

**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. 33 OF 2022**

**PARTIES:** Bijoy Hansda  
dependent son of Late Rabi Majhi  
**Vs.**  
Management of Central Kajora Colliery of ECL

**REPRESENTATIVES:**

For the Union/Workman: Mr. Milan Kumar Bandyopadhyay, Adv.  
For the Management of ECL: Mr. P. K. Das, Adv.

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 21.12.2023

**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-22012/69/2022-IR(CM-II)** dated 15.07.2022 has been pleased to refer the following dispute between the employer, that is the Management of Dhemomain Group of Mines of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“Whether the demand raised by Union i.e. Bharatiya Mazdoor Sangh against the management of Central Kajora Colliery, Kajora Area, M/s. E.C. Ltd. in not providing employment on compassionate ground under the provisions of NCWA to Sri Bijoy Hansda dependent son of Late Rabi Majhi is proper, legal and justified? If yes, to what relief Sri Bijoy Hansda dependent son of Late Rabi Majhi is entitled?”*

1. On receiving Order **No. L-22012/69/2022-IR(CM-II)** dated 15.07.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 33 of 2022** was registered on 19.07.2022/01.08.2022 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. Mr. Milan Kumar Bandyopadhyay, learned advocate for Bijoy Hansda and Mr. P. K. Das, learned advocate for the management of ECL have appeared on 25.10.2022 and both parties filed their written statement on 10.01.2023.

3. The fact of the case as disclosed in written statement filed by Bijoy Hansda, the son of Late Rabi Majhi, through the union is that Rabi Majhi was a permanent employee at Central Kajora Colliery, having U.M. No. 553730 and was posted as Line Mistry. Rabi Majhi died on 15.05.2019 and Bijoy Hansda his dependent son submitted an application on 30.07.2019 claiming employment under Eastern Coalfields Limited (hereinafter referred to as ECL) on compassionate ground as per provision of National Coal Wages Agreement Limited (hereinafter referred to as NCWA). After scrutiny of the claim and the documents filed by the petitioner, the management in their letter No. ECL/CKC/P&IR/C-6/2019/2041 dated 14.08.2019 informed Bijoy Hansda that there were some discrepancies in the claim application and advised him to submit the same after rectification. On 14.11.2019 Bijoy Hansda went to submit a fresh application claiming employment after rectification of the discrepancies but the management refuse to receive the application on the ground that Late Rabi Majhi was terminated from service on 16.01.2019 due to his prolonged unauthorized absence since 26.12.2014. A letter to that effect was issued by the Chief Manager(M)/ Agent, Central Kajora Colliery dated 11.11.2019.

4. It is further contended that the management manipulated their records to establish that Late Rabi Majhi was removed from service prior to his death. According to the petitioner his father Late Rabi Majhi was a psychiatric patient and was under treatment of Dr. S. C. Biswal, a renowned Psychiatrist. It is submitted that Rabi Majhi replied to the Charge Sheet bearing No. CKC/P&IR/C-6/19/2015/194 dated 28.01.2015 along with documents showing continuation of his medical treatment. It is urged the Rabi Majhi could not attend his duty as he was suffering from mental illness and he stated the same in his reply to the Charge Sheet issued against him. The petitioner claimed that Late Rabi Majhi's absence from duty was not willful and does not amount to misconduct. It is further indicated that the last working date of Late Rabi Majhi was 25.12.2014

and the Charge Sheet was issued on 28.01.2015. Therefore, the absence of duty was for thirty-four (34) days on medical ground but the management did not allow him to join duty. It is contended that no Notice of Enquiry was served upon the workman and an ex-parte enquiry was conducted which amounts to gross injustice. According to the petitioner no Show Cause Notice nor any order of dismissal was served upon Rabi Majhi during his lifetime and all such documents are manufactured and fabricated. In order to coverup the laps on the part of the management by not providing employment to the dependent according to the provisions of NCWA, the management removed Late Rabi Majhi from service prior to his death. The workers' union urged that Smt. Sukurmoni Mejhain, the wife of the deceased workman has been paid Group Gratuity amounting to Rs. 1,54,630/-, which is only paid in case of death of workman while in service. thereby the competent authority approved payment of gratuity after being satisfied that Rabi Majhi has expired while in service. It is contended that the action of the management in not providing employment to the dependent of Late Rabi Majhi is bad in law and the act of dismissing Rabi Majhi from service by subsequent issuance of letter of dismissal was against the principles of natural justice and is required to be treated as void.

5. The management of ECL in their written statement stated that due to absence from duty on and from 26.12.2014 Rabi Majhi was charge sheeted on 28.01.2015. He did not submit any reply to the Charge Sheet. The matter was referred for Domestic Enquiry and Notice of Enquiry was served several times but the workman did not appear to participate in the Enquiry Proceeding. Finally, an ex-parte proceeding was conducted and concluded on 27.12.2017, in which the charge of unauthorized absence from duty was proved without doubt. On the basis of such findings of the Enquiry Officer the General Manager of Kajora Area in his letter ECL/KA/APM/C-6/2019/10/951 dated 16.01.2019 dismissed Rabi Majhi from service. On 14.06.2019 the dependent son of Late Rabi Majhi applied

for employment against the death of his father. The claim for employment of son of Rabi Majhi was regretted by the management as Rabi Majhi had been removed from the service of the company before his death and the same was communicated to him by letter No. ECL/CKC/P&IR/C-6/2019/2718 dated 01.11.2019. The management claimed that the son of Late Rabi Majhi is not entitled to any relief as his father had been dismissed from company's service prior to his death.

6. Bijoy Hansda has been examined as Workman witness – 1. He has filed an affidavit-in-chief wherein he had admitted that his father had received Charge Sheet but had no information regarding the domestic enquiry nor did he receive any Second Show Cause Notice and his father expired while he was in service. In support of the case several documents have been produced by the dependent of the workman which are as follows :

- (i) Photocopy of the Death Certificate of Rabi Majhi, marked as Exhibit W-1.
- (ii) Photocopy of the application submitted by Bijoy Hansda claiming employment dated 30.07.2019, marked as Exhibit W-2.
- (iii) Photocopy of the Reply dated 14.08.2019 issued by the company asking him for removal of discrepancy in the Employment Proposal, marked as Exhibit W-3.
- (iv) Photocopy of the letter dated 11.11.2019 issued by Chief Manager (M)/Agent, Central Kajora Colliery informing that Rabi Majhi has been removed from service on 16.01.2019, marked as Exhibit W-4.
- (v) Photocopy of the documents relating to the medical prescription and treatment, marked as Exhibit W-5 series (W-5 to W-5/15).

7. In cross-examination the witness admitted that his father absented from duty for four (4) years from 25.12.2014. he stated that they were not aware that any Departmental Enquiry was initiated against his father or any ex-parte enquiry

was conducted or he was dismissed from service w.e.f. 16.01.2019. The workman witness (WW-1) produced a letter dated 30.07.2019 as (W-2) issued by him, addressed to the Sr. Manager (Min), Central Kajora Colliery, which bears a seal of receipt. From letter dated 14.08.2019 issued by Personnel Executive, Central Kajora Colliery (W-3), it is gathered that the management returned the employment proposal asking him to resubmit the same after clarifying the discrepancy that in the Indemnity Bond the name of workman was mentioned as Late Rabi Majhi @ Hansda but in the office records his name was mentioned as only Rabi Majhi. The management did not raise any objection / disowned issuance of letter dated 14.08.2019.

8. Management examined Mr. Proloy Dasgupta as Management witness -1. In his affidavit-in-chief the witness stated that Charge Sheet was issued to Rabi Majhi for his unauthorized absence from duty from 26.12.2014 but Rabi Majhi did not submit any reply to the Charge Sheet nor did he appear in the Enquiry Proceeding as such finally an ex-parte enquiry was concluded on 27.12.2017 and the charge was proved on the basis of the findings of the enquiry. Workman was dismissed from service by the order of the General Manager dated 16.01.2019. It is also stated that the claim for employment by the dependent of Late Rabi Majhi was regretted by the management through their letter dated 01.11.2019. Management produced the following documents in support of their case:

- (i) Photocopy of the Charge Sheet dated 28.01.2015, marked as Exhibit M-1.
- (ii) Photocopy of the Notice of Enquiry dated 27.06.2017, marked as Exhibit M-2.
- (iii) Photocopy of the Notice of Enquiry dated 29.09.2017 bearing Left Thumb Impression of Smt. Sukurmoni Mejhain, marked as Exhibit M-3.
- (iv) Photocopy of the Enquiry Proceeding dated 22.02.2016 in six pages collectively, marked as Exhibit M-4.

- (v) Photocopy of the Enquiry Report dated 15.02.2018 in four pages collectively, marked as Exhibit M-5.
- (vi) Photocopy of the Second Show Cause Notice dated 12/17.11.2018, marked as Exhibit M-6.
- (vii) Photocopy of the Order of dismissal dated 16.01.2019 issued by the General Manager of Kajora Area, marked as Exhibit M-7.
- (viii) Photocopy of the Death certificate of Rabi Majhi, marked as Exhibit M-8.
- (ix) Photocopy of the letter dated 11.11.2019 regretting the claim for the compassionate employment, marked as Exhibit M-9.

9. In his cross-examination the witness stated that the Second Show Cause Notice was not served upon the employee but it was served upon his wife. The witness could not state as to who served the Second Show Cause Notice and Notice of enquiry to the wife of Late Rabi Majhi. It appears from such evidence that the onus of proof regarding service of Second Show Cause Notice and Notice of enquiry could not be discharged by the management. Though management has claimed that Rabi Majhi had been dismissed from service prior to his death, it transpires from Exhibit W-3, a letter dated 14.08.2019 issued by the management to the dependent of Late Rabi Majhi that management at the first instance considered the claim for employment against the death of Rabi Majhi and indicated that there were some discrepancies regarding name of the workman appearing in the Indemnity Bond.

10. Let us now consider whether the decision of the management in not providing employment to Bijoy Hansda on compassionate ground against the death of Rabi Majhi is legal and justified.

11. Mr. Milan Kumar Bandyopadhyay, learned advocate for the petitioner

advancing his argument in support of the claim for compassionate appointment for the son of Rabi Majhi submitted that the dismissal order of Rabi Majhi from his service is arbitrary and in violation of natural justice as the purported proceeding was conducted without service of Notice of enquiry, Second Show Cause Notice and without informing the outcome of the enquiry. The second fact of his argument is that Rabi Majhi was under medical treatment for his mental problem under Dr. S. C. Biswal, Psychiatrist who treated Rabi Majhi from 20.12.2014 for his mental illness until he died on 15.05.2019. The death certificate of the workman is produced as Exhibit W-1. It is contended that during his illness he was never informed about any domestic enquiry proceeding and no order of dismissal was ever served upon him during his lifetime. Learned advocate referring to the Enquiry Report produced by the management as Exhibit M-5, pointed out that the purported enquiry was based upon a Charge Sheet dated 28.01.2015 (Exhibit M-1) and the last and the final Notice of enquiry dated 27.06.2017 (Exhibit M-2) disclosed that the date of enquiry was fixed on 21.08.2017 at 10.00 am. Referring to the Enquiry Report learned advocate argued that if the Enquiry Officer deemed it fit to issue a last and final Notice of enquiry on 27.06.2017, it implies that the earlier notice were not served upon the charged employee. However, the Enquiry Report (Exhibit M-5) indicates that the first date of enquiry was 22.02.2016 and second hearing was conducted on 31.03.2016. Furthermore, contention of the petitioner's advocate is that the enquiry proceeding could not have been held on 22.02.2016 and 31.03.2016 without serving any Notice of enquiry disclosing dates of such enquiry. Learned advocate urged that the entire Enquiry Proceeding was a table- work which would be evident from the fact that there was an unexplained gap of one and a half years between the second and third date of enquiry. It is vehemently argued that not a single witness has been examined in the Domestic Enquiry and the management of ECL has miserably failed to prove the charge against the workman who was prevented from attending his duty due to prolonged illness. According to learned

advocate for the petitioner there is no evidence on record to prove that the workman was ever informed about his dismissal during his lifetime. Drawing my attention to the Second Show Cause Notice (Exhibit M-6) learned advocate argued that the thumb impressions on the Second Show Cause Notice and the letter of dismissal dated 16.01.2016 does not belongs to Smt. Sukurmoni Mejhain and the said documents were never served upon the workman. It is argued that the MW-1 failed to prove that the Notice of enquiry, Second Show Cause Notice or the order of dismissal were served upon Rabi Majhi. Therefore, the order of dismissal of Rabi Majhi dated 16.01.2019 is arbitrary, violative of natural justice and cannot be sustained under the law. It is argued that only after Late Rabi Majhi's son applied for compassionate appointment these documents have been prepared by the management to deny the right of compassionate appointment of Bijoy Hansda, which accrued in his favour under Clause 9.5.0 of NCWA-VI.

12. Controverting the claim for compassionate appointment of Bijoy Hansda, Mr. P. K. Das, learned advocate for the management of ECL argued that the Charge Sheet was served upon the workman and the same is admitted by WW-1 in his evidence-in-chief. The witness claimed that his father submitted reply against the Charge Sheet along with medical prescription but the fact is that the workman did not respond to the Charge Sheet and the union failed to produce any document to establish that the charge levelled against Rabi Majhi was denied by him by submitting any reply nor any information was given to the management about the reason of his absence. Learned advocate argued that due process was observed in holding Domestic Enquiry and Notice of enquiry, Second Show Cause Notice and Order of dismissal were served upon the wife of the workman for his habitual absence from duty and remaining absent for a long period of more than ten days. Learned advocate for the management asserted that Rabi Majhi was dismissed from his service by the General Manager of Kajora Area on being satisfied that the charge of unauthorized absence and habitual absenteeism as

per provisions of Certified Standing Order had been proved against him. Management ordered for removal of Rabi Majhi from service w.e.f. 16.01.2019. The workman was not in the role of employment of the company at the time of his death on 15.05.2019. Therefore, the prayer for compassionate appointment by the son of Rabi Majhi was regretted. It is argued that the claim for compassionate appointment cannot succeed as there was no employer-employee relation between ECL and Rabi Majhi at the time of his death. The Industrial Dispute is therefore liable to be dismissed.

13. I have carefully considered the facts and circumstances of the case, evidence produced by the parties as well as argument advanced by the learned advocates for the respective parties in support of the case. Admittedly, Rabi Majhi was a permanent employee under the management of ECL at Central Kajora Colliery bearing U.M. No. 553730. Due to his absence from duty a Charge Sheet was served upon him alleging gross misconduct under Section 26.23 and 26.29 of the Certified Standing Order of ECL for his unauthorized absence from duty for 26.12.2014 till 28.01.2015 and also for his habitual absence during the previous years, 2012, 2013, and 2014. There is no qualm that Rabi Majhi was absent from his duty and the Charge Sheet was served upon him. Bijoy Hansda, workman witness (WW-1) in his examination-in-chief deposed that Charge Sheet was issued to his father and he submitted a reply of the Charge Sheet along with copy of medical prescriptions to show that his father was under medical treatment. In cross-examination the witness replied that he was unable to produce document to show that his father had replied to the Charge Sheet. Since no copy of reply to the Charge Sheet was produced by the son of Rabi Majhi it would be presumed that the workman did not submit any reply to the Charge Sheet. The stage was therefore set for holding Domestic Enquiry. The management of ECL has miserably failed to adduce any evidence to prove that the Notice of enquiry was served upon Rabi Majhi or any adult member of his family through registered post

or through any person. Under such circumstances the management cannot derive any benefit by producing copies of bare Notice of enquiry to show that prior Notice of enquiry was issued to Rabi Majhi fixing dates for enquiry. The Enquiry Report (Exhibit M-5) reveals that even before the last and final notice of Domestic Enquiry was issued on 27.06.2017 (Exhibit M-2) fixing 21.08.2017 as the date for enquiry, the Enquiry Officer held first hearing on 22.02.2016 and second hearing on 31.03.2016 despite the fact that no evidence of service of notice upon Rabi Majhi has come forth. A separate Notice of ex-parte hearing dated 29.09.2017 was issued fixing 27.12.2017 as the next date for enquiry. The said notice bears a thumb impression which has been described as L.T.I. (Left Thumb Impression) of Smt. Sukurmoni Mejhain. The thumb impression on the Notice has been marked as Exhibit M-3 with objection. The management witness (MW-1) failed to state as to who served the Notice on the wife of Rabi Majhi. When the question of service is under challenge the management has to discharge the burden of proof by examining the person in whose presence the Notice was served and the thumb impression identified. In the instant case no such evidence has been adduced. It further transpires from the Enquiry Report (Exhibit M-5) that no management representative was examined in this case to adduce any evidence and the finding has been arrived at without examining the person producing colliery documents regarding attendance. Management has also failed to explain why there was a delay of one and a half years between second and third date of holding enquiry. It is strange to find that the Notice of ex-parte enquiry dated 29.09.2017 (Exhibit M-3), Second Show Cause Notice dated 12/17.11.2018 (Exhibit M-6), Order of dismissal dated 16.01.2019 (Exhibit M-7) bears thumb impressions which are described as "L.T.I of Sukurmoni Mejhain" all in the handwriting of the same person. It cannot be a matter of coincidence that the same person took the L.T.I on these three documents on different dates and yet the management of the company failed to examine such person nor the documents bear his signature. In my considered view the finding of the said Domestic Enquiry arrived at without

service of Notice of enquiry, Second Show Cause Notice, Enquiry Report, and Order of dismissal upon the charged employee during his lifetime is an arbitrary act, violative of natural justice and is liable to be set aside.

14. In the case of **Shankar Chakravarti vs Britannia Biscuit Company and another [AIR (1979) SC 1652]**, the Hon'ble Supreme Court of India held that:

*“ Having given our most anxious consideration to the question raised before us, and minutely examining the decision in Cooper Engineering Ltd. case (supra) to ascertain the ratio as well as the question raised both on precedent and on principle, it is undeniable that there is no duty cast on the Industrial Tribunal or the Labour Court while adjudicating upon a penal termination of service of a workman either under s. 10 or under s. 33 to call upon the employer to adduce additional evidence to substantiate the charge of misconduct by giving some specific opportunity after decision on the preliminary issue whether the domestic enquiry was at all held, or if held, was defective, in favour of the workman. Cooper Engineering Ltd. case merely specifies the stage at which such opportunity is to be given, if sought. It is both the right and obligation of the employer, if it so chooses, to adduce additional evidence to substantiate the charges of misconduct. It is for the employer to avail of such opportunity by a specific pleading or by specific request. If such an opportunity is sought in the course of the proceeding the Industrial Tribunal or the Labour Court, as the case may be, should grant the opportunity to lead additional evidence to substantiate the charges. But if no such opportunity is sought nor there is any pleading to that effect no duty is cast on the Labour Court or the Industrial Tribunal suo motu to call upon the employer to adduce additional evidence to substantiate the charges. ”*

In the instant case the Industrial Dispute referred to the tribunal for adjudication is regarding the legality and justification of ECL in not providing employment on compassionate ground under the provisions of NCWA to Sri Bijoy Hansda dependent son of Late Rabi Majhi. However, in deciding the said question it needs

to be ascertain whether the dismissal of Rabi Majhi from his service is justified or not. The management of the company is seized of the issue and has placed documents relating to the Enquiry Proceeding and Order of dismissal. Having, considered the evidence on record it has been found that the Domestic Enquiry held against Rabi Majhi was not valid in the eye of law. Opportunity was granted to the employer to lead evidence to substantiate their case but the preponderance of the evidence leans in favour of the workman that he did not have the Notice of enquiry. It transpires from the medical prescription of Dr. S. C. Biswal (Exhibit W-5 series) that the workman was under medical treatment due to mental illness.

15. The absence of the workman was not willful and he adduced substantial evidence regarding mental illness (Exhibit W-5 series (W-5 to W-5/15)) which prevented him from attending his duty. Accordingly, Enquiry Proceeding is bad in law and its finding is set aside. In view of such findings I hold that Rabi Majhi is deemed to be in service at the time of his death on 15.05.2019. As he failed to perform any duty during his absence, his legal heirs are not entitled to any back wages. It is undisputed that Smt. Sukurmoni Mejhain has received Group Gratuity Cash Accumulation of LIC, introduced by ECL w.e.f. 29.06.2013 which is paid in case of death of employee during service. In the instant case the order of dismissal of Rabi Majhi from service w.e.f. 16.01.2019 is unjust, inappropriate and violative of natural justice. Bijoy Hansda submitted in his application dated 30.07.2019 before the Senior Manager (Min), Central Kajora Colliery, Kajora Area claiming employment on death of his father (Exhibit W-2). A letter was issued by the management in reply stating that in the Indemnity Bond the name of the employee was mentioned as Rabi Majhi @ Hansda but in the official records the name was noted as Rabi Majhi only for which the dependent of Rabi Majhi was asked to re-submit the application after removing the discrepancy.

16. The fact and circumstances of the case weigh heavily in favour of the

petitioner Bijoy Hansda, the son of Rabi Majhi and the management is duty bound under the provisions of Clause 9.5.0 of NCWA-VI to consider the prayer for compassionate appointment of the son of the deceased employee whose dismissal from service appears to be unjust and not in accordance with law by keeping him in dark about the enquiry proceeding. The Industrial Dispute is accordingly decided in favour of Bijoy Hansda. The management of ECL is directed to consider his prayer for compassionate appointment as dependent of Rabi Majhi

Hence,

**ORDERED**

that the Industrial Dispute is allowed on contest in favour of petitioner / dependent of Late Rabi Majhi. Let an award be drawn up in favour of the petitioner to the effect that the dismissal of Late Rabi Majhi by order / letter dated 16.01.2019 issued by the General Manager of Kajora Area is illegal and the same is set aside. The prayer for compassionate appointment of Late Rabi Majhi's son be considered within three months from the date of Notification of this Award in accordance with Clause 9.5.0 of NCWA-VI. The decision of the management be communicated to the petitioner within a period of fifteen days thereafter. 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.