

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WP No. 7595 of 2006**

- Shri Mohd. Sajjad S/o Late Safiruddin, Aged about 50 years, working as Ex Category -1 Mazdoor in South Eastern Coal Fields Limited, Korea, Collieries, Chirmiri Area

**---- Petitioner****Versus**

1. The General Manager, Chirmiri Area of SECL, Post West Chirmiri Colliery, District Sarguja (CG)
2. The Deputy Chief Mining Engineer/Sub Area Manager, Korea Collieries, SECL, Chirmiri
3. The Central Government Industrial Tribunal Cum Labour Court, Jabalpur (MP)

**---- Respondent**


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For Petitioner  
For Respondent

Ms. Anju Ahuja, Advocate  
Mr. Abhishek Sinha, Advocate

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**Hon'ble Mr. Justice Prashant Kumar Mishra****Order On Board****7/11/2019**

1. Heard.
2. Challenge in this petition is to the award passed by the CGIT on 1.6.2006 vide Annexure P/11, answering the reference against the petitioner, thereby refusing to reinstate him in service.
3. While the petitioner was serving as Category I Mazdoor at Korla Colliery, he was arrested on the allegation of commission of

murder of his wife Noorjahan on 17.7.1982. He was convicted by the Sessions Court at Sarguja, however, his appeal against conviction was allowed by the Madhya Pradesh High Court. After his arrest, the petitioner did not inform the employer about his absence from duty, which led to issuance of show cause notice dated 24.10.1983 asking him to show cause as to why he is unauthorisedly absent from duty w.e.f. 18.7.1982. In the absence of any reply from the petitioner, he was terminated w.e.f. 14.11.1983 by issuing order on 6.11.1983 (Annexure P/12). Soon after his release from jail, the petitioner made representations seeking reinstatement. The Management of the SECL formally rejected the representation on 7.8.1989. The petitioner thereafter moved before the Central Government raising industrial dispute and praying for adjudication by the Industrial Tribunal. The Central Government referred the industrial dispute for adjudication to the CGIT, which has now been decided against the petitioner vide Annexure P/11.

4. It is argued by Ms. Anju Ahuja, learned counsel for the petitioner that the petitioner was neither served with the charge sheet nor was informed about the order of termination and moreover, since the petitioner was acquitted by the High Court, the very reason for his termination order for his absence from duty being not in existence, he deserves to be reinstated.
5. Per contra, Mr. Abhishek Sinha, learned counsel for the respondent-SECL, would refer to the judgment rendered by the Supreme Court in the matter of **Burn & Co., V. Their Employees**,

**AIR 1957 S.C. 38** , to argue that in case of long absence from duty, non-issuance of formal charge sheet is not fatal. He would also submit that the exact reason for petitioner's termination is his absence from duty and not on account of his conviction.

6. Having heard learned counsel for the parties at length and on perusal of the record, it appears, the Management issued a show cause notice to the petitioner on 24.10.1983 seeking explanation for his unauthorised absence w.e.f. 18.7.1982. The petitioner states that he did not receive the show cause notice, however, the fault lies on the petitioner in not informing the Management about his arrest or inability to join duties for such reason.
7. The petitioner has admitted in his cross-examination, as mentioned in the impugned order, that he did not inform the Management from the jail. The petitioner was represented through his lawyer before the trial Court and the High Court. It is not his case that he was suffering from any mental incapacity. It appears, the petitioner was avoiding notice of his arrest to the Management so that an adverse action is thwarted without realizing that unauthorised absence from duties without informing the Management by itself is a ground for taking disciplinary action.
8. In **Burn & Co.**, (supra), the Supreme Court has held that when the ground of discharge from duty is the continued absence of

the employee and his inability to do work, it is difficult to see what purpose would be served by a formal charge being delivered to him. It is, thus, held by the Supreme Court that non-issuance of formal charge to the employee, who is absconding from duties, is not fatal for the Management.

9. If that be the legal position, the petitioner's contention that he was not served with the charge sheet or show cause notice dated 24.10.1983, as, on that date, he was in jail, would not come to his rescue.
10. Apart from what is stated above, it is also to be seen that the termination was made effective from 14.11.1983 and before that the petitioner was absent from duty w.e.f. 18.7.1982. About 37 years have already elapsed since the petitioner is out of job. His present age, as per his own affidavit, is 64 years, therefore, at this stage, the petitioner cannot be reinstated.
11. For all the afore-stated reasons, the petition has no substance, it deserves to be and is hereby dismissed.

Sd/-

**(Prashant Kumar Mishra)**

Judge