

**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. 97 OF 2005

PARTIES: Basudev Bhandary
Vs.
Management of Sangramgarh Colliery of ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Uday Giri, Adv.

For the Management: Mr. P. K. Goswami, Adv.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 31.07.2023

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-22012/490/2004-IR(CM-II)** dated 29.08.2005 has been pleased to refer the following dispute between the employer, that is the Management of Sangramgarh Colliery of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

“ Whether the action of the management of Sangramgarh Colliery of M/s. Eastern Coalfields Limited in dismissing Sh. Basudeb Bhandari, Electric Helper from services on 29.09.2002 is legal and justified? If not, to what relief the workman is entitled? ”

1. On receiving Order **No. L-22012/490/2004-IR(CM-II)** dated 29.08.2005 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a **Reference case No. 97 of 2005** was registered on 09.09.2005 and an order was passed 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. The dismissed workman on receiving Notice appeared through Mr. Sanjib Mukherjee and Mr. Ashis Halder, his advocates and filed his written statement on 14.07.2015. The management appeared through Mr. P. K. Goswami, advocate and filed their written statement in respect of the dismissal of Basudev Bhandary,

who was posted as a permanent employee at Sangramgarh Colliery of Eastern Coalfields Limited (hereinafter referred to as ECL). It is the case of the management that Basudev Bhandary was a chronic absentee and due to his unauthorized absence for a long period the management issued Charge Sheet against him. The charged employee submitted his reply that due to his wife's illness he could not attend his duty and being the only working member of the family, no intimation could be given to his office. The management was not satisfied with his reply and initiated a departmental enquiry against the charged employee and opportunity was given to him to defend his case. The workman participated in the enquiry proceeding and prayed for apology. The departmental enquiry was concluded by finding the workman guilty of the charge. It is further stated in the written statement that in the past Basudev Bhandary attended office only for ninety (90) days in the year 1999 for which one increment was stopped. In the year 2000 he attended duty only for one hundred and twenty (120) days for which two increments were stopped, in the year 2001 he attended duty only for forty-two (42) days for which three increments were stopped, and in the year 2002 three increments of the workman was stopped for his absence. Thereafter he remained absent from 12.06.2002 till the date of issuance of Charge Sheet on 15.07.2002 without any prior intimation. For such absence from duty the management could not show leniency to the workman and recommended his dismissal. It is the further case of the management is that the workman was earning his livelihood from other source and he does not deserve any relief. Ultimately the General Manager, Salanpur Area of ECL after considering the documents on record and the Enquiry Report issued a letter of dismissal to the workman.

3. The management examined Mr. Rakesh Kumar Waiker as Management witness – 1 and produced several documents which have been marked as Exhibit MW-I to MW-VII :

- (i) A copy of the Charge Sheet dated 15.07.2002 is admitted in evidence as Exhibit MW-I.
- (ii) A copy of the reply submitted by the workman on 04.11.2002 as Exhibit MW-II.
- (iii) A copy of the Notice of Enquiry issued by the Enquiry Officer on 26.10.2008 as Exhibit MW-III.
- (iv) A copy of the Enquiry Proceeding of the Enquiry Officer as Exhibit MW-IV.
- (v) A copy of the Enquiry Report of the Enquiry Officer as Exhibit MW-V.
- (vi) A copy of the Note Sheet of management of ECL as Exhibit MW-VI.
- (vii) A copy of the Letter of Dismissal dated 13.02.2003 issued by the General Manager, Salanpur Area, of ECL as Exhibit MW-VII.

At the time of evidence of management witness after notice none appeared for Basudev Bhandary to cross-examine the witness. Subsequently after appearance Mr. Uday Giri, learned advocate for Basudev Bhandary, no step was taken by him for the purpose of cross-examine the management witness who had been earlier discharged.

4. Workman filed written statement on 14.07.2015. It is contended that the management dismissed him from service in a predetermined manner and the Departmental Enquiry held against him was only an eye wash. It is claimed that the charges levelled against him are incorrect and that he received a copy of Charge Sheet which did not disclose any wrong done by him. He informed the management that his absence from duty was not due his fault but he remained absent as his wife was seriously ill and except him there is no other family member in the family to look after her. It is urged that the punishment imposed by order of dismissal passed against him is disproportionate to the charges against him and no Second Show Cause Notice was issued to him before imposing the punishment. The workman prayed for setting aside the order of dismissal and restore him to his office with full back wages.

5. Basudev Bhandary, the workman filed affidavit-in-chief wherein he has stated that management issued Charge Sheet No. SAN/C-6/-1796 dated 15.07.2002 and he was not allowed to join his duty. The management dismissed him from service of the company vide letter no. C-6/36/P-2908 dated 13.02.2003 without giving him any opportunity to defend himself against the charge. According to the workman the Enquiry Officer was biased and in violation of the principles of natural justice conducted the inquiry in an unfair manner. The workman witness stated that his financial condition is miserable and is without any job for which he should be reinstated in the service of the company and allow him to resume his duty. The witness in cross-examination by the company stated that he absented from duty five (5) times on previous occasions and received minor punishments. He admitted that each time he assured the management that he will not absent from duty in future. The workman further denied that he has received the Charge Sheet and took part in the Enquiry Proceeding.

6. In the backdrop of the above facts and contentions of the parties, stage is set for consideration as to whether the management of ECL is justified in dismissing Basudev Bhandary, Electric Helper and if not, to what relief the workman is entitled?

7. The case has a checkered career. The management of ECL appears to have been consistent with their representation but the workman remained unrepresented for a long time. After ten years he filed his written statement in the year 2015. Several advocates have appeared on behalf of the workman from time to time and lastly Mr. Uday Giri, learned advocate appeared on 17.02.2023 after several Notice were issued to the workman and the case was argued by the learned advocate of both parties on 08.05.2023.

8. It is an undisputed fact that the workman was a habitual absentee and the

workman witness in his cross-examination admitted that due to his absence from duty on earlier occasion he had received minor punishments. He also deposed that finally he was dismissed for his absence from duty for two months. The Charge Sheet dated 15.07.2002 which was sent to Basudev Bhandary under registered post at his village address was received by him. Copy of the Charge Sheet was produced by the management as Exhibit MW-I. The charge levelled against him is that he is a habitual absentee amounting to major misconduct under Clause 26.23 and 26.29 of the Certified Standing Order. In response to the Charge Sheet the workman submitted his reply on 04.11.2002 (Exhibit MW-II). The concerned workman admitted receipt of the Charge Sheet and stated therein that he could not attend duty on 12.06.2002 due to his wife's serious illness and he is the only family and could not inform his office from his native place. The management of the employer company issued Notice of Enquiry to the workman on 26.10.2002 informing him that the inquiry shall take place on 13.11.2002. The Enquiry Proceeding was initiated by Mr. Anjan Banerjee, Senior Personnel Officer who held the inquiry in presence of Basudev Bhandary, the charged workman, Mr. Goutam Sarkar, Clerk and Mr. Jagai Chandra Mondal, Clerk. In the Enquiry Proceeding it is stated that the delinquent accepted and confirmed the statements made by him in the reply submitted by him on 04.11.2002. The charge was read over and explained to him in Bengali. The delinquent was given opportunity to cross-examine the management witness and examine his own witnesses and also to take assistance of any co-worker, which the workman declined. The workman accepted the charge and prayed for pardon. In the Enquiry Proceeding it is stated since the delinquent has accepted the charge, the proceeding was concluded by recording the statement of the delinquent where he admitted that he could not attend his duty from 12.06.2002 due to serious illness of his wife. On a close scrutiny of the Enquiry Proceeding report I find that no management representative was examined to establish the charge levelled against the delinquent. In the Enquiry Report (Exhibit MW-V), I find that the Enquiry

Officer on perusal of the evidence observed that the workman was a seasoned and a habitual absentee for the preceding three years and from the facts and circumstances it was clear that the workman left his job and place of work, having no interest in continuing his service. The Enquiry Officer went ahead to hold that the charge of unauthorized and habitual absence from duty under Clause 26.23 and 26.29 of the Certified Standing Order of the company have been proved beyond any doubt. No specific punishment was proposed by the Enquiry Officer in his report. The Manager of Sangramgarh Colliery of ECL in his Note Sheet dated 23.11.2002 (Exhibit MW-VI) proposed that Basudev Bhandary, Electrical Helper, U.M. No. 179225 of Sangramgarh Colliery was charge sheeted for unauthorized absence from duty from 12.06.2002 to 04.11.2002 and on perusal of the report it was found that he was a habitual absentee. The Manager further observed that the finding of Enquiry Report was accepted in its entirety and there was no extenuating circumstance in favour of the workman. He was liable for the punishment and it was proposed that he may be demoted from Category – III SLU (1993) to Category – I.

9. A Letter of Dismissal dated 13.02.2003 (Exhibit MW-VII) was issued by the General Manager of Salanpur Area of ECL addressed to the charged employee. It has been stated in the letter, communicating his decision that on going through the Enquiry Report submitted by the Enquiry Officer where the charge has been proved, the charged employee was being dismissed from service with immediate effect and was directed to collect legal dues.

10. Learned advocate for the dismissed workman argued that the charge cited against the workman was not proved by examining the management witness. It is contended that the Enquiry Officer and the Disciplinary Authority are two different persons. Therefore, before acting on the basis of an unfounded Enquiry Report, the charged employee ought to have been furnished with a copy of Inquiry

Proceeding for giving him an opportunity to defend himself. It is contended that in this case no Second Show Cause Notice was issued by the management. Therefore, the order of dismissal passed by the General Manager is illegal and cannot be sustained under the law.

11. Learned advocate for the Management argued that the workman is a habitual absentee and he has admitted his guilt therefore the charge levelled against him under Clause 26.23 and 26.29 of the Certified Standing Order stands proved against the workman. In such view of the matter the management has acted within the purview of law by dismissing Basudev Bhandary.

12. I have carefully considered the evidence on record and find that though the workman participated in the Enquiry Proceeding, the Enquiry Officer did not examine any Management witness to substantiate the charge. The charged employee has been examined as the sole witness to depose and he admitted the charges. There is no ambiguity that the charge of unauthorized absence from duty for more than ten days has been established.

13. Non-supply of Enquiry Proceeding report to the delinquent and non-issuance of the Second Show Cause Notice is conspicuous by their absence. It is therefore evident that the Disciplinary Authority has dismissed the charged employee without giving him any opportunity to put forth his explanation against the report of the Enquiry Officer.

14. The settled position of law on this point has been laid down in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471]**, where the Hon'ble Supreme Court of India held 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."

In this respect it is pertinent to place reliance upon a decision of the Hon'ble Supreme Court in the case of **Managing Director, ECIL, Hyderabad vs. B. Karunakaran [1993 (3) SLR 532 (SC)]**, where it was held that :

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

15. Giving effect to the above guiding principles in the case of **Union of India and Others (Supra.)** and **Managing Director, ECIL, Hyderabad (Supra.)**, Coal India Limited of which Eastern Coalfields Limited is a subsidiary, issued a Circular bearing No. CIL C-5A(VI)/50774/28 dated 12.05.1994 adopting the following policy decisions :

- " (i) On receipt of the inquiry report and before passing the final order, the Disciplinary Authority shall furnish a copy of the Enquiry Report to the delinquent employee provided there is no scope of disagreeing with the findings of the Inquiry Officer by the Disciplinary Authority.*
- (ii) In case of the Disciplinary Authority disagrees with the findings of the Inquiry Officer, he may record the reasons and draw the conclusion based on the*

evidence adduced during the course of the enquiry and communicate the same to the delinquent-employee along with the copy of the enquiry report.

- (iii) After seventy two (72) hours of the receipt of the inquiry report by the delinquent employee, the Disciplinary Authority may pass orders provided no representation has been received from the delinquent employee on the inquiry report.*
- (iv) in case a representation has been submitted by the delinquent employee the same should be taken into consideration by the Disciplinary Authority while passing the final orders in the case. While communicating the final orders it must be mentioned that his representation was taken into consideration by the Disciplinary Authority.”*

In the instant case the management of ECL has not complied the various provisions of the Circular dated 12.05.1994 and no opportunity was given to the delinquent employee to respond to the findings of the Enquiry Officer. Furthermore, from the Letter of Dismissal dated 13.02.2003 (Exhibit MW-VII), I find that no representation of the delinquent was taken into consideration by the Disciplinary Authority which is a clear violation of the principles laid down by the Hon'ble Supreme Court of India in the aforesaid judgements on this point.

16. Under the aforesaid facts and circumstances and the settled position of law discussed above, I hold that the order of dismissal passed by the General Manager, Salanpur Area of ECL in respect of Basudev Bhandary is bad in law and the same is set aside. the management of ECL is directed to supply a copy of Enquiry Proceeding and Enquiry Report to the delinquent within one month from the Notification of the Award, giving him opportunity to submit his representation, if any, and the Disciplinary Authority shall pass a fresh order after taking into consideration all material particulars including Enquiry Report, Findings, Second Show Cause Notice and the representation of the delinquent workman, if any, and communicate the same to him within a fortnight thereafter. The Industrial

Dispute is accordingly disposed in favour of the workman. However, it is made clear that he is not entitled to any back wages.

Hence,

ORDERED

that an Award be passed in favour of the workman. The order of dismissal dated 13.02.2003 passed by the General Manager, Salanpur Area of ECL is bad in law and the same is set aside. the Disciplinary Authority of Salanpur Area of ECL is directed to furnish a copy of Enquiry Proceeding, Enquiry Report along with Second Show Cause Notice to the delinquent employee, providing him a scope of disagreeing with the findings of the Enquiry Officer within a fortnight after service of Notice. The Disciplinary Authority shall pass a fresh order taking into consideration all relevant materials and representation of the delinquent workman. Let an award be drawn up in accordance with my above observation. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

(ANANDA KUMAR MUKHERJEE)

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