

**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. 76 OF 2006

PARTIES: Jiban Bouri
(dependent son of Late Kinkar Bouri)
Vs.
Management of Dhemomain 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: 08.09.2025

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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-22012/344/2005-IR(CM-II)** dated 04.10.2006 has been pleased to refer the following dispute between the employer, that is the Management of Dhemomain Colliery under Sodepur Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of M/s. ECL for denial of employment to the dependant of Late Shri Kinkar Bouri as per the provisions of wage agreement / NCWA VI is legal and justified? If not, to what relief the dependent son of the ex-workman is entitled to ? ”

1. On receiving Order **No. L-22012/344/2005-IR(CM-II)** dated 04.10.2006 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 31.10.2006 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. The workman being represented by Mr. Rakesh Kumar, President, Koyala Mazdoor Congress filed written statement on 07.04.2015. Several opportunities were granted to the management of Eastern Coalfields Limited (hereinafter referred to as ECL) but no written statement was filed. On 14.01.2016 an order

was passed by this Tribunal that ECL has not filed written statement after nine years and a last chance was granted to the management to file written statement. On 29.03.2016 an order was passed for ex-parte hearing of the case. No evidence was adduced by the union and the case was fixed up on 16.11.2016 for hearing of argument. On 06.09.2022 Mr. P. K. Das, learned advocate without any authorization sought for accommodation to argue the case on the basis of materials on record and law points involved. Since no evidence was adduced by any of the parties the union was granted opportunity to adduce evidence on 30.06.2023. Jiban Bouri, the dependent son was examined as Workman Witness No. 1 and documents were produced as Exhibit W-1 to W-12. Without filing any written statement Mr. P. K. Das, learned advocate examined Mrs. Gangula Meena Kumari as Management Witness No. 1 and produced documents as Exhibit M-1 to M-3.

3. Brief fact of the case as disclosed in the written statement of the union is that Kinkar Bouri, a Pump Khalasi was posted at Dhemomain Colliery under ECL. He died in harness on 14.08.1998 leaving behind Janki Bouri, his second wife and his dependent sons namely, Jiban Bouri and Milan Bouri and a daughter Rina Bouri. Further case of the union is that Tari Bouri, the first wife of Kinkar Bouri had predeceased Kinkar Bouri on 20.08.1992. The name of Tari Bouri and the sons out of first marriage are mentioned in the Service Record Excerpt (hereinafter referred to as SRE). The name of the second wife was not recorded in the SRE as the marriage took place in 1993. Initially, after the death of Kinkar Bouri his second wife Janki Bouri submitted application claiming employment for herself but as her name did not appear in the Service Record, she was neither provided with employment nor with monetary compensation. A second application for employment of Jiban Bouri, dependent son was submitted. Management held screening and medical test of Jiban Bouri but did not communicate their final decision. The claim for employment was not processed

because Jiban Bouri was below eighteen years of age and the management did not keep his name in the Live Roster as per provision of Clause 9.5.0. of National Coal Wage Agreement – VI. The wife and son of Kinkar Bouri requested the management for providing employment to the dependent son but their request was not considered, as a result the Industrial Dispute had to be raised. The union prayed for providing employment to Jiban Bouri at the earliest and till such time prayed for pay monetary compensation to Janki Bouri, the second wife.

4. The short point for consideration is whether Jiban Bouri, the dependent son of Kinkar Bouri is entitled to any employment as per provisions of National Coal Wage Agreement (hereinafter referred to as NCWA) and whether the denial of employment to the dependent son by ECL is justified.

5. It transpires from the affidavit-in-chief of Jiban Bouri, that after the death of Kinkar Bouri, Janki Bouri his step-mother claimed for employment and payment of legal dues but management did not process the proposal for employment and did not pay the legal dues as her name did not appear in the Service Record. The witness further stated that he prayed before the management for including his name in the Live Roster till he attained eighteen years of age and for payment of monetary compensation to his mother but the proposal was not accepted for some reason. In his affidavit-in-chief the workman witness stated that he received Coal Mine Provident Fund and gratuity of his father. He also claimed to be eligible for employment and that his other family members issued no objection certificate in his favour for grant of employment. The witness produced the following documents :

- (i) Copy of Death Registration Certificate of Kinkar Bouri has been produced as Exhibit W-1.
- (ii) Copy of Identity Card of Kinkar Bouri, as Exhibit W-2.
- (iii) Copy of SRE of Kinkar Bouri, as Exhibit W-3.

- (iv) Copy of application of Jiban Bouri and Milan Bouri to the Agent of Dhemomain Colliery for providing employment to their mother, as Exhibit W-4.
- (v) Copy of application of Janki Bouri, for providing her employment to her, as Exhibit W-5.
- (vi) Copy of application of Janki Bouri dated 02.11.2001 to the Manager, Dhemomain Colliery, nominating Jiban Bouri for employment in her place, as Exhibit W-6.
- (vii) Copy of application of Jiban Bouri and Milan Bouri to the Manager of Dhemomain Colliery for payment of gratuity, LCS and other dues in respect of their deceased father, as Exhibit W-7.
- (viii) Copy of letter dated 21.02.2011 issue by the Manager, Dhemomain Group addressed to Jiban Bouri, regarding irregularities in Employment File, as Exhibit W-8.
- (ix) Copy of letter dated 27.09.2011/01.10.2011 issue by the Manager, Dhemomain Group addressed to Jiban Bouri, regarding screening test, as Exhibit W-9.
- (x) Copy of letter dated 16/17.02.2012 issued by the Dy. Manager (Personnel), Sodepur Area addressed to the Dy. Manager (Personnel), Dhemomain Group, as Exhibit W-10.
- (xi) Copy of Death Registration Certificate of Tari Bouri, as Exhibit W-11.
- (xii) Copy of Application of Jiban Bouri addressed to the Agent, Dhemomain Colliery, praying for employment, Exhibit W-12.

6. In cross-examination the witness stated that he prayed for employment two years after death of his father. He also admitted that the dues of his father from the management of ECL has been paid to him. The witness denied the suggestion that he delayed in claiming for employment and for such reason his prayer for employment was turned down.

7. Mrs. Gangula Meena Kumari has been examined as Management Witness No.1. In her affidavit-in-chief she stated that screening was done for providing employment to the dependent son at Colliery and Area levels. Initial Medical Examination (hereinafter referred to as Initial Medical Examination) was conducted and during the examination held on 08.03.2013 the age of Jiban Bouri was assessed as 20 to 25 years on 08.03.2013. His age was thereby assessed as 22 years and 6 months on the date of assessment and his Date of Birth was notionally calculated as 08.09.1990. the management witness deposed that at the time of death of Kinkar Bouri, Jiban Bouri was less than fifteen years of age and he was not eligible for his name being maintained in the Live Roster. The management witness produced the following documents :

- (i) Copy of the SRE of Kinkar Bouri is produced as Exhibit M-1.
- (ii) Copy of the Report of the Initial Medical Examination of Jiban Bouri, as Exhibit M-2.
- (iii) Copy of the letter dated 03.08.2013 issued by the Manager (Personnel/Empl)/WD to the Chief Manager (Personnel)/IC, Sodepur Area, as Exhibit M-3.

8. Mr. Rakesh Kumar, union representative argued that the name of Jiban Bouri appeared in the SRE of the deceased employee and according to the provisions of Clause 9.3.4 of NCWA the dependent son of the deceased employee was found physically fit for employment and more than 12 years of age on the date of death of his father, therefore his name was required to be maintained in the Live Roster of the employer company as per Clause 9.5.0 (iii) and on attaining 18 years of age the dependent son should be provided with employment. Mr. Kumar submitted that in the instant case the management in their report of medical examination in Form 'O' (Exhibit M-2) stated that Jiban Bouri appeared to be 20 to 22 years of age on the date of examination i.e. on 03.04.2013 and he was found fit for employment. In the SRE (Exhibit M-1) management has recorded

the age of Jiban Bouri as 4 years as on 01.04.1987. Therefore, as per provisions of Clause 9.5.0 (iii) of NCWA-VI which came into force on 01.07.1996, the dependent son was within the eligible age limit for maintaining his name in the Live Roster. It is urged that Jiban Bouri had already completed 12 years of age at the time of his father's death which is the minimum age required for inclusion in the Live Roster. It is argued that the letter issued by the Manager (Personnel/Empl)/WD dated 03.08.2013 (Exhibit M-3) addressed to the Chief Manager (Personnel)/IC, Sodepur Area, stating that the higher authority has expressed his inability to consider the case since Jiban Bouri was minor and was below the age of 15 years on the date of death of his father. It is strenuously argued that the management under misconception of the provisions of NCWA has issued the letter disregarding the fact that at the time of death of Kinkar Bouri in August 1998, NCWA-VI was in force and a male dependent having completed the age of 12 years was eligible to be maintained in the Live Roster. It is claimed that this is a fit case where the dependent son of the deceased employee is entitled to get employment as per settled rules and the management cannot deny employment to a dependent of an employee who died in harness.

9. Mr. P. K. Das, learned advocate argued that Jiban Bouri was far below the age of 12 years on the date of death of his father as such he is not entitled to get employment.

10. I have considered the materials on record, evidence adduced and the argument advanced on behalf of the union and management. In this case the management of ECL has not filed any written statement to disclosed the stand taken by them. The management neither has a case that delay in submitting the application by the dependent son has disqualified him for employment nor has they come out with any specific case that the dependent son did not satisfy the minimum age mentioned in the NCWA-VI for being considered for his employment

on attaining majority. In the case of **Sukumoni Hembram alias Sukumoni Mejhan Vs. Union of India and Others [MAT 27 of 2024]** the Hon'ble Division Bench of the Hon'ble High Court at Calcutta held :

“ NCWA is a negotiated agreement that has been arrived at between the employer and the employees. It is a settlement under section 2 (p) of the Industrial Disputes Act, 1947 and has binding effect on the parties thereto under section 18 (3) of the Act of 1947. NCWA has made provisions for compassionate appointment for the dependents of the deceased employee. ”

On death of Kinkar Bouri on 14.08.1998 at the Colliery. Janki Bouri, the second wife filed an application for providing employment in place of her husband (Exhibit W-5). The application of Janki Bouri for her employment and payment of legal dues was not processed by the management nor did the management communicate anything to Janki Bouri as reasons for her disqualification. Jiban Bouri thereafter submitted his application on 10.02.2000, praying for his employment as a dependent son (Exhibit W-12), disclosing that he had turned an adult and employment may be provided to him. From the SRE produced by the management witness it appears that the name of Jiban Bouri was recorded in the SRE and his age as on 01.04.1987 was recorded as 4 years (Exhibit M-1). From the age mentioned in SRE the age of Jiban Bouri is computed as 15 years 4 months and 14 days on the date of death of his father. From the copy of SRE produced by the management, I find that Jiban Bouri had already attained the age of 15 years on the date of death of his father i.e., 14.08.1998. Therefore, as per provisions of Clause 9.5.0 of NCWA-VI, which became applicable from 01.07.1996, the management of ECL was duty bound to maintain the name of minor son in the Live Roster of the company for providing him with employment on his attaining 18 years. The nonchalant conduct of ECL officials in not providing employment to the dependent son of the deceased is untenable. In the instant case after submission of application by Jiban Bouri on 10.02.2000, claiming employment as a dependent, followed by submission of necessary documents on

02.11.2001, the management of ECL arranged for IME of Jiban Bouri on 08.03.2013. It appears that the management failed to take prompt action and delayed the matter by more than a decade only to frustrate the case of dependent son of the deceased employee. For no reason management wasted twelve (12) valuable long years in holding IME only to find him fit for employment. The Area Medical Officer on the basis of his appearance assessed the age of Jiban Bouri between 20 to 25 years on the date of examination i.e., 03.04.2013. From the evidence of the Management Witness No.1, it appears that the IME was held on 08.03.2013 and from the report produced as Exhibit M-2 it is gathered that the examination was held over a period of time, ranging from 08.03.2013 till 03.04.2013. The audiometry test was done on 02.04.2013. As per the report of IME the age of Jiban Bouri, on eye assessment (as per appearance) was computed as 22 years and 6 months on 08.03.2013 and his date of birth was calculated as 08.09.1990. This assessment of age is self-contradictory and palpably erroneous, hence cannot be accepted. The SRE produced by the management as Exhibit M-1 reveals that on 01.04.1987 Jiban Bouri was four (4) years of age and his physical existence is an indelible truth. The contradictory and unfounded statement of the management that Jiban Bouri's date of birth was 08.09.1990 therefore does not reconcile with their SRE. Only for the purpose of depriving the dependent son from getting an employment under the company as per the agreed terms of NCWA, the management contended that Jiban Bouri was less than 12 years of age on the date of death of his father without considering their own document (Exhibit M-1). This stand of ECL is contrary to the provisions of NCWA-VI. It is explicit from the evidence on record that Jiban Bouri, the dependent son was within the eligible age limit for being included in the Live Roster on the date of death of his father. According to NCWA there is no time limit for claiming employment as a dependent. The petitioner has filed his application within a reasonable time. Therefore, I hold that Jiban Bouri, son of Late Kinkar Bouri is entitled to employment under ECL as per provisions of NCWA-VI. The action of

the management in denying employment to the dependent son despite fulfilment of necessary age criteria and being declared fit for employment is arbitrary, illegal and untenable. The management has deliberately delayed taking effective action and has caused immense suffering to the family of the deceased employee. Under the fact and circumstances discussed above the management of ECL is directed to provide employment to Jiban Bouri, son of Kinkar Bouri within one month from the date of communication of the Award. Any further delay in the matter would entitle the dependent son to compensation equivalent to the last monthly wage drawn by the deceased employee till employment is provided.

Hence,

ORDERED

that the Industrial Dispute is allowed on contest. Jiban Bouri, son of Late Kinkar Bouri is entitled to employment under the management of Eastern Coalfields Limited. The management of Eastern Coalfields Limited is directed to provide employment to Jiban Bouri within one month from the date of communication of the Award. In default, the petitioner son shall be entitled to compensation equivalent to the last monthly wage drawn by the deceased employee till employment is provided. 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.