

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

WPA 12549 of 2023

The Eastern Coalfields Limited
Vs.
Union of India & Ors.

For the petitioner : Mr. Soumya Majumder,
Mr. Syed Nurul Arefin,
Mr. Syed Moyeenul Arefin,

For the respondent : Ms. Anita Khatri,
No.3

Heard on : 09.10.2023.

Judgment on : **09.10.2023.**

Raja Basu Chowdhury, J:

1. The present writ application has been filed, *inter alia*, challenging the award dated 30th September, 2022 passed by the learned Central Government Industrial Tribunal-cum-Labour Court, Asansol.
2. It is the petitioner's case that Fatik Bouri, since deceased, was employed as a Driller in Eastern Coalfields Limited (hereinafter referred to as "ECL") at Searsole Colliery. According to the petitioner, the said employee was a habitual absentee and had unauthorizedly absented himself from duty. In connection with his absenteeism, he was issued a show cause notice dated 8th

January, 1992 seeking for his explanation on account of his unauthorized absence from duty with effect from 19th March, 1990. Having not received any explanation, a charge sheet dated 8th January, 1992 was issued for violation of clause 17(i)(n) of the Model Standing orders as applicable to ECL, on the ground of unauthorized absence from duty, with effect from 19th March, 1990 to 8th January, 1992, without any prior permission or sanction.

3. It is the petitioner's case that Fatik Bouri, since deceased, did not respond to the charges, a departmental enquiry was initiated against him. Notice of enquiry was communicated by post, which was not received by him, accordingly, the date of enquiry was published in the local newspaper.
4. It is the contention of the petitioner that the petitioner is presently unable to trace out the paper publication in its department. According to the petitioner, since Fatik Bouri did not participate in the aforesaid enquiry proceeding, the same was held *ex parte* and charges against Fatik Bouri were proved.
5. On the basis of the enquiry report, the departmental authority had passed a final order of dismissal dated 28th March, 1992. Following dismissal of Fatik Bouri since deceased, a belated industrial dispute was raised.
6. The conciliation proceeding having failed, a failure report was issued by the Assistant Labour Commissioner on 21st /23rd

September, 1998. The dispute was ultimately referred by the appropriate Government to the learned Central Government Industrial Tribunal-cum-Labour Court at Asansol by framing the following issues:-

“Whether the action of the Management of North Searsole Colliery, Distt. Burdwan, ECL in dismissing Sh. Fatik Bouri is legal and justified? If not, to what relief is the workman concerned entitled?”

7. The said proceeding was contested by the petitioner. Both the petitioner as also the union filed their respective written statements and rejoinders. In course of the aforesaid proceeding Fatik Bouri having died, the legal heir of Fatik Bouri, being his widow was substituted before the learned Tribunal by an order dated 5th October, 2016. Before the Tribunal the parties relied on several documents. On behalf of the petitioner the following documents were exhibited:-

“Management did not examine any witness, though opportunity was given to them. On behalf of Management of Searsole Colliery, Eastern Coalfields Limited some documents have been produced from their custody as follows:

- (i) *Xerox copy of the charge sheet Ref. No.ECL/NS-P&IR/5361 dated 08.01.1992 issued to Fatik Bouri on his alleged unauthorized absence from 19.03.1990 and constituting a charge under section 17 (i) (n) of the Model Standing Order applicable to the Coal Mining Industry (marked as exhibit ME-I)*

- (ii) *Xerox copy of the letter dated 28/30.03.1992 issued by the General Manager, Kunustoria Area, ECL communicating the Order of dismissal (marked exhibit ME-II)*
 - (iii) *Xerox copy of the Enquiry Report in respect of charges framed against Fatik Bouri submitted by the Enquiry Officer dated 18.03.1992 (marked as exhibit ME-III)*
 - (iv) *Xerox copy of the statements of witnesses Shri Ashok Chakraborty, Tin Keeper, Shri B. M. Singh, Leave Clerk and Shri Sanaton Mondal, Sick Leave Clerk, who were examined in course of the Disciplinary proceeding (marked as exhibit ME-IV collectively)”.*
8. While on behalf of the workman/union the following documents were exhibited:-

“An array of documents produced on behalf of the workman are as follows:

- (i) *Xerox copy of the Treatment papers of Fatik Bouri (marked as Ext. WE-I in two sheets.)*
- (ii) *Xerox copy of the Discharge ticket of Fatik Bouri issued from Kunustoria Area Hospital, ECL (marked as Ext. WE-II)*
- (iii) *Xerox copy of the Certificate issued by T.B. Hospital, Searsole, ECL (Ext. WB-III)*
- (iv) *Xerox copy of the Identity Card of the workman (Ext. WE-IV)*
- (v) *Xerox copy of the Failure of Conciliation Report (FOC) issued by Assistant Labour Commissioner (Central), Asansol-II dated 21/23.09.1998 (Ext. WE-V)*

(vi) *Xerox copy of the Circular dated 12.05.1994 issued by Director (P&IR), ECL regarding supply of Enquiry Report to Charge-sheeted employee and Minutes of meeting of JCC held on 23.11.1994 (Ext.WE-VI)*

(vii) *Xerox copy of the purported Medical Prescriptions and documents (produced as Ext.WE-VII, Ext.WE-VIII, and Ext.WE-X)."*

9. The said reference was disposed of on contest by a judgment and award dated 30th September, 2022, *inter alia*, setting aside the order of dismissal dated 28th March, 1992, along with payment of back wages in favour of the deceased workman, from the date of dismissal till the date of death, on proper verification of identity, with further consequential benefits in form of monetary compensation from the date of death of the workman till the date of his notional superannuation, had the workman been alive.

10. Mr. Majumder, learned advocate representing the petitioner, by relying on the enquiry report dated 18th March, 1992, submits that in course of enquiry it was proved that the workman had absented himself from duty. In any event, it is submitted that the management intended to prove the case before the Tribunal independent of the enquiry proceeding and for the aforesaid reason had relied on the documents, which have been exhibited in course of enquiry.

11. By placing before this Court the award passed by the Tribunal it is submitted that the Tribunal having considered the evidence placed before it, returned the finding that the enquiry proceeding stands vitiated by reasons of failure of the service of the second show-cause. It is still further submitted that the Tribunal having arrived at a finding that the charges of unauthorized absence having been proved against the workman, ought not to have held that the enquiry stands vitiated on account of failure of second show cause notice. He submits that the Tribunal committed procedural irregularity, by going back to the validity of the domestic enquiry. In support of his aforesaid contention that the Tribunal is obliged to consider not only the validity of the domestic enquiry but proof of the charges levelled against a workman, reliance has been placed on a judgment delivered by the Hon'ble Supreme Court in the case of ***Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. v. Management & Ors.***, reported in **AIR 1973 SC 1227**.

12. On the ground of justifiability of the order of dismissal, he has placed reliance on Section 11A of the Industrial Disputes Act, 1947(hereinafter referred to as the "said Act"). According to him, the Tribunal has applied the wrong test, not only while deciding the validity of the enquiry but also while considering the provisions of Section 11A of the said Act. The Tribunal having returned the

finding of unauthorized absence of the workman, ought not to have placed reliance on Section 11A of the said Act to grant relief.

13. According to Mr. Majumder, there could not have been any extenuating circumstances for the Tribunal to hold that the action of the management was harsh or arbitrary. It is still further submitted that it was beyond the scope and authority of the Tribunal to direct payment of consequential benefits in the form of compensation from the date of death of the workman till the notional superannuation. In the facts as stated above, he submits that the award is perverse and should be set aside.

14. *Per contra*, Ms. Khatri, learned advocate representing the respondent no.3 submits that at the relevant point of time when the enquiry was held, the deceased workman was unwell and was in hospital and as such he could not have replied to the show-cause or the charges. By relying to the award passed by the Tribunal she submits that it has been admitted by the learned advocate representing the petitioner that there was no document to show or establish that notice or the charge sheet was served upon the workman before commencement of the enquiry proceeding. She also submits that the learned advocate for the management also conceded that relevant documents relating to the departmental enquiry were not supplied to the charged workman nor any second show cause notice was served upon him, prior to

imposing any penalty. She submits that the enquiry report was also prepared in a mechanical manner as the date of unauthorized absence indicated in such report is mentioned as 9th August, 1990. Having regard to the aforesaid, it is submitted that the petitioner never wanted to adduce any evidence, contrary to what has been submitted by Mr. Majumder she submits that the petitioner always wanted to rely on the documents of the enquiry to establish the charges. It is her specific case that no paper publication had been made and it is for such reason the same had not been exhibited. Till this date the petitioner has not been able to disclose the paper publication. In the factual backdrop as aforesaid she prays for dismissal of the aforesaid writ application.

15. Heard the learned advocates appearing for the respective parties and considered the materials on record. Admittedly, it is noticed that the workman was employed and engaged as a Driller at Searsole Colliery. It is also noticed that on account of unauthorized absenteeism, show cause notice was initially issued. Although, it is contended on behalf of the petitioner in paragraphs 3 and 5 of the writ application that the deceased workman having not responded to the show cause, a charge sheet was issued, I, however, notice from the statements made in the petition, both the show cause as also the charge sheet were issued on the same date. As such, it is incorrect to contend on account of failure on

the part of the deceased employee to respond to the show cause that the charge sheet was issued.

16. Although, the enquiry appears to have been conducted against the deceased workman on the basis of the charge sheet dated 8th January 1992, the records of the proceedings, the award passed by the Tribunal in no uncertain terms demonstrate that the charge-sheet was not served on the deceased workman. The learned advocate representing the petitioner before the Tribunal had specifically admitted that there is no document to show the service of notice or charge sheet on the workman before commencement of the enquiry proceedings. Although, it has been contended by the learned advocate appearing on behalf of the petitioner that since, the notice/charge sheet was not accepted by the workman a paper publication had been made, the purported paper publication had not been exhibited in course of the hearing before the Tribunal. Despite the fact that, it has been strenuously argued by and on behalf of the petitioner by, *inter alia*, contending that the petitioner wanted to give a go-by to the enquiry and wanted to prove the factum of unauthorised absence of the deceased workman before the Tribunal, the finding of the Tribunal would give a different picture. In paragraph 13 of the award, it has been specifically recorded by the Tribunal that the ECL Management was given opportunity to adduce evidence, however, they only relied on certain documents

relating to the domestic enquiry. It has further been recorded that they did not seek any opportunity to adduce any further evidence.

17. Having regard to the findings returned by the Tribunal and there being no contemporaneous document to the contrary, I am of the view that the Tribunal had proceeded to hear out the matter on the basis of the enquiry conducted by the petitioner. The petitioner had failed to establish before the Tribunal by documentary evidence or otherwise that the charge sheet which was the foundation for holding an enquiry was served on the deceased workman. It is well-settled that unless a delinquent is made aware with regard to the charges, enquiry cannot be held. As such, no finding could have been reached by the Tribunal as regards the charges, especially when the petitioner had failed to establish service of charge sheet on the delinquent. Since, the petitioner has not been able to establish service of the charge sheet on the delinquent, the subsequent documents relied on by the petitioner takes a back seat. In the facts on record the judgment delivered by the Hon'ble Supreme Court in the case of ***Workmen of M/s Firestone Tyre and Rubber Co. of India (P.) Ltd. (supra)*** does not assist the petitioner.

18. Having regard to the aforesaid, and despite the petitioner being afforded an opportunity to adduce evidence and having failed to establish the charges in the manner provided by law, I do not find

any irregularity committed by the learned Tribunal in passing the award impugned thereby, setting aside the order of dismissal dated 28th March, 1992. The writ application fails and the same is accordingly dismissed.

19. The respondent no.3 shall be at liberty to apply before the learned Registrar General for release of the amount already deposited by the petitioner and shall be entitled to appropriate the same towards her claim on account of back wages in protanto satisfaction thereof.
20. Before parting with the matter, I must record a note of appreciation, for the Member Secretary, District Legal Services Authority, for not only locating the respondent no.3, but in convincing her to be represented by an advocate, before this Court.
21. Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of necessary formalities.

(Raja Basu Chowdhury, J.)