

13

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

O.A.No.1447/99

New Delhi: this the 23rd day of August, 1999.

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

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

Shri Harbans Lal,
S/o Shri Hargyan Singh,
R/o B-1/114, Bharat Vihar,

New Delhi-110043.

.... Applicant.

(By Advocate: Shri J.C.Madan)

Versus

1. Govt. of NCT of Delhi
through Chief Secretary,
5, Sham Nath Marg,
New Delhi-110054.

2. Director-General,
Home Guards, CTI Complex,
Raja Garden,
New Delhi

.... Respondents.

ORDER

HON'BLE MR.S.R.ADIGE, VICE CHAIRMAN (A).

Applicant impugns respondents' oral threat to terminate his engagement as Home Guard, and seeks grant of temporary status and regularisation. Applicant also impugns Section 2 of Bombay Home Guards Act, 1947 and Rule 8 of Delhi Home Guards Rules, 1959 relating to voluntary character of persons engaged as Home Guards and fixation of tenure of 3 years.

2. We have heard applicant's counsel Shri J.C.Madan.

3. In the OA, it has been stated that applicant was appointed as Home Guard on 10.6.93.

At the time of his initial appointment as Home Guard, he was not engaged in any work, business or avocation and only source of his livelihood was his small remuneration as Home Guard amounting to Rs.1800/- p.m. It is stated that as a member of Home Guard, applicant is a public servant within the meaning of Section 21 of the Indian Penal Code. It is also stated that he has performed his duties with devotion and dedication and received an appreciation certificate (Annexure-A2). He also underwent a training programme for Home Guards (Annexure-A3). It is stated that he was initially appointed for a period of 3 years but was allowed to continue in service beyond 3 years on the basis of his efficient performance of duty. Having put best years in his life as Home Guard he has now become overage for any job under the Govt. or public undertaking. He contends that his removal as Home Guard is arbitrary, discriminatory and mala fide as freshers are being appointed from outside and persons junior to him are being allowed to continue. Thus a pick and choose policy is being adopted in regard to retention of persons as Home Guards. It is also contended that voluntary character of Home Guards has undergone a considerable change and, therefore, laying down a tenure of Home Guards initially for a period of 3 years and then extending it or terminating it is not only arbitrary but also breed corruption.

4. We have considered the matter carefully.
 5. Under Section 19 A. T. Act a person may approach
- 2

the Tribunal if he is aggrieved by any order. In the present case, no order has been passed terminating applicant's engagement as Home Guard. That apart, even if applicant was disengaged pursuant to any order, it is not denied that he has completed more than 3 years as Home Guard. In O.A. No. 1929/98 M.K. Jain Vs. Govt. of NCT of Delhi & other cases decided on 18.2.99 it has been held by a Division Bench of the Tribunal that once the initial term of 3 years expires a Home Guard cannot claim as of right that the term of his appointment should be extended or that his services should be regularised. While coming to this conclusion the Division Bench has relied upon the Apex Court's judgment in Rameshwar Dass Sharma & Ors. Vs. State of Punjab & Ors. (SLP (C) No. 12465/90) wherein it has been held that a person in Home Guard being employed on the basis of temporary need from time to time cannot ask for regularisation and therefore such persons are not entitled to any reliefs from the courts. The aforesaid order dated 18.2.99 also cites the Tribunal's decision in O.A. No. 2323/98 & O.A. No. 2486/98 (Daya Nidhi Vs. Commandant General, & Husain Ahmed & Ors Vs. Secretary, Ministry of Home Affairs) dated 18.12.98 dismissing two OAs filed by Home Guards personnel which was upheld by the Delhi High Court by order dated 6.1.99.

6. We are also unable to detect anything in Section 2 of Bombay Home Guards Act, 1947 and Rule 8 Delhi Home Guards Rules, 1959 relating to the voluntary character of persons engaged as Home Guards and fixation

2

of their tenure for 3 years which can be said to be illegal, arbitrary or violative of Articles 14 and 16 of the Constitution.

7. Before concluding we would advert briefly to the Delhi High Court's order dated 26.5.99 in CWP No. 4286/97 M.S.L. Rawal & Ors. Vs. UOI & Ors. dismissing the challenge to the CATPB's orders in O.A.No. 2423/95 and 6 other OAs while dismissing the CWP, the Delhi High Court observed that they had been informed that a policy was being framed to ensure that there was no pick and choose with regard to persons who had to be enrolled or re-enrolled, and those whose tenure was not to be extended. The Court observed that given the fact that many of the duties performed by Home Guards were of a permanent nature and the fact that there were fewer employment, it was expected of respondents that they would frame a transparent and workable policy in this regard, and hoped that the same would be framed within 6 months.

8. Applicant is presently enrolled as a Home Guard, if he is eventually disengaged, contrary to the policy so framed by respondents it is open to him to challenge the same in accordance with law.

9. The OA warrants no interference at this stage and is dismissed in limine.


(KULDIP SINGH)
MEMBER(J).


(S. R. ADIGE)
VICE CHAIRMAN (A).