

**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. 69 OF 2007**

**PARTIES:** Sunil Majhi  
**Vs.**  
Management of Monoharbahal Colliery of ECL

**REPRESENTATIVES:**

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

**INDUSTRY:** Coal.

**STATE:** West Bengal.

**Dated:** 26.09.2023

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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-22012/57/2007-IR(CM-II)** dated 08.08.2007 has been pleased to refer the following dispute between the employer, that is the Management of Monoharbahal Colliery under Salanpur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

**THE SCHEDULE**

*“ Whether the action of the management of Monoharbahal Colliery of M/s. ECL in dismissing Sri Sunil Majhi from services w.e.f. 14.12.2002 is legal and justified? If not, to what relief is the workman entitled? ”*

**1.** On receiving Order **No. L-22012/57/2007-IR(CM-II)** dated 08.08.2007 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 69 of 2007** was registered on 04.09.2007 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. R. K. Tripathi, the Chief Organizing Secretary of Koyala Mazdoor Congress filed written statement **on 12.08.2009** on behalf of the dismissed workman, Sunil Majhi having U.M. No. 142072. The fact of the workman's case delineated in the written statement is that he could not attend his duty from 27.02.2002 due to illness. After recovering he reported for duty along with his

medical certificate in support of his illness but he was not allowed to join his duty. On the other hand, the management of Eastern Coalfields Limited (hereinafter referred to as ECL) issued Charge Sheet against him and later on dismissed him from service of the company w.e.f. 19.12.2002 vide letter of dismissal no. C-6/36/P-2390 dated 14/19.12.2002. Further case of the workman is that no Second Show Cause Notice was issued to him, contrary to the mandate of the Hon'ble Supreme Court of India and no opportunity was given to him to defend himself. In course of enquiry, it has been claimed that the management breached natural justice and imposed disproportionate punishment. Furthermore, despite representation by the workman and union representative before the management, the workman was not reinstated in service. In the written statement it is prayed that the management of Monoharbahal Colliery under Salanpur Area of ECL may be directed to reinstate the workman in service.

**3.** The management of ECL contested the case by filing a written statement on 12.08.2009, wherein it is submitted that Sunil Majhi was designated as Underground Loader. He was chargesheeted on 05.07.2002 for his misconduct of unauthorize absence from duty from 27.02.2002 and he was a habitual absentee. Sunil Majhi replied the Charge levelled against him and participated in the enquiry proceeding, wherein he was provided with an opportunity to defend himself and disprove the charges. The Enquiry Officer after considering all materials found the workman guilty and submitted his report. It is contended that Mr. R. K. Tripathi by his letter dated 03.07.2006 raised an Industrial Dispute regarding dismissal of Sunil Majhi after a lapse of four years without citing any reason for such delay. It is further contended that the workman was initially posted at Patmohna Colliery of ECL and he was dismissed on 26.02.1996 for his unauthorized absence from duty but his dismissal was withdrawn on 14.03.1997 and he was transferred to Monoharbahal Colliery of ECL. However, he failed to rectify his conduct. The management of ECL urged that the punishment imposed

against the workman by way of dismissal is appropriated and the workman is not entitled to any relief.

**4.** Sunil Majhi (workman witness – 1) adduced evidence and filed an affidavit-in-chief in support of his case. He has averred in his affidavit-in-chief that he could not attend his duty from 27.02.2002 due to his illness. After his recovery he reported for duty along with medical certificate but he was not allowed to resume his duty and he was chargesheeted which finally resulted in his dismissal. He further stated that he submitted medical certificate at the time of enquiry but the management did not consider his case. His main contention is that no Second Show Cause Notice was issued to him. Therefore, ample opportunity was not provided to defend himself. The workman claimed that his dismissal from service is a harsh and disproportionate punishment compared to the nature of offence alleged to have been committed by him.

In course of cross-examination the witness admitted that he was absent from duty for seven months and he was treated by a doctor but he failed to produce any medical prescription of the doctor who treated him during his absence from duty. The witness further stated that he was treated by a doctor at Durga Mandir, Asansol but failed to state his name. The witness admitted that though no fee was required to be paid to a colliery doctor he never received any treatment at the colliery. The cross-examination of workman witness – 1 reveals that he was dismissed from his work on earlier occasion at Patmohna Colliery due to his absence from duty. It may be derived from his statement that presently he is engaged as a daily labour for his earning and maintaining his wife and children. The workman did not produce any document in course of his evidence.

**5.** Mr. Rajendra Ram, Senior Manager Personnel, Salanpur Area of ECL has been examined as Management Witness – 1. He has stated in his affidavit-in-chief that Sunil Majhi was absent from duty from 27.02.2002 without any information.

he workman submitted his reply against the Charge Sheet but the same was not satisfactory and a departmental enquiry was started. The workman participated in the enquiry proceeding where he adduced evidence. The workman was found guilty and a report was submitted by the Enquiry Officer. On the basis of such enquiry the workman was dismissed. Management witness – 1 also stated in the affidavit-in-chief that on earlier occasion the workman was dismissed at Patmohana Colliery but later on he was reinstated.

**6.** In course of his evidence following documents have been produced by the management witness :

- (i) Photocopy of the Charge Sheet dated 05.07.2002 issued to Sunil Majhi, as Exhibit M-I.
- (ii) Photocopy of the Reply dated 21.09.2002 submitted by the workman against the Charge Sheet, as Exhibit M-II.
- (iii) Photocopy of the documents relating to the Enquiry Proceeding and its Findings are collectively marked as Exhibit M-III(a) and M-III(b).
- (iv) Photocopy of the letter of dismissal dated 14/19.12.2002, as Exhibit M-IV.

The witness admitted that the Second Show Cause Notice was not issued to the workman before his dismissal.

**7.** Mr. Rakesh Kumar, Union representative subsequently represented the dismissed workman on behalf of Koyala Mazdoor Congress and argued that the management of the company did not take into consideration the reason for absence of the workman and was dismissed from service without supplying the findings of the Enquiry Officer. It is contended that the punishment of dismissal from service for absence from duty is disproportionate to the alleged charges. Furthermore, the Enquiry Officer and the Disciplinary Authority being two separate authorities, the workman ought to have been supplied with a copy of

Enquiry proceeding and report to provide him with an opportunity to respond to the findings against him before the final decision of dismissal taken against him. Mr. Kumar relied upon 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]** and the Circular of Coal India Limited bearing no. CIL C-5A(VI)/50774/28 dated 12.05.1994, wherein the Director (P&IR), CIL observed that the law laid down in Mohd. Ramzan Ali's case would operate prospectively to the orders of punishment passed after 20th November, 1990. Accordingly, the Enquiry Report should be supplied to the charged employee and while communicating the final order it must be mentioned that the representation of the employee was taken into consideration by the Disciplinary Authority. It is argued that the order of dismissal passed by the management (Exhibit M-IV) is arbitrary, illegal and liable to be set aside. It is argued that the workman has been deprived of his right to life due to his premature and illegal dismissal from service and he should be reinstated in his service.

**8.** Mr. P. K. Goswami, learned advocate for the Management of ECL argued that Sunil Majhi is a habitual absentee and his conduct in service has disrupted smooth functioning of the company's activity. It is argued that the workman was given ample opportunity to defend his case and to explain the reason of his absence but he failed to produce any Medical Certificate in support of his illness. The workman was previously dismissed from his service for unauthorized absence at Patmohana Colliery but later on an opportunity was granted to him by way of his reinstatement. The workman did not rectify his conduct and continued to remain absent from duty for which the Enquiry Officer found him guilty of his offence in his report (Exhibit M-III(b)). The General Manager of Salanpur Area of ECL on the basis of the Enquiry Report issued a Letter of Dismissal on 19.12.2002, which is produced as Exhibit M-IV. Learned advocate argued that the procedure have been duly followed except issuance of the Second Show Cause Notice and there is nothing to interfere in the Order of Dismissal.

9. I have carefully considered the facts and circumstances of the case, evidence produced by the parties, documents produced by the management and the law involved. Admittedly, Sunil Majhi had remained absence from duty without any prior information to the management from 27.02.2002 till issuance of Charge Sheet on 05.07.2002. The conduct of the workman attracts imputation for his second offence of remaining absent. The Charge Sheet (Exhibit M-I) clearly disclosed that prior to his absence from duty w.e.f. 27.02.2002 he had performed duty for 160 days in the year 1999, 112 days in the year 2000, and 79 days in the year 2001. During his posting at Patmohana Colliery of ECL he was dismissed from service on 26.02.1996 and was reinstated on 14.03.1997. The workman having received the Charge Sheet submitted a reply on 21.09.2002, copy of the same has been produced as Exhibit M-II. The workman stated that due to serious disease he was under the treatment of Dr. P. K. Dutta, Ushagram, Asansol and prayed for allowing him to join his duty. No medical certificate was enclosed with his application. The management in course of Departmental Enquiry examined Sunil Majhi who stated that he was under treatment of Dr. P. K. Dutta, ex-Medical Officer of Central Hospital, Kalla from 27.02.2002 to 13.09.2002 and produced his Medical Certificate. His only fault is that he did not inform the management. In the Enquiry Proceeding a cryptic Finding has been made in eight lines where the Enquiry Officer has stated that the workman was really suffering from Chest disease which was supported by Dr. P. K. Dutta's prescription but the previous record of the workman shows that he was a habitual unauthorized absentee so the charge levelled against him was proved. In my considered view the Findings of the Enquiry Officer (Exhibit M-III(b)) suffers from self-contradiction. It has been found from the relevant document and statement of the workman that "he was really suffering from chest disease which was supported by the Doctor P. K. Dutta's prescription in different consultation." But due to his previous absence for which he had been earlier dismissed from service and then reinstated, the Enquiry Officer found the charge levelled against him for unauthorized absence

was proved. The Findings of the Enquiry Officer suffers from lack of appreciation of facts. The previous absence of the workman which was absolved and he was reinstated cannot be taken up as a fresh charge as it would amount to double jeopardy resulting in violation of natural justice. He appears to be prepossessed with the idea of the previous absence of the workman for which he was already been punished. From the facts and circumstances and available material, I find that the finding of the Enquiry Officer is not consistent with the facts of the case. I also find that the management of the company has failed to comply the direction 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]**, wherein 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.”*

**10.** In the case of **Managing Director, ECIL, Hyderabad vs. B. Karunakaran [1993 (3) SLR 532 (SC)]**, the Hon'ble Supreme Court of India on further examination laid down the following guidelines and direction :

*“It is evident where the Inquiry Officer is other than the Disciplinary Authority, the disciplinary proceeding break into two stages. The first stage when the Disciplinary Authority arrives at its conclusion on the basis of evidence, Inquiry Officer’s report and the delinquent employee’s reply to it. The second stage begins when the Disciplinary Authority decides to impose penalty on the basis of its conclusion. If the Disciplinary Authority decides to drop the proceeding, the second stage is not even reached. The employee’s right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of inquiry. If he right*

*is denied to him, he is in effect denied the right to prove his innocence in the disciplinary proceeding.”*

**11.** The management witness in his cross-examination has admitted that no Second Show Cause Notice was issued to the workman before his dismissal. This is a clear admission of the fact that the management did not comply their own Circular No. CIL C-5A(VI)/50774/28 dated 12.05.1994, wherein reference was made to the decisions of the Hon'ble Supreme Court of India and the Director (P&IR), CIL clearly indicated that the law laid down in Mohd. Ramzan Ali's case would operate prospectively to the orders of punishment passed after 20th November, 1990. The Enquiry Report should be supplied to the charged employee and while communicating the final order it must be mentioned that the representation of the employee was taken into consideration by the Disciplinary Authority.

**12.** Being guided by the aforesaid provisions of law laid down by the Hon'ble Supreme Court of India, I hold that the management of Monoharbahal Colliery under Salanpur Area of ECL has not complied the mandate of the Hon'ble Supreme Court of India in the aforesaid case and also failed to comply the Circular of Coal India Limited dated 12.05.1994, resulting in gross breach of natural justice. The facts of the case demonstrate that the charge levelled against the workman was actually not proved as he had adduced substantial evidence in support of his illness, which was reinforced by the Medical Prescriptions that were submitted in course of the Enquiry Proceeding.

**13.** Considering all these aspects I hold that the management of ECL has acted in an arbitrary and unjust manner in dismissing Sunil Majhi from his service. The letter of dismissal bearing no. C-6/36/P-2390 dated 14/19.12.2002 issued by the General Manager of Salanpur Area, ECL is liable to be set aside for not

having considered the fact situation as well as not complying the mandate of the Hon'ble Supreme Court of India. This is a fit case where the workman should be reinstated in his service within a month from the communication of the Notification of the Award. Since the workman has not rendered any service for several years and had resorted to alternative means of livelihood for his survival, he is not entitled to any pay for the period of his absence from duty on the basis of the principle of 'no work no pay'. The period of absence from duty shall be treated as dies non. Any delay in compliance will entitle the workman to compensation for the remaining period of his service.

Hence,

**ORDERED**

that the Industrial Dispute is decided in favour of Sunil Majhi on contest. The letter of dismissal bearing no. C-6/36/P-2390 dated 14/19.12.2002 issued by the General Manager of Salanpur Area, ECL is hereby set aside. The management of Monoharbahal Colliery under Salanpur Area of ECL is directed to reinstate Sunil Majhi in service within one (1) month from the communication of the Notification of the Award. An Award be drawn up in favour of Sunil Majhi in the 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.