

**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. 60 OF 2007

PARTIES: Nand Kishore Singh.
Vs.
Management of Bansra Colliery of ECL.

REPRESENTATIVES:

For the Union/Workman: Mr. H. L. Soni, Asst. Gen. Secy., Koyla Mazdoor Congress
For the Management of ECL: Mr. P. K. Das, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 28.10.2024

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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-22012/48/2007-IR(CM-II)** dated 19.07.2007 has been pleased to refer the following dispute between the employer, that is the Management of Bansra 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 Bansra Colliery of M/s. ECL in dismissing the services of Shri Nand Kishore Singh w.e.f. 27.10.2006 is legal and justified? If not, to what relief is the workman entitled? ”

1. On receiving Order **No. L-22012/48/2007-IR(CM-II)** dated 19.07.2007 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 60 of 2007** was registered on 31.07.2007 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 and a list of witnesses.

2. Mr. H. L. Soni, Assistant General Secretary, Koyla Mazdoor Congress filed written statement on behalf of the dismissed workman on 09.12.2009. Management contested the Industrial Dispute by filing their written statement on 27.01.2015. Brief fact of the case as per written statement of the union is that Nand Kishore Singh a permanent employee of Bansra Colliery was posted as Haulage Khalashi. A Charge Sheet bearing Ref. No. ECL/BC/Per/03-04/1422

dated 08.07.2003 was issued against him for his absence from duty for the period from 26.05.2003 till 08.07.2003. The workman replied to the Charge Sheet along with his medical papers in support of his absence from 25.04.2003 to 22.07.2003 and disclosed that he was suffering from illness which was beyond his control. No enquiry was held in respect of the Charge Sheet. After lapse of three years the management issued another Charge Sheet bearing Ref. No. ECL/B/Per/06-07/931 dated 16/17.06.2006 levelling charge of misconduct for his unauthorized absence from 26.05.2003 till 17.06.2006 and habitual absenteeism. The workman submitted his reply but the management initiated a domestic enquiry proceeding against him on the basis of Charge Sheet dated 16/17.06.2006. Nand Kishore Singh, in his reply submitted his treatment papers, contending that there was no question of issuing a second Charge Sheet over his absence for the period from 26.05.2003. Nand Kishore Singh participated in the enquiry proceeding, arising out of the second Charge Sheet and he was dismissed from service by Order bearing Ref. No. A.KNT/P&IR/26(B)/3828 dated 25/27.10.2006, issued by the General Manager of Kunustoria Area. It is the case of the union that the question of issuing a second Charge Sheet does not arise in the instant case and the management has committed illegality by not conducting any Domestic Enquiry after issuance of first Charge Sheet bearing Ref No. ECL/BC/Per/03-04/1422 dated 08.07.2003. It is urged that extreme punishment of dismissal issued against the workman is disproportionate to the charge, specially when the workman was suffering from illness.

3. Management in their written statement disclosed that Charge Sheet bearing Ref. No. ECL/B/Per/06-07/931 dated 16/17.06.2006 was issued to the workman under Clause 26.23 and 26.29 of the Certified Standing Order for unauthorized absence of the workman from 26.05.2003 to 17.06.2006, for a period over three years. The workman failed to submit any satisfactory reply to the Charge Sheet, as such a Domestic Enquiry was initiated. The Enquiry Officer issued a Notice of

enquiry and provided reasonable opportunity to the workman to defend his case. The enquiry was held following the principles of natural justice and the workman was found guilty of charge framed against him. It is further case of the management that due to habitual absence in the preceding three years from 2000 to 2002, the workman was subjected punishment. He did not improve his attendance and the management after careful consideration of charge, Enquiry Proceeding, Enquiry Report and other relevant documents found no extenuating circumstance and dismissed the workman from his service. It is the case of the management that the order of dismissal is fully justified and the workman is not entitled to any relief.

4. The specific case for consideration before the Tribunal is whether the action of the management of Bansra Colliery in dismissing Nand Kishore Singh from his service w.e.f. 27.10.2006 is legal and justified. If not, what relief the workman is entitled to.

5. Nand Kishore Singh filed an affidavit-in-chief in support of his case. The main submission of the workman is that after issuance of the first Charge Sheet dated 08.07.2003 no Domestic Enquiry was held and he waited for the same. After lapse of three years a second Charge Sheet bearing Ref. No. ECL/B/Per/06-07/931 dated 16/17.06.2006 was issued for his absence from duty from 26.05.2003 till date of issuance of the Charge Sheet. He received Notice of enquiry dated 04.07.2006, calling upon him for appearance in the enquiry proceeding on 25.07.2006. He further stated that the enquiry was held in respect of Charge Sheet 16/17.06.2006, where it was found that he was absent from duty from 26.05.2003 to 17.06.2006. He admitted his participation in the enquiry proceeding arising out of the second Charge Sheet and his dismissal from service by letter dated 25/27.10.2006, issued by the General Manager, Kunustoria Area. The dismissed workman in his affidavit-in-chief stated that the management

committed a lapse by not conducting any Domestic Enquiry on the basis of the first Charge Sheet bearing Ref. No. ECL/BC/Per/03-04/1422 dated 08.07.2003 and that the extreme punishment of dismissal is disproportionate to the nature of alleged misconduct, which was beyond his control. Nand Kishore Singh claimed that he should be reinstated in service and back wages should be paid to him with other consequential benefits from the date of dismissal.

6. In his cross-examination the workman stated that he had sent verbal information to the management about his illness and no written communication was made. The witness denied that he had intentionally absented from duty and that the order of dismissal was justified. No document has been produced by the workman or the union before this Tribunal.

7. Mr. Ayan Chatterjee, has been examined as Management Witness – 1. He filed an affidavit-in-chief, where he has stated that he is posted as Assistant Manager (Personnel) at Bansra Colliery. The witness stated that the ex-workman was chargesheeted by the management for unauthorized absence from duty from 26.05.2003 to 17.06.2006 vide Charge Sheet dated 16/17.06.2006. The workman submitted his reply on 01.08.2006, which was not found satisfactory and a Domestic Enquiry was initiated. The concerned workman participated in the enquiry proceeding and reasonable opportunity was provided to him to defend his case. The principles of natural justice were followed. The Enquiry Report has been submitted, finding him guilty of the charge. A second Show Cause Notice was issued on 09.09.2006. The Disciplinary Authority i.e., the General Manager, Kunustoria Area after considering relevant materials dismissed the workman for his long and habitual absence. Management produced the following document in support of their case :

- (i) Copy of the Charge Sheet dated 16/17.06.2006 is produced as Exhibit M-1.

- (ii) Copy of the Reply of Nand Kishore Singh dated 01.08.2006 to the Charge Sheet, as Exhibit M-2.
- (iii) Copy of the Notice of enquiry dated 04.07.2006, whereby Mr. T. N. Mitra was appointed as Enquiry Officer, as Exhibit M-3.
- (iv) Copy of the Notice of enquiry dated 04.07.2006 and 26.07.2006 issued by the Enquiry Officer addressed to Nand Kishore Singh, as Exhibit M-4 and M-4/1.
- (v) Copy of the Enquiry Proceeding, in six pages, including findings of the Enquiry Officer, as Exhibit M-5.
- (vi) Copy of the second Show Cause Notice dated 09/10.09.2006, as Exhibit M-6.
- (vii) Copy of the Reply dated 09.10.2006 submitted against the second Show Cause Notice, as Exhibit M-7.
- (viii) Copy of the letter of dismissal dated 25/27.10.2006, as Exhibit M-8.
- (ix) Copy of the Charge Sheet bearing Ref. No. ECL/BC/Per/03-04/1422 dated 08.07.2003 has been marked as Exhibit W-1, on admission.

8. In course of cross-examination the management witness stated that no enquiry proceeding was initiated in respect of the earlier Charge Sheet and all relevant documents including reply to second Show Cause Notice were considered by the General Manager before passing the order of dismissal. The witness stated that the workman absented for three years and medical papers were submitted for a short period from 24.05.2003 to 24.07.2003.

9. Mr. H. L. Soni, Union representative advancing his argument submitted that initially a Charge Sheet bearing Ref. No. ECL/BC/Per/03-04/1422 dated 08.07.2003 (Exhibit W-1) was issued to the workman for his unauthorized absence from duty for the period from 26.05.2003 till the issuance of Charge Sheet and he was directed to submit his explanation within three days. It is

argued that the workman was suffering from jaundice and he submitted his medical papers, which clearly stated that he was under medical treatment from 26.05.2003 to 22.07.2003. The management did not take any action against the workman and subsequently a second Charge Sheet was issued on 17.06.2006, alleging unauthorized absence from duty from 26.05.2003 till 17.06.2006 i.e., date of issuance of the Charge Sheet and also for habitual absence. It is argued that the second Charge Sheet (Exhibit M-1) is not sustainable under law, as it is in respect of the charge of unauthorized absence, partly for the same period from 26.05.2003 till 08.07.2003. It is inter-alia argued that a person cannot be tried twice for the same misconduct. It is further argued that had the management been dissatisfied with his reason for absence for the period from 26.05.2003 till 08.07.2003, which was specified in Exhibit W-1, it was open for the management to initiate a Domestic Enquiry against the workman for such absence but once no action was taken for the notified period, the management of ECL did not have the jurisdiction to issue a second Charge Sheet for the same period of absence or even for part of the same period. Referring to the Charge Sheet dated 17.06.2006 it is argued that though the charge under Clause 26.23 of the Certified Standing Orders has been mentioned regarding habitual absence from duty without sufficient case, particulars about such charge have not been mentioned. The union representative contended that the enquiry proceeding based upon the second Charge Sheet is illegal and the order of dismissal passed by the Disciplinary Authority is not sustainable under law. It is urged that the workman was unable to attend his duty due to his illness and he is entitled to be reinstated in service with a direction to the management for payment of his Back wages.

10. Mr. P. K. Das, learned advocate for ECL argued that the workman had continuously remained absent from 26.05.2003 till 17.06.2006. He has submitted a medical certificate, issued by a private doctor for the period from 24.05.2003 to 22.07.2003 but he did not inform the Competent Authority about

his illness and absence from his duty and also failed to submit any documentary evidence regarding his absence till 17.06.2006. It is argued that the workman has continuously absented from duty without any prior intimation, affecting the work of the management. It is further submitted that after the workman was found guilty a second Show Cause Notice along with a copy of Enquiry Proceeding was served upon him. The workman replied to the second Show Cause Notice dated 09/10.09.2006 which was considered by the Disciplinary Authority and exercising his jurisdiction issued the order of dismissal which has been produced as Exhibit M-8. Learned advocate submitted that the charge levelled against the workman in the second Charge Sheet (Exhibit M-1) travelled beyond the period of absence mentioned in the first Charge Sheet (Exhibit W-1). Therefore, the management did not commit any error by holding the enquiry proceeding on the basis of second Charge Sheet. In the Enquiry Proceeding along with findings, produced as (Exhibit M-5), the Enquiry Officer has reached a finding that as per documentary evidence Nand Kishore Singh submitted Medical Certificate of a private doctor for the period from 24.05.2003 to 22.07.2003 but he failed to submit any document from 23.07.2003 till the date of issuance of Charge Sheet. The workman had taken a plea that he was undergoing herbal treatment at his home but could not adduce any evidence in support of the same. Learned advocate submitted that the charge against the workman was proved and the order of dismissal does not call for any interference.

11. I have considered the facts and circumstances of the case and the arguments advanced on behalf of the contending parties in the light of Industrial Dispute referred to his Tribunal. On a perusal of the pleadings of the parties it is gathered that no Departmental Enquiry was initiated for the absence of the workman from 26.05.2003 till 08.07.2003. Undisputedly the absence continued without further intimation, resulting in issuance of another Charge Sheet bearing Ref. No. ECL/B/Per/06-07/931 dated 16/17.06.2006. The charge was in two

folds, one on the allegation of habitual absence and the other for unauthorized absence from duty from 26.05.2003 till date. The workman submitted his reply (Exhibit M-2), wherein for the first time he informed the management the reason of his absence for the period from 26.05.2003 to 22.07.2003 trying to justifying his absence on the ground of illness and submitted medical certificate issued by Dr. J. B. Barat. The workman did not join his duty on any earlier occasion prior to issuance of second Charge Sheet dated 16/17.06.2006. The workman claimed that he could not attend his duty because he was suffering from same disease and was under treatment of Indian Home herbal medicine. If for argument's sake the statement of the workman in his reply is accepted to be true that he continued to suffer from same disease, he would not have obtained the certificate from the doctor only his medical treatment for the period from 26.05.2003 to 22.07.2003, declaring him fit to join his duty. The workman failed to substantiate the reason of his continuous absence beyond 22.07.2003. The management not finding the statement satisfactory was fully authorized to initiate a Domestic Enquiry against the workman. After appointing Enquiry Officer (Exhibit M-3) and issuing Notice of enquiry (Exhibit M-4 and M-4/1), the workman participated in the enquiry proceeding, wherein he was found guilty of charge for his absence, specially for the period from 23.07.2003 till the dated of Charge Sheet i.e., 17.06.2006. In respect of the charge under Clause 26.23, which is related to habitual absence, no evidence has been led by the management regarding absence of the workman in the three preceding years up to 2003. The Enquiry Officer on the basis of statement of management representative has found that three increments of the workman were deducted in the year 1997, another three increments were deducted in the year 1998, from where it was concluded that the workman is not interested in discharging his duty regularly and he was a habitual absentee. This statement does not have any relevance to the charge, as the reason for deduction of increments have not been clearly stated by the management representative. Be that as it may, it is well establishment that the charged employee was held guilty of unauthorized absence from duty for a long period of over three years. He failed

to justify his absence from duty for the period from 23.07.2003 till 17.06.2006 i.e., for nearly three years. After holding the workman guilty of the charge, a second Show Cause Notice was issued to him and the reply submitted by the charged employee on 09.10.2006 was considered by the Disciplinary Authority, who having found no extenuating circumstance in favour of the workman issued a letter of dismissal to Nand Kishore Singh dated 25/27.10.2006, dismissing him from service with immediate effect. Having considered the evidence on record, I do not find any infirmity in the Enquiry Proceeding. The workman was provided with reasonable opportunity to represent his case. The Enquiry Officer has followed the principles of natural justice during enquiry and found that the charged employee failed to garner evidence justifying his absence for the period from 23.07.2006 to 17.06.2006. Discipline is an integral part of service by a person. Lack of discipline disrupts the purpose and smooth functioning of any establishment. In the instant case, I find no infirmity in the decision of the management dismissing Nand Kishore Singh from service and the order calls no interference. The Industrial Dispute raised by the union, challenging dismissal of the workman is devoid of merit and the same is dismissed on contest. The aggrieved workman is not entitled to any relief of consequential benefit.

Hence,

ORDERED

that the Industrial Dispute raised by the union against dismissal of the workman from service is dismissed on contest. 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.