

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH
NEW DELHI

O.A. Nos. 672/98, 676/98, 673/98, 675/98

New Delhi, this the 10th day of July, 1998

Hon'ble Shri N. Sahu, Member (A)
Hon'ble Dr. A. Vedavalli, Member (J)

1. Sombir, (O.A. 672/98)
S/o Shri Indra Singh,
R/o B-1/334, Sultanpuri,
New Delhi-41.
2. Rajender Singh (O.A. 676/98)
S/o Shri Mansa Ram,
(Sanad No. 10065 H.G.),
R/o Gali No. 1, Harijan Basti,
Nashirpur, Delhi-45.
3. Birbal Singh (O.A. 673/98)
S/o Shri Jeet Singh,
R/o 37B, Chirag Delhi,
New Delhi-17.
4. Tirlok Chand (O.A. 675/98)
S/o Shri S.P. Sharma,
(Sanad No. 6768 C.C.),
R/o F/224, Lado Sarai,
New Delhi-30.

.... Applicants

(By Advocate Shri U. Srivastava)

Versus

N.C.T. of Delhi through,

1. The Director General,
Home Guard and Civil Defence,
Nishkam Sewa Bhawan, Raja Garden,
New Delhi.
2. The Commandant,
Home Guard and Civil Defence,
Nishkam Sewa Bhawan, Raja Garden,
New Delhi.

.... Respondents

(By Advocate Shri Rajinder Pandita)

O R D E R

By Hon'ble Shri N. Sahu, Member (A)

Common grounds and identical issues are involved in all these four OAs and, therefore, they are disposed of together in a common order.

5

2. The applicants were recruited and appointed as Home Guards under Rule 3 of the Delhi Home Guard Rules, 1959, initially for a period of three years. We shall take up in detail the facts of appointment and discharge, as mentioned in the OAs.

3. In the case of Som Vir (O.A.672/98), the applicant was enrolled on 12.11.89 having Sanad No.8029 and was discharged by an oral order dated 19.7.92. He represented to the Director General Home Guards, Raja Garden, Delhi on 9.5.97. He states in his representation that he came to know of the decision of Central Administrative Tribunal in O.A.188/95 very late. On the basis of the orders in this O.A., the applicants therein have been reinstated. On the basis of this knowledge, he made a representation. There was no response from the respondents. The applicant's only prayer here is that a direction be given to the respondents to dispose of the representation of the applicant in the light of the judgement passed in the case of I.S.Tomar Vs. N.C.T. Delhi pronounced on 12.12.97 (a number of OAs are consolidated together but we shall take the leading OA as O.A.1753/97).

4. The Learned Counsel for the applicant cited the decision of the Principal Bench of the Tribunal in O.A.2681/97 dated 19.12.97 and O.A.2868/97 dated 28.1.98 wherein there was a direction given for the disposal of the representation made by the petitioner. The learned Counsel, at the time of hearing, placed before us a decision of this Tribunal in O.A. Nos. 723/98, 724/98, 725/98 and 727/98. These OAs are consolidated together

6

and by a common order dated 22.5.98, the Bench directed the respondents to dispose of the representations submitted by the applicants within a period of two months by a speaking and reasoned order. It is also observed that this direction was given without expressing any opinion on the issue of limitation. It is finally made clear that the decision taken by the respondents shall not provide any fresh cause of action to the applicants.

5. In the case of Trilok Chand (O.A.675/98), the applicant was enrolled on 1.1.80 having Sanad No.6768. He was discharged by a verbal order dated 6.12.93. He also filed representations which were not answered.

6. In the case of Rajender Singh (O.A.676/98), the applicant performed his duties from 24.9.91 and he was discharged by an oral order dated 6.7.93.

7. Finally in the case of Birbal Singh (O.A.673/98), the applicant was enrolled on 1.8.90 and he was discharged on 8.7.93. These are the distinguishing factual features in each case otherwise the issues involved are common.

8. The applicants claim is that similarly placed persons have been provided with relief and the applicants are similarly placed persons to those who have got the benefit on the basis of the orders of the Tribunal in the case of I.S.Tomar and ors. Vs. N.C.I. Delhi disposed on 12.12.97 in O.A.1753/97. The Hon'ble Supreme Court in the case of K.C.Sharma & ors. Vs. UOI

7

and ors. - 1998(1) SLJ 64, held that applications filed by similarly placed persons should not be rejected on account of limitation.

9. This claim of the applicants was vehemently resisted by Shri Rajinder Pandita, Learned Counsel for the respondents. He stated that the applicants were discharged way back in 1990, in some cases and in 1993, in other cases. They have kept silent for a period of 5 to 8 years and they cannot be allowed to raise the issue after such a long time. Even the representations were addressed to the respondents after a gap of several years from the date of discharge. Learned Counsel drew our attention to the decision of the Supreme Court in case of P.K.Ramachandran Vs. State of Kerala and ann. - J.T. 1997 (8) SC 189, wherein their Lordships held that "the Court has to record in writing that the explanation offered for the delay was a reasonable explanation and the court was satisfied about the same". Their Lordships have held that "this is a pre-requisite for condonation of delay."

10. Learned counsel for the respondents further relied on the Constitution Bench decision of the Supreme Court in AIR 90 SC 10 in the case of S.S.Rathore Vs. State of M.P. Their Lordships of the Supreme Court held that "the date of cause of action is not the date of original adverse order but the date of order of higher authority entertaining statutory remedy and where no order is made by a higher authority within 6 months from the date, the remedy is availed." This principle applies only if the remedy is statutory.

8

11. We have carefully considered the submissions. In Rattam Chandra Sammanta and ors. Vs. UOI & ors. - JT 1993 (3) SC 418, it was held by the Apex Court that "the delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well." In the case of Bhoop Singh Vs. UOI & ors. - 1992 (3) SCC 136, a constable in the Delhi Armed Police whose services were terminated in 1967 claimed reinstatement on par with certain other dismissed constables who were reinstated in service after the decision of the Hon'ble Supreme Court in Lt. Governor of Delhi Vs. Dharam Pal (1990 (4) SCC 13). The Hon'ble Supreme Court declined to consider such a stale claim unless the delay is satisfactorily explained and is not attributable to the claimant. The Hon'ble Supreme Court held that "the lapse of such a long unexplained period of several years is a strong reason not to qualify him with the other dismissed constables who approached the court earlier and got reinstatement." We find that the applicant had not explained the delay and the feeble attempt made by the learned Counsel for the applicants to explain the delay did not appear to us to be convincing. We, therefore, hold that the delay is unexplained by any reasonable cause.

12. On the ground of delay, these OAs deserve to be dismissed in limine. We accordingly direct so.

13. Even so, the learned counsel for the applicant seeks a direction for disposal of the representation on the lines of the order in the case of Subhash Chander & ors. passed on 22.5.98. We have gone through the order. We notice that there is no mention of the date on which the representation had been filed. As we mentioned earlier, the representations in these cases have been filed, in two out of four OAs, after a delay of 7 to 8 years. The question at issue is, would it be appropriate for us to give a direction for disposal of the representation? In the O.A. cited, the Hon'ble Bench did not record any opinion on the question of limitation. In this case, we have recorded an opinion that the OAs are barred by limitation and since we cannot admit the OAs, there is no question of giving any direction for disposal of the representation.

14. The second aspect is that the matter of termination of service of Home Guards and their reinstatement decided by the Principal Bench in O.A. 1753/97 on 12.12.97 in I.S. Tomar's case followed by other Division Bench decisions is not conclusive. The learned counsel for the respondents argued that the Apex Court has already pronounced on this issue against the Home Guards and, therefore, the law in Tomar's case is no longer good law on the subject.

15. The Chandigarh Bench of the Tribunal in O.A. 833/97 passed an order on 7.8.97 on this issue. Fourteen applicants in the case before the Chandigarh Bench who worked as Home Guards with Chandigarh Administration for over a decade,

①
were discharged by a verbal order dated 15.5.96. They knocked the door of the Tribunal and by an order dated 31.1.95 in O.A.1013-CH-88, their claim was rejected. S.L.P. was filed in the Supreme Court which was dismissed with a direction that the representation must be made to the Government and not to the Court. The applicants made a representation to the Govt. which was rejected on 6.9.96. The Commandant Home Guards took the view that the applicants were volunteers and not employees of the Govt. The respondents also relied on the decision of the Supreme Court in Rameshwar Dass Sharma and ors Vs. State of Punjab and ors. dated 6.3.90. The Apex Court decided that "the Home Guards are employed on the basis of need voluntarily from time to time and in this system, they cannot claim for regularisation". Our attention was drawn to a decision of a Division Bench in Tarsem Singh's case (O.A.418-CH/94) wherein there was an elaborate discussion on merits. The Chandigarh Bench consistently held that "the Home Guards are employees on the basis of temporary need from time to time and in case they are called back to do work with arms in hand, they are paid at the rate of Rs.30/- per day on the basis of eight hours working during the day. They cannot claim regularisation." The learned counsel also cited the decision of the Principal Bench in O.A.561/92 wherein there is an elaborate discussion on the question of limitation.

16. We have considered the submissions of rival Counsel. We are of the opinion that these OAs cannot be admitted as they are hit by limitation. The

11

representations filed after a long delay of several years are not statutory representations. Therefore, no direction can be given for their disposal. Even on the view that a representation is a grievance of a Govt. servant who is entitled to place his grievance in a non-statutory memorandum for redressal, we shall be doing disservice to the Administration by directing them to consider the case. That would mean reviewing old and settled matters which are consigned to the Record Room. We would have considered a direction if the relief sought for has the seal of finality by a pronouncement of the court. We find that Chandigarh Bench has consistently ^{ruled} ~~acted~~ against the claims of discharged Home Guards. Chandigarh Bench has relied on the decision of the Hon'ble Supreme Court in this matter. There is, therefore, no unanimity among the Benches and we are informed that even the decision of the Principal Bench in O.A. 1753/97 is under challenge ~~before the High Court~~ ~~of Delhi~~.

In this view of the matter, we consider it inappropriate to issue any direction for disposal of the representations. OAs are dismissed. No costs.

(Dr. A. Vedavalli)
Member (J)

(N. Sahu)
Member (A)

/mishra/

Attal

DKumar

15-7-98

(संजीव कुमार)

(SANJEEV KUMAR)

वरिष्ठ निजी सहायक/Sec. P. A.

केन्द्रीय प्रशासनिक अधिकरण

Central Administrative Tribunal

प्रधान न्यायधीश, फरीदाबाद हाउस

Principal Bench, Faridkot House

नई दिल्ली / New Delhi-110001