

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
A L L A H A B A D

O.A./T.N. No. 896 of 89

DATE OF DECISION

17/1/95

- Rakesh Kumar Baghui ----- PETITIONER(S)

- Shri - R K Tewari ----- ADVOCATE FOR
THE PETITIONER(S)

VERSUS

- Asst. Subdt. Posts - Kanpur City RESPONDENTS
& ors

- Shri - H B - Singh ----- ADVOCATE FOR THE
RESPONDENT(S)

C O R A M :-

The Hon'ble Mr. S. Das Gupta Member (A)

The Hon'ble Mr. T. L. Verma Member (J)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench ?


(SIGNATURE)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad: Dated 17th November of 1995

Original Application No. 896 of 1989

QUORUM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Rakesh Kumar Bajpai Son of Shri
Beni Shanker Bajpai,
ED Chowkidar BNS Nagar Post,
Kanpur.

(By Shri R.K. Tiwari, Advocate)

..... Applicant

Versus

1. Asst. Supdt. Posts Kanpur City (West),
Sub Division, Kanpur.

2. Sr. Supdt. Posts City, Kanpur.

3. Additional PMG, Kanpur.

4. Union of India through the
Secretary M.O.C., New Delhi.

(Shri N.B. Singh, Advocate)

..... Respondents

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ORDER

(B)

By Hon'ble Mr. S. Das Gupta, A.M.

In this Application filed under Section 19 of the Administrative Tribunals Act, the Applicant has prayed that he be paid extra remuneration for the excess duty beyond prescribed maximum rendered by him.

2. The Applicant's case is that he was working as an Extra Departmental Chowkidar at Harihar Nath Shastri Nagar Post Office in Kanpur Postal Division.

He was required to put in 14 hours' duty including 10 hours of night duty every day. He was required to report for duty at 5 P.M. and he was off duty at 7 A.M. in the following day. He represented against such long hours of duty to the Assistant Superintendent of Post Office, Kanpur City (West) and the Respondent No. 1. He was subsequently put off from duty from 18-1-1982 and was later ~~subsequently~~ removed from service on an allegedly ^{false} charge. The Applicant had filed a suit in the Court of Munsif, Kanpur City and the case was subsequently transferred to this Tribunal. A bench of this Tribunal allowed the Application and set aside the order of penalty. The Applicant was reinstated in service but the question of excess duty performed by him was shelved. He was again required to put in duty of 14 hours a day. He represented against this to Respondent No. 1 on 18-12-1987 and claimed that his allowances be revised in accordance with the duty hours he was required to put in. Inspite of several reminders no reply was received from Respondent No. 1 while Respondent No. 2 rejected the application of the Applicant by a non-speaking order dated 25-8-1988

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(Annexure-A-1). Hence, this Application.

3. The Respondents have contested the claim of the Applicant by filing a counter affidavit. It has been stated therein that the Applicant was removed from service after due disciplinary proceedings against him. The order of penalty was, however, quashed by a Bench of this Tribunal, but the Respondents were given liberty to hold a proper inquiry under the rules. Consequently, a decision was taken to hold inquiry under Rule 8 of the EDA (Conduct & Service) Rules, 1964 and he was deemed to have been placed off duty on 5-6-1982 till finalisation of the case. After completion of the inquiry, the Inquiry Officer exonerated the Applicant from charges and the intervening period was treated to be duty for all purposes. The Applicant worked as Chowkidar till September, 1988 and thereafter he was posted as Extra Departmental Letter Box Peon.

It is stated that the extra departmental Chowkidar performed $7\frac{1}{2}$ hours' duty which is equivalent to 5 hours' duty for fixation of allowance. However, if they are engaged for 3 hours of duty, the period shall be equated to two hours of duty. This policy was introduced by the Department of Post vide order dated 21-9-1987. It has been referred at Page 84 of the IVth Edition of Swami's Compilation of Service Rules for EDA Staff. It has further been stated that the duties hours of Chowkidar starts immediately after the closure of the post office and he works for 4 hours

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after such closure in the evening and thereafter for 3½ hours prior to the opening of the post office in the following day and as such, it is wrong to allege that the Applicant was working for 14 hours. He was not working for more than 7½ hours and this was equivalent to 5 hours of duty.

5. The Applicant has filed a rejoinder affidavit in which it has been stated that the fact that he was working for 13 hours and 15 minutes every day is confirmed by the order of penalty itself.

6. The Applicant's claim is based on the contention that he was made to work for 14 hours a day. The Respondents on the other hand contend that he was made to work only for about 7½ hours a day. In this regard we have referred to the order dated 5-6-1982 passed by the disciplinary authority removing the Applicant which was later quashed by this Tribunal. Certain sentences in this order are quite illuminating. We quote the same as under :-

"Shri R.K. Bajpai as Chowkidar of the office was required to guard the P.O. at night from closure of P.O. to the opening of P.O. on the following day. Thus he is responsible to see that PO locks are not harmed in any way by any person whatsoever."

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7. From the above, it would be clear that the disciplinary authority had specifically stated that the Applicant was required to guard post office at night from the closure of the post office till the opening of the post office on the following day. This fully supports the Applicant's claim that he was required to work from 5 P.M. till 7 A.M. on the following day. The contention of the Respondents in the counter affidavit that the duty of the Chowkidar starts immediately after the closure of the post office and he works only for 4 hours after such closure and thereafter for about 3½ hours prior to the opening of the post office in the morning, does not appear to stand to reason. The Respondents have not stated what would happen in the intervening period after 4 hours from the closure till about 3½ hours prior to the opening of the post office. If the intention is that during this intervening period, the post office will remain unguarded and the Chowkidar need not be there, he obviously could not have been responsible for not being present through out as mentioned in the order of penalty. We are, therefore, convinced that the Applicant was required to be present after closure of the post office till its opening on the following day and he should be paid on that basis in accordance with rules whichever were extant at the relevant time.

8. We are accordingly direct the Respondents to reassess duty hours of the Applicant reckoning *W.E.F.*

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his duty begin shortly after the closure of the post office and to end when the post office was reopened on the following day and in case such duty hours are in excess of the maximum duty hours prescribed, he shall be paid for such excess hours in accordance with law. Let this direction be complied with within a period of three months from the communication of this order. There shall be no order as to costs.

J. L. K.

Member (J)

W. C.

Member (A)

RBD/