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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 3275 of 2001

New Delhi, this the 13th day of May, 2002

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

Capt. K.S. Malhotra
S/o Late Shri P.S. Malhotra
Junior Staff Officer (Retd.)
Directorate of Civil Defence
and Home Guards,
Delhi.

-APPLICANT

(By Advocate: Shri M.C. Dhingra)

Versus

1. Appellate Authority,
Lt. Governor,
Raj Niwas,
Delhi-110 054.

2. Delhi Administration
Through Chief Secretary,
5, Sham Nath Marg,
Delhi-110 054.

3. Director General Home Guards-
Cum-Director Civil Defence,
Nishkam Sewa Bhawan,
Directorate General of Home Guards
and Civil Defence,
Raja Garden,
New Delhi-110 027.

-RESPONDENTS

(By Advocate: Shri Vijay Pandita)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicant has assailed the order dated 25.7.2000 vide which the disciplinary authority had passed the punishment order of censure upon the applicant. He has also assailed order dated 30.10.2001 vide which his appeal has been dismissed and has prayed for quashing of the same.

2. The facts in brief, as alleged by the

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applicant are that the applicant at the relevant time was working as Junior Staff Officer, Central Training Institute on a Group 'B' post under Delhi Administration in the office of the Directorate General of Home Guards and Civil Defence, Delhi. It is submitted by the applicant that though he was appointed on the recommendation of the UPSC but his appointment was wrongly shown as ad hoc and ultimately UPSC had ordered for making him regular but respondents illegally withheld the order, so applicant had to file various OAs to seek regularisation which were allowed. But with the result the applicant was harassed by the department and the impugned order is in the chain of harassment meted out to the applicant.

3. It is further submitted that one Shri J.P. Sharma, Bn. Commander and others including Additional District Commandants were discharged from the Home Guards on the ground that no post of Additional District Commandants and Bn. Commanders exist in the Directorate General of Home Guards and Civil Defence, Delhi. These persons preferred appeal before the Lt. Governor of Delhi but the appeal was defended by the applicant. The applicant had taken a plea that there was no provision under the Home Guards Act and Rules and Compendium of Instructions of 1993 for appointment as Additional District Commandants and Bn. Commanders in Delhi Home Guards.

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4. It is further stated that Shri A.K. Singh who had taken over the charge of Commandant General Home Guards (CGHS) in the office of the Directorate General of Home Guards, Delhi on 1.4.1997 and Shri Virender Rai, IPS, Dy. Commandant General Home Guards Delhi they had been writing to the Principal Secretary (Home), Government of NCT Delhi with reference to the dismissal of the appeals by the Lt. Governor holding non-availability of posts of Additional District Commandants and Bn. Commanders, but they had been corresponding for re-introduction of these posts for having effective control of the Home Guards.

5. However, on 29.6.98, a Board meeting under the Chairmanship of the Director General Home Guards with the Deputy Commandant General as members was held on 29.6.98 to consider the names for enrolment as District Commandants, Additional District Commandants and Bn. Commanders and in the said Board the applicant was also juniormost member, being a Junior Staff Officer. The Board recommended appointment of certain persons as District Commandants, Additional District Commandants and Bn. Commanders though these posts did not exist under the Home Guards Act as applicable to Delhi or under the Compendium of Instructions of 1993. The appointments were made against the rules. Hence a show cause notice was issued to the applicant wherein it was alleged against the applicant that he being one of the members of the Board concealed the facts and misguided the Board as he was well conversant with the Home Guards Act and Rules and it was the duty of the applicant to apprise the Chairman and Commandant General of Home Guards about the

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orders of Hon'ble Lt. Governor, Government of NCT of Delhi about the non-availability of such posts so the appointments were made in contravention of Acts and Rules of Home Guards and also shown disregard to the order of the Hon'ble Lt. Governor in appellate order dated 24.4.97. Thus the applicant was called upon to explain why the action should not be taken against him. The applicant submitted his explanation which was not accepted and the impugned order of censure was passed vide Annexure A-12 by the disciplinary authority. The applicant preferred an appeal against the said order which was also dismissed by the appellate authority.

6. To challenge the same, the applicant has taken a ground that he himself is a very junior officer and his designation is also Junior Staff Officer though he was one of the members of the Board but the senior members, namely, Shri A.K. Singh and Shri Veerendra Rai were well aware of the facts that the post for which the appointment was made to the said meeting did not exist in the service of the Home Guards and those posts were also voluntary in nature. In order to show that the other members had the knowledge about the same and the applicant had not concealed the facts from them the applicant has referred to letters, i.e., Annexure A-1 letter dated 17.12.1997 written by Shri Veerendra Rai, IPS, Dy. Commandant General Home Guards to the Principal Secretary (Home), Government of NCT of Delhi wherein he had made a request to the Principal Secretary for taking approval of the Hon'ble Lt. Governor for reintroducing the above ranks in the organisation. On the same point, the applicant also referred to another letter Annexure



A-2 dated 17.2.1998 which is written by Shri A.K. Singh, Commandant General, Home Guards and Director Civil Defence, Delhi to the Principal Secretary making plea for reintroduction of these posts but still at the time the Board met vide which the disputed appointments were made, no approval of the Hon'ble Lt. Governor had been received for appointing persons to those ranks. Thus the counsel for the applicant submitted that there is no question of concealment of any fact on the part of the applicant as both the other members who are much senior officer are IPS were well aware of the facts that these ranks did not exist in service and both had been making pleas with the Principal Secretary (Home) to seek the approval of the Lt. Governor for reintroduction of those ranks in the service, so on the strength of these letters the counsel for the applicant submitted that the question of concealment does not arise at all and the show cause notice itself fails and is liable to be quashed.

7. In reply to this the learned counsel for the respondents referred to the impugned order Annexure A-12 where the disciplinary authority on going through the defence reply furnished by the applicant along with various other records found that the defence put forward by the applicant was a superficial plausibility but flawed on the facts so much so that the advice/clarification tendered by the Director General, Civil Defence, Ministry of Home Affairs vide letter dated 11.11.1996 postulating therein that there is no provision under the Home Guards Act and Rules and Compendium of Instructions of 1993 for appointing Additional District Commandants and Bn. Commanders in Delhi Home Guards



Organisation makes it clear that there is no provision for appointment of Additional District Commanders and Bn. Commanders.

8. Further it is the disciplinary authority who had observed that the applicant was well aware of the same as he had taken a stand before the Hon'ble Lt. Governor in the appeal filed by Shri J.P. Sharma so the counsel for the respondents submitted that the fact that the applicant had knowledge that there was no such type of post available, so he was liable to be punished.

9. In my view the contentions as raised by the learned counsel for the respondents has no merits because the show cause notice as served upon the applicant shows that the applicant was charged with concealing certain facts from the Board who was to consider the appointments but in this order passed by the disciplinary authority that simply says that the applicant had the knowledge that these posts do not exist. There is no denial that the applicant was the junior-most members of the Board and both the senior members were IPS officers of a very senior position and both of them had been making correspondences with the Principal Secretary (Home) and Hon'ble Lt. Governor seeking his approval for reintroduction of these ranks in the service. Thus as far the question of concealment is concerned, that was not possible at all because all the members had the knowledge about non-existence and non-availability of posts so the applicant could not be charged for concealment of any fact from the Board. The order passed by the appellate authority also shows that the appellate

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authority had contemplated taking a separate disciplinary proceedings against those IPS officers also shows that those senior IPS officers had the knowledge so the question of concealment at the hands of the applicant does not arise at all. There is marked difference between 'knowledge' of a fact and 'concealment' of fact. It appears that both disciplinary authority and appellate authority had not properly applied their mind while holding the applicant guilty.

10. So in view of the above facts the orders of the disciplinary authority as well as that of the appellate authority cannot be sustained and the same are liable to be quashed. I hereby quash the same and also quash the show cause notice since it is based on wrong facts.

11. In view of the above, OA is allowed and the impugned orders dated 25.7.2000 and 31.10.2001 are hereby quashed. No costs.


(KULDIP SINGH)
MEMBER (JUDL)

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