

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. 1513/96

Present: Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman.  
Hon'ble Mr. B.P. Singh, Administrative Member.

Narayan Chandra Dey, son of  
Sri Abani Kumar Dey, working  
as Contingent Paid Night Guard,  
Simurali-P.O., Dist. Nadia (since  
dismissed from service), resident  
of Vil. & P.O. Chanduria, Via  
Simurali, District-Nadia.

...Applicant.

- v e r s u s - /

1. Union of India service through  
the Secretary, Ministry of  
Communications, Department  
of Posts, Dak Bhawan, New Delhi-110 001.
2. The Director of Postal Services,  
Calcutta Region, Calcutta-700 012.
3. Superintendent of Post Offices, Nadia South  
Division, Kalyani-741 325.

...Respondents.

For the applicant : Mr. N. Bhattacharya, counsel.

For the respondents : Mr. S.P. Kar, Counsel.

Heard on 3.2.99 & 6.4.99

Order on 16.4.99

O R D E R

B.P. Singh, AM

In this O.A. the applicant has prayed for setting aside and quashing the order of dismissal (termination) of the applicant from the service of Contingent Paid Night Guard and reinstate him on the post treating the applicant as on duty from the date he was not allowed to work till he assumes the charge of the post and grant him temporary status according to extant rules for granting temporary status/regularisation of casual labour.

2. The applicant was appointed as part time chowkidar of Simurali P.O. in the District of Nadia w.e.f. 24.4.85. He was registered with Kalyani Employment Exchange and have passed class VIII examination. He further states that though he was appointed as a Part-time Chowkidar yet he has been working as full time Night Guard which is clear from

Annexure-A/5. He has been working as Night Guard from 7 p.m. to 7 a.m. On 15.2.96 the applicant Narayan Chandra Dey exchanged the mail at the railway station at about 7 P.M. alongwith Swapan Pramanik, outsider Group-D of Simurali Post Office. After coming back from the station Sri Swapan Pramanik handed over four keys to the applicant and left for his home. The applicant also came back to his home. On reaching home he states that he had stomach trouble and vomitting and, therefore, he consulted a Medical Practitioner, Dr. J. Ghosh, L.M.F., Simurali, Nadia and took medicine and stayed back at his home and thus did not perform duty on 15.2.96/16.2.96 from 7 P.M. on 15.2.96 to 7 A.M. on 16.2.96. On the morning of 16.2.96 the applicant went to the Post Office to hand over the keys to the Group D official. When he went to open the locks of the Post Office alongwith the Group D official both of them found the locks of the Post Office forced open. The Group D informed the Sub-Postmaster about the incident. The Superintendent of Posts also visited Simurali P.O. and made enquiry. The enquiry established that a theft has been committed in the P.O. in the night of 15/16.2.96 in which the Department has sustained a considerable loss. The police was also informed. The Police took enquiry in which the applicant was also interrogated by the police. The Departmental authority lodged F.I.R. and the police started P.S. Case No. Chakdah 3896/461/379 I.P.C., but no charge-sheet has so far been filed in the case. The applicant further states that on 16.2.96 he handed over the medical certificate to the Sub-Postmaster for onward transmission to the Superintendent of Post Offices, Nadia South Division. But the Postmaster refused to accept the medical certificate. He, however, annexed a photo copy of the proof of medical consultation and medicine purchased which are available at Annexure-A/1 to this O.A. at pages 12 and 13. The applicant further states that in his written statement dated 16.2.96 he intimated the full circumstances in which he could not attend office and perform the night duty. The Superintendent of Post Offices, Nadia, South Division, Kalyani issued a letter dated 19.7.96 (Annexure-A/3) to the applicant to explain as to why he did not perform the duties in the night of 15/16.2.96 at Simurali P.O. as a Night Chowkidar which facilitated

theft in the P.O. and considerable loss of the Govt. cash. He also asked to explain as to why his service as Contingent Paid Night Guard should not be terminated. The applicant vide his explanation dated 2.8.96 (Annexure/4) explained the circumstances due to which he could not work as Night Guard as the same was beyond his control. He further referred to his written statement dated 16.2.96 in which he reported that he has stated the compelling circumstances due to which he was absent on the fateful night. The Superintendent of Post Offices, Nadia, South Division did not make any enquiry and did not give the applicant any personal hearing and without these, he dismissed (terminated) the applicant from the post of Contingent Paid Night Guard, Simurali with immediate effect vide his order dated 28.8.96 (A/5). The applicant preferred an appeal to the Director of Postal Services, Calcutta Region vide his appeal dated 30.9.96 (Annexure-A/6) which is yet to be acted upon by the Appellate Authority.

3. Ld. counsel Mr. Bhattacharya appearing on behalf of the applicant pleaded that the disciplinary authority (Superintendent of Post Offices, respondent No.3 herein) did not apply his mind properly before rejecting the medical certificate produced by the applicant. Therefore, the behaviour of the Disciplinary Authority was autocratic and above law and he failed to pay any attention to the principles of natural justice. He also acted in vindictive way without giving any opportunity of personal hearing to the applicant. The respondent authority denied the equal treatment to the applicant and thereby violated the provisions of Articles 14 and 16 of the Constitution. Mr. Bhattacharya, Ld. counsel for the applicant pleaded that the applicant was innocent and his service was terminated against various decisions of the CAT Bench/Higher Courts. The decision is based on mere suspicion and, therefore, requires to be quashed.

4. Ld. counsel Mr. Kar appearing on behalf of the respondents drew our attention to the facts of the case. He stated that the applicant was living very near to the P.O. and the in-charge of the P.O. was also staying within a short distance. If the applicant was suddenly taken

ill and was not in a position to work as Night Guard of the P.O. he should have at least taken action to inform the In-charge of the Sub Post Office who was not staying at a far off distance either from the P.O. or from his residence. He also drew our attention to the fact that the medical certificate about the consultation of the medical practitioner on 15.2.96 and purchase of medicines (Annexure-A/1) was not produced by the applicant on 16.2.96 or immediately thereafter. He further stated that they were actually submitted by him alongwith the appeal dated 30.9.96 and thus the plea that he was suddenly taken ill and consulted the medical practitioner is not reliable and appears to be an after-thought. He drew our attention to the fact that due to absence of the applicant from the duty on 15.2.96/16.2.96, theft occurred in the post office and as a result thereof the Department suffered a huge loss. The conduct of the official proves his dereliction of duty and carelessness and, therefore, the action taken by the disciplinary authority in the case is fully justified. He also drew our attention to the fact that the CCS (CCA) Rules, 1965 are not applicable to the casual employees. But in view of the decision of CAT the Deptt. has issued guidelines in December, 1994 which was circulated by the PMG, Howrah Region on 31.3.95 which is annexed with the reply. The prescribed formalities were observed before taking final action in terminating the service of the applicant. The said annexure provides that there is no rule which requires holding of a regular enquiry. The principle of natural justice will be observed if a show cause notice is issued to the casual labours and they are allowed reasonable opportunity to defend themselves before the action to terminate the service is taken. In this case, this procedure was followed as would be clear from Annexure-A/3, Annexure-A/4 and Annexure-A/5. The decision of the Disciplinary authority is based on reliable evidence, the facts and circumstances of the case and is objective in nature. There is no question of any bias on the part of the higher authority. There has not been any discrimination in the case of the applicant and, therefore, the question of violation of provisions of Articles 14 and 16 of the Constitution does not arise. In view of the above he pleaded that the O.A. of the applicant fully justifies rejection.

5. We have gone through the materials made available in the file as well as the pleadings of the Id. counsels of the applicant and the respondents. The un-disputed facts of the case are that the applicant was appointed as Part Time Night Guard of Simurali P.O. w.e.f. 24.4.85. His duty hours were from 7 P.M. to 7 A.M. The applicant attended office on 15.2.96 at about 7 P.M. But immediately thereafter he went back to his home and he remained absent from duty throughout the night. In the next morning when he went to hand over the keys to the Gr.D of the Post Office he found the locks of the Post Office forced open. They reported the matter to the Sub Postmaster and other authorities of the Post Office. The matter was also reported to the police. On enquiry it was found that theft has occurred in the Post Office in the night of 15.2.96/16.2.96 and the Deptt. has suffered considerable loss for which the applicant was found responsible due to his negligence and carelessness in discharge of his duties. The Superintendent of Post Offices, Nadia Division in pursuance of the Departmental guidelines/instructions called for explanation of the applicant for absence ~~from~~ <sup>for</sup> duty. He also issued a show cause notice to the applicant as to why his service as Contingent Paid Night Guard should not be terminated. The reply given by the applicant to the notice was not found satisfactory and convincing by the Disciplinary authority viz. Superintendent of Post Offices, Nadia South Division and, therefore, he dismissed the applicant from the service of Contingent Paid Night Guard, Srimurali Post Office with immediate effect. He also found that the plea of the applicant regarding illness and in support thereof submission of medical certificate etc. was not correct as his statement (Annexure-A/2) dated 16.2.96 does not speak about the submission of medical certificate etc. The self-written statement in Bengali dated 16.2.96 instead of defending the applicant creates doubt about his statement and supports his negligence and carelessness in discharge of prescribed duty on 15/16.2.96. The decision of dismissal of the applicant taken by the disciplinary authority is based on convincing facts and circumstances of the case, is not vindictive and/or violative of the provisions of Articles 14 and 16 of the Constitution. It is also in keeping with the decisions of the Hon'ble

Courts/Benches of the Tribunals.

6. In view of the above, we are of the view that the dismissal of the applicant from the service of Contingent Paid Night Guard, Srimurali P.O. dated 28.8.96 (Annexure-A/5) is fully justified. Hence we reject the application of the applicant with no order as to costs.

2-2-97

( B.P. Singh ) 16/4/97  
Member (A)

S.N. Mallick  
( S.N. Mallick )  
Vice-Chairman

a.k.c.