

**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. 36 OF 2018**

**PARTIES:** Abhijit Bouri  
**Vs.**  
Management of B.M.P. Group of 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:** 21.08.2024

**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-22012/50/2018-IR(CM-II)** dated 13.11.2018 has been pleased to refer the following dispute between the employer, that is the Management of B.M.P. Group under Sodepur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of the Management of Patmohna Colliery under Sodepur Area of M/s. ECL in dismissing Shri Avijit Bouri, U.G.Loader w.e.f. 12/16.12.98 is justified or not? If not, to what relief the workman concerned is entitled to and from which date? ”*

1. On receiving Order **No. L-22012/50/2018-IR(CM-II)** dated 13.11.2018 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 36 of 2018** was registered 03.12.2018 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 and a list of witnesses.
2. The aggrieved workman filed his written statement on 28.10.2022 and the management of the employer company contested the Industrial Dispute by filing their written statement on 02.01.2023. In gist, the fact of the case of the workman represented by Koyala Mazdoor Congress is that, Abhijit Bouri, an Underground

Loader, bearing UM No. 814898 was a permanent employee of the company, posted at Patmohana Colliery under Sodepur Area of Eastern Coalfields Limited (hereinafter referred to as ECL). The workman was absent from duty from 04.02.1998 to 15.10.1998, for a period of eight months and ten days due to illness. The management of the employer company issued a Charge Sheet against the workman for his unauthorized absence to which Abhijit Bouri submitted his reply, requesting the company to permit him to join his duty.

3. Without issuing any Notice of enquiry, the employer company initiated a domestic enquiry against him, of which he had no knowledge. The workman was not provided with any opportunity to represent his case or to take the assistance of any co-worker. The Enquiry Proceeding was concluded ex-parte and the order of dismissal was issued against him bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998.

4. The grievance of the workman is that he had to reside at Satgram Bogrchetti, which is far away from his place of duty at Patmohana Colliery. No Notice of enquiry was sent to his home address, as a result workman could not attend the enquiry. No 2<sup>nd</sup> Show Cause Notice was issued to the workman to provide him an opportunity to defend his case. In the Charge Sheet there is no charge of habitual absence but the management had taken into consideration such charge in the course of enquiry without any notice to the workman. The workman submitted mercy petitions for his reinstatement but the management did not consider the same. In the light of Memorandum of Settlement reached before the Regional Labour Commissioner (Central), Asansol on 22.05.2007, it had been agreed between the management and the functioning unions of ECL that mercy petitions of the dismissed employees would be considered if the period of absence was up to nine months and at the relevant time, the workman was within forty-five years of age.

5. Further case of the workman is that in similar situation, in the case of Damu Dakua of Khas Kajora Colliery of ECL and Bagia Nayak of Chora Colliery of ECL, the Hon'ble High Court at Calcutta, directed the management to follow the order of the Coal India Limited, regarding issuance of 2<sup>nd</sup> Show Cause Notice. According to the workman the enquiry proceeding resulting in his dismissal is illegal and unjust as the Enquiry Officer had filled up printed form in the guise of an enquiry. The punishment of dismissal imposed against the workman is disproportionate to the charge and the workman prayed for setting aside the order of dismissal, reinstatement in service and full back wages with all other consequential benefits.

6. The management of BMP Group of ECL in their written statement urged that Abhijit Bouri, an Underground Loader at Patmohna Colliery had remained absent from his duty from 04.02.1998 without any authorization and a Charge Sheet dated 15.10.1998 was issued under Section 17(i)(n) of Model Standing Order. The workman failed to submit any reply to the Charge Sheet, giving rise to a domestic enquiry. An Enquiry Officer was duly appointed who held enquiry but the workman did not participate. The charge against the workman was established and on the basis of Enquiry Report and past conduct of the workman an order of dismissal from service was issued bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998. It is asserted by the management that the punishment is proportionate to the charge as the workman never informed the management about his absence from duty due to his alleged illness. It is further stated that if the Tribunal find that the enquiry was unfair, in that event the management may be given an opportunity to establish the charge by adducing independent proof and evidence.

7. In order to substantiate his case Abhijit Bouri filed an affidavit-in-chief, reiterating his case in the written statement. He admitted having received the

Charge Sheet and in paragraph – 4 of his affidavit-in-chief he stated that he replied to the Charge Sheet and requested the management to allow him to join his duty. He could not attend duty due to his illness and averred that he did not receive any Notice of enquiry for which he could not participate in the enquiry proceeding and the management without issuing any 2<sup>nd</sup> Show Cause Notice illegally dismissed him from service. It is asserted that he is not a habitual absentee and no Charge Sheet for habitual absence was issued against him. In the affidavit-in-chief the workman stated that his residence was far away from Patmohana Colliery for which he requested the management for his transfer but his request was not considered as a result he faced problem in attending his duty. The workman also stated that he filed mercy petition on 14.02.2012 and 02.03.2012 but the management did not consider the same in accordance with the terms of Memorandum of Settlement dated 22.05.2007. Abhijit Bouri in course of his examination as Workman Witness – 1 produced a copy of the Charge Sheet dated 15.10.1998, which has been marked as Exhibit W-1, a copy of the letter of dismissal dated 12/16.12.1998, as Exhibit W-2, and copies of the Mercy Petitions dated 14.02.2012 and 02.03.2012 as Exhibit W-3 and W-4 respectively.

8. In his cross-examination the workman witness stated that though he faced difficulty in travelling from Bogra Village to Patmohana Colliery for attending duty he did not apply before the employer company for providing him with quarters at Patmohana. He also failed to produce any application seeking transfer to some other place. The workman denied that he intentionally absented from duty from 04.02.1998 to 15.10.1998. In course of cross-examination the witness admitted that he did not inform the employer company the reason for his absence from duty.

9. Mr. Rahul Panwar, Assistant Manager (P/HR) of BMP Group filed an affidavit-in-chief and was examined as Management Witness – 1. In his affidavit-

in-chief the witness stated that the workman did not submit any reply to the Charge Sheet for which a domestic enquiry was held. The charge of misconduct was established during the enquiry proceeding, which took place ex-parte. It transpires from the contents of his affidavit-in-chief that the Disciplinary Authority passed an order of dismissal after considering the enquiry proceeding and past conduct of the workman. It is urged that the dismissal of the workman is proper and justified. The management witness has produced the following documents :

- (i) A copy of the Charge Sheet dated 15.10.1998 has been produced as Exhibit M-1.
- (ii) A copy of the Notice of enquiry dated 18.11.1998, as Exhibit M-2.
- (iii) A copy of the Enquiry proceeding, in five pages, as Exhibit M-3.
- (iv) A copy of the letter dated 07/08.12.1998 issued by the Chief General Manager of Sodepur Area to the Agent of BMP Group regarding dismissal of Abhijit Bouri, as Exhibit M-4.
- (v) A copy of the letter of dismissal of Abhijit Bouri dated 12/16.12.1998, as Exhibit M-5.

The witness stated that he had no document relating to appointment of the Enquiry Officer, nor does he know the name of the Enquiry Officer, who issued the Notice of enquiry.

10. In his cross-examination the management admitted that he was unable to produce any record relating to previous punishment of Abhijit Bouri in course of his service. He also admitted that the Enquiry Proceeding was prepared in the printed Form and that there is no record to show that the Notice of enquiry was served upon the workman before initiating the enquiry proceeding. The management witness denied that the enquiry initiated against the workman was illegal or that the punishment of dismissal was disproportionate to the charge. The witness further admitted that no 2<sup>nd</sup> Show Cause Notice was issued to the

workman and the direction of the Coal India Limited as well as the mandate of the Hon'ble Supreme Court of India were not complied.

11. The crux of the issue which emerges for consideration is whether the dismissal of Abhijit Bouri from service w.e.f. 16.12.1998 is justified. If not, to what relief the workman is entitled to.

12. Mr. Rakesh Kumar, on behalf of the dismissed workman draw my attention to the evidence of MW-1 that the enquiry was held without ensuring the service of Notice to the workman and that the management failed to produce any letter of appointment of the Enquiry Officer and was unable to identify who the Enquiry Officer was. It is argued that the workman had no opportunity to meet the charges levelled against him and the entire enquiry proceeding is a gross violation of the principles of natural justice. It is argued that the Enquiry Report has been submitted in a filled up pro forma without recording of statements of the management witness in first person. The union representative vehemently argued that there was serious miscarriage of justice by not issuing the 2<sup>nd</sup> Show Cause Notice to the workman even after conclusion of an ex-parte enquiry proceeding, especially when the Disciplinary Authority and Enquiry Officer were not the same person. Mr. Kumar placed reliance upon the decision of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471]**, which laid down as follows:

*“ When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer’s report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer’s report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice.”*

13. It is further argued by the union representative that the principle laid down by the Hon'ble Supreme Court of India was adopted by the Coal India Limited on issuing Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994 and directed its subsidiaries that a 2<sup>nd</sup> Show Cause Notice is to be issued to the workman after enquiry proceeding in order to give opportunity to meet the findings of the Enquiry Officer. Mr. Rakesh Kumar referred to the Mercy Petitions filed by the workman, which have been marked as Exhibit W-3 and W-4. It is urged that the management did not consider the mercy petition though the period of his absence was only eight months and ten days, which is less than nine months and at the relevant time his age was less than forty-five years. It is submitted that the management of ECL and all functioning unions have executed a Memorandum of Settlement before the Regional Labour Commissioner (Central), Asansol, agreeing to take into consideration such cases of absence.

14. In reply, Mr. P. K. Das, learned advocate for the management of ECL argued that the workman has been dismissed for his unauthorized absence from duty for over eight months, without any intimation to the employer company. It is submitted that though the workman denied having received any Charge Sheet and Notice of enquiry, in his affidavit-in-chief as well as his evidence the workman claimed to have replied to the Charge Sheet which goes to establishment that he has received the Charge Sheet but did not participate in the enquiry proceeding.

15. Learned advocate for ECL however, fairly admitted that the management is not in a position to prove that the Notice of enquiry was served upon the workman before the enquiry proceeding commenced and did not dispute that no 2<sup>nd</sup> Show Cause Notice was served upon the workman before his dismissal. The management did not respond to the contention that the mercy petitions of the workman were not considered by the management in compliance with the terms of the Memorandum of Settlement dated 22.05.2007. It is submitted that the



management may be granted an opportunity to review their decision in consequence of the enquiry proceeding.

16. I have considered the rival arguments in the light of the materials on record. Admittedly Abhijit Bouri remained absent from his duty for over eight months without any authorization and has grossly misused his privilege of working under the management of ECL. There are no qualms that a Charge Sheet for unauthorized absent was issued to the workman and he has received the same. The workman has failed to produce any reply to the Charge Sheet. Therefore, no material is forthcoming to support the claim of the workman that due to his illness he was unable to attend his duty. The facts and circumstances of the case clearly indicate that the situation was rife to initiate a domestic enquiry against the workman for his misconduct and violation of standing order. The pre-condition of starting an enquiry proceeding is that the competent authority has to appoint an Enquiry Officer and the Enquiry Officer is duty bound to ensure service of Notice of enquiry upon the charged employee. The management witness in his cross-examination stated that there was no record to show that the Notice of enquiry was served upon the workman before initiating the enquiry proceeding. On a perusal of the enquiry proceeding (Exhibit M-3), it appears that the enquiry proceeding was recorded in a printed Form by filing up the blanks which also contain a statement that charge was read over and explained in Bengali and Hindi. In fact, the workman did not appear and there is no reason to read out the charge. There is no whisper in the Enquiry Proceeding that the Notice of enquiry was served upon the workman. I find that Mr. Kanailal Pan, Mr. Mangalmoy Sarkar and Mr. Goutam Banerjee were examined as Management Representatives but their statements have not been recorded in the first person. On the other hand, the statements are in the form of reporting by the Enquiry Officer himself.

17. It is an admitted fact that no 2<sup>nd</sup> Show Cause Notice was issued to the workman before reaching a conclusion that his misconduct was grave enough to attract the punishment of dismissal. In this context it is worthwhile to rely upon the decision of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan (Supra.)**. The principle laid down was also to be followed by the Coal India Limited, which issued a Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994, directing all its subsidiaries to issue 2<sup>nd</sup> Show Cause Notice to the employees before taking the final decision of dismissal. In the instant case the workman did not get the opportunity to submit his reply before the Disciplinary Authority, which again amounts to violation of natural justice. The letter of dismissal bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998 was issued by the Agent of BMP Group. I find that the Dy. CME / Agent is not the Appointing Authority of the charged employee, as such without any specific concurrence of the General Manager of the Area, the Agent had no jurisdiction to dismiss the workman from his service. In such view of the matter, I hold that the Agent has exceeded his jurisdiction by passing the order of dismissal of the workman bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998, not being the Disciplinary Authority or Appointing Authority. The procedure followed by the Enquiry Officer holding the enquiry proceeding is 'ex facie' illegal and violative of natural justice. The order of dismissal also appears to be disproportionate to the charge, without any proof of habitual unauthorized absence of the workman.

18. The evidence on record clearly indicates that two mercy petitions dated 14.02.2012 and 02.03.2012 were submitted by the dismissed workman, praying for allowing him to join his duty in terms of the Memorandum of Settlement signed by the management and union representatives on 22.05.2007. Though these petitions are submitted long after thirteen years from the date of dismissal, the management ought to have disposed the same after considering the facts and

circumstances involved in accordance with the terms of the Memorandum of Settlement.

19. In view of my above discussion I find and held that though the workman had remained absent for a long time and his mercy petitions were filed long after thirteen years from the date of his dismissal, the management ought to have considered the same. The enquiry proceeding is manifestly illegal and there has been no prior service of Notice upon the workman intimating him the date and place of holding such enquiry. Consequently, there has been violation of principles of natural justice by not providing opportunity to the workman to represent his case. Non-issuance of 2<sup>nd</sup> Show Cause Notice and passing of order of dismissal by the Agent, who is neither the Disciplinary Authority nor the Appointing Authority, I hold that the order of dismissal is illegal and is not sustainable under the law. The impugned order of dismissal is therefore set aside. The management shall provide an opportunity of hearing to the workman within one (1) month of communication of the Award and after considering the representation of the workman, if any, to be submitted within fifteen (15) days, shall pass a fresh order on the subject matter and communicate the same to the workman. In view of such facts and circumstances discussed above no order for payment of back wages is passed.

Hence,

**ORDERED**

that the Industrial Dispute is allowed on contest. The impugned order of dismissal of Abhijit Bouri, bearing Ref. No. BMP/C-6/12-A/1009 dated 12/16.12.1998, passed by the Agent of BMP Group is set aside. The management shall provide an opportunity of hearing to the workman within one (1) month of

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communication of the Award and after considering the representation of the workman, if any, to be submitted within fifteen (15) days, shall pass a fresh order on the subject matter and communicate the same to the workman. 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.

**(ANANDA KUMAR MUKHERJEE)**

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