

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated : This the 31<sup>st</sup> day of MARCH 2005

Original Application No. 573 of 2002

Hon'ble Mr. D.R. Tiwari, Member A  
Hon'ble Mr. K.B.S. Rajan, Member J

Patwari Singh, S/o Late Sri Babu Singh  
R/o Vill & Post Rajpur,  
Distt : Kanpur Dehat.

....Applicant

By Adv : Sri B.N. Singh

V E R S U S

1. Union of India through its Secretary,  
Ministry of Communication ( P&T)  
NEW DELHI.
2. Chief Post Master General, U.P. Circle,  
LUCKNOW.
3. Superintendent of Post Offices (M) Division,  
KANPUR.
4. Inspector of Post Office Pukhrayan,  
Sub Divisiona Kanpur (M).
5. Dinesh Singh S/o Sri Megh Singh,  
R/o Vill & Post Rajpur,  
Distt : Kanpur Dehat.

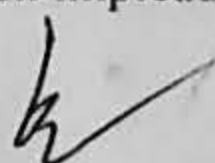
.... Respondents.

By Adv : Sri D.K. Dwivedi

ORDER

By K.B.S. Rajan JM

The applicant, Shri Patwari Singh, has under S. 19 of the Administrative Tribunals Act, 1985 is aggrieved by the termination of his services by the respondents without any inquiry or show cause notice and consequently prayed for a direction to the respondents to reinstate him in the service and consequential benefits thereof. As the respondents had appointed one Shri Dinesh Singh, in the place of the applicant, the said Dinesh Singh has also been impleaded as one of the respondents.



2. The brief facts of the case with terse sufficiency are as under:-

(a) Applicant was engaged as Chowkidar on 12-07-1977, by the S.D.I. South Sub Division Pukhrayan, Kanpur. His appointment was against a post which fell vacant due to promotion of one Shri Ram Pal Singh in the post of Chowkidar.

(b) It was alleged by the applicant that on the ground that the applicant was absent for the period from 13-09-1989 to 19-09-1989, in his place Respondent No. 5 was appointed and the services of the applicant were terminated.

(c) The above termination, as per the applicant was without<sup>o</sup> any order, or any reason and without any show cause notice.

(d) Representations made by the applicant for reinstatement did not yield any fruitful result consequent to which the applicant had moved OA No. 1487 of 2000 which was disposed of by this Tribunal on 12-12-2001 with a direction to the respondents to consider the representation filed by the applicant.

(e) The respondents by the impugned order dated 18-03-2002 rejected the representation of the applicant consequent to which the applicant has filed ~~his~~<sup>the</sup> present OA.

(f) The grounds raised by the applicant include that the applicant having rendered as many as 12 years of service from 1977 to 1989, he has crystallized certain rights, including one that in the event of any action against him to be taken, the authorities have to issue necessary charge sheet whereas the authorities have neither followed the rules nor did they even give in

writing the order of termination. Further, the appointment of Respondent No. 5 in his place has also been assailed.

3. Notice was issued to the respondents including the Private Respondent. While the official respondents had filed their reply, there was no response from the Private Respondent, despite notice having been issued to him. The records show that neither the AD card was received nor the notice returned undelivered. Presumption is thus made that the notice was served upon the respondent No. 5. Resp. No. 5 has, therefore been set ex parte.

4. Official respondents have filed their version. In para 4 and 5 of the counter, it has been submitted as under:-

*"4. That , Shri Patwari Singh was temporarily engaged as C.P. Chaukidar Rajpur in short gap arrangement by the S.D.I. South Sub Division, Pukhrayan vide his letter No. A/Rajpur dated 12.07.1977. The petitioner was only substituted. The S.P.M. Rajpur reported to S.D.I. Pukhrayan vide his letter No. Nil dated 20.08.1989 that Sri Patwari Singh had not performed his duties as Chaukidar and he was very negligent and careless and undevoted to his duties. He did not come on his duty and watch the building & Govt. property with himself from duty in an unauthorized manner and without information for the period from 13.09.1989 to 19.09.1989. The S.P.M. Rajpur also reported that Sri Patwari Singh often absent himself from and he used to sleep at his shop. The S.P.M. has further informed that the brother of Sri Patwari Singh came to the residence of S.P.M. on 19.09.1989 and abused him (S.P.M.). The S.P.M. further intimated that Sri Patwari Singh was very irresponsible person and he disclosed the secretes of the department and his retention in the department was quite undesirable.*

*5. That, on receipt of report of S.P.M. Rajpur, the S.D.I., South Sub Division, Pukhrayan issued instructions to S.P.M. Rajpur to make suitable arrangement against the post of Chaukidar Rajpur during the period of absence of Sri Patwari Singh and directed to S.P.M. not to allow Shri Patwari Singh to engter into the Post Office. The S.D.I. South Sub Division, Pukhrayan also addressed to the S.P.Os Kanpur (M) Division to make drastic action against the said Sri Patwari Singh for his unwarranted undesirable activities."*

5. The applicant in his rejoinder had emphasized his contention in the OA and emphatically denied the contention of the respondent that he was appointed on a short gap arrangement. He reiterated that his appointment against a vacant post caused by promotion of his predecessor <sup>to which</sup> coupled with the fact that he was serving continuously for 12 years confirms that his

appointment was on regular basis and as such termination without show cause notice and inquiry is vitiated. Further, the applicant had contended that Respondent No. 5 at the time of appointment in 1989 was just 13 years, his date of birth being 01-10-1976. In this regard he had also annexed a copy of the letter issued by the head of the School in which respondent No. 5 studied. Respondents had filed a supplementary counter affidavit, only repeating their earlier counter. As regards the age of Respondent No. 5 the respondents have stated that his ~~age~~<sup>4-0-0-3</sup> was verified by SDI and it is 01-10-1970.

6. The counsel for the parties advanced their arguments. The Learned counsel for the applicant submitted that the applicant having served for 12 years cannot be cashiered in the fashion as has been done by the respondents and the entire action has thus been vitiated. Again, he had challenged the appointment in his place of Respondent No. 5 who was just 13 years as of 1989.

7. The Learned Counsel for the respondents has contended that the appointment of the applicant being on short gap arrangement, there was no need to follow any detailed procedure of conducting the inquiry. Further, it was argued that appointment of Respondent No. 5 has no concern with the case of the applicant.

8. We have heard the counsel for the parties at great length and perused the pleadings and gave our anxious consideration. Admittedly the applicant was in service for 12 long years and his appointment was against a vacant post, vacancy of which was caused by promotion of the predecessor of the applicant. The appointment order at Annexure A-1 dated 12-07-1977 nowhere specified that the appointment is of short term. Thus, there is no merit in the contention of the respondent that the applicant was appointed only on a short term basis. The alleged absence is for six days and the respondents have, admittedly, not issued any show cause notice nor conducted the inquiry.

Again, in the counter affidavit, apart from the alleged absence from duty, it has been stated that the applicant "had not performed his duties as Chaukidar and he was very negligent and careless and undevoted to his duties. He did not come on his duty and watch the building and Government property with himself from duty in an unauthorized manner and without information for the period from 13-09-1989. The SPM Rajpur also reported that Shri Patwari Singh often absented himself from and he used to sleep at his shop." The above statement clearly reflects that aspersions regarding the conduct of the applicant has been cast. The termination is nothing less than punitive and the same has been without even a show cause notice to the applicant. Such an order cannot stand judicial scrutiny as held in the case of **Major Singh vs State of Punjab, 2000 (9) SCC 473.**

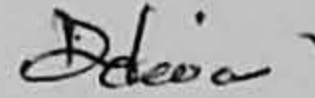
9. In view of the above, we have no hesitation to hold that the entire action of termination of service on the part of the respondents is vitiated due to complete violation of the Principles of Natural Justice and the action is also violative of rules regulating the disciplinary proceedings. Consequently the impugned order is quashed and set aside. The respondents are directed to reinstate the applicant forthwith as Chowkidar, if need be by replacing Respondent No. 5. The applicant is deemed to have been in service as if there was no termination. His pay should be fixed at the current rate but as the learned counsel for the applicant had fairly conceded that he is not insisting upon the payment of arrears of pay and allowances under the term, "consequential benefits", the applicant need not be paid any arrears of pay etc., and whatever benefit arises should be by way of notional fixation only. In the event of accommodating the applicant by way of reinstatement in the place of Respondent No. 5, it is left open to the respondents to accommodate Respondent No. 5 in some other post, as by now he too had completed as many 16 years of service.



10. The applicant has also prayed for cost and the same is quantified at Rs 3,000/-. This amount should be paid to him within three months of receipt of certified copy of this order. Reinstatement, however, as mentioned above, should be forthwith.



Member (J)



Member (A)

/pc/