

**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. 42 OF 2004

PARTIES: General Secretary, Koyala Mazdoor Congress representing
Rajendra Hembram

Vs.

Management of Chora Colliery, 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: 28.03.2025

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-22012/313/2003-IR(CM-II)** dated 30.06.2004 has been pleased to refer the following dispute between the employer, that is the Management of Chora Colliery under Kenda Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Chora Colliery under Kenda Area of M/s. Eastern Coalfields Ltd. in dismissing Sri Rajendra Hembrom, Timber Mazdoor from services w.e.f. 8.7.1993 is legal and justified? If not, to what relief is the workman entitled? ”

1. On receiving Order **No. L-22012/313/2003-IR(CM-II)** dated 30.06.2004 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered 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. Mr. Rakesh Kumar, then General Secretary of Koyala Mazdoor Congress filed written statement on 13.06.2006 on behalf of Rajendra Hembram, the dismissed workman. Brief fact of the case as disclosed in the written statement is that Rajendra Hembram was posted as Timber Mazdoor at Chora Colliery under Kenda Area of Eastern Coalfields Limited (hereinafter referred to as ECL) bearing U.M. No. 705215. Due to his unauthorized absence from 18.09.1992 a Charge

Sheet was issued to the workman bearing No. ECL/CH/C-6B/1993/1689 dated 13.02.1993. The charged employee replied to the imputations disclosing that he went home to attend the funeral of his father and thereafter he suffered from the severe stomach pain with vomiting. He underwent treatment at his native place. The workman thereafter requested management to allow him to join duty but management initiated a domestic enquiry against the workman. The workman participated in the enquiry and produced medical certificate in support of his treatment. There is no denial of such fact by the management representative and the Enquiry Officer also accepted the ground for his absence as well as the medical document. Without issuing any second Show Cause Notice and for a period of absence for only five (5) months and few days on the ground of illness management awarded an extreme punishment of dismissal. It is contended that the punishment of dismissal is harsh, extreme, and disproportionate to the nature of misconduct and prayed for setting aside the order of dismissal, reinstatement of the workman and payment of back wages with all other consequential benefits.

3. The Agent, Chora Colliery contested the Industrial Dispute by filing written statement on 22.02.2007. According to the management Rajendra Hembram unauthorizedly absented from duty since 18.08.1992 without prior permission for which he was chargesheeted under Clause 17(i)(n) of Model Standing Orders applicable to the establishment. Charge Sheet was served upon the workman but he failed to submit any reply as a result domestic enquiry was held to examine the charge. Management appointed an Enquiry Officer who issued Notice of enquiry to the workman at his recorded address. Reasonable opportunity was given by the Enquiry Officer to the workman to defend his case in accordance with the principles of natural justice. The Enquiry Officer after concluding the Enquiry Proceeding submitted his report before the appointing authority and held the workman guilty of the charge levelled against him. Disciplinary Authority after considering the Charge Sheet, Enquiry Proceeding and Enquiry Report and all

connected documents was fully satisfied with the findings of the Enquiry Officer, passed an order dismissing Rajendra Hembram from service vide order of dismissal dated 08.07.1993. According to the management the punishment awarded against the charged workman is proportionate and to the guilty of misconduct committed by the workman by causing serious dislocation of production to the management and there was no mitigating circumstance for the management to take liberal view. Management denied that the workman could not attend his duty due to illness or that he was under medical treatment of Dr. Sakti Pada Sadhu at Nala. Management contended that if the Tribunal arrived at a preliminary finding that the Enquiry Proceeding was unfair for any reason, the management may be granted an opportunity to prove the said charge before the Tribunal. It is urged that the action taken by the management is totally justified and the dismissed workman is not entitled to any relief, as prayed for.

4. The scheduled question referred for consideration is whether dismissal of Rajendra Hembram, Timber Mazdoor from his service from 08.07.1993, by the management of Chora Colliery is legal and justified. if not to what relief the workman is entitled to?

5. During pendency of the Industrial Dispute, on 18.03.2015 Smt. Sonaki Hembram, mother of Rajendra Hembram submitted a verified petition, informing that Rajendra Hembram died on 03.08.2009 leaving behind her and Jitendra Hembram, the younger brother as legal heirs and successors and prayed for their substitution in place of the deceased workman. By order dated 09.12.2015 the mother and brother of the deceased employee were substituted.

6. In order to prove their case union examined Smt. Sonaki Hembram, the mother of the dismissed workman as Workman Witness No. 1. She has filed an affidavit-in-chief and was cross-examined on behalf of the management. In her affidavit-in-chief the mother of the dismissed workman stated that her son

attended the Enquiry Proceeding and explained the circumstances under which he was absenting. It is stated that Rajendra Hembram went to attend the funeral of his father who had expired and after that he was attacked with severe stomach pain with vomiting and underwent medical treatment. Treatment papers were submitted and the management representative also admitted the fact during the Enquiry Proceeding. She further stated that the total period of absence from duty was only five months and few days and that too was due to reason beyond his control, as such he should not be awarded with the punishment of dismissal. The witness claimed that no second Show Cause Notice was issued to her son which is essential as per law laid down by the Hon'ble Supreme Court of India and Circular issued by the Coal India Limited. She stated that the past record of her son was good and he submitted mercy appeal in the light of the Memorandum of Settlement dated 22.05.2007 but the request of her son was not considered. In her affidavit-in-chief she stated that Rajendra Hembram died on 03.08.2009 leaving behind his mother and a brother, Jitendra Hembram. Her son had no source of income for livelihood and after dismissal from service he died due to lack of medical treatment. She stated that Jitendra Hembram, the younger brother should be provided with employment and back wages of Rajendra Hembram from the date of dismissal till the date of joining of Jitendra Hembram be paid. In cross-examination she deposed that she is not in a position to state whether any intimation was given to the management by her son regarding his illness. She denied that her son was dismissed by management for his misconduct and for proper reasons. She admitted that enquiry was held in presence of her son and that on the basis of Enquiry Report her son was dismissed from service. Opportunity was granted to the union to adduce further evidence but union failed to produce Jitendra Hembram and ultimately evidence of workman witness was closed on 14.02.2023.

7. Management availed full opportunity to prove that the enquiry held was fair. Mrs. Sarita Kujur, Assistant Manager (Personnel), Chora Colliery has been

examined as Management Witness No. 1. She filed an affidavit-in-chief in support of the management's case wherein it is stated the Disciplinary Authority after careful consideration of Enquiry Proceeding, Enquiry Report and all other connected papers dismiss the workman from service. The punishment awarded is justified, which is not disproportionate and the workman is not entitled to any relief. Management witness produced the following documents in support of their case:

- (i) Copy of the Charge Sheet issued to Rajendra Hembram dated 13.02.1993 has been produced as Exhibit M-1.
- (ii) Copy of the Enquiry Proceeding, as Exhibit M-2.
- (iii) Copy of the Enquiry Report, as Exhibit M-3.
- (iv) Copy of the order of dismissal dated 08.07.1993, as Exhibit M-4.

It appears from her evidence that the workman participated in the Enquiry Proceeding.

8. In course of cross-examination Management Witness No. 1 deposed that the workman submitted medical document relating to his medical treatment. The concerned workman was not referred to the Medical Board of the company even after he filed medical document. The witness denied the suggestion that the punishment imposed against the workman is disproportionate to the charge.

9. Mr. Rakesh Kumar, Union representative advancing his argument submitted that the dismissed workman has expired on 03.08.2009 and is substituted by his dependant mother and brother. It is argued that the concerned workman was absent for five months and few days due to his illness. He went to attend his father's funeral at his native place in Nala in Jharkhand and suffered from severe stomach pain with vomiting due to which he was medically treated by Dr. Sakti Pada Sadhu. After receiving the Charge Sheet, the workman participated in the Enquiry Proceeding where he disclosed the nature of his

illness and produced medical document which has been "Ex. D-1". It is further argued that in the Enquiry Report (Exhibit M-3) the Enquiry Officer clearly stated that he is of the opinion that the chargesheeted workman was absented from his duty due to illness from 18.08.1992 to 04.04.1993 as per medical certificate enclosed as "Ex. D-1" and his deposition. It was also observed by the Enquiry Officer that the charged employee failed to inform the colliery authority as he was mentally disturbed. Mr. Rakesh Kumar, Union representative argued that on the basis of such findings the Enquiry Officer arrived at a contradictory decision, bereft of reason and held the charged employee guilty of the charge. It is argued that the Enquiry Officer and the Appointing Authority issuing the order of dismissal (Exhibit M-4) are not the same person and the management was duty bound to issue a second Show Cause Notice and supply copy of the Enquiry Proceeding and Enquiry Report to the charged employee inviting his explanation. Admittedly, no second Show Cause Notice was issued by the management, thereby a substantive provision of law was violated by the management of the employer. The union representative further asserted that the ratio laid down by the Hon'ble Supreme Court of India in the case of **Union of India and Others Vs. Mohd. Ramzan Khan [AIR (1991) SC 471]** and the Circular issued by Coal India Limited bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994 have been violated by the management. It is contended that the workman had assigned cogent reason for his absence and the management acted in an illegal manner by not following the established principles that if the absence of the workman is beyond his control due to illness, he is not liable to be punished. Concluding his argument Mr. Kumar submitted that the Enquiry Proceeding was unfair, arbitrary, violative of the principles of natural justice and contrary to the findings of the Enquiry Officer. Therefore, the order of dismissal of the workman is liable to be set aside and since the workman has died during pendency of the Industrial Dispute, the dependant mother and brother of the deceased workman are entitled to the back wages to which Rajendra Hembram would have been entitled to and other consequential benefits.

10. Mr. P. K. Das, learned advocate, in reply, argued that undisputedly the workman was absent from duty from 18.08.1992, till issuance of Charge Sheet on 13.02.1993, copy of which has been produced as Exhibit M-1. The Enquiry Officer held enquiry following the principles of natural justice and granted reasonable opportunity to the charged employee to defend his case. In course of Enquiry Proceeding (Exhibit M-2) the charge under Clause 17(i)(n) of the Model Standing Orders was read over and explained to the charged workman who participated in the enquiry and admitted the same to be correct. The workman was allowed to take assistance from co-workers to defend him but he did not agree. The management representative, Mr. J. P. Singh, made statement before the Enquiry Officer and clearly stated that the workman was absent for more than ten days and did not submit any reply to the Charge Sheet. Rajendra Hembram was examined and he produced his document and claimed to be under medical treatment of Dr. Sakti Pada Sadhu at Nala in Jharkhand. The workman witness was crossed as to why he did not inform the colliery about his father's sudden death and his illness. The workman, in reply, stated that he was mentally disturbed. Learned advocate for the management submitted that the workman had abandoned his work without information and there is no reason to interfere with the findings of the Enquiry Officer and dismissal of the workman. It is urged that the Industrial Dispute is liable to be dismissed.

11. Having considered the materials in record, evidence adduced by both the parties and rival contention, I have no hesitation to hold that the concerned workman after remaining absent for five months and few days had participated in the Enquiry Proceeding. He produced medical certificate issue by Dr. Sakti Pada Sadhu which was marked as "Exhibit D-1" by the Enquiry Officer. According to the certificate marked as "Exhibit D-1", the doctor certified that Rajendra Hembram was suffering from Gastric Pain and was under his treatment from 18.08.1992 to 04.04.1993 and he was fit for joining his duty on 05.04.1993.

Medical papers have not been filed during the Enquiry Proceeding but during cross-examination of the workman witness no such question was raised by the management representative. No suggestion was given to the charged employee that he was not suffering from illness or the documents produced by him were not genuine. In absence of such objection on the part of the management, the Enquiry Officer has no option but to accept the ground of illness as the reason for absence of the workman from duty. It is a well settled principle that if absence from duty is beyond the control of the workman due to illness, he is not liable to be held guilty. While considering the question as to why he did not inform the reason of his absence to the management, the witness stated to management representative that he was mentally disturbed. It may be gathered from the Enquiry Proceeding that the workman had left his work due to sudden death of his father and thereafter he suffered from illness. Under such circumstance it is natural that the aggrieved son would be under mental distress and this is an appropriate reason for not informing the reason to the management for his absence. It appears from the Enquiry Report (Exhibit M-3) that the Enquiry Officer has accepted the ground of absence and clearly stated that he is of the opinion that the charged employee was absenting from his duty due to illness from 18.08.1992 to 04.04.1993, as per medical certificate, "Exhibit D-1" as well as from his deposition and failed to inform colliery authority as he was mentally disturbed. While accepting the ground for absence, the Enquiry Officer acted contrary to the facts and without assigning any reason held the workman guilty of the charge. I therefore hold that the finding of the Enquiry Officer is inconsistent and contrary to the materials placed on the record to which he expressed his satisfaction and formed an opinion on such basis.

12. The second facet of the case is that the management did not issue any second Show Cause Notice to the charged employee. In the law laid down by the Hon'ble Supreme Court of India in the case of **Union of India and Others Vs. Mohd. Ramzan Khan [AIR (1991) SC 471]** it was held 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.”

The principle laid down by the Hon’ble Supreme Court of India was enforced by the Coal India Limited by way of issuing a Circular bearing No. CIL C-5A(vi)/50774/28 dated 12.05.1994 to the effect that before imposing any punishment of dismissal from service the charged employee should be given an opportunity to submit his representation against the findings of the Enquiry Officer. In the instant case non-compliance of such principles of natural justice invalidates the order of dismissal and in my consideration the same appears to be disproportionate to the nature of misconduct.

13. In the light of my above discussion, I hold that the dismissal of the workman is a disproportionate punishment compared to the nature of his misconduct. The order of dismissal produced as Exhibit M-4 is not found tenable under the law and the same is set aside. It appears from the record that Rajendra Hembram died on 03.08.2009 during the pendency of the Industrial Dispute. Under such circumstance no purpose would be served by deciding the fairness of the Enquiry Proceeding as a preliminary issue, the reason being the management cannot hold enquiry against Rajendra Hembram for the second time or rectify its default by issuing a second Show Cause Notice for its explanation. For the same reason question of reinstatement of the workman does not arise. In my considered opinion the object and purpose of the Industrial Dispute would be effectively served if a monetary compensation of Rs. 2,00,000/- (Rupees two lakhs only) is paid to the dependant mother of the deceased employee. Management is also directed to pay the consequential benefits to the dependant of the deceased employee in respect of the service of Rajendra Hembram.

Hence,

ORDERED

that the Industrial Dispute is allowed on contest. The order of dismissal of Rajendra Hembram dated 08.07.1993 issued by the General Manager, Kenda Area of Eastern Coalfields Limited is set aside. The management of Chora Colliery under Kenda Area of Eastern Coalfields Limited is directed to pay a lumpsum monetary compensation of Rs. 2,00,000/- (Rupees two lakhs only) to the dependant mother of the deceased employee along with all consequential benefits. 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 and Employment, Government of India, New Delhi for information and Notification.

Sd/-

(ANANDA KUMAR MUKHERJEE)

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