

**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. 50 OF 2006**

**PARTIES:** Radha Nayak  
(Represented by the legal heirs)

**Vs.**

Management of Amritnagar 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:** 25.06.2025

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**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-22012/275/2005-IR(CM-II)** dated 17.08.2006 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 action of the Management of Amritnagar Colliery under Kunustoria Area of M/s. ECL in dismissing Shri Radhya Nayak, U.G. Loader w.e.f. 17.5.2002 is legal and justified? If not, to what relief is the workman entitled ? ”*

1. On receiving Order **No. L-22012/275/2005-IR(CM-II)** dated 17.08.2006 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 18.09.2006 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. H. L. Soni, Assistant General Secretary, Koyala Mazdoor Congress filed written statement on 22.01.2007 on behalf of Radha Nayak, the dismissed workman. The fact of the case is that Radha Nayak was a permanent employee at Amritnagar Colliery under Kunustoria Area of Eastern Coalfields Limited. The workman served as an Underground Loader, bearing U. M. No. 476745. Due to

prolonged illness Radha Nayak remained absent from duty from 19.07.2001 to 24.10.2001 which was beyond his control. At the relevant time he was under the treatment of Medical Practitioner and after recovery he reported for his duty on 24.10.2001 along with medical certificate. Management did not permit him to join and issued a Charge Sheet against him bearing No. M/4100/01/316 dated 24.10.2001. The workman did not receive any Notice of enquiry and could not participate in the enquiry proceeding. The Enquiry Officer held ex-parte enquiry without giving adequate opportunity to the workman to defend his case. Gross injustice was caused to the workman by denying principles of natural justice. The General Manager, Kunustoria Area thereafter issued a letter of dismissal of the workman bearing letter No. AKNT/P&IR/26A/1036 dated 17.05.2002. It is claimed by the union that the past record of the workman is good and he did not face any punishment on previous occasion. It is therefore claimed that dismissal of Radha Nayak was illegal and unjustified and prayed for setting aside the order of dismissal and payment of full back wages along with other consequential benefits.

3. On 07.08.2017 an order was passed whereby the legal heirs of Radha Nayak were substituted due to his death on 01.05.2011.
4. In this case no written statement was filed by the management, after several opportunity.
5. Union examined Dilip Kumar Nayak, son of Radha Nayak as Workman Witness No. 1. He filed an affidavit-in-chief wherein he stated that his father was continuously sick and remained absent from duty from 19.07.2001 to 24.10.2001 due to his illness, which was beyond his control and he was undergoing medical treatment during that period. After he was declared medically fit, he went to resume duty on 24.10.2001 but on that date a Charge Sheet was issued to him.

The witness further stated that his father attended work for 246 days in the year 1999, 176 days in the year 2000, and 94 days in the year 2001 and he was neither a habitual absentee nor any punishment was awarded against him on earlier occasion. The witness also stated that the enquiry proceeding was held against his father keeping him in the dark and he could not attend enquiry proceeding to defend his case. In spite of such facts the General Manager issued an order of dismissal against him. The witness asserted that the punishment of dismissal passed against his father is harsh and disproportionate to the nature of misconduct and that during pendency of the Industrial Dispute his father died on 01.05.2011. The witness produced the following documents :

- (i) Copy of the Death Certificate of Radha Nayak is produced as Exhibit W-1.
- (ii) Copy of the Fitness Certificate of Radha Nayak dated 24.10.2001, as Exhibit W-2.
- (iii) Copy of the Chargesheet dated 24.10.2001, as Exhibit W-3.
- (iv) Copy of the Enquiry proceeding dated 09.03.2002, as Exhibit W-4.
- (v) Copy of the Enquiry Report, as Exhibit W-5.
- (vi) Copy of the second Show Cause Notice dated 26.03.2002 / 02.04.2002, as Exhibit W-6.
- (vii) Copy of the Letter of dismissal dated 14/17.05.2002, as Exhibit W-7.
- (viii) Copy of the Legal Heirship Certificate dated 21.06.2023, as Exhibit W-8.

6. In cross-examination the witness deposed that his father was medically treated by Dr. Senapati Mondal and then left for his native village. The witness could not state if his father received any medical treatment at any colliery hospital. Nothing was produced by the witness to prove that Radha Nayak informed the management of ECL about his absence from duty. Witness stated that his father submitted reply to the second Show Cause Notice. He denied that Charge Sheet

and Notice of enquiry were served upon his father or that he intentionally stayed away from the enquiry proceeding.

7. The case of the management, as disclosed in the affidavit-in-chief of Mr. Dinabandhu Mondal, the Management Witness No. 1 is that the workman was chargesheeted for his unauthorized absence from 19.07.2001 to 24.10.2001. Workman failed to submit any reply to the Charge Sheet and a domestic enquiry was held. In spite of issuing several Notice of enquiry to the charged employee he failed to appear before the Enquiry Officer to defend his case and the enquiry proceeding was held ex-parte. The charge of misconduct by unauthorized absence was established and the Disciplinary Authority after considering relevant documents dismissed the workman from service. The witness denied that the workman suffered from illness or he underwent medical treatment from any medical practitioner. Management averred that the dismissal of the workman is totally justified. In course of his evidence management witness produced the following documents :

- (i) Copy of the Charge Sheet dated 24.10.2001 is produced as Exhibit M-1.
- (ii) Copy of the envelope containing Charge Sheet addressed to the workman, as Exhibit M-2.
- (iii) Copy of the Notice of enquiry dated 20/21.02.2002, as Exhibit M-3.
- (iv) Copy of the postal envelope used to send Notice of enquiry upon the workman, as Exhibit M-4.
- (v) Copy of the Notice of enquiry dated 28.01.2002, as Exhibit M-5.
- (vi) Copy of the postal envelope used to serve Notice of enquiry upon the workman, as Exhibit M-5/1.
- (vii) Copy of the Notice of enquiry dated 22.11.2001, as Exhibit M-6.
- (viii) Copy of the postal envelope used to serve Notice of enquiry upon the workman, as Exhibit M-6/1.

- (ix) Copy of the Enquiry proceeding dated 09.03.2002, as Exhibit M-7.
- (x) Copy of the Enquiry Report dated 09.03.2002, as Exhibit M-8.
- (xi) Copy of the second Show Cause Notice, as Exhibit M-9.
- (xii) Copy of the Letter of dismissal of the workman, as Exhibit M-10.

8. In cross-examination the witness deposed that the Charge Sheet and Notice of enquiry were sent to the workman at his address and they were returned unserved. The period of unauthorized absent was three months and the workman was dismissed for unauthorized absence. The witness denied that the dismissal of the workman was disproportionate to the nature of misconduct.

9. At the time of argument, the union representative as well as the legal heirs of the deceased employee remained absent without steps. The case pending for nineteen years is taken up for disposal on the basis of material in the record.

10. Mr. P. K. Das, learned advocate for the management of ECL argued that Radha Nayak, the dismissed workman has expired on 01.05.2011 and he could not adduce any evidence indicating the reason for his absence. It is argued that Dilip Kumar Nayak, son of Radha Nayak, in his affidavit-in-chief stated that during the period of absence the workman was under the medical treatment but no medical prescription has been produced. The Charge Sheet against him has been issued on 24.10.2001 and it is a coincidence that a Medical Certificate, in the name of Radha Nayak, has been issued on the same date. The workman was declared fit to resume his duty from 25.10.2001 and the Charge Sheet was issued on 24.10.2001, the same is presumed to have been served upon him on the date he reported for his duty i.e., on 24.10.2001. Except a single medical certificate, issued by a Registered Medical Practitioner the union could not produce any other document relating to his medical treatment.

11. It is further argued that the sole workman witness did not disclose the nature of illness suffered by his father. The Medical Certificate (Exhibit W-2) states that Radha Nayak was treated for dislocation of his Right Hip. The workman did not undergo any medical treatment at the colliery hospital or central hospital of ECL. No medical document has been produced to prove that the workman actually had suffered dislocation of his Right Hip. Under such facts and circumstances, I am not inclined to place reliance upon the Medical Certificate of Radha Nayak (Exhibit W-2) produced by the union. The workman remained absent for three long months without any intimation to the employer company. At the time of evidence management produced a copy of postal envelope addressed to Radha Nayak at his native place at Ganjam (Odisha) bearing Ref. No. M/4100/01/316 dated 24.10.2001. The document produced as Exhibit M-2 bears an endorsement "Left". Subsequently, a Notice of enquiry dated 22.11.2001 was sent at the same address under registered post with A/D. The copy of the postal envelope has been produced as Exhibit M-6/1. From the face of the document it appears that the addressee had left the place and the same has returned unserved. Thereafter, a Notice of enquiry dated 28.01.2002 was issued to the workman under registered post with A/D but the same returned unserved. Copy of the postal envelope has been produced as Exhibit M-5/1. Lastly, a Notice of enquiry dated 20/21.02.2002 (Exhibit M-3) was sent to the charged workman under registered post with A/D at his home address. Copy of the postal envelope is marked as Exhibit M-4 and the same was retuned unserved with an endorsement "Left". The management made several attempts to serve Notices of enquiry upon the absenting workman but failed to succeed. The enquiry was held after extending several opportunities to the workman who had knowledge of the Charge Sheet. The Enquiry Officer held the enquiry ex-parte and noted that after the workman started absenting himself i.e., from 19.07.2001, Charge Sheet and three Notices of enquiry were issued to the charged employee out of which two Notices of enquiry were returned with postal remark "Addressee left all days

absent". The Enquiry Officer noted that in seven months of his absence the workman did not send a single letter communicating the management of his absence. After providing opportunity to the workman, he did not participate in the enquiry on his own accord. The Enquiry Officer held a proper enquiry and found him guilty of the charge. A second Show Cause Notice dated 26.03.2002 / 02.04.2002 was issued to Radha Nayak (Exhibit M-9). The Disciplinary Authority i.e., the General Manager, Kunustoria Area by his letter dated 14/17.05.2002 thereafter dismissed the workman from service. In my view the domestic enquiry though held ex-parte, the Enquiry Officer made best efforts to serve Notice of enquiry upon the workman. It appears from the Enquiry Proceeding that the workman did not make himself available in seven months, thereafter the enquiry was taken up ex-parte. The workman has a reciprocal responsibility to attend his duty and place of work but in the present case the workman was unperturbed about his long absence. A person cannot seek equity without him exhibiting equity. Therefore, the findings of the Enquiry Officer and dismissal of the workman by the Disciplinary Authority cannot be faulted only due to the fact the workman did not participate in the enquiry proceeding. The workman and the union have miserably failed to establish the cause for long absence of the workman. No document relating to medical treatment of the workman has been produced. A single document issued by a Registered Medical Practitioner, who himself has not been examined in this case, does not evoke any confidence in the workman's case. Under the facts and circumstances, I hold that the Industrial Dispute raised by the union has no merit and the same is liable to be dismissed. The dependents of the deceased workman are not entitled to any relief for his dismissal from service.

Hence,

**ORDERED**

that the Industrial Dispute is dismissed on contest. Let an award be drawn

up in light of my above findings. Management of Eastern Coalfields Limited is directed to pay the legal dues of the workman to his dependents / Legal Heirs for the past service within two (2) months from the date of communication of the Award. 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.