

25  
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)

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 Mai  
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  
Singhara 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 Hqme Guard  
Sanad No.3976  
r/o 2145, Shora Kothi  
Ganta Ghar  
Subzi Mandi  
Delhi - 7.
6. Sri Chand  
s/o Shri Neta 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, Reshanara Building  
Shakti Nagar  
Delhi - 110 007.

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9. Shri Rai 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 Kari 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

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

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. Upadhyay, 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

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 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.

*V.S.*

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:

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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.AHOOJA)  
MEMBER(A)

(SMT. LAKSHMI SWAMINATHAN)  
MEMBER(J)

/rao/

Attested  
Abdul  
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Co. CIV