

**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. 37 OF 2012

PARTIES: Budhu Majhi

Vs

Management of Jambad Colliery, Kajora Area, 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: 23/06/2025

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-22012/112/2012-IR(CM-II)** dated 26/10/2012 has been pleased to refer the following dispute between the employer, that is the Management of Jambad Colliery, Kajora Area of Eastern Coalfields Limited and their workmen for adjudication by this Tribunal.

THE SCHEDULE

“Whether the action of the management of Jamabad Colliery under Kajora Area of M/s. Eastern Coalfields Limited in dismissing Shri Budhu Majhi, U. G. Loader, from service w.e.f. 08.02.1997 is legal and justified? What relief the workman is entitled to?”

1. On receiving Order **No. L-22012/112/2012-IR(CM-II)** dated 26/10/2012 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 37 of 2012** was registered on 14/11/2012 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. Budhu Majhi, the dismissed workman filed his written statement on 08/05/2013 through Mr. Rakesh Kumar, the then General Secretary of Koyala Mazdoor Congress. Management filed written statement on 04/07/2016. In gist, fact of the workman's case is that Budhu Majhi was employed at Jambad Colliery, Kajora Area of ECL. He was

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unauthorizedly absent from duty. It is contended that the workman was posted as Underground Loader which is a hazardous job and he was unable to adjust himself and frequently fell ill. Workman was unable to attend duty due to his illness. He requested the management of the colliery to allow him to join his previous job but the management issued a charge sheet against him and after holding enquiry, dismissed him from service of the company. It is the case of workman that a Memorandum of Settlement dated 22/05/2007 was executed between the management and representatives of the unions wherein it was decided that management would consider the case of absentees if they were less than forty two years of age and their period of absence was less than nine months. Contention of the workman is that punishment awarded to him is disproportionate to his alleged misconduct. Order of dismissal is illegal, unjust and the punishment is extreme which can be avoided. It is prayed that the dismissed workman may be reinstated in his service and back wages may be paid to him.

3. Management contested the Industrial Dispute by filing written statement, wherein it is stated that workman was charge sheeted by the management for his unauthorized absence from duty which is a misconduct under the provision of standing order applicable to parties. It is further stated that reply of the workman was found to be totally unsatisfactory and a departmental enquiry was held in respect of charge sheet. Enquiry Officer was appointed by the appointing authority and the workman remained absent for continuous period in unauthorized manner causing loss to the management in the matter of production of coal. It is urged that management rightly dismissed the workman from service after holding domestic enquiry by the Enquiry Officer and all opportunities were given to him to defend his case. It is claimed that management followed the principle of Natural Justice while holding enquiry proceeding and charge of misconduct was fully

established against him. It is urged that the workman intentionally remained absent. Management denied that punishment of dismissal awarded against the workman is disproportionate to the nature of misconduct. It is further claimed that enquiry proceeding is fair and workman had no right to challenge the enquiry proceeding.

4. Budhu Majhi, the dismissed workman was examined as Workman Witness-I. He filed his affidavit-in-chief in support of his case. Workman in his affidavit reiterated his case disclosed in the written statement. He claimed that his absence was not intentional and he was compelled to remain absent due to illness, which was beyond his control. In his evidence workman stated that he did not remember the period of his unauthorized absence and stated that he was dismissed for remaining away from duty for one and a half months. During his examination, witness produced copy of a mercy petition submitted before the company praying for his reinstatement in service. Copy of mercy petition is marked as Exhibit W-1. During cross-examination, witness deposed that he was under medical treatment of Dr. Pal at Haripur for one month. Witness failed to produce medical prescription issued by the Doctor. He denied the suggestion that he was a chronic absentee and deposed that he did not remember if any charge sheet, Notice of Enquiry were issued or departmental proceeding was initiated by the company in his name.

5. Management examined Mr. Ramjee Tripathi as Management Witness-I. He filed an affidavit-in-chief stating that workman was working as Trammer at Jambad Colliery and remained absent from duty from 29/04/1995 without taking any leave from the appropriate authority or without any information. A charge sheet dated 08/04/1996 was issued by Dy. CME/Agent, Jambad Colliery which was sent to the workman under

registered post with AD and a copy of charge sheet was also displayed on the Notice Board of the company. It further transpires from the affidavit that the workman failed to submit any satisfactory reply and two separate Notices of Enquiry dated 01/06/1996 and 02/11/1996 were sent to Budhu Majhi under registered post and a copy of such Notice was displayed on the Notice Board of the company. Witness disclosed that Enquiry Officer after conclusion of the enquiry proceeding submitted his report and the charge of misconduct was proved. Agent, Jambad Colliery initiated a Note Sheet dated 21/01/1997 and forwarded the same to the Dy. Chief Personnel Manager being the appropriate authority. Disciplinary authority passed an order of dismissal against the workman on 05/08.02.1997. In course of examination, witness produced the following documents:-

- (i) Copy of Charge Sheet dated 08/04/1996 is produced as Exhibit M-1
- (ii) Copies of Notice of Enquiry sent to Budhu Majhi on 01/06/1996 and 02/11/1996 are produced as Exhibits M-2 and M-3 respectively.
- (iii) Copy of Enquiry proceeding in four pages is collectively produced as Exhibit M-4.
- (iv) Copy of Enquiry report submitted by Mr. R. K. Roy, the Enquiry Officer is produced as Exhibit M-5.
- (v) Copy of Note Sheet dated 21/01/1997 initiated by the Agent, Jambad Colliery is produced as Exhibit M-6.
- (vi) Copy of letter dated 05/08.02.1997 issued by the General Manager, Kajora Area by which Budhu Majhi was dismissed from service is produced as Exhibit M-7.

Witness stated that no second show cause Notice was issued before dismissal of the workman. In cross-examination, management witness admitted that there was no charge of habitual absence against the workman and only charge levelled against him was under

clause 17(i)(n) i.e. unauthorized absence from duty. It transpires from cross-examination of the witness that enquiry proceeding was held ex-parte and copy of enquiry proceeding, enquiry report and second show cause Notice were not served upon the workman before his dismissal. Witness in cross-examination stated that he had no knowledge regarding the mercy petition (Exhibit W-1) filed for reinstatement of the workman in service.

6. Mr. Rakesh Kumar argued that dismissal of the workman is illegal and not tenable as neither charge sheet nor Notice of Enquiry was served upon the workman and that enquiry proceeding was held ex-parte without providing opportunity to the workman to defend himself. Mr. Kumar argued that workman was suffering from illness due to which he was unable to attend duty. It is argued that management did not hold a fair enquiry and order of dismissal issued is disproportionate to the nature of misconduct disclosed in the charge sheet, as such the workman is entitled to be reinstated in service and management should pay back wages to him from the date of his dismissal.

7. Mr. P. K. Das, learned advocate for the management argued that workman did not perform the work diligently and remained absent for nearly one year from 29/04/1995 till 08/04/1996 in an unauthorized manner and without intimation to the management of the employer company. It is argued that charge the sheet was sent to the workman under registered post at his home address at Jhalakdiha, PO- Tikattol, PS- Bengabad, Dist- Giridih (then Bihar). It is submitted that workman did not submit any reply to the charge sheet and two Notices of Enquiry were issued to him dated 01/06/1996 and 02/11/1996 which were again transmitted at his home address under registered post. Management in support of his argument produced a copy of charge sheet as Exhibit M-1 along with a copy of postal receipt, Notices of Enquiry as Exhibits M-2 and M-3 along with postal receipt in name of Budhu Majhi which were sent to his home address. Workman did not participate

in the enquiry proceeding held by the Enquiry Officer and enquiry proceeding in four pages is collectively produced as Exhibit M-4. Enquiry Officer appears to have recorded statement of Management Representative who established charge against the charged employee. Enquiry Officer submitted the enquiry report where he held that Budhu Majhi had no valid reason for his absence from duty and he neither obtained prior permission nor did he intimate the management about his absence. Enquiry Officer found that charge levelled against the workman stood proved. Learned advocate argued that Disciplinary Authority issued order of dismissal against the workman on the basis of materials produced. Order of dismissal is produced as Exhibit M-7. Learned advocate for the management argued that workman remained absent from duty without any information and thereby hampered the production process of the company. His conduct was absolutely unpredictable. Workman had taken plea that he was suffering from illness but he did not state the nature of his illness and the period of treatment. According to the learned advocate for the management, workman is duty bound to adduce cogent evidence before the Tribunal to establish that there were sufficient reasons for his absence but he failed. It is urged that the union cannot seek reinstatement of the workman on a plea that enquiry proceeded was technically untenable due to non-service of Notice of Enquiry and enquiry proceeding.

8. I have considered arguments advanced by the union and the management, pleading of parties and evidence adduced. Workman admittedly remained absent for one year. Management produced copy of charge sheet along with postal receipts showing that charge sheet was transmitted to the workman at his home address. Similarly Notice of Enquiry along with postal receipts were produced by the management to prove that management made fair and reasonable attempt to reach the workman before initiating domestic enquiry. Workman did not turn up to participate in the enquiry. In my considered

view, if workman failed to turn up after Notice was sent to him under registered post at his home address maintained by the employer company, management cannot be held responsible for holding ex-parte enquiry. During enquiry, workman was found guilty of misconduct. Disciplinary Authority after considering relevant materials, issued order of dismissal against him. After dismissal of the workman in the year 1997 he raised an Industrial Dispute through the union after passage of fifteen years. There is no explanation for delay nor did the union cite reasons for not taking steps earlier.

9. Main contention of the union representative is that enquiry proceeding suffered from illegality due to non-service of Notice of Enquiry and dismissal of the workman was done on the basis of an ex-parte enquiry and without issuance of second show cause Notice. Having considered enquiry proceeding and report of the Enquiry Officer, I do not find any illegality in the proceeding as reasonable opportunities were given to the workman to appear and contest the charge. In the instant case workman has not denied charge of unauthorized absence for one year. His case is that he was absent due to his illness which was beyond his control. Workman may not have represented his case before the Enquiry Officer but even before the Tribunal, workman has not produced a single document relating to his illness and medical treatment during the period of absence. There is no whisper regarding the nature of illness he was suffering from during the period of his absence. Therefore, I am unable to accept the plea of the workman that his inability to attend duty of the employer company was due to his illness. Workman has a reciprocal responsibility towards the management and he failed to exhibit such responsibility by remaining absent for a long period without intimation or authorization. Non issuance of second show cause Notice to the charged employee in this case appears to be a procedural lapse and does not prejudice the workman as he failed to explain the reason of long

absence from his place of work.

10. It is pertinent to refer to a decision of Hon'ble Supreme Court of India in the case of **State of Karnataka and Another Vs. Ravi Kumar [2009 (122) FLR 737 (S.C.)]** where it was held that long delay in seeking reference of dispute rendered the reference stale and it should be rejected. In the present case reference has been made after long fifteen years from dismissal and the same appears to be a stale one and is fit to be rejected. Conduct of the workman is unacceptable and I hold that he is not entitled to any relief. Industrial Dispute is therefore dismissed on contest.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest. Let an Award be drawn up in the light of my above discussion. Let copies of Award be communicated to the Ministry for information and Notification.

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