

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1660/96

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T.A.No.

DATE OF DECISION 28.3.2000

Gopi Chand

....Petitioner

~~Gopi Chand~~ None present.

....Advocate for the
Petitioner(s)

VERSUS

Govt. of NCT Delhi & Ors.

....Respondent

None present.

....Advocate for the
Respondents.

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J).

The Hon'ble Mr. V.K. Majotra, Member (A).

1. To be referred to the Reporter or not Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

O.A. 1660/96

New Delhi this the 28th March, 2000.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Shri V.K. Majotra, Member(A).

Gopi Chand,
Home Guard,
S/o Shri Likhi Ram,
R/o J-1742, Jahangirpuri,
Delhi-110 033.

... Applicant.

None present.

Versus

1. The Government of NCT of Delhi,
through its Chief Secretary,
5, Sham Nath Marg,
Delhi.
2. The Commandant, Home Guards,
C.I.T. Complex,
Raja Garden, New Delhi-110 027.
3. The Commissioner of Police,
Delhi Police Headquarters,
I.P. Estate,
New Delhi.

... Respondents.

None present.

O R D E R (Oral)

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

This application has been filed by the applicant being aggrieved by Office Order No.212/95 dated 25.8.1995 discharging him from the rolls of Delhi Home Guard under Rule 10 read with Rule 6-B (1A) with immediate effect.

2. The brief relevant facts of the case are that the applicant was initially appointed as Home Guard for a period of three years by Annexure A-2 letter. According to him, because of his efficient performance of duties, his services were extended beyond three years and he has rendered at least 8 years as Home Guard in the organisation of Home Guards. He has stated that he was not employed elsewhere

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when he was engaged as Home Guard. Hence, his only source of income was the remuneration paid to him by the respondents. The applicant has submitted that there are several vacancies available in the rank of Home Guards and similarly vacancies are also regularly occurring in the rank of Police Constables in Delhi Police, the latter being filled from open market. He has submitted that because of his practical experience, he is in a better position to be considered for the post of Constable in Delhi Police.

3. The applicant has stated that previously he had been discharged by Respondent 2 and he had filed O.A. 118/92 which was disposed of by the Tribunal in his favour. In compliance with the Tribunal's order, the applicant was reinstated provisionally w.e.f. 2.9.1994 by order dated 2.9.1994 (Annexure A-4). In this order, it was further mentioned that this was subject to the decision in SLP filed before the Hon'ble Supreme Court vide Dy. No.12993/94 on 22.8.1994. According to the applicant, because of his filing the earlier O.A. 118/92, the respondents have become inimical to him and issued a memo dated 28.8.1995 regarding his absence from duty on 20.7.1995, 21.7.1995 and again on 28.8.1995. The applicant has submitted that he was sick on 20.7.1995 and 21.7.1995 and could not attend his duties. He has contended that this cannot, therefore, be considered as unauthorised absence from duty. He has submitted that ^{on 22.8.1995} he had some unavoidable piece of private work, for which he had also submitted an application for grant of leave for one day. He has stated that he had submitted his reply regarding these facts on 4.9.1995 (Annexure A-6). According to him, the respondents have arbitrarily discharged him from service by

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the impugned order dated 25.8.1995 and he had not been given a reasonable opportunity nor given one month's prior notice in writing before discharge from service, as provided in the Bombay Home Guards Act, 1947, as extended to Delhi by the Home Guards Rules, 1959. In the circumstances, he has prayed that the impugned order discharging him from service dated 25.8.1995 should be quashed and set aside and the O.A. be allowed with costs. He has also prayed for reinstatement in service as Home Guard with all consequential benefits.

4. The respondents have filed two replies, namely, one on behalf of Respondents 1 and 2 and the other on behalf of Respondent 3. Respondent 3 i.e. The Commissioner of Police, Delhi Police Headquarters, has, inter alia, submitted that if the applicant is qualified, he may apply for the post of Constable (Executive) in Delhi Police as and when the vacancies are notified and subject to fulfilment of the eligibility conditions laid down in the relevant Rules he will be considered for selection to that post.

5. We find the stand taken by Respondent 3 with regard to the contention of the applicant that he should be considered for recruitment to the post of Constable (Executive) in Delhi Police is unexceptionable. If the applicant is eligible and applies against any vacant posts that may be notified or advertised, he may be considered for selection, subject to his fulfilment of the eligibility conditions prescribed in the Recruitment Rules.

6. Respondents 1 and 2 have taken a preliminary objection that as the Home Guards are purely volunteers and are not paid any salary, the Tribunal has no jurisdiction to

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entertain the O.A. In the Full Bench judgement of the Tribunal in Indel Singh Tomar and Ors. Vs. Union of India & Ors. (OA 1753/97 with connected cases), decided on 25.11.1999, the Tribunal noting a similar objection raised by the respondents, had held as follows:

"As regards the submissions of learned counsel for respondents, the question whether the Tribunal has jurisdiction to entertain applications from Home Guards or not, was not an issue on which there was any difference of opinion between the Hon'ble Members who had initially heard the O.As. The Delhi High Court also in its order dated 26.5.99 has nowhere held that the Tribunal has no jurisdiction to entertain these O.As. Hence we do not propose to go into this question whether the Tribunal has jurisdiction or not while disposing of this reference".

From the above, it is seen that the Tribunal has been consistently entertaining applications regarding Home Guards and the Hon'ble Delhi High Court has also not held that the Tribunal has no jurisdiction to entertain such applications. Having regard to the aforesaid observations of the Full Bench of the Tribunal, the preliminary objection taken by the respondents has to be rejected.

7. The respondents in their reply to the merits of the case have, inter alia, stated that the contention of the applicant that he has been functioning as Home Guard to the satisfaction of his immediate superior, is false and baseless and they have denied the same. According to them, his performance of duties was not satisfactory as there were many written complaints against him as per the enclosures at Annexures RI-R5. They have also stated that a show cause notice was accordingly issued to him dated 22.8.1995 which has been wrongly stated as 22.8.1985¹⁸ calling upon him to give his explanation. They have stated that his reply giving his explanation was found unsatisfactory and

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✓ hence the impugned termination order was issued. They have also stated that the applicant had never submitted any application for leave for his sickness or for any other urgent work at his home and had stated these reasons only in his explanation. The respondents have also denied the other averments made by the applicant contained in Paragraphs 4.1-4.14. In the circumstances, they have submitted that there was no reason to retain the applicant in service as Home Guard and they have prayed that the O.A. may be dismissed.

9 8. The applicant has filed a rejoinder more or less reiterating the averments made in the O.A., including the fact that the performance of his duties was satisfactory and it was because of the personal bias and malice of the concerned officer who had concocted the complaints that the impugned order was eventually passed. He has also submitted that he had never neglected his duties and it is only on account of the difficulties that he was unable to attend his duties for some days.

9. We have carefully considered the pleadings and the documents on record.

10. In the impugned Office Order No. 212/95 dated 25.8.1995, the respondents have referred to the complaints received from the concerned officers regarding the performance of the duties by the applicant which are stated to be not diligent despite several warnings. The applicant has not denied that he has received ^{the} show cause notice issued by the respondents regarding his absence from duty to

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✓ which he had also given his reply. In the circumstances, it cannot be stated that the principles of natural justice have been violated.

11. Rule 10 of the Delhi Home Guards Rules, 1959 as extended to the Union Territory of Delhi by Notification dated 20.7.1959 provides as follows:

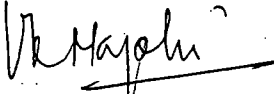
10. Conditions subject to which power of discharge may be exercised. No member of the Home Guards shall be discharged under sub-section (1-A) of section (6-B) unless the Commandant or the Commandant General, as the case may be, is satisfied that such member has committed an act detrimental to the good order welfare or discipline of the Home Guards Organisation".

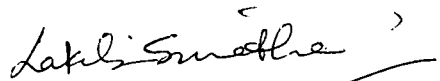
12. The respondents have issued the impugned Office Order No. 212 of 1995 acting under the provisions of Rule 10 of the aforesaid Rules. As stated above, the applicant has been given an opportunity to put forward his case before the same was issued. The respondents have taken into account the performance of the applicant as well as the reply given by him to the show cause notice. In the facts and circumstances of the case, it cannot be stated that the action of the respondents is either arbitrary, unreasonable or contrary to the relevant Rules. The allegations of bias and unfairness alleged by the applicant against the concerned officer because he had filed an earlier application cannot also be accepted as these allegations have only been made in a general manner and the particular officer against whom these allegations have been made has not even been impleaded in person. Therefore, this contention also deserves to be rejected as not proved.

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13. In the facts and circumstances of the case, we find no merit in this application or any justification to set aside the impugned termination order dated 25.8.1995. The O.A. accordingly fails and is dismissed. No order as to costs.


(V.K. Majotra)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'