

**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. 43 OF 2005

PARTIES: Raj Kishore Harijan
Vs.
Management of Parasea Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Rakesh Kumar, President, Koyala Mazdoor Congress.
For the Management of ECL: Mr. P. K. Goswami, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 10.07.2024

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-22012/199/2004-IR(CM-II)** dated 13.05.2005 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 O.C.P. over dismissing Sh. Rajkishore Harijan, Security Guard (Trainee) w.e.f. 18.9.93 is legal and justified? If not, to what relief the concerned workman is entitled and from which date? ”

1. On receiving Order **No. L-22012/199/2004-IR(CM-II)** dated 13.05.2005 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 43 of 2005** was registered on 31.05.2005 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 Secretary of Koyala Mazdoor Congress filed written statement on 14.11.2005 on behalf of the aggrieved workman. Management of Eastern Coalfields Limited (hereinafter referred to as ECL) contested the case by filing written statement on 27.03.2007. The brief fact of the case disclosed in the written statement of the union is that Raj Kishore Harijan was appointed as an

Underground Loader and the management of Parasea OCP posted him as a Security Guard (Trainee). On 09.07.1993 the workman was on duty in the second shift from 4.00 p.m. to 12.00 a.m. (midnight). At about 10.00 p.m. on 09.07.1993, he took permission from the Security Havildar to return home on the ground of his son's illness. Sri Krishna Singh, Security Havildar allowed Raj Kishore Harijan to leave the place of work on that night. At about 11.00 p.m. on 09.07.1993 some miscreants raided Parasea OCP and committed theft of three hundred feet Power Cable and snatched away company's gun allotted to another Security Guard. According to the union the incident took place in absence of Raj Kishore Harijan, who already left his duty, taking permission from his immediate superior and he is not responsible for the occurrence.

3. In connection with the incident a Charge Sheet was issued by the management of Parasea OCP bearing No. POCP/P&IR/C.S./93/367 dated 18.07.1993. According to the Model Standing Order, Raj Kishore Harijan was suspended by the management of Parasea OCP. It is contended that the Manager who issued the order of suspension is neither the Appointing Authority nor the Disciplinary Authority and furthermore the charge levelled against him is vague, baseless, false and motivated. Furthermore, management did not supply the copy of complaint, names of witnesses and the statement of the witnesses along with the Charge Sheet. The workman replied to the Charge Sheet, denying the allegation. After submission of his reply the workman was allowed to resume his duty from 26.07.1993. An enquiry was initiated in perfunctory manner. After the enquiry was held no 2nd Show Cause Notice was issued to the workman and he was dismissed from the service by a letter issued by the General Manager dated 18.09.1993. The union prayed for setting aside the order of dismissal and claimed that the punishment imposed is disproportionate to the charge and prayed for an order of reinstatement of workman along with full back wages and consequential relief.

4. Management in their written statement stated that the concerned workman was chargesheeted on 18.07.1993 under Clause 17(i)(a), 17(i)(f) and 17(i)(p) of the Model Standing Order. The concerned workman appeared before the Enquiry Officer and he was afforded reasonable opportunity to defend himself. After hearing the workman as well as management representative, the enquiry was completed and the workman was found guilty of misconduct, in respect of charges framed. A report was sent before the competent authority and he was dismissed from service according to the provisions of standing order. Management contended that the union has no locus standi to raise this Industrial Dispute, as the workman was not a member of the union at any point of time. It is contended that the order of dismissal was issued by letter dated 18.09.1993 but the union raised the dispute for the first time on 15.04.2004, i.e. after a lapse of a decade without showing any reason of delay. It is urged that the workman having left his place of work, does not deserve any leniency in the matter of imposition of punishment. He is earning his livelihood from other source as such he is not entitled to any monetary benefit. Management therefore prayed for dismissal of the case.

5. The sole question for consideration of this Tribunal is whether the dismissal of Raj Kishore Harijan w.e.f. 18.09.1993 is legal and justified and if the concerned workman is entitled to any relief.

6. In course of proceeding before this Tribunal Raj Kishore Harijan submitted his affidavit-in-chief where he stated that on 09.07.1993 he was under training as a Security Guard working in the second shift i.e. 4.00 p.m. to 12.00 a.m. Due to his son's serious illness, Mr. Sri Krishna Singh, the Security Havildar allowed him to go home at 10.00 p.m. that night. On the same night at about 11.00 p.m. some miscreants raided Parasea OCP working site and committed theft of Power Cable and snatched company's security guard which was issued to another

security guard. He also stated that the incident did not occur during his duty hours and that the management issued the Charge Sheet after nine days as an afterthought to victimize the charged employee and save other persons. The witness asserted that the enquiry was held in a perfunctory manner and without issuance of 2nd Show Cause Notice, the workman was dismissed from service from 18.09.1993. He further stated that he performed his work with loyalty and there was no adverse report against him. the workman prayed for his reinstatement and claimed back wages and consequential reliefs. In course of his re-examination-in-chief on recall the Workman Witness - 1 produced the following documents :

- (i) Copy of the Charge Sheet dated 18.07.1993 has been produced as Exhibit W-1.
- (ii) Copy of the reply against the Charge Sheet, as Exhibit W-2.
- (iii) Copy of the letter dated 26.07.1993 issued by the Manager, Parasea OCP addressed to Raj Kishore Harijan, as Exhibit W-3.
- (iv) Copy of the reply to the Enquiry Notice, as Exhibit W-4.
- (v) Copy of the letter for nominating co-worker for the Enquiry Proceeding, as Exhibit W-5.
- (vi) Copy of the Enquiry Proceeding in sixty pages, as Exhibit W-6.
- (vii) Copy of the Enquiry Report dated 18.09.1993, as Exhibit W-7.
- (viii) Copy of the letter for dismissal dated 18.09.1993 issued by the General Manager of Kunustoria Area, as Exhibit W-8.

7. In his cross-examination the workman admitted that he participated in the Enquiry Proceeding. He also produced a copy of the reply to the Enquiry Notice as Exhibit W-4. He was provided with the assistance of co-employee during the Enquiry Proceeding and the copy of Enquiry Proceeding in sixty pages has been produced by him as Exhibit W-6. During Cross-examination the workman stated that he participated in the Enquiry Proceeding on a regular basis and did not have

complain against anybody nor did he have any grievance against any co-worker. The workman admitted that he was on duty at the time Power Cable was stolen from the site of work. The witness denied that his dismissal from service was proper and justified.

8. Initially management filed affidavit-in-chief of Mr. Raj Narayan Bhattacharjee, Senior Manager (Personnel), Parasea Group of Mines as Management Witness. Since the witness was not found available to stand the test of cross-examination, the affidavit-in-chief of Mr. Raj Narayan Bhattacharjee has no value in the eye of law. Mr. Soram Sanjoy Singh, Manager (Personnel), Parasea Colliery, examined himself as Management Witness – 1. He filed his affidavit-in-chief on 29.05.2023. It is stated in his affidavit-in-chief that Raj Kishore Harijan and one Chottu, his co-worker, were posted as Security Guards on 09.07.1993 having duty hours from 04.00 p.m. to 12.00 midnight. At about 11.00 p.m. when the workman was engaged on duty some miscreants decamped three hundred feet of Power Cable and snatched the gun from a Security Guard. It was reported that Raj Kishore Harijan and his co-worker, Chottu were not present at the place of their duty for which Charge Sheets were issued to them on 18.07.1993, seeking explanation. The reply submitted by Raj Kishore Harijan was not found satisfactory and a Departmental Enquiry was initiated against him. After going through the Enquiry Proceeding and Enquiry Report, the order of dismissal was passed against Raj Kishore Harijan. It is stated that the ex-workman is not entitled to any relief. The witness identified and admitted the documents produced by the workman as Exhibit W-1 to W-8.

9. In cross-examination the management witness stated that leaving workplace earlier than the normal duty hours was sufficient to hold the workman guilty of the charge. The employee left the workplace one and half hours before the expiry of duty hours and the occurrence took place at 11.00 p.m.

10. Mr. Rakesh Kumar, President, Koyala Mazdoor Congress, arguing the case for the dismissed workman submitted that Raj Kishore Harijan was on duty at the work site on the night of 09.07.1993 and by taking leave from Mr. Sri Krishna Singh, Havildar, left the place of duty at 10.20 p.m. It is submitted that in the Charge Sheet dated 18.07.1993 (Exhibit W-1) charges were levelled under Clause 17(i)(a) of Model Standing Order for theft of Company's property, Clause 17(i)(f) of Model Standing Order for neglect of work, and Clause 17(i)(p) of Model Standing Order for leaving work without permission or sufficient reason. The workman submitted his reply against Charge Sheet (Exhibit W-2) claiming that the Security Havildar allowed them to leave the work site early for catching vehicles on 09.07.1993 at 10.45 p.m. He had left his workplace and the incident of theft and snatching of gun took place during absence of the charged employee for which he is not responsible and prayed for withdrawing of Charge Sheet issued against him.

11. Referring to the Enquiry Proceeding (Exhibit W-6) Mr. Kumar argued that in course of enquiry the statement of Sri Krishna Singh, Security Havildar was recorded by the Enquiry Officer as MW-2 and it appeared from his statement that on 09.07.1993 he was on duty at the work site of Parasea OCP from 04.00 p.m. to 12.00 midnight. As the Armed Guard was absent Sri Krishna Singh and Chottu performed the duty of Armed Guard. At about 04.15 p.m. Gulbadan Harijan, Security Guard joined duty as there was shortage of security personnel. The union representative traversing the statement of Sri Krishna Singh, submitted that the Havildar has also admitted the fact that he permitted Chottu and Raj Kishore Harijan to leave the workplace before their normal duty hours was over and later he handed over the Gun and Cartridge of Chottu to one Nilmuni at 10.40 p.m. who came to join the third shift. It is argued that the occurrence of theft and snatching of Gun took place during the absence of Raj Kishore Harijan and there is no material to hold Raj Kishore Harijan was guilty of charges of

neglect of work, leaving the place without permission or theft. It is argued that no 2nd Show Cause Notice was served upon the workman. Therefore, the order of dismissal, without providing any opportunity to the workman to submit his representation in respect of the findings against him, is in violation of natural justice. It is argued that the order of dismissal passed against the aggrieved workman is not tenable under the law and is liable to be set aside. Besides, the workman has suffered unnecessarily requires to be reinstated in service and he should be paid the back wages for the period of his entire dismissal along with consequential relief.

12. Mr. P. K. Goswami, learned advocate for the management of ECL argued that in cross-examination the workman witness stated that he left his place of work due to illness of his son but in his reply to the Charge Sheet (Exhibit W-2), the workman stated that in the night shift the security Havildar on duty is aware about the fact that they are allowed to leave the work site early for availing the vehicle provided by the company. It is argued that there is no whisper in the reply to the Charge Sheet that on that night any emergency arose due to illness of his son or he left the place early after obtaining permission from his superior. Learned advocate further argued that admittedly the workman was absent from his place of duty giving rise to such incident which occur due to shortage of Security Personnels and Armed Guard at the work site. Mr. Goswami finally argued that the workman in his cross-examination admitted that he had no grievance about the enquiry proceeding and the Industrial Dispute has been raised in the year 2005 after passage of more than ten years from the date of dismissal. Learned advocate argued that the charge of negligence in work and leaving workplace without permission of the authority has been proved against the workman and the charge under Clause 17(i)(a), 17(i)(f) and 17(i)(p) of the Model Standing Order has been proved against the workman beyond doubt and there is no extenuating circumstance to absolve him of the charge or for setting aside the order of

dismissal. It is contended on behalf of the management that non-issuance of 2nd Show Cause Notice ipso facto cannot demolish the case against the workman and he is not entitled to any relief.

13. I have considered the facts and circumstances of this case, argument advanced on behalf of both parties as well as the materials on record. Admittedly, Raj Kishore Harijan was on duty at the work site of Parasea OCP on the night of 09.07.1993 as a Security Guard. He left the place of work about one and half hours prior to completion of duty hours i.e. 12.00 midnight. On that night an incident took place at 11.00 p.m. when some miscreants committed theft at the company's site by stealing three hundred feet of Power Cable and snatched a Gun from company's Armed Guard. In their written statement, union emphatically stated that the enquiry was held in a perfunctory manner and that the management failed to prove that the Enquiry Officer had been appointed in the case and the letter of appointment was served upon the workman. During his examination-in-chief on recall WW-1 produced a copy of Charge Sheet and the reply submitted by him against the Charge Sheet. Copy of the reply to the Enquiry Notice is produced as Exhibit W-4 and the charged employee admitted in evidence that he participated in the enquiry proceeding. Exhibit W-5 establishes the fact that a co-worker was nominated to assist the workman in the Enquiry Proceeding. Copy of the Enquiry Proceeding has been produced as Exhibit W-6 and Enquiry Report, as Exhibit W-7 collectively. The order of dismissal issued by the General Manager of Kunustoria Area has been produced as Exhibit W-8. In re-cross-examination the workman admitted that he had no complain against anybody nor grievance against any co-worker. He also admitted the fact that he was on duty when the cable was stolen. There is no evidence on record that the charged employee left the workplace for any proper reason. He did not have approval from proper authority to leave the place of work despite the fact that Sri Krishna Singh, the Havildar had allowed Raj Kishore Harijan and Chottu to leave the workplace

on that night. In cross-examination Mr. Soram Sanjoy Singh, the management witness deposed that Sri Krishna Singh, Havildar was not the controlling authority of the charged employee and the Manager of the Colliery is the controlling authority. Therefore, it goes without saying that Sri Krishna Singh did not have the authority to permit Raj Kishore Harijan to leave his work place on the night of occurrence. It also transpires from the cross-examination of the MW-1 that an FIR was lodged at the Andal Police Station regarding the incident of theft and snatching of Fire Arms. The evidence on record is rife to hold that the charge against Raj Kishore Harijan, under Clause 17(i)(f) and 17(i)(p) have been proved. There is no case that the theft had been committed by the charged workman. Accordingly, there is no material on record to hold that the charge under Clause 17(i)(a) was proved against the workman. Be that as it may there is sufficient material on record to hold that Raj Kishore Harijan was guilty of neglecting his duty by leaving his workplace without any sufficient reason. The only irregularity of the management in this case is that, no 2nd Show Cause Notice was issued to the workman for submitting his reply against the findings of the Enquiry Officer in the Domestic Enquiry. It is evident that the management did not comply the mandate of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471]**, the Hon'ble Supreme Court of India laid down the law 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 of law 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, wherein it has been clearly laid down that

the charged employee had to be supplied with Enquiry Proceeding and Enquiry Report and a 2nd Show Cause Notice had to be issued to him before taking any final decision of removing him from service. In the instant case I find that the management has been unmindful of the mandate and failed to observe the pre-requirement before passing the final order of dismissal.

14. There is a clear non-compliance of a guiding principle on the part of the management. However, it is also to be borne in mind that after dismissal of the workman on 18.09.1993, the instant Industrial Dispute has been raised by the union after passage of ten years from the date of the dismissal. In view of the nature of charge established against Raj Kishore Harijan with succinct evidence and the inordinate delay of ten years in raising the Industrial Dispute from the date of dismissal, I do not find any cogent reason for interfering with the order of dismissal, only for non-issuance of 2nd Show Cause Notice. Non-issuance of 2nd Show Cause Notice before dismissal amounts to an irregularity but does not destroy the findings of the Enquiry Officer. Under the facts and circumstances and long lapse of time I do not find it appropriate to interfere with the order of dismissal. The workman having been found guilty of neglecting his work by leaving his work place without sufficient reason cannot seek reinstatement or back wages.

15. In the case of **Senior Superintendent Telegraph (Traffic) Bhopal Vs. Santosh Kumar Seal and Others [2010 (6) SCC 773]**, the Hon'ble Supreme Court of India laid down as follows:

“ 9. In the last few years it has been consistently held by this Court that relief by way of reinstatement with back wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back wages in cases of such nature may be appropriate.”

16. Drawing wisdom from the aforesaid decisions of the Hon'ble Supreme Court of India in matters involving termination of employees, I find it appropriate to allow a monetary compensation of Rs. 2,00,000/- (Rupees two lakhs only) to the dismissed workman for his termination from service without issuing a 2nd Show Cause Notice. The dismissed workman is not entitled to any relief of reinstatement nor back wages in this case.

Hence,

ORDERED

that the Industrial Dispute is allowed in part in favour of the workman. His prayer for setting aside the order of dismissal and reinstatement in service with back wages is disallowed. The workman is allowed a monetary compensation of Rs. 2,00,000/- (Rupees two lakhs only) in lieu of reinstatement and back wages, to be paid by the management of the company within two (2) months from the date of communication of this Award. 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.

(ANANDA KUMAR MUKHERJEE)

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