

**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. 58 OF 2007

PARTIES: Lokesh Bouri
(Dependant son of Late Birendra Kumar Bouri)
Vs.
Management of Porascole Colliery, ECL

REPRESENTATIVES:

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

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 29.04.2025

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-22012/100/2007-IR(CM-II)** dated 09.07.2007 has been pleased to refer the following dispute between the employer, that is the Management of Porascole Colliery under Kajora Area and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of M/s. ECL in dismissing Shri Birendra Bouri w.e.f. 08.04.2003 is legal and justified? If not, to what relief is the workman entitled? ”

1. On receiving Order **No. L-22012/100/2007-IR(CM-II)** dated 09.07.2007 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 24.07.2007 / 26.07.2007 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. The Industrial Dispute was referred to this Tribunal at the instance the Secretary (Legal), Colliery Mazdoor Union (INTUC). The written statement on behalf of the dismissed workman was filed on 12.08.2009 by Mr. S. Mukherjee, Secretary. In brief, the fact of the case is that Birendra Kumar Bouri, posted as Underground Loader at Porascole Colliery under Kajora Area of Eastern Coalfields Limited (hereinafter referred to as ECL) was unable to attend his duty from 04.12.2002 to 12.02.2003 due to his illness. He reported his illness at Porascole

Colliery Dispensary on 04.12.2002 and was under their treatment till 14.12.2002. From 15.12.2002 he was under medical treatment at Laudoha Block Primary Health Centre under the Government of West Bengal and informed about his illness to the Manager, Porascole Colliery by his letter dated 04.01.2003. Management issued Charge Sheet bearing No. PC/C-6/2003-11 signed on 12.02.2003, wherein a charge of unauthorized absence was disclosed against the workman and a charge under Clause 26.29 of the Certified Standing Orders was proposed. Manager of Porascole Colliery issued the Charge Sheet without being the Disciplinary Authority. The workman submitted his reply to the Charge Sheet and disclosed that the absence from duty was beyond his control due to his illness. The workman was not allowed to join his duty and no subsistence allowance was paid to him. The workman was asked to attend the enquiry but no order of appointment of the Enquiry Officer was issued by the management. It is contended that without holding any enquiry the self-styled Enquiry Officer obtained signature of the charged person on some documents. It is further stated that Enquiry Officer held the enquiry proceeding in English language without allowing the workman to take assistance from any co-worker. It is further contended that Enquiry Officer did not permit him to cross-examine the management representative. On the other hand, he allowed the management representative to cross-examine the workman. According to the workman the medical certificates produced by him were not disputed by the management as false certificates. The certificates therefore were admitted as genuine. It is disclosed that a second Show Cause Notice was issued by the Deputy Chief Personnel Manager of Kajora Area and the General Manager issued order of dismissal dated 27.03.2003 / 08.04.2003. It is urged that the report of the Enquiry Officer was not served upon him and the General Manager is not the Competent Authority to dismiss the workman from service. Furthermore, the workman contended that the punishment of dismissal awarded against him is an extreme punishment and it was based upon his past conduct in service though no charge was levelled against him for habitual absence. The workman contended

that the Enquiry Proceeding is vitiated due to non-observation of principles of natural justice and prayed for setting aside the order of dismissal, reinstatement in service and payment of back wages with other consequential benefits.

3. The Management filed their written statement on 12.08.2009. The specific case of the management is that Birendra Kumar Bouri, Underground Loader, Porascole Colliery absented from his duty from 15.12.2002 without any prior permission or information. No leave was sanctioned in his favour, as such a Charge Sheet bearing No. PC/C-6/2003-11 dated 12.02.2003 was issued. Enquiry was held on 19.02.2003 in presence of chargesheeted workman. Reasonable opportunity was given to the workman to defend his case and principles of natural justice was followed during the proceeding. The charged workman failed to produce any treatment paper or prescription for the period of his absence. After conclusion of Enquiry Proceeding the Enquiry Officer held the workman guilty of his charge and submitted his report. Management issued a second Show Cause Notice to the charged workman on 10.03.2003 but he failed to submit any satisfactory reply. In the written statement it is disclosed that the dismissed workman attended his work for 142 days in the year 1999, 196 days in the year 2000 and only 32 days in the year 2001. The chargesheeted workman is a habitual absentee and in spite of several opportunity granted to him he did not mend his conduct. The Disciplinary Authority after considering the Enquiry Report and materials dismissed the workman by order No. KA:PM:C-6:10:83/1915 dated 27.03.2003 / 08.04.2003. The management of the employer company lost confidence on the workman for the nature of misconduct and disruption caused to the work. It is urged that the order of dismissal issued against the workman is consistent to the charge and it is not disproportionate to the nature of misconduct of the workman.

4. Birendra Kumar Bouri filed an affidavit-in-chief in support of his case. He is examined as Workman Witness No. 1. The witness has been cross-examined

on behalf of the management. In his affidavit-in-chief the witness stated that he reported about his illness at Porascole Colliery and the said letter dated 14.12.2002 has been produced by him as "Exhibit-1", the letter is addressed to the Welfare Officer of Porascole Colliery, wherein it is stated that he is unable to perform his duty due to fever, cold and cough and to allow him sick leave. The letter bears receiving seal of the colliery. It is further stated in the affidavit-in-chief that his physical condition deteriorated from 15.12.2002 and the doctor advised him complete bed rest so he did not report to Porascole Colliery. The witness claimed to have received medical treatment at Laudoha Block Primary Health Centre under the Government of West Bengal. It is stated that he informed about his illness to the Welfare Officer, Porascole Colliery by letter dated 04.01.2003 which has been produced by him as "Exhibit-2". On a perusal of the evidence on record, I find that "Exhibit-2" is a Medical Certificate dated 25.01.2003 and it is not a communication made to the Welfare Officer, as stated in the affidavit-in-chief. The workman admitted receipt of the Charge Sheet which is produced as "Exhibit-3". It is stated that he replied to the Charge Sheet. His reply has been produced as "Exhibit-4". In his reply to the Charge Sheet, he disclosed that he was suffering from illness and could not attend his duty. The witness deposed that he was neither allowed to join duty nor did he received any intimation about appointment of the Enquiry Report, management representative and was asked to put his signature on some papers said to be the Enquiry Report. The workman claimed that no enquiry was held and the Enquiry Report was manufactured by the management. In his further statement in the affidavit-in-chief the workman has taken a contrary stand by disclosing that the Enquiry Officer allowed the management representative to be cross-examined and the Enquiry Officer has also cross-examination the charged workman. The subsequent statement of the workman that he was cross-examined by the management representative gave a goodbye to his earlier statement that no enquiry was at all held. Workman admitted that General Manager dismissed him

from service by issuing order of dismissal dated 27.03.2003 / 08.04.2003 and claimed that he was not the Competent Authority to dismiss him.

5. In cross-examination the workman witness stated that no Notice of enquiry was served upon him and he was not present at the time of Enquiry Proceeding. Workman denied that his absence from duty was unauthorized.

6. Mr. Ashlam Shair, Assistant Manager (Personnel), Porascole Colliery, Kajora Area, ECL appeared as Management Witness No. 1 and filed his affidavit-in-chief. In his examination-in-chief witness stated that Birendra Kumar Bouri absented from duty from 15.12.2002 without any information, permission and sanctioned leave. Charge Sheet bearing No. PC/C-6/2003-11 dated 12.02.2003 was issued against him as per provisions of Certified Standing Orders. The Enquiry Officer conducted an enquiry on 19.02.2003 in which the charged employee participated. He was given reasonable opportunity to defend his case following the principles of natural justice. The workman failed to produce any supporting document and prescription relating to his alleged medical treatment. It is further stated that the past conduct of the workman and his habitual absence from duty resulted in stoppage of seven Special Piece-Rate Allowances as punishment. It is stated that after careful consideration of Charge Sheet, Enquiry Proceeding, Enquiry Report and other documents, the Competent Authority was satisfied that the charge was proved and dismissed the workman from service. In his examination-in-chief the management witness produced the following documents :

- (i) Copy of the Charge Sheet issued against the workman has been produced as Exhibit M-1.
- (ii) Copy of the reply of Birendra Kumar Bouri to the Charge Sheet, as Exhibit M-2.
- (iii) Copy of the appointment letter of the Enquiry Officer, as Exhibit M-3.

- (iv) Copy of the appointment letter of the Management Representative, as Exhibit M-4.
- (v) Copy of the Notice of enquiry dated 15.02.2003, as Exhibit M-5.
- (vi) Copy of the Enquiry Proceeding and findings of the Enquiry Officer has been collectively marked as Exhibit M-6.
- (vii) Copy of the second Show Cause Notice dated 10.03.2003, as Exhibit M-7.
- (viii) Copy of the order of dismissal dated 27.03.2003 / 08.04.2003, as Exhibit M-8.

7. In cross-examination the witness stated that the workman was on sick leave from 04.12.2002 to 14.12.2002, which is mentioned in the Charge Sheet. He further deposed that the Enquiry Report was placed before the Agent which was sent to the General Manager for further action. The workman did not file medical documents in reply to the Charge Sheet and the management of the company after receiving reply against Charge Sheet did not ask Birendra Kumar Bouri to submit any medical document.

8. In order to find out if the dismissal of the workman was justified, legal and proper, it is necessary to find out if the Enquiry Proceeding was held granting opportunity to the charged workman to participate. It is also essential to consider whether the Enquiry Proceeding was fair and if not, what relief the workman would be entitled to ?

9. The case was taken up in a special campaign for disposal of old cases. Notice under registered post was sent to the concerned union and management of ECL. Ms. Debarati Konar, learned advocate appeared on behalf of the dependant son of the dismissed workman on 27.08.2024 and 29.01.2025 but did not appear on 06.03.2025.

10. Mr. P. K. Das, learned advocate for the management advanced his argument that the stand taken on behalf of the workman that no Enquiry Proceeding was held against him was demonstrably false on account of the averments made in the written statement and the in affidavit-in-chief that the workman was cross-examined by the management representative and the Enquiry Officer. It is submitted that workman was admittedly absent from duty from 15.12.2002 till issuance of the Charge Sheet on 12.02.2003, without any information to the management. Learned advocate for ECL further argued that no medical document has been produced in support of his absence for the period from 15.12.2002 to 12.02.2003 on account of illness. Learned advocate urged that unauthorized absence of the workman for the period from 15.12.2002 to 12.02.2003 has caused disruption of work at the workplace and he failed to produce any medical document relating to his medical treatment. The management claimed to have lost confidence in the workman for which he has been appropriately punished by the Competent Authority.

11. I have perused the pleadings of the workman and management, evidence adduced by both the parties and argument advanced in this case. The workman was served with a Charge Sheet (Exhibit M-1) dated 12.02.2003 for his absence from duty. Serious charge of unauthorized absence under Clause 26.29 of the Certified Standing Orders was levelled against the workman. In his written statement he submitted that he replied to the Charge Sheet. In his affidavit-in-chief the workman stated that due to deterioration of his physical condition from 15.12.2002 he could not report his illness to Porascole Colliery. It is further stated that his absence from duty for the period was beyond his control and he disclosed it in his reply to Charge Sheet, which has been produced as Exhibit M-2 / Exhibit-3. It transpires from Exhibit M-6, the Enquiry Proceeding that the enquiry was held by the Enquiry Officer on 19.02.2003. The workman participated in the enquiry and was examined and cross-examined. He has also put his signature

in English on the Enquiry Proceeding after reading his statement. The Enquiry Officer in his findings observed that the workman never applied for any leave. He received the Charge Sheet, Notice of enquiry and appeared in the enquiry proceeding in person. The workman never sent any sick information during his absence nor was his case referred for any treatment by any outside doctor. The workman was therefore found guilty of charge of unauthorized absence. In the Enquiry Report, past performance or absence of the workman was never a subject matter for consideration nor was he found guilty of such charge. The General Manager, Kajora Area being the Competent Authority issued an order dated 27.03.2003 / 08.04.2003, dismissing the workman from service after careful examination of the report of the Enquiry Officer. The General Manager did not take into consideration any extraneous matter which is not the subject matter of the charge. I find that prior to dismissal of the workman a second Show Cause Notice was also issued to him seeking his explanation, enclosing copy of Enquiry Report and findings but no reply was submitted.

12. It appears from materials on record that the principles of natural justice were followed at the time of holding the enquiry and reasonable opportunity was given to the workman to meet the findings against him. The workman cannot take liberty to remain absent without informing the employer. Remaining absent from duty without any information even on account of illness would amount to abandonment of work. In the case of **Nav Bharat Industries Vs. Presiding Officer and Another [2018 LLR 493 (P&H HC)]**, the principle of law laid down by the Hon'ble High Court of Punjab and Haryana is that if the workman remained absent unauthorizedly for a long time, even due to his illness, without informing the management about it, termination of his service by invoking conditions as stipulated in the Certified Standing Orders is not illegal. When the workman does not inform the management about his illness, remaining absent for a long time gives rise to a presumption that the workman has abandoned the job on his own. In the present case long absence of the workman amounts to abandonment of job

on his own. He failed to produce any medical document in support of his absence to suggest that the absence from duty was beyond his control.

13. In view of the facts and circumstances discussed above, I hold that the enquiry conducted against the charged workman was fair and order of dismissal passed against the workman was consistent to the charge proved against him. Therefore, the workman nor his legal heirs are entitled to any relief. The Industrial Dispute raised by the union has no merit and the same is liable to be dismissed.

14. During pendency of the Reference case a petition for substitution was filed by wife, Habi Bouri, son, Lokesh Kumar Bouri and two daughters, Nayan Bouri and Jayashree Bouri for their substitution in place of Birendra Kumar Bouri, who died on 14.07.2010. the legal heirs of the deceased workman are only entitled to receive the legal dues lying in the credit of Late Birendra Kumar Bouri due to his past service.

Hence,

ORDERED

that the Industrial Dispute is dismissed on contest. The order of dismissal passed against Birendra Kumar Bouri does not suffer from any illegality and the same calls for no interference. The management of ECL is directed to pay the amounts lying in the credit of the deceased employee on account of his past service, to the legal heirs within three (3) months from the date of communication of the 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.

Sd/-

(ANANDA KUMAR MUKHERJEE)

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