

Central Administrative Tribunal  
Principal Bench

(8)

✓ OA No.1994/2001  
with  
OA No.2627/2001  
OA No.2657/2001  
OA No.2850/2001

New Delhi this the 20th day of March, 2002

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

1. OA No.1994/2001

1. Dinesh Singh S/o Baleshwer Singh,  
R/o H.No. B-8, Police Qtr. Shalimar Bagh,  
New Delhi.  
Sanad No.6350.
2. Gauri Shankar Sharma,  
S/o Sh. Manohar Lal Sharma,  
H.No. 128, Tajpur Pahari Badarpur,  
New Delhi.  
Sanad No.8898.
3. Kishan Lal S/o Chddhi Lal,  
R/o H.No.545 Gali No.13,  
Mandoli Vistar, Nand Nagri,  
Delhi.  
Sanad No.6435.
4. Kashi Ram S/o Sh. Ganga Bal  
R/o H.No.642, Chandni Chowk,  
Katra Nil, New Delhi,  
Sanad No.6329.
5. Sudesh W/o Sh. Sumer Singh,  
R/o R-Z,104, Maksudabad Colony,  
Nanglooi Road, Nazafgarh,  
Delhi.  
Sanad No.2416.
6. Sandhya Chaturvedi D/o V.N. Chaturvedi,  
H.No.88, Village Naharpur,  
Sector 7, Rohini, New Delhi.  
Sanad No.2404.

....Applicants

(By Advocate : Shri U. Srivastava)

Versus

Govt of NCT Delhi, through

1. The Chief Secretary,  
Govt. of NCT Delhi, 5 Sham Nath Marg,  
New Delhi.

2. The Commandant General,  
Home Guard & Civil Defence,  
CTI Building, Raja Garden,  
New Delhi.

3. The Commandant  
Delhi Home Guard, CTI Building,  
Raja Garden, New Delhi. ....Respondents  
(By Advocate : Shri Vijay Pandita along with  
Ms. Shabana)

## 2. OA No.2627/2001

1. Atul Kumar, S/o Shri Govind Saran  
R/o C-112 B, DCM Colony,  
Brahampur Colony, New Delhi.
2. Umed Singh, S/o Shri Jaswant Singh,  
R/o RZ-Q 11, Vikas Vihar,  
Uttam Nagar, New Delhi.
3. Ved Prakash, S/o Shri Prakash Singh,  
R/o B/250, Sultanpuri, New Delhi.
4. Ajesh Kumar Trivedi, S/o Shri Waji Lal  
R/o C-112 B, DCM Colony,  
Brahampur, New Delhi.
5. Laxmi Narayan, S/o Shri Kamal Singh,  
R/o D/190, Ambedkar Colony,  
Chattarpur, New Delhi.
6. Satish Kumar, S/o Shri Mohan Singh,  
R/o H-734, Ward No.6,  
Mehruli, New Delhi.
7. Balram Singh, S/o Shri Baden Singh,  
R/o C-167, Nangli Vihar Extn.  
Baprota Villl. Near Ambedkar Public School,  
Delhi.
8. Karori Mal, S/o Shri Ram Ratan Sharma,  
R/o 163, Khirki Village, New Delhi.
9. Om Bir, S/o Shri Fathe Ram,  
R/o J-4/44A, Khirki Extn.,  
Malviya Nagar, New Delhi.
10. Ram Villas, S/o Shri Mehendra Babu,  
R/o B-1067, Sangam Vihar,  
New Delhi.
11. Jay Singh, S/o Shri Basdev,  
R/o B-1100, Sangam Vihar,  
New Delhi.
12. Vikram Singh, S/o Shri Bachan Singh,  
R/o C-497, Shak Sari, Phase -I,  
New Delhi.
13. Kanhiya Lal, S/o Shri Kalyan Prasad,  
R/o H.No.133, Khirki Village,  
New Delhi.
14. Roshan Alli, S/o Balli Mohmod,  
R/o 18 A/30, Ward No.1,  
Mehruli, New Delhi.
15. Digamber Singh, S/o Raghuvir Singh,  
R/o H.No.147 B/5, Ward No.9,  
Kishangarh, New Delhi.
16. Nandlal S/o Shri Bulkaki Ram,  
R/o H.No.108 E, Kishan Garh,  
Ward No.9, New Delhi.

17. Surender Kumar Singh,  
S/o Sh. Vishav Nath Singh,  
R/o G-961, Sukurpur, Delhi-34.
18. Udal Khan S/o Shri Mane Khan,  
H.110, Sukurpur, Delhi-34.
19. Deepak Kumar S/o Shri Nandan La,  
R/o B-5, H.C-2, III Gate,  
Hauz Khas, New Delhi.
20. Nawal Singh S/o Shri Kaluaram,  
R/o 205, Mandi Pahari,  
New Delhi. ....Applicants  
(By Advocate : Shri U. Srivastava)

Versus

Govt of NCT Delhi, through

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2. The Commandant General,  
Home Guard & Civil Defence,  
CTI Building, Raja Garden,  
New Delhi.
3. The Commandant  
Delhi Home Guards, CTI Building,  
Raja Garden, New Delhi. ....Respondents  
(By Advocate : Shri Vijay Pandita along with  
Ms. Shabana)

3. OA No.2657/2001

1. Anil Kumar, S/o Shri Rambir Singh,  
R/o C-280, Chanakya Marg,  
East Babar Pur, Sahadra,  
New Delhi.
2. Ramesh Chand, S/o Shri Pati Lal,  
R/o A-156, DDA Flat,  
Kalkaji, New Delhi.
3. Madan Lal S/o Shri Rajbir Singh,  
R/o E-II/13/710, Nehru Vihar,  
Dayal Pur, New Delhi.
4. Raj Kumar, S/o Shri Gopi Ram,  
R/o D-II, 136 Madan Giri,  
New Delhi.
5. Prabhu Dayal, S/o Kanaya Lal,  
R/o D-II, 121, Mehruuli,  
New Delhi.
6. Ashok Kumar, S/o Maha Singh,  
R/o WZ-222, Narain Gaoan,  
New Delhi.
7. Kamala Prasad, S/o Ram Siromani,  
R/o H. No.33, Kishan Ganj,  
New Delhi.

8. Sanjaya Kumar, S/o Shri Kartar Singh,  
R/o 178 C, Ward No.2, Mehruli,  
New Delhi.
9. Vinod Kumar, S/o Shri Om Prakash,  
R/o A/42, Lal Kua,  
Juggi No.2, Badar Pur,  
New Delhi.
10. Suresh Chand, S/o Pyari Lal,  
R/o H. No.280, Tuglokabad Village,  
New Delhi.
11. Bir Pal, S/o Babu Singh,  
R/o RZ-26B, Indira Park-II,  
Gali No.3, Palam,  
New Delhi.
12. Ravinder Kumar, S/o Shri Bisharam Singh,  
R/o RZF 767/12, Raj Nagar-II,  
Palam Colony, New Delhi. ....Applicants

(By Advocate : Shri U. Srivastava)

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New Delhi.
3. The Commandant  
Delhi Home Guard, CTI Building,  
Raja Garden, New Delhi. ....Respondents

(By Advocate : Shri Harvir Singh)

4. OA No.2850/2001

1. Bhupender Singh, S/o Shri Swakaran Singh,  
R/o H. No.2/65, Mehrouli,  
New Delhi.
2. Ved Pal S/o Shri Ram Singh Prajapati,  
R/o Vill Nahri, Distt. Sonipath,  
Haryana.
3. Shiv Kumar PC, S/o Shri Horam Singh,  
R/o T/163 E/3, Khidki Gaoan,  
Malviya Nagar, New Delhi.
4. Sarala Sukla, W/o Shri Krishan Kumar Sukla,  
R/o T-605, Baljit Nagar, Prem Nagar Road,  
Shiv Mandir, New Delhi.
5. Kusum Lata, W/o Shri Rajesh Kumar,  
R/o E-III, 284, Raghuvir Nagar,  
New Delhi.

6. Rajesh, S/o Jagdish Prasad,  
R/o RZ-123/124, East Sagar Pur,  
New Delhi.
7. Ram Kishan, S/o Banarasi Dass,  
R/o WZ-1988, Sadh Nagar,  
Palam Colony, New Delhi.
8. Ram Chander, S/o Raja Ram,  
R/o H-77, Mahavir Vihar,  
Kanjhawala, New Delhi.
9. Raj Pal Singh,  
R/o H. No.147 B/9, Kishan Gagarh,  
Mehrouli, New Delhi.
10. Laxman Prasad, S/o Shri Ram Chander  
R/o W-28/104, G Block Juggi,  
Mangolpuri, New Delhi.
11. Bhusan Singh, S/o Puran Singh,  
R/o B-14, Amar Vihar,  
Sultan Puri, New Delhi.
12. Ram Gulam, S/o Shri Nakshed Ram,  
R/o Q.8/4, Krishan Vihar,  
Sultan Puri, New Delhi.
13. Rakesh Kumar, S/o Shri Suggan Lal,  
R/o H.No.43, Ambedkar Colony,  
New Delhi.
14. Dal Chand, S/o Parnu,  
R/o 296, Sahapur Jhath, New Delhi.
15. Suresh Kumar, S/o Shri Tak Chand,  
R/o WZ-A1/80, Uttam Nagar, New Delhi.
16. Jai Bhagwan S/o Shri Rattan Singh,  
R/o H. No.1/5373 A/14, Balbir Nagar,  
Sahadra.
17. Tilak Raj s/o Shri Khai Rati Lal,  
R/o H. No.5A/68 Janak Puri,  
New Delhi. ....Applicants  
(By Advocate : Shri U. Srivastava)

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Ms. Shabana)

ORDER (ORAL)

Shri Govindan S. Tampi, Member (A) :

This order disposes of the above four OAs as the deal with identical matters, seek same reliefs and have been argued together.

2. Heard S/Shri U. Srivastava and Vijay Pandita with Ms. Shabana for the applicants and the respondents respectively.

3(i) - OA 1994/2001 - Reliefs sought for by Shri Dinesh Singh and five other applicants in this OA are as below :-

- "(a) Declaring the actions of the respondents not allowing the applicants for their further duties till the completion of extended tenure of three years is an illegal, unjust, arbitrary, unconstitutional, malafide and against the mandatory provisions of law.
- (b) Directing the respondents to allow the applicants to continue as member of Home Guard Organisation and perform their duties till the completion of extended tenure of their services of three years.
- (c) To allow the O.A. of the applicants in the light of the judgment/order issued by the Tribunal in O.A. No.188/95 in case of Kishan Kumar & Ors. Versus Govt. of NCT Delhi & Ors. and in case of Arvind Kumar and Ors. Versus Govt. of NCT Delhi and Others placed at Annexure A/3 and A/9 respectively, with all other consequential benefits and costs.
- (d) Any other fit and proper relief may also be granted."

3(ii) - OA 2627/2001 - has Shri Atul Kumar and 19 others seeking the same reliefs as in OA 1994/2001.

3(iii) - OA 2657/2001 - has Shri Anil Kumar and 11 others and the reliefs sought are the same as above.

3(iv) - OA 2850/2001- has Shri Bhupender Singh and 16 others, seeking the same reliefs as in the above three OAs.

4. The applicants were originally recruited as Members of the Home Guards Organisation, in terms of Rule 3 of the Delhi Home Guards Rules, 1959 for initial period of three years, as per Rule 8 ibid. All of them are governed by the Bombay Home Guards Act, 1947 made applicable to Delhi. Though originally they have been recruited for a period of three years, they have been continuing by extensions issued from time to time and are expected to go upto the end of 2002 or thereafter. The applicants have been performing satisfactorily throughout and have been recipients of commendations from the seniors. On 15.12.1994, services of a number of Home Guards were dispensed with, invoking Rule 8. On the aggrieved persons filing OA No. 188/1995, the said order was quashed and set aside by the Tribunal on 1.6.1995, but with liberty to the respondents to pass a fresh orders, if so advised, in accordance with law. Review Application No.251/1995, seeking recall and review of the earlier order dated 1.6.1995, was dismissed as warranting no intervention. Thereafter the matter regarding the regularisation of the Home Guards had come up when differences of opinion were recorded in the Tribunal which led to the preference to the Full

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*The Full Bench*  
Bench, disposed of on 25.11.1999 directed that the Hon'ble Delhi High Court's judgement dated 26.5.1999 in Mansukh Lal Rawal's case be followed. During the pendency of the dispute before the Full Bench in the Tribunal, a few applications filed by individual Home Guards were dismissed by the Tribunal, whereafter in C.W.P. No.4286/1997, on 26.5.1999, the Hon'ble High Court of Delhi directed the respondents to frame a policy with regard to the Home Guards. This was followed by framing of the policy named as 'Policy Guidelines for Enrollment/Re-enrollment and Discharge of Members of Home Guards in Delhi', communicated under Order No.FI198/98/Home(G)/2264-74 dated 18.4.2000. Though the applicants are continuing on the strength of the extensions granted every three years and have more time of the tenure yet to expire, the respondents are restraining the applicants performing their duties, which was incorrect and unreasonable. In terms of Rule 9 of Delhi Home Guards Rules, 1959, a member of the Home Guard can perform his duties upto 60 years of age and his services can be terminated, if the respondents are satisfied that the individual concerned had committed any act(s) detrimental to the good order welfare and discipline of an organisation. No such case has been raised by the applicants. Nor have any of the procedures prescribed under Section 6 (b) of the Bombay Home Guards Act, 1947 been initiated against any of the applicants. Still the respondents have restrained the applicants from performing their

duties since 9.9.2001 or such similar dates. The same is illegal, unjust arbitrary and unconstitutional.

5. The various grounds raised in the OAs are summarised as below :-

- (i) the restrained orders are illegal and unjust;
- (ii) under Rule 9 of the Home Guards Rules, the maximum age limit for a member of the Home Guard is 60 years;
- (iii) respondents have not acted as model employers as was expected of them and have thrown out the applicants, who have no other source of income;
- (iv) no act detrimental to the discipline of the organisation has been reported or alleged; *and*
- (v) no notice has been served on them nor has any one of the applicants is declared to be medically unfit.

In view of the above, the applicants seek the intervention of the Tribunal to render them justice.

6. Reply on behalf of the respondents state that the applications are exercised in abuse<sup>of</sup> process of law and are hit by Sections 19, 20 and 21 of the

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Administrative Tribunals Act, 1985. The Tribunal has no jurisdiction to deal with the present applications as there existed no relation between the applicants and the respondents. They are only 'volunteers', who are called *upm/s* to perform certain emergencies and are only self employed individuals. They receive certain subsistence allowance, paid out of contingency fund. Chandigarh Bench of the Tribunal had dismissed OA No.1013/CH/88, on 31.1.1995, which was up-held by the Hon'ble Supreme Court also. Director General Home Guards and Director Civil Defence Govt. of NCT controls Home Guards Organisation in all the aspects including enrolment, discharge, training, placement of duties and displaying. It is as stated above, a voluntary organisations and a number of Home Guards personnel are working elsewhere as well. Suggestions have been made to consider granting some weightage to Home Guards/Civil Defence Volunteers in Govt. service. State Govts. have also been advised in this connection. It will show that Home Guards do not hold any civil post or would come under the jurisdiction of the Tribunal. This has been the view taken in a few judgments of the Tribunal. Respondents also point out that they have in accordance with various decision of the Tribunal and the Delhi High Court in the case of Mansukh Lal Rawal (supra) introduced fresh policy guidelines on the subject and had acted accordingly. That being the case, the same cannot be called in question, is what the respondents aver.

7. During the oral submissions before me, Shri U. Srivastava, learned counsel for the applicants invited my attention to the decision of the Principal Bench of the Tribunal dated 5.3.2002, issued while disposing of OA No.270/2002 filed by Shri Pawan Kumar. In the said OA, the applicant who is similarly placed as the applicants in these OAs had challenged his discharge from the Home Guard as well as the policy guidelines, issued by the Home Guards Organisation at Delhi. The Tribunal had, while disposing of the OA held that the Selection Board constituted in this regard do not have any powers under law and, therefore, their actions are not to be endorsed. According to Shri Srivastava, the above decision of the Tribunal would <sup>be</sup> equally applicable in the case of these applicants as well and, therefore, the action of the respondents in dispensing with the services of the applicants would have to be declared as illegal. Shri Vijay Pandita, learned counsel for the respondents reiterates his pleas but does not contest the validity of the orders passed by the Tribunal in OA No.270/2002.

8. I have carefully considered the matter. The applicants in all the four OAs are assailing the orders (oral or otherwise), dispensing with their services and/or restraining them from performing their duties as Home Guards, though they have considerable time in their tenure to expire, in terms of their extension orders. The jurisdiction of the Tribunal in the case of Home Guards is no longer in dispute and only the respondents appear to be unaware

of the same. As is evident, the disengagement of the services of individuals like the applicants in the OAs, or the restraint placed on them by the respondents, are emanating from the policy guidelines, enunciated by the Home Guards Organisation of NCT Delhi. The same has been under challenge in OA No.270/2002, filed by the Pawan Kumar, and disposed of by the Tribunal on 5.3.2002. The relevant portion of the said judgment, as it lays down the law, deserves to be cited in full as below:-

"7. Certain Home Guards had approached the Delhi High Court by filing Civil Writ Petition No.4286/1997 challenging their termination as Home Guards and claiming regularisation. At the hearing, the learned counsel for the respondents therein had made a statement that some policy was being framed to ensure that there is no pick and choose with regard to the persons who have to be enrolled or re-enrolled and those whose tenures are not to be extended. The High Court on the statement observed:-

"Giving the fact that many of the duties performed by the members of the Home Guards are to a permanent nature and the fact that there is such severe unemployment in the country, we do expect the Respondents to be alive to this situation and to frame a transparent and workable policy in this regard. We hope that the Respondents will frame the policy within a period of six months."

Since guidelines as directed had not been framed within the stipulated period, Civil Contempt Petition No.527/1999 was moved. During the pendency of the petition, impugned guidelines have been issued which are now the subject matter of challenge in the present OA.

8. Guidelines of 18.4.2000 at Annexure A-4 deal with enrolment of members of Home Guards Volunteers. The same, inter alia, provide as follows:-

"In accordance with Sub-Section 2 of Section 2 of the Bombay Home

Guards Act, 1947, as extended to the Union Territory of Delhi, enrolment as members of the Home Guards are subject to the approval of the Hon'ble Lt. Governor of Delhi. Therefore before initiating any process of appointment of members of Home Guards in Delhi, the Commandant General or the Commandant Home Guards shall seek the approval of the Hon'ble Lt. Governor of Delhi for filling up the existing such numbers of vacancies as may exist at a given point of time through Principal Secretary (Home)/Home(General) Department."

9. Paragraphs 6, 7 and 8 of the Guidelines provides as follows:-

"6. A Selection Board comprising of following officers will be constituted :-

Commandant General Home Guards & Civil Defence - Chairman

Commandant Home Guards - Member

Additional District Magistrate (West) - Member

Asstt. Commissioner of Police (Rajouri Garden) - Member

Senior Staff Officer (Home Guards) - Member Secretary

"7. The applications of the eligible persons will complete relevant information will be placed before the Selection Board and the list of selected applicants shall be sent to the Home Department, Govt. of Delhi, for seeking the approval of the Hon'ble Lt. Governor for appointment as members of the Home Guards.

"8. On receipt of approval of the Hon'ble Lt. Governor of Delhi the Commandant General or the Commandant Home Guards shall issue appointment letters and ensure that they are delivered to the selected persons and also paste the list of the appointed members on the notice board of the headquarters of the office/district office and branch office for dissemination of complete information to the general public."

10. Provisions contained in the

aforesaid paragraphs, in our view, are wholly outside the purview and scope of the provisions contained in the Act and the Rules. Whereas the Act and the Rules confer exclusive jurisdiction of appointment on the Commandant or the Commandant General, aforesaid provisions have diluted their power by constituting a selection board which is wholly outside the ambit and scope of the Act and the Rules. Power is now conferred on the aforesaid selection board comprising of five members of which Commandant General and the Commandant are only two members. It is, therefore, conceivable that a decision of three members in regard to the selection will hold the field even though the Commandant and the Commandant General do not agree with the same. The list of selected candidates is thereafter required to be sent to the Home Department, Government of Delhi for seeking the approval of the Hon'ble Lt.Governor which is again not provided under the Act and the Rules. Para 8 of the Guidelines of 18.4.2000 provides that on receipt of approval of the Hon'ble Lt.Governor of Delhi, the Commandant General or the Commandant Home Guards shall issue appointment letters. Hence the decision of the Selection Board is required to sent to the the Home Department, Government of Delhi for seeking the approval of the Lt.Governor and the same is made binding upon the Commandant General and the Commandant Home Guards. Hence in certain cases even if the Commandant General and the Commandant Home Guards have not agreed or have dissented with the decision of the Selection Board that decision is made binding upon them as far as appointments are concerned. Aforesaid provisions which cannot be supported by any of the provisions of the Act and the Rules, in our view, are unsustainable and are liable to the quashed and set aside.

11. We next come to the guidelines of 6.9.2000 at Annexure A-4A. The same provide as follows:-

"On the above cited subject, and in continuation of this Government's letter of even number dated 18.4.2000, I am directed to state that the Lt.Governor, Delhi has ordered that the committee constituted vide this Government's order No. F.1/81/99-Home(G)/4380-4389 dated 12.11.1999 shall continue to take decisions on discharge of Home Guards Volunteers under the Bombay Home Guards Act,

1947, as extended to the N.C.T. of Delhi and the Delhi Home Guards Rules, 1959, till further orders.

This shall form a part of the policy guidelines issued vide aforesaid letter dated 18.4.2000."

Aforesaid guidelines confer upon the committee earlier constituted by the Government of Delhi on 12.11.1999 to take decisions on discharge of Home Guard Volunteers. This again, in our view, is conferring the power of discharge on a committee which power is conferred only on the Commandant General and the Commandant. The same which lacks the authority of the law, we find is unsustainable and is also liable to be quashed and set aside.

12. Now coming to the impugned order of discharge dated 29.9.2001 at Annexure A-5, the same in so far as relevant for the enquiry at hand provides as follows:-

"The Govt. of NCT of Delhi has constituted a Discharge Committee vide Order No.F.1/198/Home(G)/SSH/5345 dated 6.9.2000 to take decision to discharge Home Guards Volunteers. The committee has decided that those Home Guards Volunteers who have completed their initial tenure of three years or more be discharged."

The opening paragraph of the aforesaid order makes it clear that a decision to discharge those Home Guards Volunteers who had completed their initial tenure of three years or more has been taken by the Discharge Committee. Based on the aforesaid decision of the Discharge Committee, the Commandant has proceeded to discharge the applicant. It is difficult to fathom had such a decision not been taken by the Discharge Committee, whether or not the Commandant would have been persuaded to issue an order of discharge against the applicant. One thing has been made abundantly clear that the Commandant has definitely been influenced by the decision of the Discharge Committee which decision can have no role to play as the Act and the Rules do not provide for any Discharge Committee to take any decision to provide for tenures for Home Guards Volunteers and for their discharge on completion of their tenure. Aforesaid order of discharge, in the circumstances, we find cannot be sustained and the same is also liable to be quashed and set aside.

13. Shri Vijay Pandita, the learned advocate appearing for the respondents has strenuously urged that the guidelines impugned as also the order of discharge are perfectly valid and in conformity with the Act and the Rules. He has taken us through Sections 1 and 2 of the Act which provide as follows:-

"Short title, extent and commencement- (1) This Act may be called the Bombay Home Guards Act, 1947.

(2) It extends to the whole of the Union Territory of Delhi.

(3) It shall come into force at once.

"2. Constitution of Home Guards and appointment of Commandant General and Commandant.

(1) The Chief Commissioner of Delhi shall constitute for the Union Territory of Delhi a volunteer body called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons, the security of property and the public safety as may be assigned to them in accordance with the provisions of this Act and Rules made thereunder.

Provided that the Chief Commissioner of Delhi may, by notification in the Official Gazette, divide the Union Territory of Delhi into two or more areas and constitute such a volunteer body for each such area.

(1-A) Omitted.

(2) The Chief Commissioner of Delhi may appoint a Commandant of each of the Home Guards constituted under sub-section (1).

(3) The Chief Commissioner of Delhi shall appoint a Commandant General of the Home Guards in whom shall vest the general supervision and control of the Home Guards throughout the Union Territory of Delhi and until a Commandant is appointed under sub-section (2), the Commandant General may also exercise the powers and perform the functions assigned to the Commandant by or under this Act.

In our view, reference to the aforesaid provisions cannot and do not confer upon the Selection Board or the Discharge Committee, to pass orders which are impugned in the present OA.

14. Shri Pandita has further contended that the applicant can only have a grievance in respect of the order of discharge. He is accordingly not entitled to impugn the power of appointment which is not the subject matter of the OA. In our view, the contention raised cannot be sustained as while considering the vires of a particular provision, the challenge raised by and on behalf of the applicant can justifiably be entertained.

15. Shri Pandita has also raised certain other contentions. However, in view of what has been stated hereinbefore, a special reference to the same is found unnecessary.

16. For the foregoing reasons, the present OA succeeds. The guidelines of 18. 4.2000 at Annexure A-4 and 6.9.2000 at Annexure A-4A as also the order of discharge of the applicant dated 29.9.2001 at Annexure A-5 are quashed and set aside. Applicant would now be entitled to be restored to his position last held by him in the Home Guards with consequential benefits as per law and rules on the issue.

17. It goes without saying that the present order will not come in the way of respondents if they are so advised to either amend the rules or to take such steps as may be validly open to them under the law. Present order, we further clarify will not come in the way of the Commandant if he is so advised to issue fresh orders without being influenced by any external agency against the applicant."

The above observations squarely cover the issues raised in the above four OAs and the same would have to be adopted for deciding these OAs as well.

18. In the above view of the matter OAs &c. succeed and are accordingly allowed. The impugned orders, both written and oral, dispensing with the services of the

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applicants as Home Guards, and/or placing restraint on their performing duties as Home Guards are quashed and set aside with all consequential benefits, permitted in law. No costs.

(Govindan S. Tampi)  
Member (A)

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