

**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. 40 OF 2002

PARTIES: Bodi Majhi
Vs.
Management of J. K. Nagar Colliery, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Partho Choudhary, Advocate.
Ms. Debarati Konar, Advocate.
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 06.06.2025

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-22012/59/2002-IR(CM-II)** dated 02.09.2002 has been pleased to refer the following dispute between the employer, that is the Management of J. K. Nagar Colliery under Satgram Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of J.K. Nagar Colliery of M/s ECL in dismissing Sh. Bodi Majhi, U.G.Loader w.e.f. 28.7.2000 is fair and legal? If not, to what relief is the workman entitled? ”

1. On receiving Order **No. L-22012/59/2002-IR(CM-II)** dated 02.09.2002 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 27.09.2002 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. Bodi Majhi, the dismissed workman filed his written statement on 12.12.2002. Management filed their written statement on 23.07.2009. In a nutshell, the fact of the case disclosed in the written statement of the workman is that Bodi Majhi was a permanent employee of ECL, posted at J. K. Nagar Colliery under Satgram Area of Eastern Coalfields Limited (hereinafter referred to

as ECL). He was dismissed from his service w.e.f. 28.07.2000. Due to premature death of Bodi Majhi's father he got employment under the company, according to National Coal Wage Agreement (hereinafter referred to as NCWA). Due to his illness, he could not attend his duty from 01.12.1997. After a month the workman visited his office for joining his duty but he was asked to put his left thumb impression on few blank papers the assurance that letter for joining would be issued. Due to delay in response from the colliery office the workman again went to join his duty after a long period but in the middle of the year 2000 the workman learnt that his file had been sent to higher authority for approval. After a considerable period, the workman received a letter of dismissal from service, bearing No. SAT/GM/PER/C/2000/396(C) dated 28.07.2000. According to him no Charge Sheet was issued and no enquiry was held. The workman never replied to any Charge Sheet nor appeared before any Enquiry Officer as alleged in the letter of dismissal. It is further contended that the proceeding for dismissing him from service was in violation of natural justice. It is urged that the punishment of dismissal from service is harsh and disproportionate to the alleged misconduct and that management should not impose punishment of dismissal in casual manner. It is claimed that the order of dismissal passed by the management of J. K. Nagar Colliery is arbitrary, illegal, the same is required to be set aside and the dismissed workman needs to be reinstated in service on payment of full back wages with interest.

3. Management contesting the case and stated that Bodi Majhi, an employee of ECL at J. K. Nagar Colliery absented from duty from 01.12.1997 to 15.11.1999 without any prior intimation or authorization as such a Charge Sheet was issued against him bearing No. ECL/JKN/99/111 dated 16.11.1999 Management was not satisfied with the reply submitted by Bodi Majhi against the Charge Sheet and a domestic enquiry was initiated. Mr. A. C. Das Sarkar was appointed as the Enquiry Officer to enquire into the said charge. After concluding the said enquiry,

the Enquiry Officer found Bodi Majhi guilty of charge under Clause 17(i)(n) of the Model Standing Orders. After considering the Charge Sheet, Reply submitted by the workman, Enquiry Proceeding and Enquiry Report, in view of serious nature of the charge the Competent Authority awarded punishment of dismissal against the workman. The Competent Authority issued a second Show Cause Notice to the workman at his home address bearing No. SAT/GM/PER/LAB-C/99/1010(B) dated 28.12.1999 / 03.01.2000. Bodi Majhi submitted reply to the second Show Cause Notice on 07.01.2000. The Disciplinary Authority did not find the reply satisfactory and dismissed the workman from service by issuing letter No. SAT/GM/PER/C/2000/396(C) dated 28.07.2000. There was no extenuating circumstance to take liberal, view the management of the employer company. According to the management the order of dismissal was proportionate, reasonable and fair.

4. In support of his case Bodi Majhi has been examined as Workman Witness No. 1. He filed an affidavit-in-chief stating his case as disclosed in the written statement. In his affidavit-in-chief the witness stated that he could not report his illness at J. K. Nagar Colliery Dispensary on and from 01.12.1997. The witness further averred that after his recovery from prolong illness he visited his place of work at J. K. Nagar Colliery on 16.11.1999 and the Manager issued Charge Sheet in his name under Clause 17(i)(n), 17(i)(d) and 17(i)(i) of Model Standing Orders on the charge of absents from duty. The workman claimed that all on a sudden, he received a second Show Cause Notice and for the first time he came to know that the management initiated a Departmental Proceeding. The witness averred that no information was received by him about appointment of the Enquiry Officer and management representative nor any Notice of enquiry was issued. It is claimed that Manager of J. K. Nagar Colliery issued the Charge Sheet against him without any delegation of power in his favour. Workman claimed that the Charge Sheet is vague and without any basis and that the period of his absence from

duty was beyond his control as he was sick and was under medical treatment of doctor. Regarding the Enquiry Report, it is contended that same is perverse and that no enquiry proceeding was held and the management is duty bound to establish that there was due appointment of Enquiry Officer, the Notice of enquiry was issued and the workman was allowed to be assisted by co-workers. According to the workman the self-styled Enquiry Officer conducted enquiry in a perfunctory manner without giving opportunity to the workman of self-defense. The workman stated that he is passing his days in great hardship along with his family members and has no employment elsewhere since dismissal from the service. The workman prayed for setting aside the order of dismissal and his reinstatement in service.

5. The workman witness in his cross-examination stated that he submitted medical papers at the colliery office but could not name the official to whom such medical papers were submitted. The witness stated that he did not remember if he attended the enquiry and that he did not have any proof to show that he submitted medical papers at the colliery.

6. Mr. Subir Dey was examined as Management Witness No. 1 and filed an affidavit-in-chief. It is stated that workman was absenting from duty from 01.12.1997 and Charge Sheet was issued to him on 16.11.1999 under Clause 17(i)(n), 17(i)(d) and 17(i)(i) of Model Standing Orders. The workman submitted his reply but the same was found unsatisfactory and a domestic enquiry was started. The Enquiry Officer after concluding the domestic enquiry submitted his report before the Appointing Authority and the charge of misconduct was proved against Bodi Majhi. The workman participated in the enquiry proceeding and reasonable opportunity was given to him to defend his case, following the principles of natural justice. Management issued second Show Cause Notice and the workman was dismissed from service by order dated 28.07.2000. According to the management punishment of dismissal awarded to the workman is totally

justified and proportionate to the misconduct committed by him. The management witness produced the following documents :

- (i) Copy of the Charge Sheet dated 16.11.1999 has been marked as Exhibit M-1.
- (ii) Copy of the Reply to the Charge Sheet, as Exhibit M-2.
- (iii) Copy of the Notice of enquiry dated 18.11.1999, as Exhibit M-3.
- (iv) Copy of the Enquiry Proceeding, in ten pages, has been collectively marked as Exhibit M-4.
- (v) Copy of the Enquiry Report, in four pages, has been collectively marked as Exhibit M-5.
- (vi) Copy of the second Show Cause Notice dated 28.12.1999 / 03.01.2000, as Exhibit M-6.

7. In course of cross-examination Management Witness No. 1 deposed that Mr. A. C. Das Sarkar, the then Personnel Manager of J. K. Nagar Colliery was appointed as the Enquiry Officer and the Charge Sheet was issued from the office of the Agent on 16.11.1999. The witness was unable to produce any document to show as to by whom the Enquiry Officer and management representative were appointed. It transpires that the Enquiry Officer informed Bodi Majhi that he was appointed as Enquiry Officer to conducted the enquiry. The witness deposed that only one Notice was issued to Bodi Majhi regarding enquiry. From further cross-examination, it emerges that the Notice of enquiry issued to the workman by the Enquiry Officer was dated 18.11.1999 and it has been admitted in evidence as Exhibit M-3. The management witness disclosed that the Enquiry Officer in his Notice did not disclose by whom he was appointed as the Enquiry Officer. Management has also produced a copy of second Show Cause Notice dated 28.12.1999, issued to the workman under registered post with A/D and the same is marked as Exhibit M-6. There is no suggestion to the management witness on behalf of the workman that no Notice of enquiry was served upon him or that he

was unable to participate in the enquiry. The witness produced a copy of the order of dismissal dated 28.07.2000 as Exhibit M-7.

8. The core issue for consideration in this case is whether a fair domestic enquiry was held against Bodi Majhi, observing the principles of natural justice and if the order of dismissal issued against him is fair and legal?

9. Mr. Partho Choudhary, learned advocate arguing on behalf of the workman submitted that management has miserably failed to prove that Charge Sheet and Notice of enquiry were served upon the workman. It is contended that no letter of appointment of Enquiry Officer has been produced. Therefore, the enquiry conducted by the Enquiry Officer is not tenable and his findings against the charged workman liable to be set aside. Learned advocate further argued that Bodi Majhi was suffering from illness and he filed medical documents before the management of the company, which were not considered, resulting in his unlawful dismissal. Learned advocate prayed for setting aside the order of dismissal and reinstatement of the workman with back wages from 28.07.2000.

10. Mr. P. K. Das, learned advocate argued that in the paragraph no. 3 of the written statement, the management has categorically stated that Mr. A. C. Das Sarkar, the then Personnel Manager, J. K. Nagar Colliery was appointed as Enquiry Officer to enquire into the said Charge Sheet. The charged employee has no right to dispute the appointment of the Enquiry Officer which is within the jurisdiction and power of the Competent Authority. Learned advocate argued Bodi Majhi remained absent from his duty for nearly two years and the Charge Sheet was issued to him for his continuous absence without any permission or satisfactory cause more than 10 days. Copy of the Charge Sheet is produced as Exhibit M-1. The Enquiry Officer after issuing Notice of enquiry dated 18.11.1999 to the workman (marked as Exhibit M-3) held enquiry on 19.11.1999 and

workman participated in the enquiry proceeding. In order to establish the charge of unauthorized absence management, in course of enquiry examined Sri Lalan Singh as Management Representative, who clearly stated that Bodi Majhi remained absent from duty from 01.12.1997 to 15.11.1999 without giving any information and obtaining any permission from the proper authority. It is stated that the workman absenting for such a long period did not produce any document relating to his medical treatment for those two years. Learned advocate relying upon Exhibit M-4 argued that the workman participated in the enquiry and admitted the charge levelled against him and he simply sought for apology instead of establishing any defense case in his favour. Learned advocate for the management referring to Exhibit M-2 argued that the workman received copy of Charge Sheet and he submitted reply on 18.11.1999 stating that he was suffering from illness and he was treated at the S. D. Hospital, Asansol from 30.11.1997 to 04.03.1998 but he was unable to produce any medical document in support of his claim. Enquiry Report has been placed before this Tribunal as Exhibit M-5, where the Enquiry Officer found that the charge levelled against Bodi Majhi for his unauthorized absence under Clause 17(i)(n) of the Model Standing Orders was proved beyond reasonable doubt and found him guilty of the charge. The Competent Authority of the management issued a second Show Cause Notice to Bodi Majhi on 28.12.1999 / 03.01.2000 for obtaining his response to the findings of the Enquiry Officer. Learned advocate for the management submitted that there is no extenuating circumstance in favour of the workman and Competent Authority passed an appropriate order of dismissal against the workman on 28.07.2000 which he produced as Exhibit M-7. Learned advocate concluding his argument submitted that if the workman does not participate in the work of the management in a disciplined manner the employer establishment has no option but to terminate the service of the workman whose unpredictable presence is detrimental to the function of the company.

11. I have considered the argument advanced by learned advocates of both parties, facts and circumstances of the case as well as evidence adduced. In the written statement the workman initially tried to project a case that he had fell ill and could not attend his duty from 01.12.1997. After recovery he went to join his work at the Colliery but the Labour Officer obtained his thumb impression on some blank papers and did not permit him to join his duty for no fault of his. It is further stated that in the middle of the year 2000 the workman came to know that his file had been forwarded to a higher authority and on 28.07.2000 he received the order of dismissal without holding any enquiry and issuance of Charge Sheet. In the course of his evidence, it appears that the workman received Charge Sheet, which has been marked as Exhibit M-1 and also submitted his reply, marked as Exhibit M-2. The workman has participated in the enquiry. No suggestion was put to the management witness denying receipt of the Charge Sheet or that no enquiry proceeding was held. In paragraph no. 12 of the affidavit-in-chief the workman stated that all on a sudden he received a second Show Cause Notice wherefrom he learnt for the first time that the management had started a disciplinary proceeding against him. The copy of the Enquiry Proceeding has been collectively marked as Exhibit M-4. The dismissed workman had opportunity to cross-examine the management witness but did not venture to deny that no enquiry proceeding was held or that he was not extended reasonable opportunity to participate or cross-examine the management representative.

12. From the materials on record, it is clearly established that the workman had remained absent from duty for nearly two years without any intimation to the employer company and he has miserably failed to establish that during that period he was prevented from attending his duty due to illness. The conduct of the workman indicates that he did not act in a responsible manner and his nonchalant attitude to work hampered the work of the employer company. The management appears to have held the enquiry proceeding in a fair manner,

following the principles of natural justice. The order of dismissal has been passed against the workman after the Disciplinary Authority took into consideration all materials including the findings of the Enquiry Officer and the response of the workman against the second Show Cause Notice, which he admitted to have received. In the present case I find no illegality in the mode and manner of the dismissal of the workman from service and find no reason to interfere with the order of dismissal.

Hence,

ORDERED

that the Industrial Dispute raised on behalf of Bodi Majhi is dismissed on contest. The workman is not entitled to any relief whatsoever. 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.

Sd/-

(ANANDA KUMAR MUKHERJEE)

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