

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA No. 1169/98
OA No. 1080/98
OA No. 1079/98

(4)

New Delhi, this the 16th day of October, 1998

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P. BISWAS, MEMBER (A)

In the matter of:

OA No. 1169/98

Umed Singh S/O Sh. Ram Mehar
R/O - Vill - Neb Sarai
New Delhi.

OA No. 1080/98

Swadesh Kumar S/O Sh. Layak Chand Gupta
R/O - H.No. 166, Near Tyagi Wali Chaupal
Vill - Chhatarpur, Mehrauli,
New Delhi - 110 030.

OA No. 1079/98

Lallu Ram S/O Sh. Moolchand
R/O Mahipal Pur, Arjun Camp
New Delhi - 37.
(By Advocate: Sh. M.K. Gaur)

.... Applicants

Vs.

National Capital Territory of Delhi through

1. The Director General
Home Guard & Civil Defence,
Nishkam Sewa Bhawan, Raja Garden
New Delhi.

2. The Commandant
Home Guard & Civil Defence
Nishkam Sewa Bhawan, Raja Garden
New Delhi.

.... Respondents

(By Advocate: Sh. Rajinder Pandita)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

As these OAs involve common questions of law and facts all the three OAs are being disposed of by this common judgment.

16.10.98

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2. The applicants in these OAs were for some time working in the Homeguards Organisation of Delhi Administration but were verbally discharged and not allowed to continue. Admittedly, the applicant in OA-1169/98 was not engaged after 12.12.95. Similarly, the applicant in OA-1080/98 was discharged by verbal orders on 31.12.93 while the applicant in OA-1079/98 was also verbally discharged on 1.4.92.

3. Applicants claim not only reinstatement/re-engagement but also regularisation of their services. They seem to have made representations/appeals against the action of the respondents in discharging them from service but they did not receive any reply. Relying upon some judgments delivered by this Bench of the Tribunal the applicants claim for reconsideration of their cases and their re-engagement. Applicants mainly rely upon the judgment of the Tribunal in I.S.Tomar and Others vs. NCT of Delhi and Others.

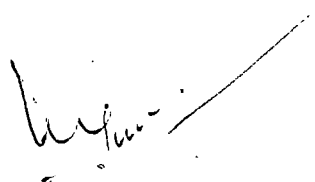
4. The respondents have resisted the claim of the applicants mainly on the ground that the service in the Homeguards is essentially voluntary in nature and that it does not confer any right to continue in the Homeguards organisation. While admitting that the applicants in these OAs did work for some time as Homeguards the respondents have contended that the services of the applicants were terminated when the same were no longer required by the respondents. The respondents have also raised the plea of limitation.

U. Singh

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5. We have heard the learned counsel for the parties at length and have perused the material on the record of these files.

6. As already mentioned, the applicants mainly rely upon the judgement of this Tribunal in I.S.Tomar & Others vs. NCT of Delhi & Others (OA-1753/97 decided on 12.12.97). That OA had also been filed by some persons who had been discharged from the Homeguards without assigning any reasons. While disposing of the OA the Bench consisting of Hon'ble Dr. Jose P. Verghese, the then Vice-Chairman(J) and Hon'ble Mr. K. Muthukumar, Member (A) held that the petitioners in those OAs could not have been discharged without assigning any reasons and accordingly directed the respondents in those OAs to reinstate the petitioners therein and also to frame a scheme or guidelines governing the services of Homeguards. We further find that subsequent to the passing of the judgment in the aforesaid case some more OAs came to be filed by other similarly situated persons. However, the Tribunal did not dispose of those OAs on merits but only directed the respondents in those OAs to consider the representations made by the respective applicants and to take a fresh decision in their cases. One of the said judgments was passed by our Bench also in Sh. Subhash Chander vs. Government of NCT of Delhi (OA-723/98 decided on 22.5.98) and a bunch of other OAs. It, however, now appears that some other persons like the applicants in these OAs are raising stale claims on the basis of the I.S.Tomar judgment and subsequent judgments by which the respondents have been directed to consider the



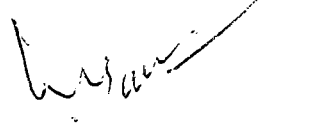
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representations made by various persons. We accordingly deem it appropriate to hear these OAs on merits including the question of limitation.

7. Having considered the rival contentions of the parties in these OAs we are convinced that the applicants in these OAs have no case on merits and their OAs are also hit by limitation.

8. As regards the judgment in I.S.Tomar (supra) the learned counsel for the respondents has taken us through that judgement and has strenuously urged before us that that judgement is not a conclusive one nor is it binding upon this Bench. In this regard our attention has been drawn to the fact that the two learned Members constituting the Bench had disagreed on various points and the operative part was also pronounced and signed by only one of the two learned Members. We find much force in this contention, as the perusal of the copy of the judgment shown to us reveals that Hon'ble Sh. K.Muthukumar, Member (A) had expressed divergent views but the other learned Member did not consider the case as one of difference of opinions and he accordingly issued directions as aforesaid.

9. That apart the aforesaid judgement does not appear to have taken into consideration the views expressed earlier by the Hon'ble Supreme Court in Rameshwar Das Sharma & Others vs. State of Punjab & Others (I.A.No. 2 in SLP No. 12485/90 dated 30.7.91). In that judgment the Apex Court clearly held that Homeguards personnel are employed on the basis of

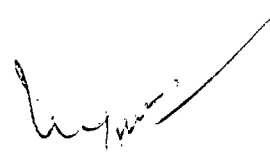


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temporary need from time to time and in case they are called back to do work with arms in hand they are paid @ Rs.30 per day, or otherwise they are paid @ Rs.25 per day. It was further held that such persons cannot ask for regularisation nor can they claim any other relief.

10. The learned counsel for the respondents has further brought to our notice a judgement of the Chandigarh Bench of the Tribunal of which one of us (Sh. T.N.Bhal) was a Member. In that case which related to similarly situated Homeguards personnel appointed under the Punjab Homeguards Act 1947, the Chandigarh Bench held that Homeguards personnel had no right to continue in the organisation if their services were not required as they were essentially engaged on voluntary basis. The common judgement in the OAs, being OA Nos. 1013/CH/98, 1252/CH/92 and a bunch of other OAs, was delivered in the year 1995. This judgment of the Chandigarh Bench does not appear to have been noticed in I.S.Tomar nor has the judgment of the Apex Court (supra) been noticed. We further find that in another judgment delivered on 10.7.98 by a Bench of this Tribunal consisting of Hon'ble Sh. N.Sahu, Member (A) and Hon'ble Dr. A.Vedavalli, Member (J) it has been held that the judgment of I.S.Tomar is not a conclusive judgment particularly in view of the fact that the Apex Court had already pronounced on this issue against the Homeguards.

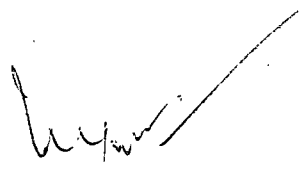
11. We find ourselves entirely in agreement with the contention raised by the learned counsel for the respondents that Homeguards personnel cannot claim regularisation or re-engagement, particularly so if their



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term of engagement (3 years) is over. The mere fact that after the expiry of the term of 3 years the applicants had been continued in service could not entitle them to any additional benefits than what they would have been otherwise entitled to.

12. That apart, these OAs are clearly barred by time. As already mentioned, the applicants in these three OAs were discharged in the years 1995, 1993 and 1992, respectively and they have come to the Tribunal only in the year 1998. The judgment of the Hon'ble Apex Court in K.C.Sharma and Others vs. Union of India and Others, reported in (1997) 6 Supreme Court cases 721 cannot be of any help to the applicants as the facts are clearly distinguishable. That case related to retrospective amendments introduced in the Rule 2544 of the Indian Railways Establishment Code by which for the purpose of calculation of average emoluments the maximum limit had retrospectively been reduced from 75% to 45% and 55%. The Hon'ble Apex court held that in the facts and circumstances peculiar to that case the delay should have been condoned. In the instant case, on the other hand, the applicants who were discharged 3 to 6 years earlier did not assail the action of the respondents within the prescribed time. In this regard, we further find that the applicants have not thought it fit even to file applications for condonation of delay nor have they explained the delay. Apart from the aforesaid judgement of the Bench consisting of Hon'ble N.Sahu and Hon'ble Dr. A.Vedavalli we have another judgment of this Tribunal dated 14.8.98 delivered by the Bench consisting of Hon'ble

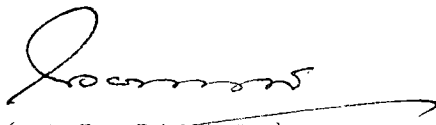


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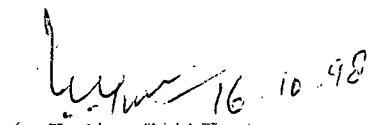
Smt. L. Swaminathan, Member (J) and Hon'ble Sh. K. Muthukumar, Member (A) in which an OA on identical facts was dismissed on the ground of limitation.

13. To sum up the applicants in these OAs have failed to make out any case in their favour and their OAs are also hopelessly time barred.

14. In view of the above, these OAs are hereby dismissed, but without any order as to costs.


(S.P. BISWAS)
Member (A)

'sd'


(T.N. BHAT)
Member (J)