

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.188/95

New Delhi: May ~~1995~~, 1.6.1995

1. Sh.KRISHAN KUMAR, PH
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S/O SH.NARAIN KUMAR
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STAFF QUARTERS AZADPUR,
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2. SH. RAM KISHOR
HG, SANAD NO.5018
S/O SH.BAN RAM
SHADI NAGAR
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3. SH. RAM KISHAN,
HG, SANAD NO.5045
S/O SH.RAM SUNDER
E-1774, JAHANGIRPURI
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4. SH. RAM KIRPAL
HG, SANAD NO.5025
S/O SH. RAMJIYAVAN
C-1406, JAHANGIRPURI
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5. SH.JITENDER KUMAR SHARMA
HG, SANAD NO. 5037
S/O SH. P.D. SHARMA
J.J. CAMP,N-41, D4-32,
SA MAIPUR BADLI
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6. SH. RAMA KANT
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S/O SHRI AWADH NARAIN
J.J. CAMP,N-41, D4-32
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7. SH. GOVERDHAN PARSHAD
HG-SANAD NO. 5041
S/O SH.SAHABADIN
15, MAHATAMA GANDHI ROAD
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8. SH. CHARAN JIT SINGH
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S/O LATE SHRI KARTAR SINGH
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9. SH. ISHWAR SINGH
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S/O SHRI BISHANBAR DAYAL
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- 9 A. Sh.Pitamber Singh
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10. SH. NETRA PAL
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S/O BHUDHI SINGH
J.J.N. AN-88,
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11. SH. BABU RAM
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S/O SHRI NANUA RAM
G/394 JAHANGIRI PURI
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12. SH. SHARDA PARSAD
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S/O BIRBAL SINGH
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13. SH. SIYA RAM
PC-SANAD NO. 4707
S/O GULZARI LAL
A-38, MUKAND PUR VILLAGE
DELHI-42.

By Advocate Shri R.K. Kamal along with S.K. Gupta
...sh APPLICANTS

VERSUS

1. GOVT. OF N.C.T. DELHI
THROUGH: CHIEF SECRETARY
5, SHAM NATH MARG
DELHI.

2. COMMANDANT
DELHI HOME GUARDS
C.T.I. COMPLEX
RAJA GARDEN, NEW DELHI.

3. DIRECTOR GENERAL
HOME GUARDS & CIVIL DEFENCE
CTI COMPLEX: RAJA GARDEN
NEW DELHI.

..... RESPONDENTS

By Shri Arun Bhardwaj, Advocate.

HON'BLE MR. S.R. ADIGE, MEMBER (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J).

JUDGMENT

By Hon'ble Mr. S.R. Adige, Member (A).

In this application, Sarv/Shri Krishan Kumar and 13 others have impugned the orders dated 15.12.94, 12.11.94 and 22.2.94 discharging them with immediate effect, and also the verbal orders said to have been communicated to some of them on 1.4.94 and 12.11.94 and have sought for

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(b)

a direction for reinstatement with all consequential benefits.

2. Shortly stated, the applicants aver that they were recruited as the members of the Home Guard under Rule 3 of the Home Guards Rules, 1959, as promulgated by notification dated 29.7.59 (Annexure-A5), and have completed 10 to 28 years of service in that Organisation. They state that initially they were engaged for a period of three years but thereafter their services were extended upto 15.12.94 in the case of applicants No.1 to 9 and 12; upto 14.94 in the case of applicant No.10; upto 12.11.94 in the case of applicant No.11; and upto 22.2.94 in the case of applicant No.13. They state that although, under Rule 8 of the said rules, the term of the office of the members of the Home Guard is three years, no undertaking was taken that the applicants would continue on their risk and responsibility. They further state that all of a sudden their services have been terminated under Rule 8 of Delhi Home Guards Rules but the respondents had no power to discharge the applicants once they had completed three years service. They admit that the Organisation under which they were working, was a voluntary Organisation which was constituted in Delhi in the year 1959 under Bombay Home Guards Act, 1947, but state that they have put in the best part of their life in serving this Organisation and all the applicants have become age barred and some^{of} them have even crossed 50 years of age.

3. The respondents have challenged the contents of the O.A. on the ground that the applicants have no locus-standi to file this O.A. as they were

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serving in the respondent-department as volunteers. They contend that the applicants are not Govt. servants and hence the Tribunal has no jurisdiction in the matter. They state that the applicants are only volunteers who had offered their services for a period of three years in the Department of Home Guards. They are not paid any salary nor are they entitled to any monthly pay, but they are allowed only some allowances and honorarium. Being only volunteers, they are not bound to refer their services every day to the department, but are called for duties, whenever required by the respondent-department and any other department. These volunteers are allowed to offer their services only for a period of three years and this ^{is} mentioned in their appointment letters given to them. It is stated that the applicants are governed by the Bombay Home Guards Act, 1947 and the Delhi Home Guards Rules, 1959. They have not acquired any vested right to any post of Home Guard and no right can accrue to a volunteer who comes forward on his own to offer his services in his spare time without any consideration. It is contended that the respondents cannot be forced by volunteers to accept their free services against the wishes of respondent department.

4. Amongst the grounds taken by the applicants are that the exercise of power under Rule 8 of the Delhi Home Guards cannot be made after completion of the three years, and the power of discharge can be exercised only when the person had not completed three years, under the proviso to the said rule. It is secondly contended that the discharge of the applicants without any notice or without

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complying with the provisions and principles of natural justice is illegal and void. Thirdly, it has been argued that no power under Rule 8 Delhi Home Guards has been conferred upon the Commandant to discharge the applicants. Furthermore, it has been contended that the judgment in the case of Gopi Chand Vs. Delhi Administration & another (O.A.No.118/92) decided on 8.9.93(Annexure-A6) gives certain safeguards to the members of the Home Guard Organisation, inasmuch as the power of discharge can be exercised only when the services of the members of the Organisation are no longer required, but in the impugned order there is not even a whisper that the services of the applicants are no longer required, and that on the other hand, fresh persons are engaged against the vacancies created by the discharge of the applicants. Lastly, it has been urged that the applicants have acquired a vested right, having worked as Home Guard from 10 to 28 years and are entitled to regular appointment.

5. We have given our careful consideration to the rival contentions. The first question that arises is whether Home Guards can be said to hold Civil posts under the Union, and whether the Tribunal has any jurisdiction in the matter. In O.A. No.1356/91 V.K.Jain Vs. Delhi Administration & others decided on 14.8.92 a Single Bench of the Tribunal has held that Home Guards being paid out of Union of India Funds and the duties being assigned to them being in the public interest and for the welfare of the public in general, they hold a Civil post under the UOI and come within the Tribunal's jurisdiction. This view was reiterated in the Tribunal(Division Bench) judgment dated 8.9.93 in O.A.No.118/92 Gopi Chand Vs.

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UOI . Recently, the Delhi High Court in CWP No.5596/93 Man Sukh Lal Rawal Vs. UOI & others, decided on 25.4.95 have held that it is CAT which is the proper forum for adjudicating on service grievances of Home Guards employees working under Delhi Administration.

6. Under the circumstances, the respondents' objections that the applicants do not hold ~~the~~ posts under UOI, and the Tribunal has no jurisdiction in this matter, have to be rejected.

7. Section 3 of the Bombay Home Guards Act, 1947 relating to the appointment of members, lays down that subject to the approval of the Commandant General, the Commandant may appoint as members of the Home Guards, such number of persons who are fit and willing to serve, as may from time to time be determined by the State Government. Section 6B relating to punishment of members for neglect of duty etc, provides that the Commandant has the authority to suspend, reduce or dismiss or fine to an amount not exceeding Rs.50/-, any member of the Home Guards, under his control, if such member, without reasonable cause, on being called out under section 4, neglects or refuses to obey such order, or to discharge his functions and duties as a member of Home Guards, or to obey any lawful order or direction given to him for the performance of his functions, or duties, or is guilty of any breach of discipline or misconduct. Section 6B (IA) lays down that notwithstanding anything contained in the Act, the Commandant shall have the authority to discharge any member of the Home Guards at any time, subject to such conditions as may be prescribed, if in the opinion

of the Commandant, the services of any such member are not required. Section 6B(3) lays down that any member of the Home Guards aggrieved by the order of the Commandant, may appeal against such order to the Commandant General and any such member aggrieved by an order of the Commandant General may appeal against such order to the State Government.

8. Section 8 of the Bombay Home Guards Act permits the State Government to make rules consistent with the Act and by Delhi Administration's Notification dated 29.7.59, ^{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. 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 month's notice, or
- b) without such notice if such member is found to be medically unfit.

Rule 9 lays down ^{the} maximum age of a Home Guard to be 60 years which may be relaxed in suitable cases, while Rule 10 lays down that no member of the Home Guards shall be discharged under Sub-section (1A) of Section 6B unless the Commandant General /Commandant, as the case may be, is satisfied that such member has committed an act detrimental to the good order, welfare or discipline of the Home Guards Organisation.

9. The impugned order states that the same has been passed in exercise of the powers conferred upon

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the Commandant, Home Guards of Delhi under the Bombay Home Guards Act, 1947 as extended to the Union Territory of Delhi Home Guards Rules, 1959 issued by DAD Notification dt. 29.7.59. It purports to be an order simpliciter and has to take immediate effect.

10. As these are not ^{the} cases of dismissal, it is clear that Section 6B has no application in this case.

In so far as Section 6B(1A) is concerned, ^{action} ^{satisfaction} under Rule 10 ^{was required,} but there are no materials to indicate that the Commandant was satisfied that the applicants had committed any act which was detrimental to the good order etc. of the Home Guards Organisation.

11. We then come to Rule 8 of the Delhi Home Guards Rules, under which the Commandant General/Commandant is empowered to terminate the appointment of any Home Guard by giving one month's notice or without notice if such member is found medically unfit. In the present case one month's notice has not been given, and there are no materials on record to indicate whether the applicants' ^{were} services ^{was} terminated because they were found medically unfit.

12. The Respondents have also not made any averment in their reply, that the services of the applicants have been dispensed with because they were found medically unfit.

13. Under the circumstances the impugned order cannot be sustained. This O.A. succeeds and is allowed, to this extent that the impugned orders are quashed, with liberty given to the Respondents to pass fresh orders if so advised, in accordance with law. No Costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
Member (J)

S.R. Adige
(S.R. ADIGE)
Member (A)