

**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 2022

PARTIES: Mongla Majhi
Vs.
Management of Amritnagar Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. Sayantan Mukherjee, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 30.09.2024

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-22012/62/2022-IR(CM-II)** dated 29.08.2022 has been pleased to refer the following dispute between the employer, that is the Management of Amritnagar Colliery under Kunustoria Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the demand raised by Koyala Mazdoor Congress vide letter dated 04/01/2021 (copy enclosed) against the Management of Amrit Nagar Colliery, Kunustoria Area of Eastern Coalfields Ltd. for not regularizing as Peon to Shri Mongla Majhi, Mason, UM No. 122119, who was appointed on 27/03/2001 as Piece Rated Trainee (UG) in place of his father (Late Ramesh Majhi), and doing surface duty as Peon w.e.f. 06/9/2014 in absence of regular Peon vide Office Order No. Agent/4100/2014/2005 dated 06/09/2014 (copy enclosed) is fair, legal and justified? If yes, what relief the concerned workman is entitled to? ”

1. On receiving Order **No. L-22012/62/2022-IR(CM-II)** dated 29.08.2022 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 42 of 2022** was registered on 29.08.2022 / 01.09.2022 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 in this case on 22.11.2022 through Mr. H. L. Soni, Assistant General Secretary, Koyala Mazdoor Congress. In gist, the contention of the workman, delineated in the written statement is that Mongla Majhi was appointed as an Underground Mason Mazdoor on 27.03.2001 at Amrit Nagar Colliery under Kunustoria Area of Eastern Coalfields Limited (hereinafter referred to as ECL). He was assigned with the work of a Peon on surface duty w.e.f. 06.09.2014 in terms with Office Order No. Agent/4100/2014/2005 dated 06.09.2014. Mongla Majhi submitted his application before the employer for his regularization as a Peon on surface duty but the management did not consider the same. The union raised an Industrial Dispute for regularization of Mongla Majhi as peon on surface duty.

3. Management contested the case by filing their written statement on 28.04.2023. According to the management Mongla Majhi is an Underground Masson at Amrit Nagar Colliery. On the basis of his application seeking surface duty on medical ground he was referred to the Apex Medical Board of ECL on 20.11.2013 and the Apex Medical Board made a recommendation for his alternate surface job for one year and then review. After completion of one year of surface job w.e.f. 20.11.2013, Mongla Majhi did not appear before any Medical Board in spite of repeated and regular verbal reminders. He was instructed to appear before the Apex Medical Board of ECL for his medical review vide letter No. Agent/4100/2021/2723 dated 15.03.2021. He was also requested to submit documents relating to his medical treatment but till date Mongla Majhi has not submitted such medical documents. According to the norms and guidelines of the employer company an underground employee cannot be regularized as Peon on surface in Technical and Supervisory Grade H. Promotion / Selection of an employee to a higher post is done by a committee constituted by the competent authority and the Departmental Promotion Committee (hereinafter referred to as DPC) has to ensure that all the employees are given the opportunity to participate.

Workman performing underground mining work are not permitted to accept surface job unless he is recommended by the Apex Medical Board or DPC. In the instant case the workman is not working as a peon continuously and uninterruptedly, rather he was deployed as and when required. The management denied that Mongla Majhi was deployed to work as a Peon on 06.09.2014 due to the requirement of the management or that he has been discharging his duty as a Peon since such time to the satisfaction of his supervisor. It is urged that the action of the management in not regularizing the workman is fully justified and the Industrial Dispute is liable to be dismissed.

4. Mongla Majhi filed his affidavit-in-chief and examined himself as Workman Witness – 1. He faced cross-examination by the management. Admittedly, he joined as an Underground Masson Mazdoor at Amrit Nagar Colliery and appeared before a Medical Board for suitability of job, where he was recommended by the Medical Board on 20.11.2013 for an alternate surface job for one year and thereafter review. In course of his examination-in-chief the witness stated that he was recommended for surface job for one year as per recommendation of the Medical Board which was required to be reviewed after one year. The witness also produced the following documents:

- (i) Copy of the Identity Card of Mongla Majhi, issued by the employer has been produced as Exhibit W-1.
- (ii) Copy of the Office Order dated 27/28.01.2014 regarding recommendation for his surface job, as Exhibit W-2.
- (iii) Copy of the Office Order dated 06.09.2014 whereby Mongla Majhi was placed as a Peon and allowed surface job, as Exhibit W-3.
- (iv) Copy of the application of Mongla Majhi submitted on 15.01.2016, praying for his regularization in the post of peon, as Exhibit W-4.
- (v) Copy of the application of Mongla Majhi submitted on 09.03.2016, praying for his regularization in the post of peon, as Exhibit W-5.

- (vi) Copy of the application of Mongla Majhi dated 06.01.2021, praying for his regularization in the post of peon, as Exhibit W-6.
- (vii) Copy of the letter dated 15.03.2021 of the Manager, Amritnagar Colliery directing the employee to submit his papers related to medical treatment, has been marked as Exhibit W-7.

The witness deposed that he did not receive any official letter from the management asking him to appear for reviewing his medical state.

5. In cross-examination the witness stated that he was deputed to perform surface duty for one year. After 20.11.2014 he never appeared before any Medical Board for review of his health condition. He did not issue any letter to the management that he was unable to appear before review committee. In course of cross-examination of WW-1 the witness admitted his signature on letter 23.02.2021 where he was requested to submit papers relating to his medical treatment. Copy of the said letter has been marked as Exhibit M-1 (on admission). Witness further stated that he did not submit any application before DPC at Amritnagar Colliery. The witness denied the suggestion that there is no vacancy in the post of Peon at Amritnagar Colliery according to the Manpower Budget and only one post of Peon is lying vacant since the death of a permanent Peon, a few years ago. He also denied that he is not entitled to be regularized to the post of Peon or that he intentionally avoided to appear before the Medical Board for review.

6. Mr. Dinabandhu Mondal appeared as the Management Witness and filed his affidavit-in-chief. The witness has been examined as Management Witness - 1. The witness stated that on the basis of own representation of the workman and on recommendation of Special Medical Board dated 20.11.2013 he was assigned with surface duty for one year from 20.11.2013. Copy of the recommendation report has been marked as Exhibit M-1. On 15.03.2021 a letter was issued to

Mongla Majhi for review of his medical condition by the Medical Board after completion of one year and to submit his medical papers. Mongla Majhi put his signature on the document. Copy of the letter has been marked as Exhibit M-2 and signature of Mongla Majhi on the letter has been marked as Exhibit M-2/1. It is deposed that Mongla Majhi did not comply the instruction in the Notice and he did not appear before the Medical Board. Subsequently, another letter dated 12/13.07.2021 was issued to Mongla Majhi as reminder to submit his medical report within seven days. Copy of the letter has been produced as Exhibit M-3. Instead of appearing before the Medical Board for review of his health condition, Mongla Majhi filed an application before the management, seeking his posting as Peon on surface. It transpires from the evidence of witness that the DPC considers for providing surface job to underground workers.

7. In cross-examination the management witness deposed that Mongla Majhi was deputed for surface job on the basis of recommendation of the Medical Board. The witness disclosed that the employee was engaged on miscellaneous job on surface and he was not posted on regular basis. The witness deposed that the management did not take steps for constitution of Medical Board for review of his health condition. He further deposed that there is no policy by which a person transferred from underground to surface had to be regularized for duty on surface and such posting on regular basis can only be done by the DPC. The witness also deposed that Mongla Majhi was receiving higher pay while he was working as a regular underground workman and stated that he was not entitled to difference of wages for inferior work done on surface.

8. On 07.05.2024 finding that Mongla Majhi never appeared before the Medical Board since 2014 for review, an order was passed by this Tribunal, whereby the Manager (Personnel), Amritnagar Colliery was directed to issue an order for referring Mongla Majhi for his medical examination at Central Hospital,

Kalla within a fortnight from issuance of the order and to find out if he is fit for his underground job and to submit a report before the Tribunal. On 23.09.2024 the case was fixed for hearing of argument and the management filed a copy of letter dated 26/27.05.2024 addressed to Mongla Majhi, whereby he was directed to appear before the Medical Board on 05.06.2024 at 09.00 am before the Chief Medical Officer's Office at Sanctoria Hospital for his medical examination. At the outset Mr. Sayantan Mukherjee, learned advocate for the management submitted that though Notice were issued to Mongla Majhi for appearing before the Chief Medical Officer's Office at Sanctoria Hospital for review of his health condition, but workman failed to appear on the date fixed. Management also filed a copy of letter dated 28.06.2024 submitted by Mongla Majhi addressed to the Manager, Mahabir Colliery, wherein he disclosed that he was unable to appear before the Chief Medical Officer's Office at Sanctoria Hospital due to his illness.

9. The case was taken up for hearing of argument. The union representative submitted that the workman is performing duty of a Peon, which is a surface job, for several years and he is entitled to be regularized as a Peon. Refuting the claim of the union, Mr. Sayantan Mukherjee, learned advocate argued that the workman is not entitled to be regularized in surface job unless the DPC considered the case at an appropriate time along with other eligible candidates, who have been performing underground job for several years. It is further argued that Mongla Majhi at his own instance sought for surface job on medical ground and he was recommended by Apex Medical Board, Kalla Hospital on 20.11.2013 for an alternative surface duty on medical ground for one year. It is argued that thereafter the workman did not appear before any Medical Board nor did he produce any medical documents after review of his health condition. Learned advocate drew my attention to the letter dated 12/13.07.2021 (Exhibit M-3) where a reminder was given to Mongla Majhi to submit his review report within seven days of receipt of the letter. It is submitted that once having taken up the surface

job the workman never complied the condition set forth and did not submit his medical report after a period of one year. It is contended that the workman cannot derive the benefit of being regularized in the surface job unless the competent authority and the DPC recommended him for a regular surface job on considering the candidature of other under ground employees.

10. I have considered the facts and circumstances of the case, evidence adduced by parties as well as arguments advanced on behalf of both parties. Exhibit M-1, a report of the Apex Medical Board reveals that Mongla Majhi, designated as Underground Trammer at Amritnagar Colliery was suffering from "Seizure disorder" since 2006. He was under medical treatment regularly. The Apex Medical Board recommended for an alternative service job for one year and review his health condition. On 15.03.2021 the Manager of Amritnagar Colliery issued a letter to Mongla Majhi, reminding him that the Medical Board of Central Hospital, Kalla on 20.11.2013 had recommended for providing him an alternate service job for one year and also proposed for review of his health condition after completion of one year. The management in their letter advised him to submit medical treatment paper after a period of one year and also a copy of the review report. The aggrieved workman did not comply the condition once again and a second reminder was issued to the workman on 13.07.2021 (Exhibit M-3), reminding him to submit his medical treatment papers within seven days of receipt of the letter. The workman neither complied the direction of the management in Exhibit M-2 and M-3 nor did he produce any medical documents before this Tribunal to establish that he is still suffering from the ailment due to which which he was provided with an alternate surface job. It appears from letter dated 26/27.05.2024 that Mongla Majhi was advised to appear on 05.06.2024 in the Boardroom of the Chief Medical Officer's Office at Sanctoria Hospital for producing his treatment and investigation papers, in original but he did not comply the same. In my considered view the workman does not deserve to be

regularized in any surface job unless he submits his documents relating to his medical treatment and his health condition on review as had been advised by the Apex Medical Board at the time of recommending the surface job. The workman has produced an Office Order dated 06.09.2014 (Exhibit W-3) where it is stated that in absence of regular Peon Mongla Majhi, who has been deployed for surface duty was authorized to distribute and collect daks from Area Office, Kunustoria Area till further order. The Office Order is merely an arrangement made to accommodate the surface duty of Mongla Majhi. It does not create any right in favour of the workman to claim his regularization as a Peon for surface duty. Any regularization of such nature requires to be considered by the DPC of the management.

11. In light of my above discussion, I hold that the workman is not entitled to be regularized as Peon, only for being deputed on surface duty for one year. The Industrial Dispute is therefore dismissed on contest.

Hence,

ORDERED

that the Industrial Dispute is therefore dismissed on contest against the workman. 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.