

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
ASANSOL

PRESENT : Shri Ananda Kumar Mukherjee,
Presiding Officer
CGIT-cum-LC, Asansol

REFERENCE NO. 38 OF 2023

PARTIES : Raju Mahato

v/s

Management of Parasea colliery, Kunustoria Area 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 : 27.09.2024

AWARD

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 Ministry of Labour, Government of India through the Office of the Deputy Chief Labour Commissioner (Central), Asansol, vide its Order **No. 1(33)/2023/E** dated 26/07/2023 has been pleased to refer the following dispute between the employer, that is the Management of Parasea Colliery under Kunustoria Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal

The Schedule

“Whether the action of the management of Parasea Colliery under Kunustoria Area of M/s. ECL in dismissing the service of Shri Raju Mahato, U.G. Loader, UM NO-110640 w.e.f. 11/16.11.2011 is justified? If not what relief the concerned workman is entitled to.”

1. On receiving Order **No. 1(33)/2023/E** dated 26/07/2023 from the Office of the Deputy Chief Labour Commissioner (Central), Asansol, Ministry of Labour and Employment, Government of India, for adjudication of the dispute **Reference case No. 38 of 2023** was registered on 28/07/2023 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. Raju Mahato, dismissed workman filed his written statement through Mr. Rakesh Kumar, President, Koyala Mazdoor Congress. Fact of his case leading to this Industrial Dispute is that Raju Mahato was posted as UG Loader at Parasea colliery under Kunustoria Area of ECL. He was unable to attend his duty from 01/10/2010 due to illness of his wife. Being only adult member in his family to look after his wife, he could not attend his duty and subsequently himself fell ill preventing him from joining duty. Management of the company issued a charge sheet against him on 26/02/2011 under clause 26.29 for his unauthorized absence for more than ten days and under clause 26.23 of the certified standing orders for his habitual absence without any sufficient cause.

3. Raju Mahato submitted reply to the charge sheet and informed that due to illness of his wife and himself he was unable to join duty. Workman also participated in the enquiry proceeding and requested the management representative and the Enquiry Officer to allow him to join duty but his plea was not considered. Management of Parasea colliery initiated a Note Sheet proposing punishment to the workman and the General Manager of Kunustoria Area issued an order of dismissal of Raju Mahato on 16/11/2011. After dismissal Raju Mahato submitted an application praying for mercy but the management did not consider his mercy petition according to terms of Memorandum of Settlement dated 22/05/2007. It is the contention of the workman that for absence of four months and few days management has imposed a punishment upon him which is harsh and disproportionate to the nature of misconduct. Workman has no any other source of income for his livelihood and to meet the expenditure of his family members and children. It is urged that the punishment imposed is unjustified and no second show cause Notice was issued to him before dismissal, which is a clear violation of guidelines of Hon'ble Supreme Court and the Circular of the Coal India Limited. It is prayed that order of dismissal be declared illegal and unjustified and the workman may be reinstated in his service with full back wages.

4. Management of the Parasea colliery contested the Industrial Dispute by filing a written statement on 12/09/2023. According to the management of ECL Raju Mahato was employed at Parasea colliery having UM No. 110640 and was designated as UG Loader. He remained absent from duty from 01/10/2010 without any authorized leave or intimation. A charge sheet was issued to him on 26/02/2011 on charge of absence from duty for more than ten days without any sanctioned leave and without reasonable cause as per clause 26.29 and for his habitual absence from duty without sufficient cause, as per clause 26.23 of the certified standing orders of the company. Workman submitted reply to the charge sheet but the management decided to hold a domestic enquiry in respect of the charges levelled. An enquiry was conducted complying the principle of Natural Justice. Workman participated in the enquiry and he was given full opportunity to defend himself and cross-examine the management representative. Raju Mahato accepted the charges levelled against him and finally the Disciplinary Authority terminated him from the service of the company vide letter No. A-KNT/P&IR/26/(C)/2685 dated 16/11/2011 of the General Manager, Kunustoria Area. On 05/03/2023 the union raised an Industrial Dispute by

filing an application before the conciliation officer i.e. ALC (C) at Asansol contending that no charge sheet and Notice of Enquiry were served upon the workman and management dismissed him from service without considering mercy petition and thereby misrepresented the facts of the case. It is contended that workman was dismissed on 16/11/2011 and Industrial Dispute was raised after more than ten years i.e. on 05/03/2023 which indicates that workman was not serious regarding his job.

5. Management further stated that workman was a habitual absentee and in the last three years, prior to his dismissal, his attendance was unsatisfactory. It is specified that workman attended duty for only ninety eight days in the year 2008, seventy days in the year 2009 and sixty three days in the year 2010. On four earlier occasions opportunity was granted to him by issuing four warnings dated 26/03/2003, 18/08/2003, 28/05/2008 and 27/06/2008. Management relied upon a decision of Hon'ble Supreme Court of India in Nedungadi Bank Limited Vs K.P. Madhavan Kutty and Others reported in (2000) 2 SEC 455 and submitted that Hon'ble court held that dispute raised after long time was stale which cannot be assumed to be in existence and accordingly management prayed for dismissal of the case.

6. In this backdrop of facts, question which now emerge for consideration is whether the dismissal of Raju Mahato from service by the management of Parasea colliery is justified and what relief the concerned workman is entitled to.

7. In support of the case the workman has filed an affidavit on 27/03/2024 and examined himself as WW-I. In his affidavit workman has reiterated his case disclosed in written statement and stated that charge sheet was issued on 26/02/2011. He participated in the enquiry and stated the circumstances under which he could not attend duty. In Paragraph seven of affidavit-in-chief the workman stated that management of the colliery proposed for allowing him to join duty with a recommendation of stoppage of one SPRA as punishment. Management at Area level did not consider the recommendation of the Agent and decided to award punishment of dismissal without issuing a second show cause Notice. He had also submitted a mercy appeal in the light of the Memorandum of Settlement dated

22/05/2007. The workman was absent for four months and few days which is less than nine months and at relevant time his age was below forty five years for which his mercy appeal should be considered as per Memorandum of Settlement. It is ascertained that punishment awarded was disproportionate to the alleged misconduct. In course of evidence-in-chief on oath the workman produced the following documents:

- (i) copy of Identity Card of Raju Mahato is produced as Exhibit W-1
- (ii) copy of charge sheet dated 26/02/2011 is produced as Exhibit W-2
- (iii) copy of Note Sheet issued by the Agent, Parasea colliery dated 11/06/2011 is produced as Exhibit W-3
- (iv) copy of order of dismissal issued on 16/11/2011 is produced as Exhibit W-4
- (v) copy of corrigendum dated 30/11/2011 stating date of termination as 16/11/2011 is produced as Exhibit W-5
- (vi) copy of letter issued by the Welfare Officer (Trainee) is produced as Exhibit W-6

In cross-examination witness stated that he participated in the enquiry but did not submit documents relating to illness. He denied suggestion that his absence was not due to illness of himself and his wife. Witness further stated that no second show cause Notice was issued to him.

8. In support of their case management examined Mr. Soram Sanjoy Singh as MW-I. He filed affidavit-in-chief and produced the following documents:

- (i) copy of charge sheet is produced as Exhibit M-1
- (ii) copy of letter dated 28/03/2011 related to the appointment of Enquiry Officer is produced as Exhibit M-2
- (iii) copies of Notices of Enquiry dated 03/06/2011 and 14/05/2011 are produced as Exhibits M-3 and M-4 respectively
- (iv) copy of warning letter by which Raju Mahato was permitted to resume his duty is produced as Exhibit M-5

(v) copy of Enquiry proceeding report and findings in four pages collectively is produced as Exhibit M-6

(vi) copy of letter of dismissal dated 16/11/2011 issued by the General Manager is produced as Exhibit M-7

In his cross-examination, management witness stated that enquiry proceeding was concluded on 04/06/2011 and Note Sheet was issued by the Dy. CME/Agent, Parasea colliery on 11/06/2011 whereby he recommended that charged employee should be allowed to join duty with stoppage of one SPRA as punishment. Witness stated that Agent is not the Disciplinary Authority and he did not have the occasion to consider the Enquiry Report for imposing punishment. Witness could not state why the management took five months' time to dismiss the workman after conclusion of the enquiry proceeding. There is a clear admission on part of management witness that no second show cause Notice was issued to the charged employee and he was also unable to state as to what decision was taken by the management relating to the mercy petition of Raju Mahato who was called to the Head Quarters.

9. Mr. Rakesh Kumar, union representative advancing argument on behalf of dismissed workman submitted that Raju Mahato was unable to attend duty for four months and few days due to illness of his wife but the management issued Charge Sheet against him on 26/02/2011. When he reported for duty a domestic enquiry was started against him on the charge of unauthorised absence for more than ten days and for his habitual absence in the previous three years. Workman participated in the enquiry proceeding and disclosed that due to his wife's illness he was not able to attend duty. Management did not consider his plea and issued a Note Sheet where Agent of the colliery recommended to allow him join duty after stoppage of one SPRA as punishment. It is argued on behalf of the dismissed workman that management issued a letter of dismissal against him on 16/11/2011 terminating his service with immediate effect without having issued a second show cause Notice as mandated by the **Hon'ble Supreme Court in the case of Union of India and Others Vs. Md. Ramzan Khan [AIR (1991) SC 471]** and which was adopted by the Director (P&IR) of Coal India Limited in their circular No. CIL C-5A (vi) /50774/28 dated 12/05/1994. It is inter alia argued that the punishment of dismissal from service is disproportionate to the charges levelled against the workman. It is submitted that order of dismissal is arbitrary, illegal and the same is required to be set aside. Mr. Rakesh Kumar further submitted that workman after dismissal had prayed for mercy and the management had called the charged employee and recommended a

proposal for his reinstatement in service but the matter is still pending and undecided. According to the union a Memorandum of Settlement dated 22/05/2007 was signed between various unions and the Management Representatives wherein it was agreed that if period of absence was less than nine months and age of the employee was less than forty five years, management would consider his/her mercy application. However, in the present case management has not taken into consideration of the mercy petition. It has been prayed that workman may be reinstatement in service with back wages and all other consequential benefits.

10. Mr. P. K. Das, learned advocate for the management of Parasea colliery argued that charges levelled against the workman under clause 26.23 and 26.29 of the certified standing orders applicable to the workman have been well established. It is submitted that workman never denied that he was not absent from duty from 01/10/2010 till 26/02/2011 without any information to the management. Charge of habitual absence during the year 2008, 2009 and 2010 is also evident from the enquiry proceeding. It would appear that he has not served two hundred forty days in these preceding years. According to the learned advocate workman participated in the enquiry proceeding but he failed to produce medical documents in support of his wife's illness. Workman had been provided reasonable opportunities to establish his case against the charges levelled but he was not successful in doing so. Therefore, management of the Parasea colliery is fully justified in dismissing the workman from service. It is further pointed out that workman was a habitual absentee and didn't perform his duty in a proper manner. On prior occasions minor punishments were passed against the workman and he was allowed to resume duty after warning but he could not rectify himself. Learned advocate fairly admitted that no second show cause Notice was issued to the workman before passing order of termination from service. It is urged that workman was terminated w.e.f. 16/11/2011 but he did not raise dispute for more than ten years. Workman raised this Industrial Dispute for the first time on 05/03/2023. Therefore, Industrial Dispute is liable to be dismissed.

11. Considered the rival contentions of the union and the management in the light of referred Industrial Dispute and materials on record. It transpires from the evidence of workman that he had remained absent from duty without any information and charge sheet was issued against him on 26/02/2011 (Exhibit W-2). Charge sheet reveals that workman had remained absent since 01/10/2010 without any sanctioned leave. Besides such charge under clause 26.29 for his long

unauthorised absence the workman was also charged under clause 26.23 for his habitual absence from duty without any sufficient cause. It appears from the enquiry proceeding that workman had attended duty for ninety eight days in the year 2008, seventy days in the year 2009 and sixty three days in the year 2010. In the written statement and affidavit-in-chief, workman has stated that he submitted reply against the charge sheet. During evidence he did not produce copy of reply. A domestic enquiry was held and a copy of enquiry proceeding report and findings has been produced by the management in four pages as Exhibit M-6. Workman participated in the enquiry proceeding held on 04/06/2011. Statements of Mr. Amit Ghosh, management witness and Raju Mahato, charge sheeted workman were recorded. Nothing has transpired to demolish the charge and it appears to me that enquiry proceeding was carried out by the management providing reasonable opportunities to the workman to represent himself and adduce evidence in support of his defence. He has clearly admitted that he was unable to produce medical certificates and had not informed the management about the incident. Management appears to have followed the Principle of Natural Justice before holding the charge sheeted workman guilty of misconduct in respect of clauses 26.29 and 26.23 of certified standing order. Union produced a copy of Note Sheet dated 10/11.06.2011 as Exhibit W-3 wherein the Agent proposed that considering past record and present unauthorised absence, the charged employee might be allowed to join duty after stoppage of one SPRA as punishment. Contention of the union is that order of dismissal is a punishment disproportionate to the misconduct and it has been passed without considering the proposal of the Agent, Parasea colliery. Letter of dismissal which is marked as Exhibit W-4 and M-7 reveals that the General Manager who is the Competent Authority and Disciplinary Authority has taken into consideration the Enquiry Officer's report against the workman and has gone through the enquiry proceeding and findings of the Enquiry Officer and was of the opinion that there was no circumstance to award lesser punishment and therefore decided to terminate the service of the workman. General Manager being the Disciplinary Authority is vested with the jurisdiction to award punishment of any description. In doing so he ought to have born in mind that issuance of second show cause Notice and service of Enquiry proceeding and findings of the Enquiry Officer to the charge sheeted workman was a prerequisite before passing any final order/punishment. It is a settled principle of law that if the Enquiry Officer and the Disciplinary Authority were different persons then the charged employee should be given opportunity to make his representation in respect of findings made against him in the enquiry and after consideration of the representation, the Disciplinary Authority would be justified in passing an

appropriate punishment proportionate to the charge established.

12. In the case of **Union of India and Others Vs. Md. Ramzan Khan [AIR (1991) SC 471]** Hon'ble Supreme Court of India 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.*". Coal India Limited in respect of which Easter Coalfields Limited is a subsidiary has issued a circular No. CIL C-5A (vi)/50774/28 dated 12/05/1994 wherein it has been laid down that a charged employee had to be supplied with a copy of enquiry proceeding and enquiry report and a second show cause Notice has to be issued to him before taking any final decision of removing him from service. It is an admitted fact that in the present case no second show cause Notice was issued to the workman. Therefore, this is a clear violation of the mandate of Hon'ble Supreme Court of India as finality reached by way of termination of the workman from service has been done in contravention of the Principle of Law laid down by the Hon'ble Supreme Court of India as well as the circular issued by the Coal India Limited.

13. Though this Industrial Dispute has been raised after a period of ten years from the date of dismissal of the workman on 16/11/2011, same cannot be left undecided on the ground that dispute has become stale. There is no limitation in respect of time for raising Industrial Dispute. Therefore, workman should get an opportunity to exercise law in his favour. In view of such facts and circumstances and law involved I have no hesitation to hold that order of dismissal issued by the General Manager, Kunustoria Area in his letter bearing No. A-KNT/P&IR/26/(C)/2685 dated 16.11.2011 is not sustainable under law and the same is set aside.

14. At this stage I am not inclined to direct the management for reinstatement of the workman in service nor to pay him back wages until a second show cause Notice has been served upon the workman along with copy of enquiry proceeding and findings, and providing him an opportunity to submit representation in respect of

the findings of enquiry. Management shall take into consideration the representation submitted by the charged employee and all other materials before passing any final order of any nature. Management shall also take into consideration any application already submitted and communicate the findings to the workman within fifteen days.

Hence,

ORDERED

that the Industrial Dispute is accordingly allowed in part on contest in favour of the workman. Order of termination of Raju Mahato from service by letter No. A-KNT/P&IR/26/(C)/2685 dated 11/16.11.2011 of the General Manager, Kunustoria Area is set aside. Management of Parasea colliery, Kunustoria Area shall issue a second show cause Notice along with enquiry proceeding and findings of Enquiry Officer to the workman within one month from the date of communication of Award and after considering representation and mercy petition if any, within a fortnight management shall communicate the findings to the workman. Let an Award be drawn up accordingly and copies be communicated to the Ministry of Labour and Employment for information and Notification.

Sd/-

(Ananda Kumar Mukherjee)

Presiding Officer

CGIT-cum-LC, Asansol