

(1979) 12 CAL CK 0006
In the Calcutta High Court
Case No : C.R. No. 9368 (W) of 1979

Debabrata Banerjee

APPELLANT

Vs

Suptd. of Police, 24 Pgs.

RESPONDENT

Date of Decision : 12-12-1979

Acts Referred:

Constitution of India, 1950 — Article 311
West Bengal Home Guards Act, 1962 — Section 5, 9

Citation : 85 CWN 417

Hon'ble Judges : P.K. Banerjee, J

Bench : Single Bench

Advocate : Satish Kumar Das, for the Appellant;

Judgement

P.K. Banerjee, J.—This Rule is directed against an order of discharge of the petitioner by the Senior Adjutant, Home Guard, Alipore, with effect from 5.11.76. In this application the petitioner was a member of the Home Guard and was appointed as such on 11.12.62 by Superintendent of Police under Ordinance No. XI of 1962. The Ordinance was repealed on the coming into force of the West Bengal Home Guards Act, 1962. Under the said Act the Superintendent of Police in a district may constitute a body to be called the Home Guards the members of which shall discharge such functions in relation to the protection of persons, the security of property or the public safety as may be assigned to them under the provisions of the Act and the Rules made thereunder. The appointing authority in the district is the Superintendent of Police. The functions of the members of the Home Guards have been enumerated u/s 5 of the Act stating therein the Superintendent of Police in a district may at any time call out a member of the Home Guard for training or to discharge any of the functions assigned to the Home Guard in accordance with the provisions of this Act and the Rules made thereunder. A member of the Home Guard when called out u/s 5 shall have the same powers, privileges and protection as an officer of police appointed under any Act for the time being in force. The members of the Home Guard when called out u/s 5 directly in aid of police force shall be under the control of the officers of

such force, in such manner and to such extent as may be prescribed by Rules made u/s 9. If any member of a Home Guard refuses without sufficient cause to obey such order made u/s 5 he may be convicted by a competent court and is punishable with a fine. It appears on the face of it that the Home Guard has function as subsidiary police force when called upon u/s 5 of the Act. The Home Guard is to help or aid the police force and perform all the duties of the police when called in. Therefore, in my opinion, the Home Guard post is a civil post. In the case reported in 59 CWN 628 *Brajagopal v. Commissioner of Police* it has been held by this Court that a Special Constable appointed by the Commissioner of Police u/s 12 of the Calcutta Suburban Police Act, 1866 holds a civil post, At page 630, it has been held interpreting the similar provisions u/s 12 of the said Act that the members of the regular police force of Calcutta are members of a civil service under the State of West Bengal or are persons, who hold civil posts under the State, admits of no doubt. The words "Civil post" and "Civil service" are used in contradistinction to service in or post under the defence forces of the Government of India. It is true that the petitioner does not belong to the cadre of any regularly constituted service. His office of a special constable continues so long as the temporary emergency within the meaning of section 12 of the Calcutta Police Suburban Act continues. Nevertheless he is holder of a civil post. In the Supreme Court judgment reported in *State of Assam and Others Vs. Shri Kanak Chandra Dutta*, it has been held that the post of Mazadar of the Assam Valley is a civil post.

2. In my view, the Home Guard appointed under the West Bengal Home Guards Act, 1962, is a civil post and, therefore, he is entitled to all protection under Article 311 of the Constitution of India. It appears the order passed by the Senior Adjutant, Home Guard, Police Officer, Alipore, by which Debabrata Banerjee, the petitioner herein, was discharged is illegal apart from the fact the appointing authority of the petitioner is the Superintendent of Police and he alone can discharge. It appears he was holding the post from 1962 till 1976 and was discharged without following the procedure for discharge of a person holding civil service. Therefore, the order impugned cannot stand and must be set aside.

The Rule is made absolute.

There will be no order as to costs It really unfortunate though the Rule was served on the State Government in July 1978 none appeared to oppose this Rule.