

Central Administrative Tribunal, Principal Bench

O.A.No.1130/95
M.A.No.283/96

with

O.A.No.1132/95
M.A.No.294/97

O.A.No.1188/95
M.A.No.1706/95
M.A.No.274/96

O.A.No.1129/95
M.A.No.293/96

O.A.No.1191/95
M.A.No.292/96

O.A.No.1192/95
M.A.No.282/96

✓ O.A.No.1193/95
M.A.No.295/96

O.A.No.1194/95
M.A.No.289/96

O.A.No.1196/95
M.A.No.275/96

Hon'ble Smt. Lakshmi Swaminathan, Member(J)
Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this 6th day of May, 1997

O.A.No.1130/95:

Ram Parsad
s/o Shri Sidhari Singh
Ex. Commandant, Delhi Home Guard
Sanad No.9056
Resident of H. No.14/32, Sindhora Kalan
Shakti Nagar
Chowki No.2
Delhi - 110 052.

... Applicant

(By Shri S.B.Upadhyay, Advocate)

WITH

O.A.No.1132/95:

Babu Lal
s/o Shri Lekh Ram
Ex. Home Guard, Delhi Home Guard
Sanad No.8222,
Resident of House No.38,
Birla Line (Old)
Delhi - 110 007.

... Applicant

(By Shri S.C.Upadhyay, Advocate)

O.A.NO.1188/95:

1. Om Parkash
s/o Shri Din Dayal
Ex. Platoon Commandar
Delhi Home Guard
r/o Near Nanak Piao, Gurudwara
Bhama Shah Marg
Delhi - 110 009.

2. Puran Mal
s/o Shri Tara Chand
Ex. Platoon Commandar
Delhi Home Garden
r/o Jhuggi No.N-129/45
Khilona Bagh
Near Nanak Piao Gurudwara
Bhama Shah Marg
Delhi - 9. Applicants

(By Shri S.B.Upadhayay, Advocate)

O.A.No.1129/95:

Mangal Singh
s/o Shri Hardayal Singh
Ex. Home Guard
Delhi Home Guard
Sanad No.7783
Resident of D-3/404, Nand Nagri
Delhi - 110 093. Applicant

(By Shri S.B.Upadhayay, Advocate)

O.A.No.1191/95:

Shyam Lal
s/o Shri Babu Lal
r/o M - 184, Shastri Nagar
Delhi - 110 052.
Ex. S.L., Delhi Home Guard
Sanad No.N/3947. Applicant

(By Shri S.B.Upadhayay, Advocate)

O.A.No.1192/95:

Vipin Kumar
s/o Shri Roop Kishore
Ex. Home Guard
Delhi Home Guard
Sanad No.9124,
r/o 26/69, Shakti Nagar
Delhi - 110 007. Applicant

(By Shri S.B.Upadhayay, Advocate)

O.A.No.1193/95:

Shri B.N Sharma
s/o Shri R.R.Sharma
Ex. Company Commandar
Delhi Home Guard
Sanad No.3941
r/o AA/143, Shalimar Bagh
Delhi - 110 052. Applicant

(By Shri S.B.Upadhayay, Advocate)

O.A.No.1194/95:

1. Ganpat Rai
s/o Budh Ram
Ex. Platoon Commandar
Delhi Home Guard
Sanad No.N-3945
r/o SK-36, Chowki No.2
Singhora Kalan
Delhi - 52.
2. Vijay Singh
s/o Shri Nathu Singh
Ex. C.H.M. Delhi Home Guard
Sanad No.3947
r/o H.No.58, Akhare Wali Gali
Delhi.
3. Chander Parkash
s/o Shri Kanhiya Lal
Ex. M.P., H., Delhi Home Guard
Sanad No.3943
r/o H.No.B-1620, Shastri Nagar
Delhi - 52.
4. Kishori Lal
s/o Shri Ram Sumer
Ex. H.G. Delhi Home Guard
Sanad No.3998
resident of Gali No.7,
New Chandrawal
Delhi.
5. Ram Gopal
s/o Shri Paras Ram
Ex. Home Guard
Delhi Home Guard
Sanad No.3976
r/o 2145, Shora Kothi
Ganta Ghar
Subzi Mandi
Delhi - 7.
6. Sri Chand
s/o Shri Nata Singh
Ex. Platoon Commandar
D.H.G. Sanad No.N/3945
r/o 17, Lalita Block
Shastri Nagar
Delhi - 52.
7. Ram Sahodar
s/o Shri Vishwanath Singh
Ex. H.G., DHG, Sanad No.4011
r/o 203, Old Birla Line
Delhi - 7.
8. Shri Ramesh Chand
s/o Shri Babu Lal
Ex. S.L.Delhi Home Guard
Sanad No.N/3947
r/o 73/2/B, Roshanara Building
Shakti Nagar
Delhi - 110 007.

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9. Shri Raj Kumar
s/o Late Prithvi Raj
Ex. P.H., D.H.G., Sanad No. NN/3648,
r/o 915, Farash Khana
Delhi - 6.
10. Shri Chaman Lal
s/o Shri Gopal Singh
Ex. Home Guard
Delhi Home Guard
Sanad No. 365
r/o 235, Gali No. 8
Padam Nagar
Kishan Ganj
Delhi - 7.
11. Gopi Singh
s/o Shri Prahlad Singh
Ex. H.G., D.H.G., Sanad No. 3970
r/o D-7/116, Dayal Pur
Delhi - 94.
12. Shri Lalji Rai
s/o Shri B. Rai
Ex. Home Guard
D.H.G., Sanad No. 3996,
r/o 6/5789, New Chandrawal
Jawahar Nagar
Delhi - 7.
13. Shri Amar Nath
s/o Shri Sheh Dev,
Ex. Home Guard
D.H.G., Sanad No. 3731
r/o 838, J.J. Colony
Shakurpur
Delhi - 34.
14. Shri Chander
s/o Shri Barsati Lal
Ex. Home Guard
D.H.G.,
Sanad No. 3755
r/o H. No. 401
Gali Chakki Wali
Kabir Basti
Malka Ganj
Delhi - 7.
15. Munnu Lal Tiwari
s/o Shri Shyam Lal
Ex. Home Guard
Sanad No. 3500
r/o 18/47, Basant Nagar
Bagh Kali Khan
Delhi.

Applicants

(By Shri S.B. Upadhyay, Advocate)

O.A.No.1196/95:

1. Girija Shanker
s/o Shri Mukh Lal
Ex. Home Guard
Delhi Home Guard

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Sanad No.4003
r/o S-1080, Mangol Puri
Delhi - 110 083.

(AO)

2. Dwarka Nath
s/o Shri Jaisa Ram
Ex. Home Guard
Delhi Home Guard
Sanad No.3425,
r/o H. No.18/47, Basant Nagar
Delhi - 110 007.

... Applicants

(By Shri S.B.Upadhayay, Advocate)

Vs.

1. National Capital Territory of Delhi through
Delhi Administration
service to be effected through its Chief
Secretary, 5, Sham Nath Marg
Delhi - 110 054.

2. The Commandant
Home Guards, Delhi
'A' Block, IIInd Floor
Vikas Bhawan
New Delhi - 110 002.

3. Director General Home Guards and
Civil Defence,
Delhi Administration
Delhi, Raja Garden
New Delhi - 110 027.

... Respondents in all the
above mentioned OAs.

(By Shri Surat Singh, Advocate)

O R D E R(Oral)

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

With the consent of the learned counsel for both the parties, the aforesaid OAs are being taken up together as the facts and issues involved are the same. We dispose of these OAs by a common order, but for the sake of convenience, the facts in OA No.1130/95 have been referred to.

O.A.No.1130/95:

The grievance of the applicant in OA No.1130/95

is that the respondents have passed the Order No.861 dated 11.11.1994 discharging him as Home Guard Volunteer of South District. This order has been passed under Section 8 of the Bombay Home Guards Act, 1947 (in short

(41) the Act) as extended to the Union Territory of Delhi and Rules made thereunder. Section 8 of the Bombay Home Guards Act 1947 permits the State Government to make rules consistent with the Act and by Delhi Administration's Notification dated 29.7.1959, the Bombay Home Guards Act has been extended to the Union Territory of Delhi, and the rules called the Delhi Home Guards Rules, 1959 have been framed. The main ground taken by the learned counsel for the applicant is that the impugned order dated 11.11.1994 has been issued without giving him any show-cause notice as required under Rule 8 of the Rules. Under Rule 8 of the said Rules, the term of office of a member of the Home Guards shall be three years; provided that his appointment may at any time be terminated by the Commandant General/Commandant, as the case may be, before expiry of the term of office:

- a) by giving one months notice, or
- b) without such notice if such member is found to be medically unfit.

3. On the other hand, Shri Surat Singh, learned counsel for the respondents submits that the respondents are required to issue one month notice, in terms of the Rule 8 only on the first engagement of the Home Guard Volunteer i.e. if he is to be discharged within the time of the initial period of three years. He submits that for the subsequent years of engagement, however, no such notice as provided under Rule 8(a) is required to be given, as the applicants are volunteers.

4. We have considered the pleadings and the submissions made by the learned counsel for both the parties. It is clear from a plain reading of Rule 8 that while the term of office of any member of the Home Guards

is three years, his services cannot be terminated by the respondents without giving him one month notice. Admittedly, in these cases the respondents have not issued the required one month notice. We are also not impressed by the arguments advanced by the learned counsel for the respondents that the service of notice is only meant for the initial period of three years and that it does not apply for the subsequent terms of engagement. Any term of extension beyond three years will itself amount to a fresh appointment as a Home Guard for a period of three years. Besides, the Rule itself does not provide for any extension of the period of initial appointment of three years and ~~so~~, before termination of the volunteers' appointment, notice is required to be given. The respondents have failed to comply with the provisions of Rule 8(a) and have also violated the principles of natural justice in these cases. Therefore, looked at from any angle, the failure on the part of the respondents to give one month notice as required under the Statutory Rules vitiates the impugned order dated 11.11.1994. It may also be added that it is not the case of the respondents that they have proceeded to issue the termination order under the provisions of Rule 8(b) of the Rules, which allows dispensation of the notice when the member of the Home Guard is discharged without any notice provided he is found medically unfit.

5. In the facts and circumstances of the case and in the light of this Tribunal's Judgment in Krishan Kumar Vs. NCT Delhi (OA No.188/95, decided on 1.6.1995) the OA is allowed to the extent that the impugned orders passed by the respondents without complying with the provisions of the statutory Rules in respect of notice are quashed

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and set-aside. It is however, made clear that the applicant shall not be entitled to any back pay or allowances for the period during which he has not worked as Home Guard Volunteer. The respondents shall consider engaging him as a Home Guard as and when the need arises in accordance with his seniority and services rendered by him earlier, and strictly in accordance with the relevant Rules and law. OA No.1130/95 is disposed of accordingly.

O.A.Nos. 1132/95, 1188/95, 1129/95, 1191/95, 1192/95, 1193/95, 1194/95 and 1196/95 are also disposed of on the same lines. No costs.

M.A.No.283/96:

6. MA 283/96 has been wrongly listed as MA No.203/96 in the cause list, which was filed by the respondents praying for vacation of the Interim order in OA No.1130/95. The learned counsel for the applicant, however, submits that no interim order has been passed in this case or in the other cases. Therefore, in the facts and circumstances, MA 283/96 in OA No.1130/95 also stands disposed of.

(R.K.AHODJA)
MEMBER(A)

/rao/

(SMT. LAKSHMI-SWAMINATHAN)
MEMBER(J)

Attested
11/2/97
28-5-97

CO. CIV

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