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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 1948 of 1998 decided on 10.2.1999

Name of Applicant : Ishwar Chand

By Advocate : Shri U. Srivastava & Shri S.K. Gupta

Versus

Name of respondent/s Govt. of NCT & others

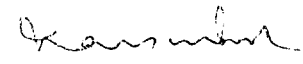
By Advocate : Shri Rajinder Pandita

Forum:

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

Hon'ble Mr. N. Sahu, Member (Admin)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. - ~~Yes~~/No


(N. Sahu)
Member (Admin)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 1948 of 1998

New Delhi, this the 10th day of February, 1999

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
 Hon'ble Mr. N. Sahu, Member(Admnv)

Ishwar Chand S/o Sh. Kishori Lal,
 Sanad No.2073, R/o Vill & P.O. -
 Kodali (Vasundhara Enclave) Delhi-96

-APPLICANT

(By Advocates Shri U. Srivastava &
 Shri S.K.Gupta)

Versus

Govt. of N.C.T. Delhi Through

1. The Chief Secretary, 5, Sharnath Marg, New Delhi.
2. The Director General, Delhi Home Guards & Civil Defence CTI Complex, Raja Garden, New Delhi.
3. The Commandant, Delhi Home Guards & Civil Defence CTI Complex, Raja Garden, New Delhi.

-RESPONDENTS

(By Advocate Shri Rajinder Pandita)

ORDER

By Mr. N. Sahu, Member(Admnv)

The prayer in this case is to quash the impugned order dated 15.9.1998 (Annexure-A-1) by which respondent no.3 discharged the applicant from the roll of Home Guards, pretending to give a notice of one month prior to the end of his tenure. The other prayer is for the respondents to allow the applicant to continue to perform his duties as a member of Home Guards and the principle of 'last come, first go' should be observed in discharging him. This order of discharge is challenged on various grounds. It is stated that the applicant had put in roughly 9 years of service and his record of service is unblemished. It is next pointed out that

the respondents have a perennial source of work and it is an admitted fact that they constantly require the services of the Home Guards. It would be in the interests of the organization to retain and continue those who have put in experience and are tested for their sincerity and devotion to duty rather than to discharge them and bring in new faces. It is further pointed out that the organization had spent considerable time and resources in training the applicant. It would not be in conformity with the national interest if the money spent on him is not properly put to use by continuing him in service. It is further stated that the applicant's sincerity and devotion to duty are not questioned by the respondents. Hence this discharge is capriciously done and hence would be violative of Articles 14 and 16 of the Constitution.

2. After notice, the respondents stated that the applicant is a volunteer who is called on to perform certain services during emergencies. The subsistence allowance and parade allowance paid to him during parade and training are out of the contingency fund. As the Home Guard is an organization of volunteers, there are no service conditions by which the respondents have tied themselves down and the Home Guards have no enforceable statutory rights. At the time of enrolment the applicant had given an undertaking to serve only as a volunteer and, therefore, there is no scope for claiming regularization. Attention of the Bench is invited to the decision of the Hon'ble

Supreme Court in the case of Rameshwar Das Sharma and others Vs. State of Punjab and others, SLP (Civil) No.12465/90 decided on 30.7.1991. The learned counsel for the respondents Shri Rajinder Pandita argued that being a volunteer, the applicant is not a Government servant and he has no enforceable right and, therefore, this Tribunal has no jurisdiction to adjudicate this O.A. The Home Guards organization by its very definition has to be broad based and people from all walks of life including professionals can be recruited because there is no prohibition from taking up any other service under the Home Guard rules. "As a matter of policy unemployed persons should not be retained as Home Guards over a long period so as to preserve the voluntary character of the organization". There is no relationship of master and servant between the Home Guard and the respondents in a manner that is normally understood. They can refuse to join; and no penalty can be levied on them for not complying ^{to a} call to duty. It is also stated that many of the existing Home Guard volunteers are actually rendering either additional private service or Government service because there is no restriction prohibiting them from rendering such service. It is in this view of the matter that the age group for initial recruitment to the Home Guards has been kept at a very elastic and accommodative range from 18-60 years with further relaxation in favour of those who act as an instructor or a leader or having specialized training. That apart by OM No. VI-31/11/1/81/DGCD(HG) dated 20.9.1993 the VII

Biennial Conference of Home Guards and Civil Defence held in New Delhi in November, 1990 recommended that unemployed Home Guards and civil defence volunteers after rendering national service for few years should be given weightage for employment in Government service. Such weightage is now mandatory to those Home Guards and civil defence volunteers who have rendered three years of service in ^{selections to} Group 'C' and 'D' posts. The Central Government further requested the State Government to issue similar instructions.

3. The crux of the argument of Shri Pandita is that as the service of the applicant is voluntary and as there is no prohibition for him to take another alternative employment simultaneously during his spare time and as there is no relationship of master and servant in the sense in which Government service is understood with prescribed conditions of service, the applicant has no locus standi to move the jurisdiction of this Court and this Court does not have any jurisdiction under Sections 14 and 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the AT Act'). Further attention of the Bench was drawn to the decision of the Chandigarh Bench of the Tribunal in the case of Tarsem Singh Vs. Union of India and others O.A. 448-CH of 1994 dated 31.1.1995 and the recent decision in the case of Ashok Kumar & others Vs. Union of India and others, OA No.1001/CH of 1994 dated 27.8.97 as also a decision of the Principal Bench in OA No.2323/98 dated 18.12.98, upheld by the Delhi High Court. The High Court only as an interim measure in CWP

No.4455/98 restrained the respondents from terminating the services of such Home Guards who have not completed the period of three years.

4. The learned counsel for the applicant Shri S.K.Gupta argued that the order of discharge is not in accordance with Section 6-B(1-A) of the Bombay Home Guards Act, 1947 (Annexure-A-3) which was extended to the Union Territory of Delhi. Under this provision it is stated as under -

"Notwithstanding anything contained in this Act, the Commandant shall have the authority to discharge any member of the Home Guards at any time subject to such conditions as may be prescribed, if, in the opinion of the Commandant, the services of such member are no longer required. The Commandant General shall have the like authority in respect of any member of the Home Guards appointed to a post his immediate control."

5. It is further stated that under Rule 10 of the Delhi Home Guards Rules, 1959 (Annexure-A-2) it is laid down as under -

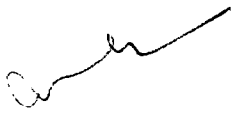
"Conditions subject to which power of discharge may be exercised. - No member of the Home Guards shall be discharged under sub-section (1A) of section 6B unless the Commandant or the Commandant General, as the case may be, is satisfied that such member has committed an act detrimental to the good order, welfare or discipline of the Home Guards Organisation."

6. The point raised by Shri Gupta is that a discharge can be made by the Commandant, the competent authority, if he is satisfied that a member of the Home Guards has committed an act detrimental to the good order, welfare or discipline of the Home Guards organization. Satisfaction requires reasons

to be recorded on proper material and such satisfaction is justiciable. Admittedly, the applicant's case is not covered by this clause. On the contrary it is accepted that the applicant had rendered impeccable service throughout the term. Hence 'discharging' him from service which can only be under Rule 10 ibid is not in accordance with law and deserves to be quashed. Our attention was drawn to the decision of the Hon'ble Supreme Court in the case of D.K.Yadav Vs. J.M.A. Industries Ltd., 1993 SCC (L&S) 723, particularly to paras 9, 10 and 12 thereof and submitted that if there is work the services of the Home Guards should be continued.

7. Shri Gupta, learned counsel for the applicant relied on Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress & others. JT 1990 (3) SC 725. He also cited the decision of the Hon'ble Supreme Court in the case of K.I. Shephard Vs. Union of India, (1987) 4 SCC 431.

8. To the contention of the applicant's counsel that in fact there was no notice of one month and that even the averment in the discharge order is not complied with, it is stated by Shri Pandita that one month's notice is mandatory only when the service rendered initially by the Home Guard is less than three years and after three years no such notice is necessary.



9. Some decisions of the Principal Bench cited at the bar need a special mention. One is in RA No. 251/95 in MA 452/97 read with 188/95 decided on 8.7.1997 in the case of Government of NCT Vs. Krishan Kumar and others. It was emphasized that the Home Guards are volunteers engaged on contract basis for a period of three years at one time and it was the objective of the Government of NCT of Delhi to cover as many people as possible under the Home Guards scheme. Thus, regularization would frustrate this very objective. Regularisation per se is inapplicable because there are no sanctioned posts of Home Guards. This principle is also confirmed in the Supreme Court decision in the case of Rameshwar Dass Sharma (supra). In OA 1229/98 the Home Guards -applicants have completed more than three years of service and were discharged and this Court did not interfere. In OA 1337/98 there were 545 applicants, some of them continuing as Home Guards from 1982, out of whom 33 were given notice of termination. In OA 1328/98 there were 130 women Home Guards who completed more than three years of service. Following the High Court order in a petition against the order of this Tribunal in OA 1442/98, the interim orders of status quo in OA 1229/98 was vacated. In the case of Shri Daya Nidhi Vs. Govt. of N.C.T. and another (OA 2323/98) affirmed by Delhi High Court, and Hashain Ahmed & others Vs. Union of India and others (OA 2486/98) decided on by a common order dated 18.12.1998 this Court had to consider whether the decision in the case of Krishan Kumar & others Vs. Govt. of NCT of Delhi, OA 188/95 decided on

1.6.1995 could be distinguished. Notwithstanding Krishan Kumar's case, the question that fell for determination was as to whether members of the Home Guards organization could be discharged from service without notice. This Court was of the view that in view of the provisions in Rule 8 of the Delhi Home Guards Rules, 1959 read with provisions contained in Section 6-B (1-A) *ibid* it was incumbent on the Commandant to issue a notice before discharging the members of the Home Guards within the first term of 3 years. If discharge was to be made without notice, there should be some material on record to show that the Home Guard was medically unfit. Accordingly, this Court held that the Home Guard personnel cannot claim regularization or re-engagement particularly when the initial term of engagement of three years is over. It is next laid down that after the expiry of the term of three years if some Home Guards were allowed to continue in the service that by itself would not entitle them to additional benefits.

10. In another O.A.47/99 in the case of Ram Naresh Vs. Govt. of NCT, disposed of on 13.1.1999 the grievance of the applicant was that persons who were junior to him are continuing while the applicant has been singled out for termination. It is further averred that the action of the respondents was discriminatory and illegal. Relying on the Hon'ble Supreme Court's decision in Rameshwar Dass Sharma's case (*supra*) and the Chandigarh Bench decision in the case of Ashok Kumar (*supra*) and also a recent

decision in Chandeshwar and another Vs. Govt. of NCT of Delhi and others. O.A.No.2006/1998 dated 11.1.1999 the Bench dismissed the claims.

11. The essence of a large number of Tribunal's decisions cited above can be summed up as under -

The Home Guards organization is a voluntary organization. There is a right of prior notice before a simple termination. within the first term of three years of their engagement. They have no rights either of re-engagement or of regularization. Within the first three years, their services can be terminated by giving one month's notice or without giving such notice if the Home Guard is found to be medically unfit to continue as a member. Under Section 6-B (1-A) *ibid* there is a general power to discharge the services but this power of discharge has to be read with the rules framed for the purpose. Without exercising the punitive power of penalty under Section 8 of the Bombay Home Guards Act, and the punitive power of discharge under Rule 10 *ibid*, we are satisfied that the respondents can terminate the services of the Home Guards and spare them at any time after the initial term of three years by a simple order of termination without giving any notice and without the need for any justification. The notice of one month or recording satisfaction of medical unfitness is required only when the initial term of three years is running its course. In this case admittedly the applicant had completed nearly 8 years of service. There is no need for a show cause

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notice. It is a clear case of termination simplicitor and, therefore, the impugned order does not call for any judicial interference.

12. Two issues have arisen from the arguments of the counsel from both the sides that need to be examined. One issue is whether this Tribunal has jurisdiction over Home Guards. It is true they are volunteers and admittedly they are not Government servants. Their initiation into the cadre is subject to a high degree of physical fitness and within the age group of 18-60 years. It is also stated in the enrolment policy that after completion of their tenure they are eligible for re-enrolment. It is further stipulated that unemployed persons should not be retained as Home Guards over a long period so as to preserve the voluntary character of the organization. These Home Guards can offer their services in their spare time and are entitled to certain prescribed allowances and honoraria whenever called for duty or training. Even so, we are of the view that this Tribunal has jurisdiction, when there is a grievance of a Home Guard arising under the existing service conditions. The Home Guards are governed under the Home Guards Acts under the various Governments. A certificate of appointment is issued to a Home Guard under the signature and seal of the appropriate authority. The appropriate authority is the Commandant who appoints a number of persons as Home Guards who are fit and willing to serve the organization. For this purpose he takes approval of the Commandant General. A Home Guard when called out

for training or duty has the same powers, privileges and protection as an officer of the police. It is clearly laid down that no prosecution shall be instituted against a Home Guard in respect of anything done by him in the discharge of his functions or his duties as a Home Guard. While there is a general power of termination simpliciter on the ground that Home Guard's services are not required, the Commandant General or the Commandant can suspend, reduce or dismiss or fine not exceeding Rs.50/- any Home Guard under his control if such Home Guard on being called out without reasonable cause neglects or refuses to obey orders or refuses to discharge his functions and duties as Home Guard or is found guilty of any misconduct or breach of discipline. There is a provision for an appeal against the order to the Government or to the Commandant General within a period of 30 days from the date on which he was served with the notice. The Home Guard also is subject to conviction and simple imprisonment for a term upto three months if he on being called out without any reasonable excuse neglects or refuses to turn up for training. Further the statute clearly recognizes the Home Guard as a public servant when he is acting under the Home Guards Act. In the conspectus of the above provisions, we are unable to agree with Shri Rajinder Pandita, learned counsel for the respondents that this Tribunal has no jurisdiction over a Home Guard. On the contrary we are satisfied that we have a clear jurisdiction in this regard. In the case of Rehmat Ullah Khan and others Vs. Union of India and others. CAT FB Vol.1

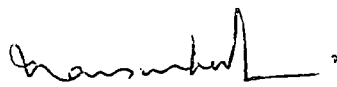
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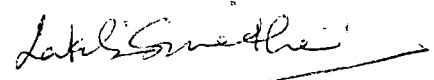
(1986-89) 323 a Full Bench of this Tribunal as early as on 24.4.1989 held in a case of a casual labour that they normally come to the Tribunal when their services were terminated, or for claims for equal pay for equal work. Under the circumstances, it is stated that the provisions of Section 3(q)(i) and (ii) of the AT Act are only attracted and not other parts of the definition of "service matters". With regard to the grievance against termination, the Full Bench held that they are aggrieved persons and their grievance relates to the service matters. They are, therefore, covered by Section 14(i)(b) of the AT Act. While clearly a casual labourer does not hold a civil post and this Tribunal has no jurisdiction under Section 14(1)(a) *ibid*, yet the allowances paid to the casual labourers is out of the Government funds and they work in connection with the Union or the State Government. The AT Act was enacted to provide quick relief to the employees during the period of their service. They work for the Government and their service matters are covered under Section 3(q) *ibid*, and, therefore, this Tribunal has jurisdiction under Section 14(i)(b) *ibid*. Applying these very principles we are of the view that during the period of service of the Home Guards, their service conditions are clearly stipulated and emoluments by way of allowances to them are also clearly defined. The Bombay Home Guards Act and the Delhi Home Guards Rules specify the hours of work; the nature of duties; and how they should be terminated. Till the Home Guards are in service, they are bound by the service conditions mentioned above. Therefore, in a

restricted way, the Home Guards are governed by definite service conditions and if they are aggrieved by any order arising out of these service conditions, they are as much entitled to invoke the jurisdiction of this Tribunal as are casual labourers. We hold that their grievances are covered under Section 3(q) ibid and the jurisdiction of this Tribunal extends over them under Section 14(1)(b) ibid.

13. The point raised by the applicant's counsel that he is discharged even when by a public notice the respondents are inviting former discharged Home Guards does not appear to be valid in view of the policy of the organization not to retain a Home Guard for a long time. It is not a substitute for an employment. The respondent - Organisation can engage, re-engage and disengage people. They do not want to retain anybody long enough. We find nothing wrong in this stand taken by the respondents as long as it conforms to a policy. We respectfully agree and accept the proposition laid down by various other Benches of this Tribunal that after completing the initial term of three years, the Home Guards have no rights either of re-engagement or of regularization. We also hold that termination simpliciter in such circumstances can also not be challenged.

14. In the result, this O.A. has no merit and is dismissed. No costs.


(N. Sahu)
Member (Admnv)


(Smt. Lakshmi Swaminathan)
Member (J)

rkv.