

I/203471/2022

Government of West Bengal  
Labour Department, I. R. Branch  
N.S. Buildings, 12<sup>th</sup> Floor  
1, K.S. Roy Road, Kolkata - 700001

No. Labr/. *648* ...../(LC-IR)/11L-86/12.Date *29/06/*.....2022**ORDER**

WHEREAS an industrial dispute existed between M/s. Hindalco Industries Limited, Belur works of 39, G.T. Road, Distt. - Howrah, Pin - 711202 and their workman Sri Debashis Guha, Bally, Ghoshpara, Distt. Howrah, Pin - 711227 regarding the issues being a matter specified in the Second schedule of the Industrial Dispute act, 1947 (14of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14of 1947) to the Second Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 2.2.12;

AND WHEREAS the Second Industrial Tribunal has submitted to the State Government its Award dated 17/06/2022 vide memo no. 909 - L.T. dated 17/06/2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award as shown in the Annexure hereto.

**ANNEXURE**

(Attached herewith)

By order of the Governor,

*Sd/-*

Joint Secretary  
to the Government of West Bengal

I/203471/2022

( 2 )

No. Labr.....<sup>648</sup>/1(2) - IRDated .....<sup>29/06/</sup>2022.

Copy forwarded for information to:

1. The Judge, Second Industrial Tribunal with reference to his Memo No. 909 - L.T. dated 17/06/2022.
2. The Joint Labour Commissioner (Statistics), W.B., 6, Church Lane, Kolkata-700001.

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Joint Secretary

No. Labr.....<sup>648</sup>/2(5) - IRDated .....<sup>29/06/</sup>2022

Copy with a copy of the Award is forwarded for information &amp; necessary action to:

1. M/s. Hindalco Industries Limited, Belur works of 39, G.T. Road, Distt. - Howrah, Pin - 711202.
2. Sri Debashis Guha, Bally, Ghoshpara, Distt. Howrah, Pin - 711227.
3. The Assistant Labour Commissioner, W.B., In-Charge of Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building (11<sup>th</sup> Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Joint Secretary

**Before the 2<sup>nd</sup> Industrial Tribunal, Kolkata**

**Present : Shri Partha Sarathi Mukhopadhyay, Judge  
2<sup>nd</sup> Industrial Tribunal, Kolkata**

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**Case No. 03 of 2018**

**Under Section 2A(2) of The Industrial Disputes Act, 1947**

**Shri Debashis Guha  
Of  
Bally, Ghoshpara, Distt.-Howrah, Pin-711 227.**

**-Vs-**

**M/s. Hindalco Industries Limited, Belur Works  
Of  
39, G.T. Road, Distt.-Howrah, Pin-711 202.**

**Dated, 17.06.2022**

**J U D G E M E N T**

The case of the petitioner as per his written statement is that on 01.08.1993 he was appointed by the O.P. company as 12' Sheer Helper and for satisfaction of his service, the O.P. company confirmed his service on 01.02.1994 and on 19.06.12 he met a severe accident and he sustained severe injuries on his head, eyes and other parts of his body and one operation was done and then he was allowed to join in his service with light job and then the O.P. company sent him to the medical board for his



examination and though the Doctors advised for light job for him, the O.P. company did not allow him to enter in the factory and perform his duty with light job on the ground that he had been absenting from 05.09.14 and in this way he was refused to do his work without any enquiry or charge-sheet and by way of such refusal of employment, the service of the petitioner was terminated by the company by violating the principles of natural justice and the said order of termination is illegal and void. Accordingly the petitioner has filed this case praying for reinstatement of his service with full back wages and other consequential reliefs.

The O.P. company has contested this case by filing a written statement and in the written statement the O.P. company has denied all the material allegations of the petitioner of this case.

The O.P. company has submitted in its written statement that the service of the petitioner was confirmed on 01.02.94 by the O.P. company but thereafter his service was not at all satisfactory for his unauthorised absence from duty for 27 days in 2013 and 59 days in 2014 and on 19.06.12 the petitioner met one accident outside the factory, not during the duty hours inside the factory in course of employment but the O.P. company paid the full medical expenses and allowed him to join on 11.02.13 after he was declared medically fit but thereafter again he started absenting from duty in an unauthorised manner and since 05.09.14 he had been absenting continuously for which by a letter dt. 15.09.14 he was advised by the O.P. company to meet the General Manager but he did not meet on the plea of illness and doctors advised him for bed rest and then the O.P. company sent him to the medical board constituted by the District Medical Officer, Howrah and the said medical board certified him as medically fit and the petitioner applied for providing him with light job but there was no category of light job in the O.P. company and the O.P. company never stopped the petitioner to enter the premises of the factory and he himself did not resume his duty thereafter and his service was not terminated by the O.P. company for which question of reinstatement does not arise and the petitioner himself stopped attending his duty and he had been absenting for a long period of time and as the Opposite Party never refused the petitioner to work, the question of domestic enquiry cannot arise and charge-sheet also was not framed against him and in spite of giving many opportunities to the petitioner to join his duty, he did not join his duty causing serious damage and loss to the Opposite Party and all the allegations of the petitioner in this case are totally false. Hence the O.P. company has prayed for dismissal of the case with cost.

Considering the materials on record, the following issues have been framed in order to arrive at a decision:-

- 1) Whether the termination of service of the applicant, Shri Debashis Guha by way of refusal of employment w.e.f. 05.09.14 is justified or not.



- 2) Whether the application suffers from any legal technicalities arising out of maintainability on both facts and law, limitation, etc. or not.
- 3) Whether the applicant, Debasish Guha abandoned the service by himself or not.
- 4) Whether the applicant is entitled to get any other relief or not.

ISSUES NOS. 1 TO 4

All the issues are taken up together for consideration for the sake of convenience.

In this case the petitioner has examined himself as the PW-I and proved some documents while the O.P. company has examined one witness and proved some documents.

As per the cases of both sides, **admittedly** the petitioner was appointed by the O.P. company on 01.08.93 as 12' Sheer Helper and then his service was confirmed by the O.P. company on 01.02.94 and then on 19.06.12 the petitioner met a severe accident outside the premises of the O.P. company and at the time of the accident he was not working inside the premises of the O.P. company during the course of employment and the O.P. company paid the cost of his medical expenses though the said accident took place outside the factory and not in course of employment inside the premises of the O.P. company and after the petitioner was declared medically fit after the said accident, the O.P. company allowed him to join on 11.02.13 in the O.P. company, and though the O.P. company has not admitted in its written statement and evidence of the OPW-I in chief regarding allowing the petitioner to work light job after the said accident in 2012, the OPW-I has admitted in his cross examination that after the accident in question, the workman was posted by giving light assignment by adjusting his times and the workman joined and worked there.

So it is proved through the above admitted facts that when after the said accident in 2012 the O.P. company allowed the petitioner to join on 11.02.13 in the O.P. company after he was medically declared fit, the O.P. company gave him **light job** by adjusting his times and then the workman joined and worked there.

Now **the main question** is whether the service of the petitioner was terminated by way of refusal of employment w.e.f. 05.09.14 by the O.P. company or whether the petitioner himself abandoned the said service.



Admittedly on 19.06.12 the petitioner met one serious accident and sustained severe injuries on his head, eyes and other parts of the body and when he met this accident, he was not working during the course of employment inside the premises of the O.P. company and he met this accident outside the factory of the O.P. company beyond the working hours but the O.P. company paid the cost of his medical expenses and it has been admitted by the petitioner in his evidence and exhibited documents. So this conduct of the O.P. company shows that the said conduct was good on humanitarian ground even if the said accident took place outside beyond the working hours.

The Hon'ble High Court, Calcutta has held in a case namely *Algemene Bank Nederland - Vs - Central Government*, Labour Court as reported in LAWS (CAL) 1977 8 40 that "I am of the opinion that the wages, as in the words of Lord Denning, are the payment for services rendered. I am inclined to think that it is not so much a question of whether the contract is divisible or entire but of reciprocal promises as the consideration, that is to say, the employer provides the employment and pays the remuneration and the employee performs the work during the period he is supposed to do the work. Therefore, the right of the employee to get the remuneration depends upon the performance of his work during the period of employment. If there is any failure of that consideration then taking a strict view of the matter the employer is entitled to refuse any payment at all".

After the said accident in 2012, the O.P. company allowed him to join the duty on 11.02.13 when he was declared medically fit but thereafter he started absenting himself frequently from duty in an unauthorised manner and since 05.09.14 he started absenting continuously as per allegations of the O.P. company.

The O.P. company has proved on letter dt. 15.09.14 as the Exbt.B and the petitioner also has proved this letter as the Exbt.I and this letter dt. 15.09.14 mentions that since 05.09.14 the petitioner would not attend his duty in an unauthorised manner and without prior sanction of leave and sufficient cause and for this reason the petitioner was directed by the O.P. company to report to the Head-HR immediately and **explain the reason of the said absence**. So this letter dt. 15.09.14 mentions that the petitioner was directed to **show cause or explain** the reason of his unauthorised absence from 05.09.14.

The petitioner has mentioned in his written statement that the O.P. company never issued any show cause notice to him to explain his conduct during the period of his service but this allegation of the petitioner **is not correct** in view of this Exbt.B and I and by this letter the petitioner was directed to explain the reason of his continuous absence from 05.09.14.



The petitioner has proved his letter dt. 18.09.14 sent to the O.P. company as the Exbt.2 and this Exbt.2 was sent by the petitioner by e-mail in response to the letter dt. 15.09.14 given by the O.P. company and in this letter he mentioned about his ill health and advice of doctor to take bed rest for four weeks and he has also stated that he had already reported to the Medical Department and the Mechanical Department about the cause for not joining the company.

The O.P. company has proved one document dt. 19.09.14 (Exbt.C) issued by Dr. S.K. Sinha and in this letter it is mentioned that the petitioner informed the pharmacist on duty by phone on 06.09.14 regarding sickness and absence from duty from 04.09.14 but he did not send any sick certificate issued by any doctor within 48 hours as per rules of the company and Dr. S.K. Sinha has received one doctor's prescription advising the petitioner bed rest for four weeks from 06.09.14 and it was not clear why or what the diagnosis was and the said doctor was not a specialised doctor and the medicines advised were routine for high blood pressure and diabetes which the petitioner had been taking for a long time and the severity of the patient's illness was in grave doubt.

The Exbt.D issued by Dr. S.K. Sinha of the O.P. company shows that he issued this letter to the Medical Superintendent, Howrah District Hospital, Howrah to know the procedure for referring the patient to the medical board of that hospital.

The Exbt.E mentions that the Chief Medical Officer of Health, Howrah directed the Superintendent, Howrah District Hospital to fix date and time for medical examination of the petitioner by the medical board of the Howrah District Hospital and for giving such information to Dr. Sinha of the O.P. company.

The Exbt.F shows that the Superintendent, Howrah District Hospital has informed Dr. S.K. Sinha of the O.P. company that the medical board will examine the petitioner on 26.11.14 and the Exbt.G mentions that the Head-HR has informed the petitioner to appear before the medical board on 26.11.14 at the District Hospital, Howrah with the medical documents for his examination.

The Exbt.H mentions that the Chief Medical Officer of Health, Howrah has sent the certificate of fitness of the petitioner to the Manager of the O.P. company and one copy of this letter was forwarded to the petitioner. So the allegation of the petitioner that he did not get the report of the medical board for his examination is not correct.

The Exbt.H /1, certificate of fitness issued by the medical board mentions that the petitioner was found medically fit on 26.11.14 and no loco motor disability was found at present and prescribed for light job and avoiding night duty.



The petitioner has examined one letter issued by him to the O.P. company as the Exbt.6 and the same letter has also been examined by the O.P. company as the Exbt.I and by this letter the petitioner has admitted that after the accident, the O.P. company paid part of the medical expenses and one Dr. Kishore Nandi recommended to give him light job and other doctors directed him to avoid night shift duty and since last three months he had been going to the factory to attend his duty but he had not been allowed to join and the security staff did not allow him to enter the factory without consent of the O.P. company.

The Exbt.7 shows that the O.P. company by this letter informed the petitioner that w.e.f. 05.09.14 he had been absenting himself in an unauthorised manner for which the company issued one letter dt. 15.09.14 advising him to report and submit explanation and in response to the letter, the petitioner sent one e-mail on 18.09.14 stating about his ill health and advice of doctor to take bed rest for four weeks and he already reported about his sickness to the Medical Department and the Mechanical Department and by this letter the O.P. company informed the petitioner that as he had been working in this factory for last 22 years, he must be aware that as per the standing orders of the company, no worker is allowed to absent himself from work unless he has the previous sanction from his Manager and in case of the sudden illness, a definite message to that respect in writing must be sent to the Time Office but he failed to comply the above standing orders and information to the Medical Department and the Mechanical Department are not required as per the standing orders and he did not submit the sick certificate of a doctor within 48 hours and as the petitioner informed about difficulty to work in the night shifts because of his impaired vision of his right eye, he was referred to the Vasan Eye Care for check up and the said Vasan Eye Care reported that he had a defective vision in his right eye and to ascertain his suitability for work in the factory the petitioner was placed before a medical board and according to the report of the medical board the doctors opined that no loco motor disability was found at present and prescribed for light job and avoiding night duty and as the manning is governed by the tripartite LTS, the O.P. company called upon the unions and informed the entire incident and asked for suggestions to place the petitioner in a job that would be suitable to him but till now the unions have not responded and the O.P. company requested the petitioner to submit his pending medical bills through the Plant Medical Officer and informed the petitioner that the O.P. company had been awaiting the concurrence and support of the unions for placing the petitioner in a suitable place to resume his duties, and this Exbt.7 mentions that the O.P. company sent the copies of this letter to the three unions of the O.P. company.

The petitioner has proved his letter dt. 26.02.15 sent to the O.P. company as the Exbt.8 and in this letter he has mentioned that after recovery from accident he joined his duty but became sick and then he was treated by the medical board and the medical board suggested for light job and avoiding night duty and then he approached



the O.P. company for light job but the O.P. company told him to wait till the reply from the unions was received, and the petitioner has mentioned in this letter that the O.P. company has not been allowing him to enter the factory and **by hand delivery** the O.P. company has not been receiving any letter from him. But this Exbt.8 issued by the petitioner to the O.P. company mentions that it was given by him **by hand delivery** to the O.P. company. So the allegation of the petitioner that by hand delivery the O.P. company has not been receiving any letter from him is not correct.

It is true that by his letters dt. 09.02.15 and 26.02.15 (Exbt.6 and 8) the petitioner informed the O.P. company that since the last three months he had been going to the factory to attend his duty but he was not allowed by the O.P. company to join and the security staff did not allow him to enter the factory but the O.P. company has stated that he was not refused to join and on the contrary he did not come to the factory to join in spite of getting many opportunities and he did not intentionally attend the O.P. company for his work and his long absence was without prior sanction of any leave.

Except these Exbts.6 and 8, the petitioner has not produced any other corroborative oral or documentary evidence to prove that after being declared medically fit by the medical board of Howrah District Hospital on 26.11.14, he went to join in the O.P. company but he was refused to join by the O.P. company.

Moreover, in his written statement or oral or documentary evidence he has not mentioned **any specific date** when he went to the factory to join but he was not allowed to enter the said factory to work there.

It is true according to The Industrial Disputes Act, 1947 that refusal of employment amounts to termination of service but the petitioner has to strictly prove it without any doubt as he has taken the plea of refusal of employment and by mentioning only in Exbts.6 and 8 addressed to the O.P. company, it is not cogently proved that after being declared medically fit by the medical board on 26.11.14, he went to the factory of the O.P. company to join his duty but he was refused to join and he was denied entry in the said factory by the security staff of the O.P. company.

By Exbt.7, the O.P. company informed the petitioner that as the manning is governed by the tripartite LTS, the O.P. company sought for opinion from the three unions of the workers for placing of the petitioner in a suitable post for his job but till now the said unions did not give any opinion to the O.P. company for which the O.P. company, being legally bound to follow the said tripartite LTS, could not provide job again to the petitioner according to his physical problem. So this Exbt.7 does not prove that **intentionally** the O.P. company did not allow the petitioner to resume his duty after being declared fit by the said medical board and this Exbt.7 also proves that the O.P.



company had no malafide intention to refuse job to the petitioner considering his health condition.

**The most interesting exhibited document** of this case is the certificate of fitness on medical ground issued by the medical board of the Howrah District Hospital and as per this certificate (Exbt.H/1), on 26.11.14 the petitioner was examined by the said medical board and according to their opinions, the petitioner was found to be medically fit and they also opined that no loco motor disability was found at present and prescribed for light job and avoiding night duty. This medical certificate is confusing and contradictory because once the medical board has found the petitioner as medically fit and again they have opined for light job and avoiding night duty.

A completely medically fit person can be allowed only to work before any place of employment. So if the petitioner was found completely medically fit, then why the said doctors opined for his light job of the petitioner and advised for his night duty! Naturally the question arises as to whether on 26.11.14 after examination by the medical board the petitioner was found completely medically fit or not and if he was found completely medically fit then the doctors would not opine for light job and avoid night duty, and a completely medically fit person will have no problem to perform any kind of job like before and he will have no problem also to work in night shift. But the said doctors have opined for light job for the petitioner with a direction to avoid the night duty, and such type of opinion means **scientifically** that after examination on 26.11.14 the petitioner was confirmly not found completely medically fit for which the opinion of light job with a direction to avoid night duty was given by the said doctors.

So considering the above contradictory opinions of the doctors of the said medical board, I have no hesitation to hold that the said opinions of the doctors are not correct and genuine scientifically and the same are biased and on the basis of this report it cannot be confirmly held as to whether the petitioner was found completely medically fit after examination on 26.11.14 or whether he was unfit or half fit for which light job with a direction to avoid night duty was prescribed by the said doctors. As the said doctors have prescribed for light job with a direction to avoid night duty, the O.P. company is not legally bound to provide light job with a direction to avoid night duty to the petitioner because it is **the sole discretion** of the company to give job of any nature to its workers with a direction to work in any shift and no doctor has any authority to interfere with such discretionary power of any place of employment far to speak of the O.P. company and by opining light job with a direction to avoid night duty for the petitioner, the said doctors have exceeded their jurisdiction in the internal affairs of the O.P. company because if the worker is completely medically fit, the O.P. company has every right to offer him any kind of work to perform and any of the duty shifts as the time of his work and if the worker is found medically unfit because the doctors have opined for his light job with a direction to avoid night duty, the said



worker is not entitled to get back his job as he was found unfit medically because of the above mentioned two recommendations for him by the said doctors. Moreover, as the petitioner himself also has claimed for light job and avoiding night duty, he has impliedly proved that he is not a completely medically fit person.

It is good luck to the petitioner that in spite of not being completely medically fit as per the opinion of the doctors of the medical board, the O.P. company by its letter dt. 20.02.15(Exbt.7) has informed the petitioner to wait for the decision of the unions for placing him suitably in the post due to his unfit condition of the body.

As the petitioner was the worker under the O.P. company, he is legally bound to follow the standing orders of the O.P. company and according to point no. 23 of the said standing orders of the O.P. company (Exbt.K), no worker will be allowed to absent himself from work unless he has previous sanction from the Manager or the Personal Officer and in case of accident or sudden illness of the worker or any of his family, compelling him to absent himself from the work without previous sanction, a definite message to that respect, preferably in writing, must be sent to the Time Office and it will be the worker's responsibility to prove correctness of his statements during later investigation, if necessary. If his absence is not considered to be justified after investigation, it will be treated as absence without leave and will be dealt with accordingly and **the worker's service will automatically be terminated in case he is absent without leave for more than seven days.**

In this case the petitioner has proved many documents but **he has not produced and proved** any document to show that he submitted leave applications to the O.P. company with documents for regularisation of his unauthorised leave for many days and there was no difficulty to submit the said leave applications **by registered post with A/D** to the O.P. company if he was not allowed to enter the factory of the O.P. company by the security guard as per his allegation.

So the entire facts and circumstances of this case sufficiently prove that till filing of this case in 2018 for unauthorised absence from 05.09.14 and till completion of trial of this case, the petitioner did not submit any leave application before the O.P. company for regularisation of all his unauthorised leave since 05.09.14 enjoyed by him, and accordingly the service of the petitioner has automatically been terminated because he was absent without leave for more than seven days according to the said standing orders of the O.P. company.

In its written statement the O.P. company has stated that the O.P. company has not terminated the service of the petitioner and naturally the question of reinstatement does not arise and the allegation of the petitioner regarding refusal of employment is also false and on the contrary the petitioner himself intentionally did not attend the



O.P. company to join his duty. So as per the case of the O.P. company, the O.P. company did not terminate the service of the petitioner either by refusal of employment or any other way.

According to the said standing orders of the O.P. company the employment of any permanent worker may be terminated by the Works Manager by one day's notice or by payment of one day's wages in lieu of notice. Admittedly the petitioner of this case is a permanent worker under the O.P. company but as per the standing orders of the O.P. company, the O.P. company has not terminated the service of the petitioner by one day's notice or by payment of one day's wages in lieu of notice. On the contrary, the O.P. company has asserted in its written statement that the O.P. company has not terminated the service of the petitioner in any way.

So considering the entire materials on record as discussed above, I hold that the petitioner has failed to prove his allegation that by way of refusal of employment w.e.f. 05.09.14, the O.P. company has terminated his service and it has also been proved that as per the standing orders of the O.P. company, the O.P. company has not terminated the service of the petitioner and the O.P. company has submitted that it has not terminated the service of the petitioner in any way, and the petitioner intentionally left the said service by remaining absent for a long time unauthorisedly without prior sanction of leave and the record also shows that the petitioner did not submit proper leave applications to regularise his long unauthorised absence to the O.P. company.

It is true that The West Bengal Industrial Disputes Act, 1947 has been made for **beneficial legislation** of the labourers but as the petitioner in this case is totally on wrong foot, he cannot demand for beneficial legislation and he also cannot utter violation of the principles of natural justice.

Accordingly, I hold that the petitioner himself has left the said service and he is not entitled to get any relief in this case as prayed for and he is also not entitled to get any back wages as he has not regularised his unauthorised long absence in the O.P. company.



Hence, it is

**ORDERED**

that the Case No. 03 of 2018 under Section 2A(2) of The Industrial Disputes Act, 1947 is dismissed on contest against the O.P. company with cost.

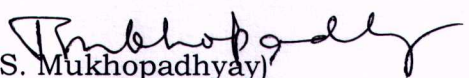
Let this judgement and order be treated as an Award.

According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.

  
Judge

  
(P.S. Mukhopadhyay)  
Judge  
2<sup>nd</sup> Industrial Tribunal

Judge  
2<sup>nd</sup> Industrial Tribunal  
West Bengal