

Central Administrative Tribunal
Principal Bench
New Delhi

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O.A. No. 2006/98
& O.A. No. 1846/98

Decided on 11. 1. 1999.

Shri Chandeshwar & Anr. Applicants
and other connected case
(By Advocate: U. Srivastava)

Versus

N.C.T. of Delhi & Ors. Respondents
(By Advocate: Shri Rajinder Pandita)

CORAM

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. JASBIR SINGH DHALIWAL, MEMBER (J)

1. To be referred to the Reporter or Not? YES
2. Whether to be circulated to other outlying benches of the Tribunal or not? Yes

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

Central Administrative Tribunal
Principal Bench

New Delhi, dated this the

11th JANUARY, 1999

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. JASBIR SINGH DHALIWAL, MEMBER (J)

O.A. No. 2006 of 1998

S/Shri

1. Chandeshwar,
S/o Shri Banshi Shah,
R/o Prem Nagar, Pandav Enclave III,
Nangloi, Delhi-110041.

2. Koleshwar Chand Yadav,
S/o Shri Magod Mahto,
(Near Water Tank), Civil Lines,
Delhi-110054. ... Applicants

(By Advocate: Shri U. Srivastava)

Versus

Government of NCT of Delhi through

1. The Chief Secretary,
5, Sham Nath 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)

O.A. No. 1846 of 1998

S/Shri

1. Raja Ram
S/o Shri Ramsewak

2. Ram Dayal,
S/o Shri Mange Lal

3. Om Prakash,
S/o Shri Prem Chand

4. Ramesh
S/o Shri Sher Singh

5. Munna Lal,
S/o Shri C.L. Bhardwaj

6. Mohan Lal,
S/o Shri Bhoora Ram

7. Ram Prasad,
S/o Shri R.A. Yadav

8. Roop Chand
S/o Shri Devi Ram

9. Mohender Singh,
S/o Devi Charan

10. Ram Shiromani,
S/o Shri Jaikaran Ram

11. Sudhir Kumar,
S/o Shri Rajpal Singh

12. Devi Das,
S/o Shri Anokhe Lal

13. Ram Nageena,
S/o Shri Peshkar Singh

14. Kailash Chand

15. Sunil Kumar,
S/o Shri A.K. Verma

16. Rakesh
S/o Shri Inder Keshav Prasad. Applicants
(By Advocate: Shri U. Srivastava)

Versus

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1. The Chief Secretary,
5, Sham Nath Marg,
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(By Advocate: Shri Rajinder Pandita)

O R D E R

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

As these two O.As involve common question
of law and fact they are being disposed of by this
common order.

2. In both O.As applicants impugn notices issued by respondents terminating their engagement as Home Guards and seek a direction to the respondents to allow them to perform their duties as Home Guards. A further direction is sought that if the Home Guards are to be disengaged the principle of last come first go should be observed and applicant should be engaged for performing their duties in preference to juniors and outsiders in future.

3. Applicants' case is that they were recruited as Home Guards under Rule 3, Delhi Home Guards Rules and the tenure of the post was initially fixed for three years as per Rules and instructions promulgated under the Bombay Home Guards Act, 1947 as extended to the Union Territory of Delhi. Each of the applicants as per their own averments were engaged between 1989 and 1992 and have been continuously working since then. They state that they have completed three years of service as stipulated in their appointment letter. As their work was satisfactory, their services were extended from time to time even without taking their willingness/option/consent. They state that all of a sudden respondents issued the impugned notices dated 15.9.98 and 24.9.98 discharging them, which they state is illegal, arbitrary and malafide.

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4. Respondents in their reply challenge the O.As. They state that the Tribunal has no jurisdiction to adjudicate the present O.As as there is no relationship of master and servant between respondents and applicants, the latter being pure volunteers, called upon during emergencies to assist the law enforcement agencies and are paid subsistence allowance and parade allowance out of contingent funds for the period they perform parade and training. It is emphasised that applicants being purely volunteers many of whom are employed elsewhere or self-employed, there is no statutory obligation on the part of respondents towards them. It is also stated that the O.A. is barred under Section 19, 20 and 21 A.T. Act as the applicants have not represented to the respondents before approaching the Tribunal. These O.As have also been challenged on merits.

5. We have heard applicants' counsel Shri Srivastava and respondents' counsel Shri Pandita.

6. Shri Srivastava has reiterated the grounds taken in the O.A., and has invited our attention to the Tribunal's judgment dated 1.6.95 in O.A. 188/95, Krishan Kumar & Ors. Vs. Govt. of NCT, Delhi & Ors. rejecting the contentions that the Home Guards did not hold posts under Union of India or that the Tribunal had no jurisdiction in the matter. Attention has also been invited to Rule 8 of Delhi Home Guards Rule, 1959 under which the term of office of a member of Home Guard

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Organisation is three years. provided that the appointment of any such member may, at any time, be terminated by the Commandant General or the Commandant as the case may be, before the expiry of the term of office -

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(a) by giving one month's notice or

(b) without such notice if such member is found to be medically unfit to continue as a member of the Home Guards.

Shri. Srivastava has also invited our attention to the impugned termination notices issued by the respondents purportedly in accordance with the aforesaid judgment in Krishan Kumar's case (Supra) and has averred that the aforesaid one month's notice has ^{not} been given in these cases. In most cases the date on which the applicants have been disengaged as Home Guards is the date of the notice itself, and in one or two cases, the date of disengagement is prior to the date of the notice. He has also invited our attention to Tribunal's judgment dated 22.9.98 in O.A. No. 1735/98 Daya Kishan and One another Vs. UOI & Ors. quashing the notices for failure to give one month's notice in consonance with Rule 8, Delhi Home Guards Rules.

7. On the other hand Shri Rajinder Pandita has invited our attention to the Tribunal's order dated 18.9.98 in O.A. No. 1328/98 Kamala & Ors. Vs. Govt. of NCT, Delhi & Ors. and other connected cases, the Delhi High Court's order dated

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9.9.98 in CW-4415/98 Basishta Singh and Others Vs. The G.G., Home Guards and others, as well the CAT Chandigarh Bench's judgment dated 7.8.97 in O.A. No. 833/97 Raj Kamal & Others Vs. UOI & Ors.; Judgment dated 27.8.97 in O.A. No. 1001/94 Ashok Kumar Vs. UOI; Judgment in O.A. 448/CH/94 Tarsem Singh Vs. UOI & Ors. Reliance has been placed on the Hon'ble Supreme Court's judgment in SLP (C) No. 12465/90 R.D. Sharma Vs. State of Punjab & Others.

8. We have considered the matter carefully.

9. It is the Bombay Home Guards Act, 1947 (Ann-A-3) which has been extended to the U.T. of Delhi. The Preamble to the Act states that "whereas it is expedient to provide a volunteer organisation (emphasis supplied) for use in emergencies it is enacted as follows", and Section 2(10) of the Act for constitution of Home Guard and appointment of Commandant General and Commandant lays down that the Chief Commissioner of Delhi shall constitute for the U.T. of Delhi a volunteer body (emphasis supplied) called the Home Guards, the members of which shall discharge such functions and duties in relation to the protection of persons the security of property and the public safety as may be assigned to them It is clear therefore that except for a small number of full time paid staff for training, command and control functions (and it is

not applicant's case that they belong to those categories), the Home Guards organisation is a voluntary organisation and Home Guards are purely volunteers. In fact this position was not denied by applicant's counsel Shri Srivastava during hearing and is further confirmed by the Delhi High Court's order dated 9.9.98 in CM-9052/98. (12)

10. Not only are Home Guards voluntary, but Section 4(1) Home Guards Act on the Functions and Duties of members, provides that the Commandant may at any time call out a member of the Home Guards for training or to discharge any of the functions assigned to the Home Guards in accordance with the Act and Rules made thereunder. It would follow that when Home Guards are not called out on duty, they are not prevented by way of any provision of the Act or the Rules notified by notification No. F.4/59 CD dated 20.7.59 (Ann. A/2) to engage themselves in any vocation, and when not called out on duty are also not subjected under the Act or the Rules to any rules of conduct or disciplinary action. As against that FR 11 lays down that unless in any case it be otherwise distinctly provided, the whole time of a Govt. servant is at the disposal of the Govt. which pays him..... Thus unlike a Home Guard, a Government servant is not permitted to engage in any other vocation unless the same is specifically permitted by Government, and he remains under governmental discipline and control throughout his service career. 2

11. It is true that in Krishan Kumar's case (Supra) relied upon by Shri Srivastava the respondents' contention that home guards did not hold posts under the Union of India or that the Tribunal had no jurisdiction to adjudicate on matters regarding Home Guards was rejected and nothing has been shown to us to establish that the aforesaid order in Krishan Kumar's case (Supra) has been set aside, stayed or modified, but when the Bench delivered that order, Hon'ble Supreme Court's order in R.D. Sharma's case (Supra) was not placed before it which is extracted in full below:

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"Heard petitioner in person and ld. counsel for the respondent. The counter affidavit indicates that the Home Guards who are ordinarily demobbed Army personnel are employed on the basis of temporary need from time to time and in case they are called back to do work with arms in hands, they are paid at the rate of Rs.30/- per day on the basis of eight hours working during the day, or otherwise they are paid at the rate of Rs.25/- per day. Petitioner, according to the respondent, being an employee under this system cannot ask for regularisation. In such circumstances, we do not think that the petitioner is entitled to any relief. We have impressed upon ld. counsel hereby to find out from the Home Guard Organisation if in any manner, the petitioner can be accompanied in a limited way.

The Special Leave Petition and the interlocutory application are disposed of accordingly. No costs."

12. Furthermore the CAT, Chandigarh (Division) Bench's order dated 7.8.97 in O.A. No. 833/97 Raj Kamal and others Vs. UOI and Others, is extremely relevant. In that O.A. the Home Guards employed with Chandigarh Administration approached the CAT Chandigarh Bench with a

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grievance that although they had been working as Home Guards for over a decade their services were terminated by verbal orders. The Bench noted that against that termination some of the applicants had filed O.A. No. 1013/CH/88 dated 31.1.95 which was rejected, against which they had filed an SLP in Hon'ble Supreme Court who by their orders dated 28.2.95 directed as follows:

"The Petition for Special Leave is dismissed. The representation must be made to Government and not to the Court."

The applicants made a representation to Government but upon facing another rejection by letter dated 6.9.96, approached the CAT, Chandigarh Bench again who dismissed the O.A. in limine holding that applicants being volunteers were not employees of Government and while so doing relied upon the judgment in R.D. Sharma's case (Supra).

13. Again in CAT, Chandigarh (Division) Bench's order dated 27.8.97 in O.A. No. 1001/CH/94 Ashok Kumar & Ors. the Bench took the view that the status of Home Guards as volunteers was no longer in debate and after quoting the Hon'ble Supreme Court's ruling in R.D. Sharma's case (Supra) that the petitioners would not be entitled to any relief dismissed the O.A.

14. Similarly in O.A. No. 448/CH/94 Tarsem Singh Vs. UOI & Ors. the CAT, Chandigarh (Division) Bench in a detailed order held that Home

Guard was not a regular employment and the applicants being volunteers were not entitled to regularisation. While coming to that conclusion the Bench noticed the Hon'ble Supreme Court's order in R.D. Sharma's case (Supra). (15)

15. It is true that in Daya Kishan's case (Supra) the notices issued to applicants were quashed for not being in consonance of Rule 8 Delhi Home Guards Rules, 1959 but the order in Daya Kishan's case (Supra) did not refer to the aforesaid orders of CAT Chandigarh Bench which itself have relied upon the rulings of the Hon'ble Supreme Court, as seen above.

16. Applicants' counsel has also brought to our notice the CAT P.B. Order dated 12.12.97 in O.A. No. 1753/97 I.S. Tomar & Ors. Vs. UOI & Ors. A perusal of that order shows that there were material differences in the views of the two Hon'ble Members of that Division Bench. The order drafted by the then Hon'ble Vice Chairman (J) was not agreed to and signed by the Hon'ble Member (A) who recorded his own views thereon, upon which the then Hon'ble Vice Chairman (J) again recorded his views stating that he did not find any disagreement with his views and that of the Hon'ble Member (A), and then proceeded to give certain directions, but

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that subsequent order of the then Hon'ble Vice Chairman (J) was also not signed by Hon'ble Member(A). Under the circumstances, we find ourselves unable to rely upon that order dated 12.12.97 as a binding authority.

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17. In the above facts and circumstances noticed above and particularly in the absence of any material differences in the terms and conditions of engagement of Home Guards by the State of Punjab and by Delhi Administration, it would follow that the Hon'ble Supreme Court's ruling in R.D. Sharma's case (Supra) that the petitioners were not entitled to any relief in that case, would be equally applicable in the two cases before us.

18. Before concluding we may refer to CAT, PB's common order dated 18.12.98 dismissing O.A. No. 2323/98 and O.A. No. 2486/98 in limine without even finding any grounds to issue notice to the respective Respondents in the aforesaid two O.As. In O.A. No. 2323/98 Shri Daya Nidhi and in O.A. No. 2486/98 Hasnain Ahmed and Others had assailed the orders issued by the Directorate General of Home Guards and Civil Defence by which the services of the respective applicants were proposed to be terminated and the applicants were sought to be discharged from the Home Guards roll. The two concluding paragraphs of the aforesaid order dated 18.12.98 are extracted below:

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"We have recently, while disposing of three OAs, being OA-1169/98, OA-1080/98 and 1079/98 by a common judgment dated 16.10.98, held that Home Guards personnel cannot claim regularisation or reengagement, particularly so if their initial term of engagement of three years is over. We further held that the mere fact that after the expiry of the term of three years some Home Guards personnel were allowed to continue in the service could not by itself entitle them to additional benefits than what they would have been otherwise entitled to had they even been discharged on the expiry of the initial period of three years. We have also another judgment dated 14.8.98 delivered by a Bench consisting of Hon'ble Smt. Lakshmi Swaminathan and Hon'ble Shri K. Muthukumar in which an O.A. on identical facts was dismissed.

In view of what has been held and discussed above we find no ground to entertain these O.As or for even issuing notices to the respective respondents. We accordingly dismiss both the O.As in limine."

19. We as a coordinate Bench are bound by the aforesaid order dated 18.12.98 and under the circumstances, we find ^{ourselves} unable to grant the relief prayed for by applicants. The two O.As are dismissed. No costs.

20. Let copies of this order be placed in both O.A. ^{files} ~~at the records~~

(J.S. Dhaliwal)
Member (J)
/GK/

(S.R. Adige)
Vice Chairman (A)