

Central Administrative Tribunal  
Principal Bench

O.A. 1462/1998

New Delhi this the 12th day of September, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Dinesh Kumar,  
S/o Shri Sem Singh,  
R/o H.No. 12/D, Dhakka Basti,  
Kanjave Camp, New Delhi. ... Applicant.

(By Advocate Shri U. Srivastava)

Versus

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 Shri Rajinder Pandita)

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved by the order passed by the respondents dated 3.4.1998 in which his name appears at Serial No. 11. By this order, the respondents have terminated the applicant's services under Rule 10 of the Bombay Home Guards Act, 1947 read with the relevant Rules applicable in Delhi.

2. I have heard Shri U. Srivastava, learned counsel for the applicant and Shri Rajinder Pandita, learned counsel for the respondents and perused the records.

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3. The applicant has stated that as he was suffering from Jaundice from 1.1.1998 to 5.4.1998, he could not attend to his duties as Home Guard. According to him, he had given the necessary information to the Company Commander. After his recovery from illness, he states that he had gone to perform his duties when he came to know that the impugned termination order dated 3.4.1998 had been passed. Shri U. Srivastava, learned counsel has submitted that the applicant had submitted an appeal against the termination order (Annexure A-2) which had been received by the respondents on 21.5.1998. He has further submitted that he had also sent a copy of the appeal to Shri Gyan Singh, who, according to him, is an officer of the Delhi Home Guards organisation which has been received by him in May, 1998. He has submitted that the necessary medical certificates have also been submitted to the respondents but no decision has been taken by the respondents.

4. The respondents have, however, denied the receipt of any appeal by the applicant. The applicant was discharged as a Home Guard Volunteer on disciplinary grounds. He had been absenting from his duties continuously from August, 1997 to October, 1997 and 9.1.1998 to 4.4.1998 and that too without intimation to the office. Shri Rajinder Pandita, learned counsel has submitted that in order to discharge the functions of the organisation, they need willing persons who are prepared to do the work and hence the defaulters, like the applicant, had been discharged under Rule 10 read with Rule 6-B of the Home Guards Rules to maintain discipline in the

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organisation. Learned counsel has also disputed the fact of receipt of the appeal stated to have been sent by the applicant. He has submitted that in the facts and circumstances of the case, as the applicant had been absenting from his duties without any prior permission and intimation, the discharge order is legal and valid and is in accordance with the relevant Rules.

5. It is seen from the rejoinder filed by the applicant that while he has tried to explain his absence for the period from 1.1.1998 to 5.4.1998, during which period he states that he has been informing the respondents about his illness, no reference has been made to the earlier period of absence which has been specifically referred to by the respondents in their reply filed in November, 1998. However, Shri U Srivastava, learned counsel has submitted that a copy of the appeal submitted by the applicant together with the medical certificates, had been sent to one Shri Gyan Singh whose designation is not known to the applicant, but is an officer with the organisation at ITO office, New Delhi. In the circumstances, he has prayed that as the applicant has filed an appeal to the Deputy Commandant of Home Guards, Delhi and there is a provision for appeal under the relevant Home Guard Rules, a direction may be given to the respondents to dispose of the appeal in accordance with the rules and instructions.

6. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

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7. Rule 10 of the Delhi Home Guards Rules, 1959 empowers the competent authority to discharge a Member of the Home Guards under sub-section (1-A) of Rule 6-B if he is satisfied that such Member has committed an act detrimental to the good order, welfare or discipline of the Home Guards Organisation. Under Rule 6-B, the Commandant has the power to dismiss any Members of the Home Guards under his control for the reasons mentioned therein, which include breach of discipline or misconduct. Under sub-rule (3) of Rule 6-B of the Rules, any Member of the Home Guards aggrieved by an order of the Commandant may appeal against such order to the Commandant-General and any such member aggrieved by an order of the Commandant General, the appeal lies to the Chief Commissioner of Delhi, within thirty days of the date on which he was served with notice of such order. In the present case, the impugned termination order dated 3.4.1998 dismissing the applicant from service as a Member of the Home Guards has been passed by the Commandant General in exercise of the powers under Rule 10. Taking into account the facts and circumstances of the case, and the averments made by the applicant categorically that he has, in fact, submitted an appeal to the respondents, although it appears that it has not been submitted to the Chief Commissioner of Delhi, as required under the Rules, there appears to be no reason why the respondents should not be directed to dispose of the appeal in accordance with the relevant rules and instructions.

8. In the facts and circumstances of the case, the respondents are directed to place the appeal (copy placed at Annexure A-2) before the competent officer for

his appropriate decision in the matter. The competent authority shall take into account the medical certificates and other documents relied upon by the applicant while disposing of the appeal. He shall do so within three month from the date of receipt of a copy of this order by a reasoned and speaking order with intimation to the applicant. No order as to costs.

*Lakshmi Swaminathan*

(Smt. Lakshmi Swaminathan)  
Member(J)

"SRD"