CS/17/162 dated 03.02.2017 under Clause 26.23 of the Certified Standing Orders for his habitual absence from duty without sufficient cause and under Clause 26.29 of Certified Standing Orders for absence beyond ten days without sanctioned leave or sufficient cause or overstaying beyond sanctioned leave without valid reason. The matter was referred to domestic enquiry and the workman participated in the enquiry held on 26.06.2017. Principles of natural justice were followed and full opportunity was given to the workman for defending himself. In course of proceeding both the charges of habitual and unauthorized absence are proved against the workman

beyond doubt. A second Show Cause Notice was issued to the workman. The charged employee has replied against the second Show Cause Notice, which was not found satisfactory. On the basis of the findings of the Enquiry Officer the General Manager, Kajora Area dismissed the workman by his letter dated 31.07.2017.

5. It is further case of the management that Dilip Bouri was a habitual absentee and during the previous five years he attended duty for 43 days in the year 2012, Nil attendance in the year 2013, 154 days in the year 2014, 167 days in the year 2015 and 129 days in the year 2016. The management asserted that absenteeism is a serious misconduct and it hampers the work of the employer and production process. The concerned workman did not improve his performance in respect of physical attendance before his dismissal. The management placed reliance upon the decisions of the Hon'ble Supreme Court of India in the case of **Union of Inda and Others Vs. Bishamber Das Dogra [C.A. No. 7087 of 2002]**, **Burn and Company Limited Vs. Wormless [AIR 1959 SC 529]** and **L & T Komatsu Limited Vs. N. Udaykumar [(2008) 1 SCC 224]** which found habitual absenteeism as gross violation of discipline. Reliance has been placed upon the decision of the Hon'ble Supreme Court of India in the case of **Delhi Transport Corporation Vs. Sardar Singh [C.A. No. 960 of 2003]** wherein it was observed that habitual absence in fact establishes lack of interest in work. The management also relied upon a decision of the Hon'ble High Court at Calcutta in the case of **Dayanand Paswan Vs. Coal India Limited and Others [W.P. No. 874 of 2014]**, where by order dated 19.05.2016 the Hon'ble Court observed that *"...The conduct and attitude of the petitioner appears to have been extremely casual and cavalier. In the judgment and order dated 20 April, 2016 delivered on WP No. 800 of 2014 (Some Majhi-vs.-Coal India Ltd.) this court emphasised that an employee must take his duty seriously. He cannot take his employment for granted. He must follow the rules and regulations of the employer company. He must conduct*

himself in a disciplined manner. He must perform his duties with responsibility. An employee should adhere to discipline not only for personal excellence but also for the collective good of the organization which he serves...”

Warning letters were issued to him on fourteen (14) instances. There was stoppage of two increments by order dated 21.09.2006, demotion to next lower category in Category – III by order dated 17.07.2007, stoppage of three increments by order dated 18.03.2008, stoppage of three increments by order dated 10.09.2012, and stoppage of three increments by order dated 23.03.2014. In spite of past punishments imposed against him the workman did not improve his conduct and performance. He did not care to attend his duty and was a job deserter. The management urged that any accommodation granted to the charged employee would amount to misplaced sympathy and claimed that punishment awarded against the ex-workman is proportionate and the decision of the management was not arbitrary in any way. The management prayed for dismissal of the Industrial Dispute.

6. The short point for consideration before this Tribunal is whether dismissal of Dilip Bouri from his service at Khas Kajora Colliery w.e.f. 31.07.2017 is proper, justified and legal? If not, to what relief the workman is entitled to?

7. In order to prove their case union has examined Dilip Bouri as Workman Witness No. 1. He has filed his affidavit-in-chief reproducing the entire case in their written statement. In Paragraph-11 of the affidavit-in-chief the workman stated that the total period of his absence from duty was only four (4) months from 01.10.2016 to 03.02.2017, which was due to his illness. The workman also stated that he requested the management to depute him for some other job suiting his physical condition but his request was not considered. The workman produced the following documents in support of his case :

- (i) Copy of the Identity Card of Dilip Bouri issued by the management is produced as Exhibit W-1.

- (ii) Copy of Charge Sheet dated 03.02.2017, as Exhibit W-2.
- (iii) Copy of Reply dated 03.06.2017 against the Charge Sheet, as Exhibit W-3.
- (iv) Copy of Medical Certificate dated 02.06.2017, as Exhibit W-4.
- (v) Copy of Note Sheet dated 20/21.07.2017, as Exhibit W-5.
- (vi) Copy of Mercy Appeal dated 11.08.2017, as Exhibit W-6.

8. The management examined Mr. Proloy Dasgupta, Manager (Personnel), Khas Kajora Colliery as Management Witness No. 1 and filed his affidavit-in-chief. In the affidavit-in-chief the management witness stated that the charged workman participated in the Enquiry Proceeding held on 26.06.2017. The Enquiry Proceeding held following the principles of natural justice and full opportunity was given to the workman to defend himself. The charge of habitual and unauthorized absence were established against the workman and a second Show Cause Notice dated 04.07.2017 was issued. The chargesheeted employee submitted his reply to the second Show Cause Notice which is not found satisfactory. The General Manager, Kajora Area by letter dated 31.07.2017 dismissed the workman on the basis of the findings of the Enquiry Officer. It is further stated that absenteeism is a serious misconduct which hampers the work of the employer. The workman did not improve his performance for which the management is unable to keep his name in the roll of the company indefinitely. It is also stated that the dismissal of the workman from service is justified. Management produced the following documents in support of their case :

- (i) Copy of Charge Sheet dated 03.02.2017 is produced, as Exhibit M-1.
- (ii) Copy of Reply dated 03.06.2017 against the Charge Sheet, as Exhibit M-2.
- (iii) Copy of Letter of appointment of the Enquiry Officer dated 13.06.2017, as Exhibit M-3.
- (iv) Copy of Notice of enquiry dated 19.06.2017, as Exhibit M-4.

- (v) Copy of Enquiry Proceeding dated 26.06.2017, as Exhibit M-5.
- (vi) Copy of Enquiry Report dated 26.06.2017, as Exhibit M-6.
- (vii) Copy of 2nd Show Cause Notice dated 04.07.2017, as Exhibit M-7.
- (viii) Copy of Reply dated 13.07.2017 against the 2nd Show Cause Notice, as Exhibit M-8.
- (ix) Copy of Order of dismissal dated 31.07.2017, as Exhibit M-9 and M-9/1.
- (x) Copies of past warnings and punishments imposed upon the workman are marked as Exhibit M-10 collectively.
- (xi) Copy of Note Sheet dated 20/21.07.2017, as Exhibit M-11.

9. In his cross-examination the management witness deposed the chargesheeted employee submitted his treatment papers from the Medical Officer, BPHC, Khandra (Ukhra) along with his reply against Charge Sheet. The witness further stated that the second Show Cause Notice issued was place before the Competent Authority before dismissal of the workman and the same is reflected in the Note Sheet dated 20/21.07.2017.

10. In the backdrop of the facts and circumstances of the case and the evidence adduced by the dismissed employee and the management witness, the stage is now set for considering whether the dismissal of the workman from service is justified or not. Mr. Mr. Rakesh Kumar, Union representative argued that the workman was suffering from illness due to which he was prevented from attending his duty, which was beyond his control. It is further submitted that the workman had no intention to remain absent from duty and the punishment of dismissal from service is disproportionate to the nature of wrong / misconduct alleged against him. Mr. Kumar argued that the management has denied to consider the mercy petition filed by the workman in violation and contrary to the Memorandum of Settlement dated 22.05.2007, which was signed by the management

representative, assuring that the cases of dismissed workmen would be considered on fulfilling the terms of settlement.

11. Mr. P. K. Das, learned advocate for the management took me through the evidence of past habitual absence of the workman for which he had been warned and punished. It is argued that the workman is a chronic absentee and his past record in service is unsatisfactory. From the cross-examination of the workman, it is pointed out that the workman has clearly admitted that from the year 2012 to 2016 he never attended duty for 190 days in any of the year, which is the minimum period for performing continuous service in underground job. It is also pointed out that in the year 2013 the workman did not attend his duty even for a single day. Learned advocate submitted that there were cogent reasons for the management to initiate a Domestic Enquiry against the workman for his unauthorized and habitual absence and he failed to adduce any evidence disclosing plausible reasons for his absence. In response to workman's claim of having undergone medical treatment from 01.10.2016 till 03.02.2017, it is urged that the workman after issuance of Charge Sheet on 03.02.2017 managed to obtain a medical certificate from the Medical Officer, BPHC, Khandra (Ukhra), which was issued on 02.06.2017 and he was advised medical treatment / investigation / rest for the period and he was fit to join his duty on 03.06.2017. Learned advocate argued that no treatment paper nor investigation report has been produced by the workman for the period from 03.10.2016 to 02.06.2017, during a long time period of eight months. Therefore, there is no reason to place reliance upon the copy of Medical Certificate, which does not find support from any other document. Mr. P. K. Das, learned advocate referred to the cross-examination of the workman witness where he admitted that the Enquiry Officer provided him with reasonable and fair opportunity to contest the charge levelled against him and the Enquiry Officer found him guilty of the charge. The Competent Authority after considering the Enquiry Report as well as the second

Show Cause Notice and reply submitted by the workman found it appropriate to impose a punishment of dismissal from service. It is argued that a workman should be disciplined in rendering his service to the employer establishment. Frequent absence in habitual manner disrupted the purpose of employment and hampered the production process. Therefore, the workman deserved no sympathy after availing several opportunities on earlier occasion. According to the management the punishment of dismissal of Dilip Bouri from service is proportionate to his repeated misconduct and long absence from duty.

12. It appears to me that the workman had absented on several occasions in the past and also remained absent for more than four months at a stretch without any intimation or authorization from the Competent Authority of the Colliery. The Charge Sheet (Exhibit W-2) clearly states the number of days he attended duty during the period from 2012 to 2016. The workman submitted his reply to the Charge Sheet after four months which has been produced as Exhibit W-3. Issuance of Charge Sheet, seeking explanation within seventy-two hours from the workman is not a matter to be taken lightly. The workman did not deny service of Charge Sheet upon him. Therefore, it was incumbent upon the workman to come out with a prompt reply disclosing the reasons of his unauthorized absence. It took him four months to reason out his absence and the workman approached the Medical Officer, BPHC, Khandra (Ukhra), Burdwan for obtaining a Medical Certificate after receipt of Charge Sheet to suit his purpose. No supportive document has been produced by him to prove that he was actually under medical treatment at any point of time. No document relating to his prognosis or diagnosis by any doctor nor any investigation report has been produced before the Enquiry Officer or before this Tribunal in support of his illness. The doctor has not been examined to support the case of the workman.

13. Under such circumstance I hold that the Enquiry Officer was justified in

not placing reliance upon the Medical Certificate. The Domestic Enquiry was held on 26.06.2017 and the Enquiry Proceeding in two pages have been produced as Exhibit M-5 collectively and the Report of the Enquiry Officer as Exhibit M-6. The finding reveals that the workman participated in the Enquiry Proceeding and was given full opportunity to defend himself. The Enquiry Officer has considered the materials produced before him in course of the enquiry proceeding and the past punishment records of the workman including the period of absence from duty for the period from 2012 to 2016. The Competent Authority thereafter issued a second Show Cause Notice, seeking explanation from the charged employee about the findings of Enquiry Officer. The second Show Cause Notice is produced as Exhibit M-7 and the reply of the workman as Exhibit M-8. The General Manager of Khas Kajora Colliery issued order of termination of service of Dilip Bouri w.e.f. 27.07.2017 (Exhibit M-9 and M-9/1). It appears from the relevant documents produced in the evidence that the reason is rife for termination of service of the workman due to his habitual and unauthorized absence without any information. The conduct of the workman adversely affected the working atmosphere and hampered the production process of the employer. The management had granted several opportunities to the workman in the past but he failed to improve his conduct. I therefore, find no mitigating circumstance to hold that the punishment imposed is disproportionate to the nature of misconduct committed. The punishment imposed by the management is found proportionate to the indiscipline and irresponsible act on the part of the workman, who deserves no sympathy. I find no incongruity in the Enquiry Proceeding which has been conducted following the principles of natural justice. In view of my above discussion, I find no merit in the Industrial Dispute raised by the union and the same is dismissed on contest.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest. I find no merit in the dispute raised against the order of termination of service against Dilip Bouri. The impugned order issued by the General Manager, Kajora Area, Eastern Coalfields Limited bearing Reference No. ECL/KA/APM/C-6/10/1319 dated 31.07.2017 calls for no interference. 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 and Employment, Government of India, New Delhi for information and Notification.

Sd/-

(ANANDA KUMAR MUKHERJEE)

Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.