

20

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER (J)
HON. SHRI R.K. AHOOJA, MEMBER (A)

NEW DELHI, THIS 21st DAY OF MARCH, 1997

1. O.A. NO.2423/95
2. O.A. NO.2549/96
3. O.A. NO.1271/95
4. ✓ O.A. NO.146/96
5. O.A. NO.1963/96
6. O.A. NO.1018/95
7. O.A. NO.1578/95

MEMO. OF APPLICANTS:

1. O.A. NO.2423/95

1. RAGHUBIR PRASAD
S/o Sh. Jagannath Prasad
R/o D-61, East Warren Road
Minto Road, DELHI.
2. NAND KUMAR
S/o Sh. Sita Ram
R/o 10328, Tokari Walan
Azad Market Library Road
DELHI
3. SATISH CHAND
S/o Sh. Sher Singh
R/o H.No.152, Gali No.5
D-Block, Bhajanpura
DELHI
4. SHAMSHER KHAN
S/o Sh. Shri Khachera Khan
R/o H.No.E-89, Gali No.13
E Block, Shastri Park
DELHI
5. DEEP CHAND
S/o Sh. Sriganga Wasi
R/o B-117, Harijan Basti
Kondli, DELHI

6. LALJI SINGH
S/o Sukhram
H.No.3866 Chudiwalan
Katra Beri Walan
DELHI
7. SUKHBIR SINGH
S/o Shri Rakam Singh
R/o Sector 15-A
Peerbaba Ki Majar (Park)
Pump No.5-A,
NOIDA, Ghaziabad
8. LALMANI JOSHI
S/o Shri Yasodhar Joshi
H-18, P.S. Sri Niwasपुरi
NEW DELHI
9. NAND KISHORE JHA
S/o Sh. Sukhmar Jha
B-837, Aman Vihar
Sultanpur
NEW DELHI
10. SARDARI LAL
S/o Sh. Niranjan Das
Sector 5, Pocket B/9
Flat No.1, Rohini
NEW DELHI
11. RAVINDRA SINGH
S/o Sh. Krishan Singh
Jhuggi No.310, Gautampuri, Part II
Near Indira Gandhi Indoor Stadium
NEW DELHI
12. CHARAN SINGH
S/o Shri Rajpal
Chilla Gaun, Ashoda
Mayur Vihar Phase I
DELHI
13. IKBALI SINGH
S/o Sh. Mahendra Singh
Sanjay Amar Colony
Jhuggi No.303, Tilak Bridge
I.T.O., NEW DELHI
14. BALINDRA MISHRA
S/o Sh. P. Mishra
R/o B-550, Gali No.10
East Vinod Nagar
Mandawali, NEW DELHI

15. SATENDRA KUMAR
S/o Sh. Sukhram Singh
166 Jwala Nagar, Shahdara
NEW DELHI
16. RAJENDRA KUMAR
S/o Sh. Braham Pal Singh
Ghora Sumra Meh
H. No.282 Shahdara
DELHI
17. VED PRAKASH
R/o Jagat Nagar
Usmanpur, Shahdara
DELHI
18. BRIJ NANDAN PRASAD
S/o Sh. Laljit Prasad.
C-210 Gokalpuri, NEW DELHI
19. VIJAY SHANKAR
S/o Sh. Bhagwan Das
202 Rameshwar Park, Loni
Ghaziabad, U.P.
20. PARDEEP KUMAR
S/o Sh. Vijay Pal Singh
B-52-A, Harijan Basti
Kondli, NEW DELHI
21. SURINDER SINGH
S/o Sh. Mahavir Prasad
H.No.3, Kotla Ferozeshah Mali Quarter
Delhi Gate, NEW DELHI
22. VRINDER SINGH
S/o Sh. Sital Prasad
C-9-353, Sonia Vihar
NEW DELHI
23. VIJAY PAL
S/o Sh. Sri Chand
D-408, Ashok Nagar
NEW DELHI
24. BRIJBHAN SINGH
S/o Sh. Jamuna Singh
J-237, Anna Nagar
Tilak Bridge, NEW DELHI

...APPLICANTS.

(BY ADVOCATE - SHRI RISHI KESH)

contd...4/-

On

93

- 4 -

2.

O.A. NO.2549/96

1. O.P. GAUR
S/o Vijay Singh Gaur
R/o Vill. Rajpur Khurd Goswami Mohalla
Post Madan Garhi
NEW DELHI
2. VED PRAKASH BHATT
S/o Sh. Rameshwar Prasad
R/o 1520 Netaji Nagar
NEW DELHI
3. K.P. BHATIA
S/o Sh. Teju Mal Bhatia
H.No.32, Old Nursing Hostel
Jaswant Singh Road
Near A.P. Bhawan
NEW DELHI

...APPLICANTS

(BY ADVOCATE - SHRI U. SRIVASTAVA)

3.

O.A. NO.1271/95

1. RAM AVTAR PRASAD
S/o Sukar Mahato
R/o G. Floor & Rice Mill Shop
14 Bhagat Singh Lane,
Gole Market
NEW DELHI
2. RAM KUMAR
S/o Talebar Singh
R/o A-L/140 Sector-4
Rohini, DELHI
3. KRISHAN KANT SINGH
S/o Sh. R.P. Singh
WZ/21/2 Dodapur
NEW DELHI
4. SUMAN KUMAR
S/o Banaras Dhanuk
R/o S-621 School Block
Shakarpur, Nehru Enclave
NEW DELHI
5. NAKCHAD PRASAD
S/o Barsati Prasad
R/o B-136 Kanchanpuri
Rajghat Power House
NEW DELHI

...5/-

02

24

6. SURESH KUMAR
S/o Ganpat Singh
Fazalpur, Gali No.11
DELHI
7. VINOD KUMAR
S/o Nathu Singh
Type III/20, Rashtrapati Bhawan
NEW DELHI
8. RAJENDER SINGH
S/o Sh. Kishan Lal Singh
H.No.8-167, Gali No.1
Gharoli Extension
Harijan Basti
DELHI-92
9. RAGHUNATH PODDAR
S/o Ram Lakhon Poddar
R/o 1659 Krishi Kunj
Inderpuri, NEW DELHI
11. ARJUN KUMAR
S/o Ramphal Mahato
G. Flour & Rice Mills
Shop No.14, Bhagat Singh Lane
Gole Market, NEW DELHI
10. RUPESH KUMAR
S/o Ramkhelawan Poddar
R/O 1659 Krishi Kunj
Inderpuri, NEW DELHI
12. HYDER ALI
S/o Ahmed Ali
R/o E-34, Seweak Pari
Najafgarh Road
NEW DELHI
13. ANIL PRASAD
S/o Jagah Nagh Prasad
R/o E-1A/22, Chungi Pushta
DELHI-92
14. RAJVIR SINGH
S/o Sh. Sughan Chand
H. MC591/867 Tajpur
Pahari, Badarpur
NEW DELHI
15. SOHAN LAL
S/o Kachermal Sharma
Room No.18-A, Gali No.7
Shakti Vihar, Badarpur
NEW DELHI
16. RAM DULAREY
S/o Sh. Sant Gulam
Mata Sundri Road
Jhuggi No.R-III-G-67
NEW DELHI

02

25

17. MEHESH PAL
S/o Sh. Bhola Singh
11/14 Triloke
NEW DELHI-91
18. VASISHT RAM
S/o Sh. Harbans Lala
G-8-C, Gobindpuri-II
I.P. Estate, NEW DELHI
19. CHANDER.SHEKHAR DUBEDI
S/o Ram Chariter Dubedi
Gali No.3, Kailash Nagar
20. KESHAN DEO PARSAD
S/o Sh. Nand Kishore Pd.
WZ-121/2 Todapur
NEW DELHI-12
21. HARI NATH YADAV
S/o Sh. Ram Parsad Yadav
1-B Sector 4, Raja Bharar
Gol Market
NEW DELHI
22. SHANKAR PARSAD
S/o Sh. Hari Charan
Q.No.80-D, Sector IV
D-2 Area,
Bawa Kharak Singh Marg
NEW DELHI
23. LALAN YADAV
S/o Sh. Rajinder Yadav
H-61, Kalibari Marg
NEW DELHI.

...APPLICA S

(BY ADVOCATE - SHRI RISHI KESH)

4. O.A. NO.146/96

1. NOOR MOHAMED
S/o Deen Mohanad
R/o C-50/30 Narendra Niketan
ITO, Behind P.S.Q.,
NEW DELHI
2. DEVI PRASAD
S/o Suryabax Pandey
R/o 390 Chandrapuri Kailash Nagar
DELHI-31

Dr

26

3. SANJAY KUMAR
S/o Sh. Ram Kishan
Saket Mandawali Fazalpur
DELHI-92
4. RAGHAV KUMAR
S/o Sheshnath Singh
B-Block, Gali No.005
H. No.361, Sonia Vihar,
DELHI-94
5. RAMMESHWAR DAYAL
S/o Jwala Prasad
R/o Mandawali Fazalpur
DELHI-92
6. AVDHASH KUMAR MISHARA
S/o Ram Bahadur Mishara
E-58 Meerdard Road
NEW DELHI
7. SURESH KUMAR
S/o Sh. Lakhi Ram
H. No.250/6 Railway Road
Azadpur, DELI
8. RAVINDER SINGH
S/o Sh. Dharampal Singh
H. No.41, Gali No.2,
Khajuri Khas
DELHI
9. VEDPAL SINGH
S/o Ram Singh
279/1 B-Block
Ashok Nagar, Mandawali
Shahdara, DELHI
10. OPENDARTRIPATH H.G.
S/o Sh. Maheshwari Pd.
AB 438 Amar Puri
Nabi Karim, DELHI
11. SUBHASH CHAND YADAV
S/o Sh. R.L. Yadav,
A-121, Amar Puri
Nabi Karim, DELHI
12. RAMJEET YADAV H.G.,
S/o Sh. R.K. Yadav
5253 G.B. Rct,
DELHI-6

On

13. JAGAN NATH YADAV
S/o Sh. Tuttur Yadav
188-A, Railway Colony Kochi No.2
Near Tis Hazari Court
DELHI
14. JAGDISH PD.
S/o Sh. Hirawaan Pd
D-3, D.C.M. Colony
Nathu Pura, DELHI
17. HARI RAM
S/o Sh. Kunjal
C-57/155, Sahid Basti
Nabi Karim, DELHI
16. LAL SHANKER
S/o Sh. Mannu
C-57/155 Sahid Basti
Nabi Karim DELHI
17. BALESHWAR JHA
S/o Sh. P.N. Jha
C-64/243, Mala Sundri Road
Hathi Park
NEW DELHI
18. KRISHNA KANT SINGH
S/o Sh. Ramjee Singh
D-532 Patel Nagar
Shiv Mandri Nagar
Patel Nagar
NEW DELHI
19. JAY PRAKASH MASHARA
S/o Sh. Ram Kishan Mishara
E-369 Old Seemapuri
Shahdara, DELHI
20. ISTAKHAR AHMED
S/o Sh. Shobrati
B-6248, Nand Nagri
Shahdara, DELHI
21. LALAN THAKUR
S/o Sh. Narain Thakur
R/o 205, A/484
Sahid Aryan & Ors. Camp
NEW DELHI-23.

...APPLICANTS

(BY ADVOCATE - SHRI RISHI KESH)

contd...9/-

28

5. O.A. NO.1963/96

1. RAM NARESH SINGH
S/o Shri Bare Singh
R/o RZ-53, F Block
Nand Ram Park, Uttam Nagar
NEW DELHI
2. SHRI UMAR DIN
S/o Sh. Abdul Hamid
D-386/87, DDA Colony
Khyala, NEW DELHI
3. SHRI MANJOO SINGH
S/o Sh. Raja Ram
C-1/128 Gali No.20
Khajoori Khas
Shahdara, DELHI

...APPLICANTS

(BY ADVOCATE - SHRI RISHI KESH)

6. O.A. NO.1018/95

SHRI MAN SUKH LAL RAWAL
S/o Sh. M.R. Rawal
CB-R/45 Gutam Puri, Part II
NEW DELHI

...APPLICANT

(BY ADVOCATE - SHRI RISHI KESH &
SHRI J.C. MADAN)

7. O.A. NO.1578/95

1. ANAND PRASAD
S/o Sh. Makaru
315 Tel Mili Gali
Laxman Puri, Pahar Ganj
NEW DELHI
2. JAI NATH
S/o Sh. Gomti Yadav
153 A/478 B, 58 Rama Road
Near Moti Nagar
NEW DELHI

...APPLICANTS

(BY ADVOCATE - SHRI U. SRIVASTAVA)

...10/-

Dr

VERSUS

MEMO OF RESPONDENTS

1. OA NO. 2423/95

1. THE DIRECTOR GENERAL
Delhi Home Guards
Nishkam Sewa Sadan
Raja Garden
NEW DELHI
2. THE COMMANDANT
C/o Commandant Home Guard
A Block II Floor
Vikas Bhavan
NEW DELHI
3. GOVT. OF NCT DELHI
through its Secretary
5 Shamnath Marg
DELHI

(BY ADVOCATE - JOG SINGH)

2. OA NO. 2549/96

1. NCT OF DELHI, through
its Chief Secretary
5 Sham Nath Marg
DELHI
2. THE DIRECTOR GENERAL
Home Guard and Civil Defence
Nishkam Seva Bhawan
Raja Garden
NEW DELHI
3. THE COMMANDANT
Home Guard & Civil Defence
Nishkam Seva Bhawan
Raja Garde
NEW DELHI

(BY ADVOCATE - NONE)

On

38

3. OA_NO.1271/95

1. UNION OF INDIA, through
its Secretary
Ministry of Home Affairs
Department of Internal Security
North Block
NEW DELHI
2. The Director General
Delhi Home Guard
G.T.E. Raja Garden
NEW DELHI
3. THE COMMANDANT
C/o The Commandant Home Guard
A Block II Floor
Vikas Bhavan
NEW DELHI
4. GOVT. OF NCT DELHI
through its Secretary
5 Shamnath Marg
DELHI

(BY ADVOCATE - SHRI JOG SINGH)

4. OA_NO.146/96

1. THE DIRECTOR GENERAL
Delhi Home Guard
Nishkam Sewa Sadan
Raja Garden
NEW DELHI
2. THE COMMANDANT
C/o Commandant Home Guard
A Block, II Floor
Vikas Bhavan
NEW DELHI
3. GOVT. OF NCT DELHI
through its Secretary
5 Sham Nath Marg
DELHI

(BY ADVOCATE - NONE)

02

5. OA NO.1963/96

1. THE GOVT. OF NCT DELHI,
through its Chief Secretary
5 Shamnath Marg, DELHI
2. THE DIRECTOR GENEREAL
Home Guards & Civil Defence Orgn.
CTI Complex, Raja Garden
NEW DELHI
3. SHRI W. CHAUHAN, JSO (CD)
O/o the D.G. Home Guards & CD
CTI Complex, Raja Garden
NEW DELHI
4. THE COMMISSIONER OF POLICE
Delhi Police Headquarters
I.P. Estate
NEW DELHI

(BY ADVOCATE - NONE)

6. OA NO.1018/95

1. UNION OF INDIA, through
The Secretary
Ministry of Home Affairs
Department of Internal Security
North Block
NEW DELHI
2. DIRECTOR GENERAL
Delhi Home Guard
CTI Raja Garden
NEW DELHI
3. COMMANDANT
O/o the Commandant
Home Guard, A Block
II Floor, Raja Garden
NEW DELHI
4. GOVT. OF NCT DELHI
through the Secretary
5 Shamnath Marg
DELHI

(BY ADVOCATE - SHRI JOG SINGH)

32

7.

OA NO.1578/95

1. NCT OF DELHI, through the
Chief Secretary
5 Sham Nath Marg
DELHI.
2. THE DIRECTOR GENERAL
Home Guard and Civil Defence
Nishkam Sena Bhawan
Raja Garden
NEW DELHI
3. THE COMMANDANT
Home Guard and Civil Defence
Nishkam Sena Bhawan
Raja Garden
NEW DELHI

...RESPONDENTS

(BY ADVOCATE - SHRI JOG SINGH)

ORDER

R.K. AHOOJA, MEMBER (A)

Since the issues involved in these O.A.s are substantially similar, they are being disposed of by a common order.

OA NO.2423/1995

The applicants, 24 in number, claim that they have been working as Home Guards for a number of years and have been rendering service with various police stations from dates ranging from 1986 to 1994. They claim that they have been treated as regular employees for all intents and purposes except in the matter of payment of wages. They work for a minimum of eight hours daily and like other Government servants have also earned promotions. The Delhi Home Guards Organisation which was set up under the Bombay Home Guards Act 1947 has rules framed and known as Delhi Home Guards Rules 1959.

23

While working as Home Guards, the applicants have been declared as public servants and therefore they claim that they are to be deemed as Civil Servants. Before they were appointed as Home Guards, they were totally unemployed and their only source of income after engagement has been the remuneration ranging between Rs.1600/- to Rs.1800/- per month paid to them by the respondents through a bank account. They are aggrieved that the respondents have directed them to sign on a declaration form vide A-3 failing which their services would be terminated forthwith. They also allege that contrary to the law and rules, they are threatened for discontinuance of their services on 25.12.1995 without any prior intimation or notice. On the basis of that apprehension, the applicants have come before this Tribunal seeking a direction restraining the respondents from forcing the applicants to sign the false declaration and not to terminate their services. Further more, they seek a direction to the respondents to regularise their services since inception and to pay them salary as per scale of pay applicable to the employees of the same status. They also want to be confirmed as Home Guards so that there is no further uncertainty regarding their employment.

2. The respondents have raised a preliminary objection that since the applicants do not hold a civil post, the O.A. is not maintainable nor does the Tribunal have jurisdiction to entertain the O.A. The applicants have no locus standi because they are merely volunteers and are not government servants. The respondents also claim that there is no relationship of master and servant between the applicants and the respondents nor are the applicants paid any salary or wages. Their

34

services have been freely and voluntarily offered without any considerations and the respondents have only made provision for duty allowance, transportation allowance, training allowance and certain other allowances to be paid to the volunteers for easier and efficient performance of their otherwise free services. Some of the volunteers are also employed with government/private agencies or have their own business while some may be unemployed. There is no bar whatsoever to a volunteer in seeking employment elsewhere even when he is enrolled as a Home Guard. As regards the filling up of the form, the respondents state that the applicants were asked to fill up an application form at the time of initial enrolment containing several columns regarding place of residence, place of work etc. at the time of their initial enrolment. The same exercise is now again being done to update the records. For these reasons the respondents seek dismissal of the O.A.

3. We have heard the counsel for both sides at great length and have also gone through the pleadings on records carefully. Insofar as the question of locus standi of the applicants and the jurisdiction of this Tribunal is concerned, the issue has been settled by various judgements of this Tribunal. More recently in OA NO.188/95 KRISHAN KUMAR & ORS. VS. GOVT. OF NCT DELHI dated 1.6.95, it was held that the respondents objection that the applicants do not hold posts under the Union of India and the Tribunal has no jurisdiction in this matter have to be rejected. We are in respectful agreement with that conclusion and the preliminary objections of the respondents on these grounds are summarily rejected.

4. The respondents have stated that the services of none of the applicants have been dispensed with and they are all continuing on the strength of Home Guards. Hence, on this score, the applicants have no cause of action.

5. The other main issue which needs adjudication is the prayer of the applicants that they be regularised, their services be confirmed as such and they should be paid regular scale of pay which is granted to government servants of equal status. Shri Rishi Kesh, ld. counsel for the applicants, has urged that ^{Delhi} the Home Guards Organisation has now been declared "permanent" and is, thus, there to stay like any other department of the Government. This clearly shows that there is a need for Home Guards on a permanent basis. The applicants have not only been enrolled and continued after the initial three years under Rule 8 but have been continued for years thereafter. Under Rule 3 of the ~~Home~~ Home Guards Rules 1959, a member of the minimum age for enrolment is 20 years and under Rule 9 he can continue to be a Home Guard until he attains the age of 60 years. Thus the applicants having completed the first three years are to continue till attaining the age of 60 years which is also established by the fact that no order of re-enrolment has been issued by the respondents. According to Shri Rishi Kesh, the applicants have been assigned duties along with the Delhi Police and they have been discharging functions like traffic control, crowd control, sentry duty, patrolling etc. Their duty hour are just like as those of policemen and they also receive allowances like for transportation etc. in compensation like the policemen. What is more, some of the applicants have been continuing for even 14 years without a break. In view of the full time nature of the duties assigned to them, there is no question of getting engaged elsewhere though it is true that few of them are employed in the government or in private sector. It was vehemently argued on behalf of the applicants that the remuneration they receive is the only means of support they have for themselves and their families and in the present socio-economic situation where unemployment is rampant, they are being exploited by getting the work of regular employees by paying them minimum daily wages. Any move to replace them

36

with new entrants, it was alleged, would not only be a blot on their long and meritorious service but would also be a means to perpetuate favouritism by bringing fresh unemployed persons from the open market. **Q.**

6. We have carefully considered the very important issues raised by the ld. counsel on behalf of the applicants. No doubt the Home Guards are deployed extensively for various duties with Delhi Police, the Delhi Jail department and elsewhere. It may even be said that most of them have enrolled as such only because they wanted to find whatever work they could at whatever wages to somehow survive in a situation of widespread unemployment and poverty. However, the whole objective, purpose and functioning of the Home Guards organisation cannot be ignored while considering these issues. The Bombay Home Guards Act 1947 has been extended to the NCT of Delhi. The Preamble of this Act (Bombay Act No.III of 1947) stipulates the nature and purpose of the Home Guard organisation and reads as follows:-

"Whereas it is expedient to provide a volunteer organisation for use in emergencies and for other purposes in the State of Bombay. It is hereby enacted as follows:-.....

(Emphasis supplied)"

7. Clearly, the members of the Home Guards are members of a voluntary organisation who are liable to be called out for emergencies. In accordance with Section 4 which empowers the Commandant to call out a member of the Home Guard for training or to discharge any of the functions or duties assigned to the Home Guards in accordance with the provisions of the Act and rules made thereunder. The Delhi Home Guards Rules 1959 framed under Section 8 of the Bombay Home Guards Act 1947 as extended to Delhi provide in rule 3 the qualifications for appointment as Home Guard; and Rule 8 the term of office. Neither

in the Act nor in the Rules is there any restriction that persons already employed either with the government or in private sector cannot be enrolled as members of Home Guards. Indeed, the ld. counsel fairly concedes that some Members of the Home Guards are in fact so employed. According to the 1995 Annual Report of the Ministry of Home Affairs, Government of India, Home Guards is a voluntary force first raised in India in December 1946 to assist the Police in controlling civil disturbance and communal riots. Subsequently, according to the report, the concept of the voluntary citizens force was adopted by several states. The report also states that Home Guards are recruited from various cross sections of the people, such as doctor engineers, lawyers, government servants, private sector, agricultural and industrial workers, university students etc. who give their spare time to the organisation for betterment of the community. Clearly, the Home Guards organisation as conceived by the framers of the Bombay Home Guards Act is in its genesis and concept a purely voluntary organisation to act as a citizens voluntary force to assist in emergencies and in times of need. The fact that Home Guards has been declared a permanent department does not detract from this position: all it denotes is that this organisation is now a permanent feature and therefore the staff sanctioned for it like Commandant General down to the Instructors will be a permanent establishment. Ideally, more and more citizens should be brought within the ambit of Home Guards which also explains why the term of office has been laid down as three years under Rule 8.

8. The question of regularisation of Home Guards volunteers has already been agitated earlier both before the Tribunal as well as the Supreme Court. In RAJ KAMAL & ORS. VS. UOI & ORS. SLJ 1995(2) CAT 321, the Chandigarh Bench held in respect of the Punjab Home Guards Act 1947 that Home Guards

38

is primarily a voluntary organisation and the applicants therein who are akin to the applicants in the present O.A. had not been appointed to the regular posts sanctioned for training, Commandants etc. and cannot be said to have the status of other than volunteers. The Hon. Supreme Court in RAMESHWAR DASS SHARMA & ORS. VS. STATE OF PUNJAB & ORS. 'CM-611-A'90 in CWP 3973 also held that Home Guards cannot claim for regularisation.

9. In view of the above facts and circumstances, We hold that the applicants have no case for regularisation.

10. It was canvassed before us by the applicant's counsel that even if the applicants cannot be regularised as government servants entitled to full pay and allowances, the unfortunate reality of their plight in the present economic and social setting needs to be recognised and their interests protected as they have come to depend on the Home Guards organisation for their livelihood. It was submitted that in today's situation of unemployment whatever remuneration they get by way of daily allowances which in fact is paid to them on a monthly basis, is better than nothing and there are many others who, failing an alternative, would like to step into their shoes. The applicants in these circumstances would be at the mercy of the respondents for obtaining a livelihood and the latter could if they so wish, on the pretext of rotating the membership, dismiss persons arbitrarily and recruit their own favourites. In these circumstances, the respondents at least have to lay down some policy which will determine the enrolment and discharge of such persons. It was submitted that such a policy should be open, transparent and based on principles of equality and fair play and should be applicable on a uniform basis. We have given careful consideration to these submissions. Undoubtedly, the respondents need to follow a consistent policy and cannot pick and choose, allowing some to continue indefinitely and

Dr

- 20 -

asking others who may be senior, to go. If they decide that persons with three years or six years or nine years 'multiples of three' should go, then it has to be applied across the board so that there is no allegation of arbitrariness or partiality. However, we consider that this is not within our domain to give any direction on such a matter of policy. We are however confident that respondents on their own initiative will examine these aspects and lay down some policy or guidelines in order to bring transparency and consistency and lay at rest the fears and apprehensions of the applicants.

11. In the light of the above discussion, finding no ground to interfere in the matter, the O.A. is dismissed. No costs.

OA NO. 2549/96

When the matter came up for hearing on 7.2.1997, the counsel for the applicants Shri U. Srivastava admitted that all the applicants were still employed. He further submitted that he relies on the judgement in the case of KRISHAN KUMAR & ORS. VS. GOVT. OF NCT DELHI & ORS. 'OA NO. 188/95' and seeks the same reliefs as were claimed therein. We have perused that judgement, delivered by a Bench in which one of us was also a Member. In that, the impugned order of discharge was set aside since the requirement of Rule 8 of the Delhi Home Guards Rules had not been fulfilled. In the present O.A., on the statement of the ld. counsel for the applicants himself, applicants are still in service and hence have no further cause for action. The O.A. is accordingly dismissed giving the applicants liberty, in case they are discharged from service, to agitate the matter, if so advised, in accordance with law.

40

OA NO.1271/95

In this O.A., the applicants have impugned the discharge orders 'Annexure B' dated 20.5.1995.

2. It has been submitted by the ld. counsel for the applicants that the impugned orders have since been withdrawn and the applicants continue to be on the strength of Home Guards.

3. The applicants have also sought the relief that they should not be forced to sign a declaration purported to have been issued by the respondents, that they should be paid salary and allowances of govt. servants of equal status and their services be regularised. As regards the payment of regular pay and regularisation, we have concluded in OA 2423/95 above that the applicants are not entitled to such a relief. Since the impugned orders of discharge have been withdrawn, the O.A. requires no further consideration and is accordingly dismissed.

OA NO.146/96

In this O.A. also, reliefs sought for are similar to that in O.A. 2423/95 and this O.A. is accordingly dismissed with the same observations. No costs.

OA NO.1963/96

This O.A. has been filed against the impugned orders dated 23.5.1995 and 27.5.1995 whereby the applicants have been discharged from the Home Guards organisation.

2. It has been stated before us by the applicants' counsel that the respondents have withdrawn the impugned orders and

the applicants continue to be in the strength of Home Guards. In view of this position and our observations above in OA No. 2423/1995 as regards other reliefs, this O.A. is also dismissed No costs.

OA NO.1018/1995

The applicant is aggrieved by the office order No.97 of 5.2.1993 passed by respondent No.3, by which his services were discontinued. He claims that he was first enrolled on 18.7.1979 and worked continuously and uninterruptedly as Home Guard till his discharge in 1993. He is aggrieved that the impugned order has been passed without any prior intimation or notice and no ground for his discontinuance has been intimated to him. He therefore prays that the impugned order be quashed and set aside, he be treated as continuing in service, be paid the salary and allowances to which he would have been entitled and his services be regularised. The respondents in their reply question the maintainability of the O.A. as the applicant is not a regular employee. On merits, they say that Home Guards are enrolled on a three-year basis and the applicant was discharged as he had completed his laid down tenure of three years.

2. We have heard the counsel on both sides. So far as the maintainability of the O.A. and jurisdiction of this Tribunal to entertain the O.A. are concerned, the matter has already been decided by this Tribunal in the KRISHAN KUMAR (OA NO.188/95) (Supra). The impugned order reads that it has been issued under Section 6A(1A) of the Bombay Home Guards Act 1947 and Rule 8 of the Bombay Home Guards Rules 1947 issued vide notification dated 20.7.1959 as their services are no longer required. Rule 8 reads as follows:-

42

"Rule 8: Term of office:- The term of office of a member of the Home Guards shall be three years.

Provided that the appointment of any such member may, at any time, be terminated by the Commandant General or the Commandant, as the case may be, before the 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 to continue as a member of the Home Guards."

3. As has been held in Krishan Kumar's case 'Supra', either the term expires at the end of three years or it can be terminated by giving one month's notice or without notice if the member of Home Guards is found to be medically unfit to continue as such. In the present case, neither a notice has been given nor it has been stated that the applicant has been found medically unfit. The only ground therefore remains is the expiry of the term of three years. The applicant claims to have been enrolled in 1979. Even if it is expected that there is a deemed fresh enrolment every three years, he would have been due to be discharged only in 1994 on completion of 15 years. As it is there is no order of re-enrolment and Shri Rishi Kesh, the ld. counsel for applicant, says that Rule 8 cannot operate if a Home Guard is retained after the initial period of three years and it must be assumed that he can continue thereafter till he attains the age of 60. We do not consider it necessary to go into this question at this stage. Suffice it to say that the applicant had been discharged under Rule 8 without fulfilling the conditions, viz., giving of one month's notice or due to medical unfitness. The impugned order therefore has to be quashed and set aside. The applicant will therefore be deemed to be on the rolls of Home Guards.

02

4. The question then arises is what other relief can be given? The Home Guards are entitled to get daily allowance when they are called out on duty. The ld. counsel for applicant says that the applicant was willing and available to be called out for duty and was prevented only because of the issue of the impugned order. He is therefore, according to the learned counsel, entitled to receive the arrears of daily allowance for all the intervening period. We do not consider that his mere enrolment as a member of Home Guards confers a right to be called out. The daily allowance is only to be given as a compensation for the time given by the volunteer members of the Home Guards organisation. Therefore, we do not concede to the prayer for grant of arrears of allowances. However, the respondents will call the applicant and assign him duties in accordance with his seniority, experience and suitability, within a week of the receipt of a copy of this order. It is however made clear that respondents would be free to pass fresh orders, if so advised, in accordance with law, regarding the applicant's retention.

The O.A. is accordingly disposed of. No-costs.

OA NO.1578/95

The main relief claimed in this O.A. is regularisation and continuation of the applicants till the age of 60.

2. These reliefs have already been discussed in O.A. No.2423/95 above and cannot be granted for reasons stated therein. The O.A. is accordingly dismissed. No costs.

H.K. AHOOJA
MEMBER 'A'

'avi'

Attested
18/Jan/2007
27/3/07

LAKSHMI SWAMINATHAN
MEMBER 'J'