

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1368 of 1998

New Delhi, this 13th day of September, 2000

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Hon'ble Smt. Shanta Shastry, Member(A)

Balam Singh
S/o Shri Khem Singh
R/o 191 Kali Bari Marg
New Delhi 110001

... Applicant

(By Dr J.C.Madan, Advocate)

versus

1. Lt. Governor of Delhi, through
Chief Secretary
Govt. of N.C.T. of Delhi
S Sham Nath Marg
Delhi.

2. The Director General
Home Guards
C.T.I.Complex Raja Garden
New Delhi-110027

3. The Commissioner of Police
Delhi Police Headquarters
I.P.Estate
New Delhi

... Respondents

(Shri Rajinder Pandita, Advocate)

ORDER

By Smt. Shanta Shastry, M(A)

This OA relates to Home Guards. The applicant was appointed as Home Guard for a period of three years initially on 8.8.1991. Thereafter he put in several spells of three years and finally he was discharged on 11.7.1997 vide impugned order dated 15.12.1997.

2. The learned counsel has contended that as a member of the Home Guard the applicant has been a public servant within the meaning of Section 21 of the Indian Penal Code. He has now become over-aged though earlier he was very much within the time limit at the time of appointment. He had been performing his duties and

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discharging functions and responsibilities assigned to him with total devotion and dedication to the entire satisfaction of the superior officers. He has unblemished record of service. He has successfully undergone basic training programme. He was being paid a meagre remuneration of about Rs.1800/-p.m. The applicant has acquired practical experience of functioning as police constable in Delhi Police department during the tenure as Home Guards. Since the applicant has been working continuously as Home Guard, he has acquired a legal right to continue at least on temporary basis. The respondents have not followed the procedure laid down in Delhi Home Guards Rules, 1959. He should have been given at least one month's notice before discharging his services. The respondents are appointing fresh candidates from outside and are allowing persons junior to the applicant to continue in service. The learned counsel for the applicant is thus aggrieved by the impugned order dated 15.12.1997.

3. The learned counsel for the respondents however has raised preliminary objections. According to him there is no relationship of master and servant between the applicant and the respondents. The applicant is the volunteer who is called on at the time of emergency to assist the law and order enforcing agencies and is paid subsistence allowance for performance of the duty. The Tribunal has no jurisdiction in the matter. The applicant had given an undertaking to the effect that he is a volunteer and will be serving the law and order

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enforcing agencies with the motto of "Nishkam Sewa". There is no provision of regularisation of Home Guard Volunteers. Detailed instructions have been issued by the Department of Personnel and Administrative Reforms to Central Ministries and Departments on the question of giving preference to Home Guards and Civil Defence Volunteers having 3 years in Group 'C' & 'D' posts vide letter dated 5.11.1993. State Governments were also requested to consider issuing similar instructions in the matter and provide assistance to unemployed Home guards in seeking gainful employment on completion of their term. The learned counsel further submits that the Hon'ble Supreme Court of India has already disposed of a similar petition and interlocutory application on the ground that an employee under the system cannot be regularised and is not entitled to any relief. It has been so held in the case of Rameswar Dass Shrama & others Vs. State of Punjab others in SLP(Civil)Nos.12465 of 1990. Similarly the Chandigarh Bench of this Tribunal in OA.No.440-CH-94 dated 27.8.1997 in OA.1001/91 has ruled that the Home Guards cannot be regularised. The learned counsel has quoted several decisions of the Hon'ble Supreme Court, High Court as well as this Tribunal wherein it has been consistently observed that the Home Guards are volunteers and they cannot be regularised. Therefore, applicant's prayer deserves to be dismissed.

4. The learned counsel for the applicant however argued at great length and insisted that since the applicant

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has put in several years of service, the respondents should have issued one month's notice as per rule 8 of the Delhi Home Guards Rules, 1959 which stipulates issuing of a notice. According to him, it is mandatory to issue a notice before discharging. He also took me through the various provisions of the Bombay Home Guards Act, 1947 as well as the Delhi Home Guards Rules, 1959 to assert that Home Guards are not mere volunteers, they are governed by a set of rules. The learned counsel also cited a judgement of the Hon'ble Supreme Court on tenant's lease, i.e. if a tenant is not discharged before the expiry of the period of lease, the same is deemed to have continued. The learned counsel also pleaded with great vigour the cause of the Home Guards. He submitted that when a Home Guard has put in several years of service it is not proper to discharge him without any notice. He has nowhere to go and it is not that he can be employed elsewhere. Some of the Home Guards are also unemployed. Even the Hon'ble High Court in their judgement dated 26.5.1999 expressed great anguish at the plight of the Home Guards and asked the respondents to formulate scheme to take care of the Home Guards. The learned counsel submits that recently the respondents have issued an Advertisement in the Nava Bharat Times calling for discharged Home Guards to re-enroll themselves. Learned counsel argues that this is an indication of the fact that jobs are there. Instead of training fresh manpower at public expense, the respondents should have continued the applicant already trained. In reply to this, the learned counsel

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for the respondents has produced a catena of judgements submitting that the various points raised by the learned counsel for the applicant have already received due attention in various judgements of the Hon'ble Supreme Court in the case of Rameswar Dass Sharma and others Vs. State of Punjab and others in SLP(Civil)Nos.12465 of 1990. Therefore, I do not think that the petitioner is entitled to any relief. Similarly the judgement of the Chandigarh Bench of this Tribunal in OA.No.1013-CH-88 in the case of Raj Kamal and others Vs UOI and others along with 3 other connected OAs dealt with various points raised by the learned counsel for the applicant in the present case at great length. Finally, the OAs were dismissed relying on the judgement in the case of Rameswar Dass Sharma and others Vs State of Punjab and others (supra). Thereafter this Tribunal followed suit in various other OAs filed by discharged Home Guards and maintained consistently that the Home Guards are not entitled for regularisation and they cannot be continued indefinitely. Their services can be dispensed with.

5. I have given careful consideration to the rival contentions. I find that though in the earlier stages a relief was granted to some of the Home Guards, all the later judgements, prominently the Supreme Court have, dismissed the cases of the Home guards as not deserving regularisation. I cannot, therefore, take a view different than the one taken by the Hon'ble Supreme Court and the different Benches of this Tribunal in the matter as the issue raised is similar to the one

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discussed in various judgements mentioned above. The learned counsel for the applicant harped on issuing of a notice before the discharge. However according to me, the notice is to be issued if there is a premature discharge i.e. before completion of three years for which the appointment is made and not otherwise. In the present case, the applicant's spell of three years was over according to the respondents. Therefore, no notice has been served on the applicant. If the three year term was over there is no need to issue any notice.

6. In view of the judgements of the Hon'ble Supreme Court and judgements of this Tribunal, I am unable to grant any relief to the applicant in this case. Accordingly, the OA is dismissed. No costs.

Shanta Shastray

(Smt. Shanta Shastray)
Member (A)

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