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. 20 OF 2019

PARTIES: Mahendra Roy
(dependent son of Late Dhodo Roy)
Vs.
Management of Bahula Colliery, ECL

REPRESENTATIVES:

For the Union/Workman: Mr. Basudev Choudhury, Advocate.

For the Management of ECL: Mr. Mani Padma Banerjee, Advocate.

INDUSTRY: Coal.

STATE: West Bengal.

Dated: 08.08.2025

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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-22012/17/2019-IR(CM-II)** dated 13.03.2019 has referred the following dispute between the employer, that is the Management of Bahula Colliery under Kenda Area of Eastern Coalfields Limited and their workman for adjudication by this Tribunal.

THE SCHEDULE

" *Whether the action of the management of Bahula Colliery of Eastern Coalfields Ltd in rejection of claim of compassionate appointment in respect of Sri Mahendra Roy, S/o Late Dhodo Roy, Ex-UG. Trammer of Bahula Colliery is justified or not? If not, what relief Sri Mahendra Roy is entitled to?* **"**

1. On receiving Order **No. L-22012/17/2019-IR(CM-II)** dated 13.03.2019 from the Government of India, Ministry of Labour, New Delhi for adjudication of the dispute, a Reference case was registered on 02.04.2019 and an order was passed for 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.

2. General Secretary of Untied Koila Mazdoor Sangh filed written statement on 22.05.2019 on behalf of Mahendra Roy, son of the deceased employee Dhodo Roy. Bare fact of the case is that Dhodo Roy was a permanent employee of Eastern Coalfields Limited (hereinafter referred to as ECL) and was posted at Jambad (N) Unit of Bahula Colliery under Kenda Area as Trammer bearing UM No. 519570.

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He died in harness on 28.09.2014. Mahendra Roy, the dependent son applied for his employment on 06.11.2014 as per the provisions under Clause 9.3.2 of National Coal Wage Agreement (hereinafter referred to as NCWA). The Apex Medical Board held on 30.08.2017 at Central Hospital, Kalla assessed the age of Mahendra Roy as thirty-five (35) to forty (40) years. Therefore, his age on the date of submission of his application on 06.11.2014 for employment was less than thirty-five (35) years and his claim for employment is genuine.

3. Management contested the Industrial Dispute by filing their written statement on 20.12.2022. According to the management Dhodo Roy expired on 28.09.2014. Mahendra Roy after the death of his father claimed for employment as per provision of NCWA. He was advised to appear before the Medical Board on 30.08.2017. As per findings of the Apex Medical Board the dependent was found over age for his employment. He was not eligible for being considered for employment and a letter was issued to him regretting the prayer for employment. According to the management of ECL, NCWA is a bipartite agreement and enforceable by law, as such no Industrial Dispute could arise on matters settled under NCWA. According to the management the Industrial Dispute is bereft of merit and it is liable to be dismissed.

4. The central point for consideration is whether rejection of claim for compassionate employment of Mahendra Roy by the management of Bahula Colliery is justified and legal.

5. Union examined Mahendra Roy as Workman Witness No. 1. He filed his affidavit-in-chief and reiterated the facts disclosed in the written statement. The dependent son further claimed that according to his Voter Identity and Aadhaar Card his date of birth is 01.01.1984. He also contended that the assessment of age by the Medical Board is erroneous and he is entitled to get employment in

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place of his father who died in harness. Witness produced the following documents in support of his case:

(i) Copy of the application of Jhinkulia Devi, wife of the deceased workman dated 13.01.2015 for employment of her son is produced as Exhibit W-1.

(ii) Copy of the application for employment of Mahendra Roy dated 04.11.2014, as Exhibit W-2

(iii) Copy of the Identity Card of Dhodo Roy issued by the management, as Exhibit W-3.

(iv) Copy of the Certificate of death of Dhodo Roy dated 28.09.2014 issued from Central Hospital, Kalla, as Exhibit W-4.

(v) Copy of the Death Registration Certificate of Dhodo Roy, as Exhibit W-5.

(vi) Copy of the application of Jhinkulia Devi, dated 08.10.2014 addressed to the Agent, Bahula Colliery, informing him about death of Dhodo Roy as Exhibit W-6.

(vii) Copy of the letter dated 14/16.05.2015 issued by the Ch. Manager (P), Kenda Area regarding screening of the dependents, as Exhibit W-7.

(viii) Copy of the letter dated 29.08.2017 issued by the Area Personnel Manager, Kenda Area addressed to the Asst. Manager (P), Bahula Colliery, regarding appearance of Mahendra Roy before the Apex Medical Board, as Exhibit W-8.

(ix) Copy of the letter dated 28.01.2015 issued by the Manager (Pers.), Bahula Colliery addressed to Mahendra Roy for his screening, as Exhibit W-9.

(x) Copy of the letter dated 17.06.2015 issued by the Chief Manager (P), Kenda Area addressed to the Area Medical Officer, Kenda Area for Initial Medical Examination of Mahendra Roy, as Exhibit W-10.

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(xi) Copy of the Report of Apex Medical Board dated 30.08.2017, as Exhibit W-11.

(xii) Copy of the letter dated 19.06.2018 issued by the Asst. Manager (P), Bahula Colliery, informing Mahendra Roy that he is not eligible for employment, as Exhibit W-12.

(xiii) Copy of the Medical Examination Form No. III of Mahendra Roy, as Exhibit W-13.

(xiv) Copy of the Aadhaar Card of Mahendra Roy, as Exhibit W-14.

6. In his cross-examination the witness deposed that he did not attend school. It further transpires that the management declined to provide employment to him on the ground that he was more than 35 years of age on the date of examination. He could not produce any document in support of his age or date of birth except Aadhaar Card.

7. Management examined Mr. Rakesh Kumar Basant, Assistant Manager (Personnel), as Management Witness No. 1. He filed an affidavit-in-chief stating therein that the management of ECL advised Mahendra Roy to appear before the Chief Medical Officer's office for his medical examination on 30.08.2017. On 23/24.03.2018 the Area Personnel Manager, Kenda Area issued letter No. Pers/KND/41/497 informing that the employment proposal of the dependent of Dhodo Roy has been examined but could not be considered due to the reason that he was over age as per provision of NCWA. The same was communicated to Mahendra Roy through letter No. Agent/BC/C-6B/20/18/476 dated 19.06.2018. In course of evidence management placed the following documents :

(i) Copy of the letter dated 23/27.04.2015 issued by the Manager (Personnel), Bahula Colliery, forwarding the employment proposal of Mahendra Roy to the Chief Manager (Personnel), Kenda Area is produced as Exhibit M-1.

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(ii) Copy of the letter dated 23.02.2016 issued by the Chief Manager (P), Kenda Area forwarding the employment proposal of Mahendra Roy to the Sr. Manager (Pers) Empl/ED, ECL, Sanctoria, as Exhibit M-2.

(iii) Copy of the letter dated 14.03.2018 issued by the Sr. Manager(P)Empl/ED addressed to the Sr. Manager (P), Kenda Area, regretting employment proposal of the dependent of Dhodo Roy, as Exhibit M-3.

(iv) Copy of the letter dated 23/24.03.2018 issued by the Area Personnel Manager, Kenda Area informing the Agent of Bahula Colliery that the employment proposal of Mahendra Roy cannot be considered, as Exhibit M-4.

(v) Copy of the letter dated 19.06.2018 issued by the Asst. Manager (P), Bahula Colliery, informing Mahendra Roy that he is not eligible for employment, as Exhibit M-5.

(vi) Copy of the Service Book of Dhodo Roy, as Exhibit M-6.

(vii) Copy of the LTC Form of Dhodo Roy, as Exhibit M-7.

It is stated by the management witness that the petitioner is not entitled to employment as he has exceeded the upper age limit for getting employment as per NCWA.

8. In his cross-examination the witness deposed that at the time of assessment of age on 30.08.2017 the age of Mahendra Roy was between 35 and 40 years (Exhibit W-11). He further deposed that the age of Mahendra Roy was assessed between 31 and 36 years at the time of his examination at Kenda Area on 08.07.2015. The management witness further deposed that Mahendra Roy is not entitled to get any employment in place of his father.

9. Mr. Basudev Choudhury, learned advocate for the union argued that as per provision in Clause 9.3.4 of NCWA the male dependent to be considered for

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employment should be physically fit and suitable for employment and he should not be aged more than 35 years. There is no qualm that Dhodo Roy died in harness on 28.09.2014 and Mahendra Roy, his dependent son submitted application for employment dated 04.11.2014 (Exhibit W-2). By letter dated 14/16.05.2015 (Exhibit W-7), Mahendra Roy along with others were asked for appearing before Area Screening Committee at Kenda Area on 20.05.2015 along with relevant documents. By letter dated 29.08.2017 (Exhibit W-8) he was asked to appear before the Apex Medical Board at Central Hospital, Kalla on 30.08.2017. It is submitted that the dependent complied the instruction and appeared for his medical examination on 30.08.2017 where after examination by the Medical Board and holding X-Ray examination, bearing investigation No. 3759 dated 30.08.2017, it was found that the age of the candidate was between 35 to 40 years as on the date of examination. Learned advocate argued that if reliance is placed upon the report of the Apex Medical Board, the age of Mahendra Roy would be assessed as thirty-seven and half (37 and ½) years on 30.08.2017 and his age would be computed as thirty-four and half (34 and ½) years on 30.08.2014 and by no stretch of imagination the management of ECL can assume that on the date of submitting his application for employment on 06.11.2014 the workman had crossed the age of 35 years, the maximum age for granting employment in respect of a male dependent of the deceased employee under Clause 9.3.4 of NCWA. It is urged that the management by regretting the prayer for employment has acted in an illegal and arbitrary manner and Mahendra Roy is entitled to employment.

10. Mr. Mani Padma Banerjee, learned advocate appeared for the management of ECL simply argued that the dependent son of Dhodo Roy had crossed the age of 35 years on the date of medical examination as such he is not entitled to employment.

11. Having considered the argument advanced by the learned advocates on

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behalf of the dependent son of the deceased employee and management of ECL and also considering the materials on record, it appears to me that the bone of contention is whether the dependent son claiming employment after the death of his father in harness had crossed the maximum age for employment on the date of his submitting application before the management. In the instant case Mahendra Roy submitted his application before the Agent, Bahula Colliery on 06.11.2014, disclosing that his father expired on 28.09.2014 at Central Hospital, Kalla and he claimed employment as a dependent son of the deceased employee. According to Circular No. CIL/C-5B/JBCCI/9.4.3/163 dated 25.07.2003, the date for reckoning the age of a dependent was the date of submitting application for employment. From the copy of Service Book of Dhodo Roy (Exhibit M-6) it appears from Column No. 16 that Mahendra Roy is one of the sons of the workman. From the cross-examination of the workman witness it appears that he did not attend any school for education and he was unable to produce any document in support of his age. Be that as it may, admittedly, Mahendra Roy was referred for his medical examination by the Apex Medical Board on 30.08.2017 and after holding scientific medical examination i.e., by conducting X-Ray of various parts of the body, the Medical Board assessed the age of Mahendra Roy between 35 and 40 years on 30.08.2017 (Exhibit W-11). It appears from the report of Medical Board that the age of the dependent son on the date of medical examination was thirty-seven and half (37 and ½) years. Therefore, his age requires to be reckoned as 34 years and 9 months on the date of submitting his application for employment and it can be declared without hesitation that he is below 35 years on the date he claimed his employment, two months after the death of his father. At this juncture it is worthwhile to reproduce the provision under Clause 9.3.4 of NCWA-IX, which lays down that :

"the dependants to be considered for employment should be physically fit and suitable for employment and aged not more than 35 years provided that the age limit in case of employment of female spouse would be 45 years as given in Clause

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9.5.0. In so far as male spouse is concerned, there would be no age limit regarding provision of employment."

12. The law is well settled that the terms and conditions agreed upon between the representatives of the management of the employer company and the representatives of the workmen laid down in the NCWA are binding upon the parties. In the case of **Sukumoni Hembram Alias Sukumoni Mejhan Vs. The Union of India and Others [MAT 27 of 2024]**, the Hon'ble High Court at Calcutta while referring to the binding nature of the NCWA observed :

" *21. NCWA is a negotiated agreement that has been arrived at between the employer and the employees. It is a settlement under section 2 (p) of the Industrial Disputes Act, 1947 and has binding effect on the parties thereto under section 18 (3) of the Act of 1947. NCWA has made provisions for compassionate appointment for the dependents of the deceased employee.****"***

I, therefore, hold that the provision of Clause 9.3.4 of NCWA-IX is binding upon the employer company just like any other settlement under Section 18(3) of the Industrial Disputes Act, 1947. At the time of his medical examination the Medical Board did not make any adverse observation regarding his fitness for employment. Under the facts and circumstances, I find and hold that Mahendra Roy being the dependent son of the deceased employee, Dhodo Roy and well within the maximum age for employment on the date of submitting his application for employment, he is entitled to get employment under the employer company / ECL according to the provisions of NCWA. It appears that management of ECL has acted in an arbitrary and illegal manner by delaying in reaching a finality and ultimately holding that the candidate was over age for employment. The decision of the management communicated to Mahendra Roy by letter dated 19.06.2018 is without foundation and in violation to the terms of agreement of NCWA. This type of erroneous approach of the management in utter violation of the terms of agreement not only frustrates the legitimate claim of the dependents of the

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deceased employees in securing their right to employment but creates immense suffering due to non-employment of the family members of the deceased for several years, keeping them waiting. It also results in depreciating human resources of the country in a wasteful manner. The management of Bahula Colliery under Kenda Area of Eastern Coalfields Limited is hereby directed to process the prayer for employment of Mahendra Roy within two (2) months from the date of communication of the Award.

Hence,

O R D E R E D

that the Industrial Dispute is decided in favour of Mahendra Roy, on contest against the management. The management of Bahula Colliery under Kenda Area of Eastern Coalfields Limited is directed to process the prayer for employment of Mahendra Roy within two (2) months from the date of communication of the Award, failing which the management of Eastern Coalfields Limited shall pay him compensation equivalent to the monthly salary of entry level post till employment is processed. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour, Government of India, New Delhi for information and Notification.

Sd/-
(ANANDA KUMAR MUKHERJEE)
Presiding Officer,
C.G.I.T.-cum-L.C., Asansol.