

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 437,894 (L)

(By Hon'ble Sir. K. Obayya, . . .)

This application has been filed for setting aside the termination order dated 12.11.1991 of the applicant from the post of Choukidar.

2. The applicant who was appointed as Chonkider in the post office Chheolcha District Barailly, joined his duties on 20.1.75. According to him, he was carrying out his duties properly and there was no complaint whatsoever. During the year 1981, the Post office was inspected by the Inspector of Post Offices, during which, it is alleged by the applicant, that the inspector asked him to pay Rs. 200/-, failing which he would be replaced by other as grants willing to pay that amount. It is alleged by the applicant that he informed his inability to pay the amount, and this resulted in the termination order dated 12.10.1981.

3. The respondents opposed this case, by filing a counter in which it is stated that the applicant was only a casual, contingency paid chowkidar, and because of old age he was found to be unequal to the duties and responsibilities attached to the post, and in the interests of security, cash, stamps, and to safeguard Government property he was terminated. It is also stated that being a contingency paid employee, he was not a civil servant and his engagement was not against any sanctioned post. Regarding the allegation of corruption charge against the inspector, it is stated that a fact-finding enquiry was held in which it was established that the allegation was false and

frivolous. The respondents deny that the termination was arbitrary, illegal or malafide, the applicant being 72 years old, was unable to bear the burdens of the job and he had to be replaced in view of security risks in public interest.

4. We have heard the counsels of the parties. The learned Counsel for the applicant urged that the termination order was bad in Law, as it was passed without giving any notice or opportunity to the applicant; the physical disability of the applicant, the ground on which the termination order was passed, was not established by any medical examination. The Learned Counsel for the respondents countered these arguments by saying that the applicant was only a contingent paid employee, he was not a regular employee as such he was liable for termination without notice and, therefore, there is no illegality in the order. Regarding physical disability, his submission is that it is not the physical disability that has to be established. The applicant may not suffer from any disability, but the question is his ability to discharge the duties, which call for physical stamina, and at the old age he was found unequal to the duties and responsibilities cast on the post of Chowkidar. He also referred to departmental instructions on the duties of Chowkidar. These instructions lay down that the Chowkidars are expected to take rest during the day so that they could keep awake throughout night, and that they are forbidden to bring any bedding to office. Their duties involve examining the locks of safe and also strong room and also the locks of each room. They

should also remain near the treasury room and periodically take rounds of the office during nights. The learned counsel for the respondents further pointed out that Chowkidars are responsible for safety of valuables cash, stamps and other Government property, and they should also be in a position to catch the offenders prowling about the vicinity with an intent to commit any offence.

5. We have given our anxious consideration to the rival contentions. We have also gone through instructions referred by learned counsel for the respondents (Annexure C 10). The duties of the Chowkidar no doubt fall on the border line of "policing" duties. Besides keeping awake throughout night, they should be alert and move briskly in taking rounds of the office, so as to see that everything is alright. We consider that there is merit in the contention that the post of the Chowkidar calls for greater stamina and strain and Physical fitness. The controversy in this case is also about of the age of the applicant. The respondents have annexed to the counter and extract of the "Kutumbh" register according to which the applicant is 72 years old. The applicant, on the other hand has claimed that he is much younger and he is 56 years old. In view of the marked difference of opinion about the age of the applicant, a direction was given to the applicant to appear in the court. Accordingly he was present in the court at the time of arguments. We noticed that he is old and of frame ^{trial} some what dropping, not straight while walking. We also found him slow in movements, from his looks and

also general bearing, he appears to be much older than he claims. However, we would not like to go into this aspect further. In any way it is not only the age factor, but also the Physical fitness to perform the duties of Chowkidar. The Department has considered that he was unable to perform his duties and accordingly being a contingent paid apply, he was terminated. In these circumstances, we do not see that any interference ^{or} called for in the order of termination. We consider, the application is without merit and accordingly it is dismissed, with no order as to costs.

R. Bhagat
Member (A)

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Dated:- 30/July, 1992.

Vice-Chairman