

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Order :- .7.1997

Registration No. OA-309 of 1996

Vijay Kumar Khatri, Son of Shri Ram Nath Prasad Arya,  
resident of Village Nadaul, P.O. Nadaul, P.S. Masaurhi,  
District Patna, and at present, Contingent Paid Night  
Guard, Nadaul S.O. in Patna Postal Division

.... Applicant

Versus

1. Union of India through Director General, Department of Posts, Government of India, New Delhi-110 001.
2. Chief Postmaster General, Bihar Circle, Patna-800001.
3. Director of Postal Services, Patna Region, Patna-800001.
4. Sr. Superintendent of Post Offices, Patna Division, Patna-800004.
5. Assistant Superintendent of Post Offices, Patna South Sub-Division, Patna-800020.
6. Shri Jagta Nand Chaudhary, Son of Shri Fekan Chaudhary, resident of Village Nadaul, P.O. Nadaul, P.S. Masaurhi, District Patna and at present posted as Postal Assistant at Masaurhi Post Office, District Patna.
7. Shri Ram Anup Das (father's name not known), Sub-Postmaster, Nadaul S.O., P.O. Nadaul, District Patna.

 ... Respondents

Counsel for the applicant ... Mr. N.P.Sinha with

Mr. I.D. Prasad

Counsel for the respondents ... Mr. S.C. Dubey,

Additional Standing

Counsel

Coram:- Hon'ble Mr. Justice V.N. Mehrotra, Vice-Chairman

O R D E R

Hon'ble Mr. Justice V.N. Mehrotra, Vice-Chairman:-

1. This OA has been filed under section 19 of the Administrative Tribunals Act, 1985 with a prayer that the Respondents be directed to pay wages to the applicant for the period 21.2.94 to 23.11.94 for the duties performed by him.

2. The applicant has alleged that he was appointed as Contingent Paid Night Guard at Nadaul Sub-Post Office in Patna Postal Division in the year 1984. Since his appointment the applicant was performing his duties and there was no complaint against his work and conduct. The applicant was given temporary status with effect from 29.11.89 by Respondent No.5 by letter dated 12.8.91. Subsequently, by letter dated 6.3.93 the applicant was given temporary status of Grade D with effect from 29.11.89. The Respondent No.6 joined as the Sub-Postmaster, Nadaul S.O. in 1991. He started troubling the applicant and deducting Rs. 50/- to Rs.100/- every month from

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the wages of the applicant. The applicant made several oral complaints to Respondent No.5. The applicant, thereafter, in February, 1994 insisted that he will not take any lesser payment. The Respondent No.6 for this reason did not allow the applicant to sign the Attendance Register, though the applicant was regularly performing his duties as Night Guard. The Respondent No.6 also stopped payment of the wages of the applicant with effect from 21.2.1994 on his created plea that the applicant was not on duty. The Respondent No.6 did not send any report to Respondent No.5 in this regard. It is asserted that finding no way out the applicant approached Respondent No.5 several times. Respondent No.5 issued letter dated 9.7.94 asking Respondent No.6 to allow the applicant to sign the attendance register and also to allow him to work as per rules and also to pay ~~his~~ wages. In spite of the above direction by Respondent No.5, Respondent No.6 though allowed the applicant to sign the attendance register on 24.11.94 and paid wages from that date, but still did not pay wages for the period 21.2.94 to 23.11.94, though the applicant had actually worked during this period. The applicant, thereafter, made an application on 6.12.94 addressed to Respondent No.5 and also made a representation to the respondent No.4, but he was not paid wages for

the period in question. The applicant has also asserted that after transfer of the Respondent No.6, the Respondent No.7 joined as Sub-Postmaster, but he also acted on instigation of Respondent No.6 for his wrongful gain from the applicant. It is, in these circumstances, the prayer for payment of wages for the disputed period has been made.

3. Written Statement has been filed on behalf of the Respondents Nos. 1 to 5 only. No Written Statement has been filed on behalf of the Respondents Nos. 6 & 7 who have been impleaded by name. In the Written Statement filed on behalf of Respondents Nos. 1 to 5 it has been contended that the applicant did not perform his duties during the period 21.2.94 to 23.11.94 and so the question of payment of wages for this period cannot arise. It has also been asserted that the Sub-Postmaster had submitted his report dated 5.8.94, in which he mentioned that the applicant was not performing his duties since February, 1994 and so the question of allowing him to sign the attendance register did not arise. It is also alleged that the matter was inquired into by the Assistant Superintendent of Post Offices who submitted his report dated 16.1.1995. In that report it was mentioned that the applicant applied for one month's leave in April, 1994 which was not granted due to absence of substitute. The Assistant Superintendent of Post Office

after holding an inquiry also submitted a detailed report mentioning that the applicant did not perform his duties during the period 21.2.94 to 23.11.94. It is in the circumstances contended that the applicant was not entitled to claim wages for the period in dispute.

4. The applicant has filed rejoinder reiterating the assertions made by him in the O.A. He has asserted that he had actually performed his duties during the period in question, but the Sub-Postmaster did not permit him to sign the attendance register for the reasons which have already been mentioned in the O.A.

5. I have heard the learned counsel for the parties and have perused the record of the case. In this case the only dispute is as to whether the applicant had performed his duties as Contingent paid Night Guard in the Sub-Post Office, Nadaul during the period 21.2.94 to 23.11.94. As mentioned earlier the applicant has made specific allegation against the Respondent No.6 who was previously the Sub-Postmaster at Nadaul Sub-Post Office and also against Respondent No.7 who succeeded the Respondent No.6 in March, 1994. The Respondents, who have filed Written Statement, have not specifically denied these allegations made by the applicant. The Respondents Nos. 6 & 7 have also not filed any Written Statement denying these allegations. Further, though it is asserted on behalf of the

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Respondents that the applicant had failed to perform his duties from 21.2.94 to 23.11.94, in the letter dated 17.3.94 the Sub-Postmaster had allegedly intimated that the applicant was not performing his duties from 2.2.94. As will be apparent from the inquiry reports (Annexures-R-2 and R-3) by the Assistant Superintendent of Post Offices, Respondent No.5, actually the letter which is dated 7.3.94 [and purports] to have been signed by the Sub-Postmaster on 17.3.94, was actually not received in the office of Superintendent of Post Offices. In the Reports (Annexures-R-2 and R-3) the Respondent No.5 has mentioned that the Sub-Postmaster, Nadaul Sub-Post Office did not intimate about the absence of the applicant from duties with effect from 21.2.94. It has been mentioned in these reports that actually the applicant in June, 1994 informed the Respondent No.5 that he was not being permitted to sign the attendance register nor he is being paid his wages though he was performing his duties. On this complaint Respondent No.5 specifically asked the Sub-Postmaster to allow the applicant to sign the attendance register and to pay him his wages. This letter was sent in July, 1994. It was after this that the Sub-Postmaster sent a letter in August, 1994 (Annexure-R-1) intimating that the applicant was not performing his duties since 2.2.94. The above-mentioned reports (Annexures-R-2 and R-3) also indicate that ultimately in November, 1994 the

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Respondent No.5 directed the Sub-Postmaster to allow the applicant to work and sign attendance register which was complied with by the Sub-Postmaster and since then the applicant was paid his wages and was signing his attendance register.

6. Learned Counsel for the Respondents has argued that the reports ( Annexures-R-2 and R-3) by Respondent No.5 show that the Applicant did not work during the disputed period. I, however, do not find any such finding in these reports. In fact, in both these reports the Respondent No.5 has mentioned that salary for the period with effect from 9.7.94 may be paid to the applicant, while for the earlier period he has said that the same was disputed. It was nowhere held that the applicant did not attend his duties during the period prior to 9.7.94 and there is no specific finding to this effect in these reports.

7. In this O.A. as well as in his representation the applicant has asserted that he had actually worked during the disputed period, but he was not allowed by the Sub-Postmaster to sign the attendance register.

The best person to deny the allegation made by the applicant was the Sub-Postmaster who was posted at that Post Office during the relevant time. However, as mentioned earlier, no Written Statement or Affidavit by the Respondents Nos. 6 & 7 has been filed in support

of the contentions by the other respondents in the present case.

8. It is significant to find that even though it is alleged that ~~the~~ the applicant did not attend his duties from 2.2.94, still he was paid his wages upto 20.2.94. The applicant moved application for leave on medical ground in April, 1994, but the same was rejected on the ground that no substitute was available. In case the applicant had remained absent from 2.2.94 or from 21.2.94, the Sub-Postmaster would have immediately informed the higher authorities about his unauthorised absence and would have made some arrangement for protecting the property of Sub-Post Office. However, ~~that any~~ there is nothing to indicate ~~that~~ such action was taken in the present case.

9. On a consideration of the entire material I am of the view that the Respondents have not been able to establish that the applicant did not perform his duties during the disputed period. On the contrary the applicant has been able to show that he had performed his duties during the period in question, but he was not paid wages for that period. In these circumstances, this O.A. should be allowed.

10. This O.A. is allowed. The Respondent No.4, Senior Superintendent of Post Offices, Patna Division, Patna, is hereby directed to pay the wages of the

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