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Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.1467/2002

Hon'ble Shri Shanker Raju, Member(J)

Thursday, this the 6th day of June, 2002

Smt. Raj Bala Devi
w/o Late Sh. Inderpal
House No.RZ 5B/170
Gali No.4, Durga Park
New Delhi - 110 045. ... Applicant

(By Advocate: Shri Rajesh Kr. Gogna)

Vs.

1. Government of NCT of Delhi
through the Principal Secretary
Home (General) Department
5th Level, Delhi Secretariat
I.P.Estate, New Delhi - 2.
2. Commandant General of
Home Guards & Civil Defence
Nishkam Seva Bhawan
Raja Garden,
New Delhi - 27.
3. The Commandant
Delhi Home Guards
C.T.I. Building
Raja Garden
New Delhi - 110 027. ... Respondents

(By Advocate: Shri Harvir Singh)

O R D E R (Oral)

By Shanker Raju, M(J):

Heard the parties.

2. Applicant has been enrolled as Home Guard on compassionate ground on 1.6.1999 for a period of three years. By an order of this Tribunal dated 30.5.2002 status-quo has been maintained. The claim of the applicant is that once she has been appointed on compassionate basis she could not be covered by the Delhi Home Guards Rules, 1959 and she be treated as separately and to be continued till she attains the age of superannuation. Further, it is contended, by drawing my attention to the decision of the High Court

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of Delhi in Man Sukh Lal Rawal & Others Vs. Union of India & Others, CWP No.4286/97, decided on 26.5.1999, that where the following observations have been made:

"What does, however, disturb us a little bit is the fact that many of the petitioners have been continuing serves as Home Guards for several years, in some cases for almost about twenty years. It does appear a little unfair to them to be suddenly told that when their existing tenure comes to an end, they will not be re-enrolled. In such a situation, it will be extremely difficult for them to look for a job in the open market."

3. It is stated that respondents while complying with the directions and in pursuance of their policy guide-lines framed on 18.4.2000 should not be left to adopt pick and choose policy and they should have been transparent in their action. It is also stated that being a compassionate appointee, she should be given preference over others while being considered for engagement under the Scheme. Applicant alleges discrimination by stating that some of the Home Guards have been continued for long years, their term being extended and the same treatment has not been meted out to the applicant, who is a compassionate appointee, which is in violative of Articles 14 and 16 of the Constitution of India.

4. On the other hand, respondents have filed their reply which is taken on record, wherein they have that once the term of the applicant expires, the provision of Rule 8 of the Act *ibid* would not be applicable and she has no right to be continued after the expiry of term of three years. It is also stated that she is not holds of a civil post and a volunteer and on compassionate engagement, would not be equated with the holder of a civil post. It is also stated

that as per the Scheme framed, which is as per the directions of the Apex Court in Man Sukh Lal Rawal's case supra transparency has been observed and no pick and choose policy has been adopted. Home Guards, who have been disengaged after three years, are to be engaged as a last term and beyond which no further continuance would be permissible, the case of the applicant, if and when matures she is eligible to apply.

5. I have carefully considered the rival contentions of both the parties and perused the material on record. The first contention of applicant is liable to be rejected at the outset, as though the applicant was appointed on compassionate basis, as a volunteer (Home Guard) for a period of three years under the Delhi Home Guards Rules, 1959, ibid she cannot be equated with a Government servant, who is holding a civil post, as she has been appointed on compassionate basis on account of death of her husband who was also a Home Guard and not the holder of Civil Post and was also working as volunteer not on regular basis. In this view of the matter she is not liable to be meted out the same treatment under the Rules meant for holder of civil post, would not have any application in the present case. As such she has no right to be continued till the date of superannuation being appointed only as volunteer Home Guard.

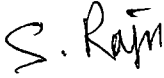
6. As regards the contention that the policy lacks transparency and the respondents are adopting pick and choose method to deprive the discharged Home Guards for their re-engagement under the Scheme, it is

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only a presumption and is not well founded. However, it is free for the applicant to apply under the Scheme which has been declared ultravires by the Division Bench of this Court in Writ Petition, the Judgment being stayed the policy is still in vogue. Applicant on acquiring the eligibility as per Clause 1 under the head of Appointment of discharge Home Guard Volunteers (Re-enrolment), is free to stake his claim for consideration for appointment of one more term of three years and the respondents are obligated to consider her claim in accordance with Scheme, if she is other wise suitable. However, keeping in view compassionate angle involved in the case, respondent shall consider the same at the time of considering her case for appointment under the Scheme.

7. In this view of the matter and for the reasons recorded above, though not finding any merit in the present OA, the same is disposed of with direction to the respondents that if and when the applicant attains eligibility and applies under the Scheme, her case would be considered subject to her suitability and strictly in accordance with the Rules and also as per the observations made above, the OA is disposed of. Interim order already passed, shall stand vacated. No costs.


(Shanker Raju)
Member(J)

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