

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH, LUCKNOW.

T.A. No. 1 of 1997.

in  
ORIGINAL APPLICATION NO. 801 of 1991.

this the 26<sup>th</sup> day of May '99.

HON'BLE MR D.C. VERMA, MEMBER(J)

HON'BLE MR A.K. MISRA, MEMBER(A)

Jagan Nath, S/o Data deen, E.D. Chaukidar, Jayas,  
District Rai Bareilly.

Applicant.

By Advocate: Shri S. Srivastava.

Versus.

Union of India through the Director General, Posts  
Department, New Delhi.

2. Sub-Divisional Inspector, Post Offices  
(East), Rai Bareilly.

3. Superintendent of Post Offices, Rai  
Bareilly.

4. Post Master General, U.P., Lucknow.

Respondents.

By Advocate: Shri A.K. Chaturvedi.

O R D E R.

A.K. MISRA, MEMBER(A)

The present O.A. has been filed against the termination order dated 7.12.90 passed by Sub-Divisional Inspector, Post Offices (East), Rai Bareilly (respondent No.2) in the case of the applicant, who was posted as E.D. Chowkidar in Sub-Post Office, Jayas, District Rai Bareilly, w.e.f. 1.7.71. The applicant was chargesheeted by chargesheet dated 4.2.90 under Rules 8 & 8(A) of E.D.A's Conduct & Service Rules <sup>1964</sup> on the charge that he went to sleep at night during his duty hours. Since the applicant as E.D. Chowkidar was required to keep vigil during the night, but he went to sleep <sup>a</sup> / burglary was committed in Sub-Post office, Jayas resulting in theft of Rs. 17311.50/- and some

National Savings Certificates. It has been submitted on behalf of the applicant that the duty hours of E.D. Chowkidar are 7½ hours as per instructions of P&T department No. 14-6/87 PAP dated 21.9.87. It has been stated that according to these instructions, the duty of departmental chowkidar is for 12 hours, which is equal to 8 hours and duty of E.D. Chowkidar is for 7½ hours, which is equal to 5 hours. In accordance with the duty hours, the salary paid to departmental chowkidar was stated to be Rs1100/- per month; whereas salary paid to E.D. Chowkidar was only Rs420/- per month. It has been stated on behalf of the applicant that there was no evidence to show that the applicant had slept at night during his duty hours. Further, it is contended that the duty hours of the applicant were from 5 P.M. in the evening till 12.30 A.M. at mid night. Accordingly, it was stated that the applicant went to sleep after completing his duty only at 1.30 A.M. at night. It has also been stated that the said burglary in the Sub-Post Office, Jayas, district Rai Bareilly, took place after the duty hours of the applicant were over. It has also been stated by the applicant that during the course of inquiry conducted against the applicant, he asked for relevant documents, but no such documents were furnished to him and accordingly the punishment inflicted on the applicant, is without affording an opportunity to him resulting in denial of natural justice. The applicant has also stated that against the penalty imposed on him, he filed an appeal on 7.2.91 and also sent a reminder dated 26.4.91 requesting that his appeal be decided, but the appeal has not been decided till date. On

*[Handwritten signature]*

behalf of the applicant, it has also been stated that he was on duty on the eastern side of the post office and the theft took place by breaking the wall on the western side. Since the applicant was guarding the eastern side of the post office, he cannot be <sup>held</sup> responsible for <sup>the</sup> theft. Further, it has been stated on the applicant's behalf that a statement to the effect that he slept at 1.30 A.M. in the night after completing his duty at 12.30 A.M. <sup>was extracted from him</sup> by higher officials, who were in a position to extract from the applicant, whatever statement they wanted. Accordingly it has been stated that ~~the~~ written statement of the applicant to the effect that he slept at 1.30 A.M. in the night of 27-28 June should not be taken as conclusive prove of his guilt.

2. On behalf of the respondents, it has been stated that as per instructions of D.G. P&T No.2411/82-TE-11 dated 28.6.83, the duty hours of a Chowkidar are 12 hours. No distinction has been made between departmental chowkidar and F.D. Chowkidar, in so far as the duty hours are concerned. Further it has been stated that the averments of the applicant that during the course of inquiry, no opportunity was given to him to defend himself, is wholly incorrect. It has been stated that <sup>the</sup> ~~inquiry~~ was held by the Enquiry officer in the presence of the applicant and witnessess were examined in the presence of the applicant. Therefore, it cannot be said that there was any denial of natural justice. In this regard, it was submitted that one Shri M.J. Siddiqui, S.S.P., Rai Bareilly had recorded a detailed statement of the applicant. Further, it has been stated that the appeal filed by the applicant against the termination order dated 27.12.90 had



duly been decided and had been rejected by order dated 29.8.91. Therefore, it was not correct to say that the appeal of the applicant filed on 7.2.91 had not been disposed of. It has further been brought to our notice by the respondents that the applicant was residing with his family in a room inside the post office premises and, therefore, as per the applicant's own admission, he went to sleep at 1.30 A.M., after which the theft took place.

3. We have heard the learned counsel for the applicant and also for the respondents and have perused the pleadings on record.

4. The factual position that the applicant was on duty in the night of 27-28 June'89 at Jayas Sub-Post office, District Rai Bareilly, is admitted. There is also no doubt that the applicant being E.D. Chowkidar was required to keep vigil in the post office premises during night. The applicant has also admitted that he slept at night at 1.30 A.M. on 27-28 June'89, but has stated that his duty hours <sup>were</sup> only from 5 P.M. in the evening to 12.30 A.M. The applicant has relied on the instructions issued by P&T department No. 14-6/87 PAP dated 21.9.87, but the copy of the said instructions was neither produced before us nor has been furnished for our record. Presuming, though not admitting, that the duty hours of the applicant as per departmental instructions dated 21.9.87 relied-upon by the applicant, were only 7½ hours, it has not been shown to us that the duty of the applicant commenced at 5 P.M. in the evening and was over at 12.30 A.M. at night. On the other hand, a copy of the departmental instructions issued by D.G. P&T

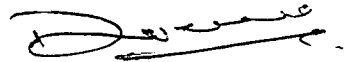


No. 24-11/82-TE-11 dated 28.6.83 has been furnished for our record by the respondents, to show that the duty hours of a Chowkidar are for 12 hours. Even otherwise, a Chowkidar who is on duty in a post office during night is not expected to go to sleep at 1.30 A.M. If a chowkidar is on duty during night, he has to guard the post office through-out the night, unless a substitute comes and relieves him.

5. In view of the discussion made in the foregoing paragraphs, we hold that the applicant was guilty of not performing his duty in a proper manner in sub-post office, Jayas, District Rai Bareilly. Accordingly, the punishment imposed on him by way of termination of his service by order dated 27.12.90 is confirmed. The O.A. is accordingly dismissed. No costs.



MEMBER(A)



MEMBER(J)

LUCKNOW: DATED:

GIRISH/-