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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

...

OA No. 2323/98
&
OA No. 2486/98

New Delhi, this the 18th day of December, 1998

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

OA - 2323/98

Shri Daya Nidhi
r/o WZ-1591,
Nagal Rai,
New Delhi - 110 016. ...Applicant

(By Advocate: Shri M.K.Bhardwaj)

Vs.

Government of N.C.T. of Delhi through

1. The Commandant General,
Directorate General of Home Guards,
and Civil Defence, Nishkam Sewa Bhawan,
Raja Garden, New Delhi.

2. The Commandant,
Delhi HOme Guards,
Directorate General of Home Guards,
and Civil Defence, Nishkam Sewa Bhawan,
Raja Garden, New Delhi. ...Respondents

(By Advocate: None)

OA- 2486/98

1. Hasnain Ahmed
s/o Shri Shahidur Rahman,
Masjid Thakiah Buraishah,
Ashok Park, Punjabi Bagh,
New Delhi.

2. Tek Chand s/o Sh. Lakshman Ram,
P-4, 1036 Sultanpuri,
Nangloi, New Delhi.

3. Ramphal s/o Sh. Tara Chand,
P-4, 998, Sultanpuri,
Nangloi, New Delhi.

4. Chanderpal Sharma
s/o Sh. Tara Chand Sharma
D/111, Tripathi Enclave,
Prem Nagar, Nangloi,
New Delhi. ...Applicants

(By Advocate: Shri Ajit Pudussery)

18.12.98

Versus

Union of India through

1. The Secretary,
Ministry of Home Affairs,
Department of Internal Security,
North Block, New Delhi.

2. Government of N.C.T. of Delhi through
the Chief Secretary,
5, Sham Nath Marg,
New Delhi.

3. Directorate General of Home Guards,
and Civil Defence, Nishkam Sewa Bhawan,
Raja Garden,New Delhi.

4. The Commandant,
Delhi Home Guards,
Nishkam Sewa Bhawan,
Raja Garden,New Delhi.

5. Commissioner of Police,
M S O Building,
Police Headquarters,
I T O, New Delhi. ..Respondents

(By Advocate: None)

O R D E R

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

This common judgement disposes of two OAs filed separately by Shri Dayanidhi and Shri Hasnain Ahmed & Others assailing the orders issued by the Directorate General of Home Guards and Civil Defence, New Delhi by which the services of the respective applicants are proposed to be terminated and the applicants are sought to be discharged from the Home Guards roll. In the first OA the impugned order/notice has been issued on 20th October, 1998 informing the applicant that upon completion of three years tenure on 3.12.1998 his services will no longer be required after the said date and that he will stand discharged. The applicant has been given one month's notice. Similarly in the second OA one month's notice has been given to the applicants therein. 4 in

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number, stating that on the completion of their tenure of three years in the Home Guards Organisation on different dates they shall stand discharged.

2. We heard the learned counsel for the applicant in OA 2323/98 on 1.12.1998 and the order was reserved. As regards OA 2486/98 the arguments at motion hearing stage were heard on 17.12.1998 and the order was reserved.

3 Since in both the OAs identical questions are involved, we are disposing of the OAs by this common judgement/order.

4 The main question that arises in these OAs is as to whether persons belonging to the Home Guards Organisation can approach the Tribunal against orders of discharge passed by the superior officers in the Organisation. Learned counsel for both sets of the applicants in the OAs vehemently argued that in view of the judgement of this Tribunal in Shri Krishan Kumar & Ors. Vs. Govt. of NCT of Delhi (OA 188/95) dated 1.6.1995 the respective applicants in the OAs have a prima facie case and that ordinarily a notice should go to the respondents and in the meantime the operation of the impugned notices should be stayed. Learned counsel for the applicant in OA 2323/98 in addition placed reliance upon the judgement of another bench of this Tribunal delivered in I.S. Tomar & Ors. Vs. Govt. of NCT of Delhi (OA 1753/97) dated 12.12.1997. Both the learned counsel have contended before us that in view of the

aforesaid judgements of coordinate Benches, we have no choice but to hold that these are fit cases for issuance of notice and for stay of the impugned orders/notices.

5. Having considered the contentions raised by the respective applicants in their OAs and the arguments of the learned counsel we find ourselves unable to agree, for the simple reason that the judgement in Krishan Kumar (supra) is clearly distinguishable, as in that case the question that fell for determination was as to whether members of the Home Guards Organisation could be discharged from service without notice. That Bench of the Tribunal held that in view of the provisions contained in Rule 8 of the Delhi Home Guards Rules, 1959 read with the provisions contained in Section 8 of the Bombay Home Guards Act it was incumbent on the Commandant General/Commandant to issue a notice before discharging the members of the Home Guards. It was further held that if the services of a member is discharged without a notice then there should be some material to indicate that the member was medically unfit. In the instant cases notices have been issued to the applicants. Therefore, the ratio of the judgement in Sh. Krishan Kumar would not be attracted.

6. That apart, the Bench of the Tribunal while disposing of the aforesaid OA (Krishan Kumar & Ors. vs. Govt. of NCT of Delhi) does not appear to have noticed the judgement of the Apex Court in Rameshwar Dass Sharma & Ors. vs. Stte of Punjab & Ors. in SLP No. 12465/90 decided on 30.7.1991 wherein it was clearly held that Home Guards personnel are employed on the basis of temporary

need from time to time and in case of need they are called back to do work with arms in hand and are paid remuneration on daily wages basis and that, therefore, such personnel cannot ask for regularisation nor can they claim any other relief. The Chandigarh Bench of the Tribunal had also held in a number of cases, notably OA Nos. 1013/CH/98 and 1252/CH/92 and a bunch of other OAs that the Home Guards personnel had no right to continue in the Organisation if their services were not required, as they were essentially engaged on voluntary basis. These judgements also do not appear to have been noticed in Krishan Kumar nor in I.S. Tomar (Supra).

7. As regards the judgement in I.S.Tomar (supra) we further notice that the views expressed by Hon'ble Dr. Jose P. Verghese, the then Vice-Chairman, were not agreed to by the other Member constituting the Bench, namely, Hon'ble Shri K.Muthukumar. In the circumstances the judgement in that case would not be a judgement in law nor would it be a binding authority for us.

8. We have recently, while disposing of three OAs, being OA 1169, 1080 and 1079 of 1998, by a common judgement dated 16.10.1998, held that Home Guards personnel cannot claim regularisation or re-enggement, 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 entitled them to additional benefits than what they would have been otherwise entitled to had

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they ~~were~~ been discharged on the expiry of the initial period of three years. We have also another judgement dated 14.8.1998 delivered by a Bench consisting of Hon'ble Smt.Lakshmi Swaminathan and Hon'ble Shri K. Muthukumar in which an OA on identical facts was dismissed.

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

(S.P.Biswas)
Member (A)

18.12.98

(T.N.Bhat)
Member (J)

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