

ORDER SHEET

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL,
JABALPUR (M.P.)

Date of Order of Proceeding	Order Or Proceeding with Signature of Judicial Member	Remark
	CASE NO. CGIT/LC/R/97/2018 Durjo V.S. SECL	
15.07.2026	<u>Order on Preliminary Issue</u> The preliminary issue is as follows – <i>“Whether the enquiry conducted against the workman is just, legal and proper?”</i> The Case of the Workman is that one Kirtan was employed by Korea Colliery of SECL, Chirmiri Area. His brother in law Kartik was also working with him. They both belong to Village Paliama, Distt. Ganjam of Odisha. Kirtan did not have any son. He adopted Ramesh, son of Kartik and adoption deed was signed on 07.01.1980 in the village and required customs were observed. Name of Ramesh was changed and he was named as Durjo after his adoption. He started living with his adopted parents as their adopted son. The adoption deed (photocopy) is <i>Annex. P-1</i> to the Statement of claim. The Workman Kirtan, the adopted father of Durjo got recorded name of Durjo as his son in his service record, copy filed with statement of claim as <i>Annex. P-2</i>. Kirtan was declared medically unfit in the year 1993 and his adopted son Durjo, the Applicant workman in the case in hand, was offered appointment as Category-I General Mazdoor on 15.12.1993 under NCWA-III. He served till 2015 as an employee of the Management after his appointment, when one Satpunjan Mishra, a resident of Korea Colliery made a written complaint to Korea Police and also sent a copy to the Chief Vigilance Officer SECL stating that in fact the Applicant workman Durjo was never adopted by the Workman Kirtan. According to the complainant, in fact the Applicant Workman is son in law of the said Kirtan and thus he got employment by way of misrepresenting himself as adopted and dependant	

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	son of Kirtan. It is further the case of Workman that this complaint was sent by Management to Ganjam Police for verification of the allegations and identity of Applicant Workman Durjo. They sent a report in this respect to the Management stating that from investigation it was found that the Applicant Workman Durjo was in fact the adopted son of Kirtan, according to the customs of the community. Copy of the complaint, letter of Chief Vigilance Officer to General Manager, Letter of General Manager to Ganjam Police, findings of the Ganjam Police, Certificate of Gram Panchayat and joint declaration are filed as Annex. P-3 to P-8 respectively to the statement of claim. According to the Applicant Workman he was served a charge sheet on 08.01.2016 and a Corrigendum of Charge sheet on 01.02.2016 with allegation of misconduct by way of misrepresenting and not disclosing all the facts in getting employment as a dependant son of Kirtan. Documents were not supplied, which were to be relied upon in support of the charges. The Applicant workman filed his response to the charge sheet in which he stated that documents be supplied to him so that he could effectively reply to the charges. This letter was treated as a reply to the charge sheet and a Departmental inquiry was constituted vide letter dated 08.04.2016. Copies of charge sheet dated 08.01.2016, Corrigendum dated 01.02.2016, letter of Durjo for providing documents, order constituting inquiry dated 08.04.2016 have been filed by the Applicant Workman as Annexure P-9 to P-12 respectively to the Statement of claim. Thus according to the Applicant workman no list of witness in support of the charge was ever supplied to him, the charges were also vague. The workman participated in the inquiry, he filed his adoption deed which was originally in Odia language, translated in	

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	Hindi in support of his name with respect to his adoption and established his adoption. The Senior Officer in-charge, Regional Workshop, Korea who issued a charge sheet, did not appoint the Inquiry Officer rather the inquiry committee was constituted by the Area Personnel Manager, who had not issued the charge sheet. Hence, the charge sheet itself is incompetent and the whole inquiry conducted on such a charge sheet is non est. in law. The Inquiry Officer wrongly recorded a finding with the charge that was illegal and the punishment was also bad in law as well excessive. The Applicant Workman raised a dispute in this respect which cannot be conciliated, hence this reference. According to the Applicant Workman, this action of Management is unjust, illegal and arbitrary. He has requested that setting aside his termination, he be held entitled to be reinstated with all back wages and benefits. Case of the Management is mainly that, the Applicant Workman got employment as a dependant son of Kirtan, who was working with Management and was discontinued from the service on the ground of being medically unfit. One, Satpujan Mishra made complaint to the Korea Police. Copy of report was forwarded to Chief Vigilance Officer, complaining that the Applicant Workman had got the employment by producing wrong claims and false documents. This complaint was sent to Superintendant of Police Distt. Ganjam, Odisha. They submitted their report dated 29.10.2015 in which it was mentioned that Kirtan had four daughters and had no son, so he adopted his son in law Ramesh as his son and offered his job in the year 1993, changing his name as Durjo son of Kirtan. There are no documents for his adoption but	

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	voter identity card proved that Durjo is son of Kirtan. According to the Management, as per voter list published in the year 2011 at Serial No. 311 Ramesh Chandra Nahak s/o Kirtan 39 years were published. This voter list was also forwarded by the Superintendant of Police Ganjam to the Management. It is further the case of the Management that Kirtan never declared that Durjo is his son-in-law and is an adopted son, not his biological son. An inquiry was conducted after the reply of the workman Annx. M-3 to the written statement was found not sufficient. This inquiry was conducted in 07 days. Statement of two Management witness was recorded. The Applicant workman cross examined these Management witness. The workman cross examined himself in defense, he was cross-examined. The inquiry officer submitted his inquiry report dated 08.09.2016 holding that the Applicant workman guilty of misconduct. The Applicant workman was served a copy of the inquiry report and show cause notice dated 19.09.2016. He did submit his reply to the show cause notice dated 26.09.2016. The Competent Authority after considering all the records, imposed punishment of the dismissal of the Applicant Workman from service vide its order dated 10.11.2016. The Applicant Workman filed an appeal dated 22.02.2017 before the Chief General Manager and another appeal before the Chairman of the Company which were dismissed. According to Management, the charge sheet has been issued by the Competent Authority. The Inquiry has been conducted properly, the findings have been recorded correctly by the inquiry Officer and the punishment is also justified in law and facts. The Applicant workman has filed his affidavit as his examination in chief. He has been cross	

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	examined by the Management. Management has also filed affidavit of its witness as his examination in chief. This witness has been cross examined by the Workman side. I have heard argument of Mr. Bhagwat Prasad Dubey, Union Representative for the Workman Union and Learned Counsel Mr. Neeraj Kewat for Management and I have gone through the record as well. First argument from the side of workman is that the charge is incompetent. Undisputedly, the Applicant workman was working in SECL and was posted as Tyndal Category-V Mazdoor in Regional workshop Korea at Chirmiri area. According to the Office order No. SECL/BSP/CMD/ES/08/18/552 dated 31.03.2008 list of Charge-sheeting Authority, Disciplinary Authority, Punishment Authority, Appellate Authority And Review Authority has been given. According to these documents on which both the sides relied, all the Colliery Managers/SAM Works/Manager/Depot Officer/Deputy Chief Medical Officer/Deputy CPM (Admin) SECL Headquarters shall be Charge-sheeting Authority. They will exercise this power in consulting with Personnel Manager only. Similarly, all the Sub-Area Managers shall be Disciplinary Authority. All the punishment awarding/approval authorities will be all Chief General Managers/ General Managers, CGM CP &A)/GM(P&A) for Headquarters. The Director (Personnel) shall be the Appellant Authority and Chairman-cum-Managing director shall be the Reviewing Authority. Vide Office order dated 01.04.2008, Officers	

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	for exercising power of Competent Authority with respect to the Workman working in their respective area of work/control for all the provision of Certified Standing Order except Clause 28, 30 and 31 for which Office Order No.SECL:BSP:CMD:ES:08:552 dated 31.03.2008 has been issued separately. The list is as follows – Chief General Manager General Manager Deputy General Manager Sub-Area Manager Colliery Manager / Colliery Engineer / Senior Executive Engineer. Staff Officer (Personnel). Chief Engineer Chief Medical Officer Medical Superintendant / Deputy Medical Superintendant. Union representative submits that since the Applicant Workman was working in workshop, the Charge-sheeting Authority for employees at workshop will be Works Manager. But the charge sheet has been issued by Senior Officer, In-charge of the Workshop. In-charge of the Workshop and Works Manager are two different persons. There is nothing on record to show that the power to issue charge sheet has been delegated to the In-charge of the workshop also. Similarly, the Sub-area Manager shall be the Disciplinary Authority according to the order dated 31.03.2008. The Departmental Inquiry has been ordered by Area Personnel Manager and not by	

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	Works Manager or Sub Area Managers. Hence, according to the Workman Union Representative, the charge sheet is itself incompetent inquiry and the inquiry itself is against rules. Any finding of such inquiry cannot be relied upon for awarding punishment. Learned Counsel for Management also could not show any Rule or Circular or Office Order authorizing In-charge of workshop to issue charge sheet against a workman working in the workshop or Personnel Manager instituting an inquiry against such a staff. As regards the legality of procedure adopted in the inquiry, the workman has been given full opportunity during the inquiry to defend himself hence on this score, the inquiry cannot be said to be unjustified in law. Since, the charge sheet and order with respect to inquiry has been found incompetent, inquiry in the case in hand cannot be held to be just, legal and proper. <i>Hence, the Departmental Enquiry is held unjust and illegal.</i> <i>Preliminary issue is answered accordingly.</i> It is further to mention here that in their written statement of defense, the Management has prayed that if the inquiry is found not justified, they be given opportunity to prove the charges before this Tribunal. Hence, Management is given one opportunity to prove the charges before this Tribunal. List on _____ for evidence of Management on charge. Presiding Officer	