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Central Administrative Tribunal
Principal Bench, New Delhi

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O A No. 2563/97.

New Delhi, this the 16th day of October, 1998

Hon'ble Shri T.N. Bhat, Member (J)
Hon'ble Shri S.P. Biswas, Member (A)

1. Rajinder Singh s/o Sh. Gajadhar Singh
r/o K-2, Jahangir Puri,
C-442, Behind I.I.T., Delhi.
2. Kali Charan s/o Shri Lala Ram,
r/o Jhuggi No. 671, Jahangirpuri,
Behind I.I.T., Delhi.
3. Smt. Seema Sharma d/o Sh. Girvar Singh,
R/o H.No. 759, Gali No. 5,
Ashok Nagar, Delhi.

....Applicants

(By Advocate: Shri U. Srivastava)

Versus

1. Govt. of National Capital Territory of Delhi
through the Director General,
Home Guard & Civil Defence, C.T.I. Complex,
Raja Garden, Delhi.
2. The Commandant,
Home Guards, C.T.I. Complex,
Raja Garden, Delhi.

...Respondents

(By Advocate:- Shri Jog Singh)

O R D E R

delivered by Hon'ble Shri T.N. Bhat, Member (J)

The applicants who were for some time working in the Home Guards department of the Govt. of N.C.T. of Delhi have filed this O.A. assailing the orders dated 5-8-1997 and 8.9.1997 by which the respondents have rejected the representations/appeals of the applicants for their reinstatement in the Home Guards Department, as Home Guards.

The applicants had been enrolled as Home Guards sometime in the years 1984 and 1989. Applicant No. 1 worked upto 13.10.1997, applicant no. 2 upto 18.6.1992 and applicant no. 3 upto 13.1.1994. Initially all the three applicants were engaged for a period of three years but

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their services were continued and extended. However, in the years 1997, 1992 and 1994, respectively, the services of the applicants were terminated. According to the applicants their services are terminated under Rule 8 of the Delhi Home Guards Rules and that they preferred appeals against the termination orders which have been rejected by the respondents by the impugned orders.

The grounds on which the impugned orders are assailed are that the respondents had no powers under the law to terminate the services of the applicants and that such departmental representations could not be rejected on the ground of limitation.

The respondents have resisted the O.A. on the ground that the applicants who were engaged as volunteers under the Home Guards Organisation could not be held to be government servants nor were they working against any regular posts. It is averred by the respondents that they have the 'inherent' power to discharge the services of the applicants on completion of their tenure as per the terms of their engagement.

We have heard the learned counsel for the applicants and have perused the material on record.

Learned counsel for the applicants has placed reliance on some earlier judgements of this Tribunal in O.A. 188/95 (Shri Krishan Kumar & Ors. vs. Govt. of N.C.T. of Delhi & Ors) delivered on 1.6.1995 and O.A. no. 1753/97 and a bunch of other OAs (I.S. Tomar & Ors. vs. Secretary, Min. of Home Affairs & Ors. delivered on 12.12.1997). Reliance is further placed upon the judgement of the Apex Court in Union of India vs. Subir Mukherjee and Ors., reported in JT 1998(3) SC540.

In reply, the counsel for the respondents has cited before us some recent judgements delivered by two other benches of this Tribunal on 10.7.1998 and 14.8.1998. The first judgement was delivered in OA No. 672/98 and a bunch of other OAs (Sombir & Ors. vs. Govt. of N.C.T. of Delhi & Ors) the other in and Ranbir Singh vs. Directorate General of Home Guards & Anr. (OA 1723/97).

During the course of his arguments learned counsel for the applicants erroneously argued that under Rule 8 of the Delhi Home Guards Rules the services of a Member of Home Guards can be terminated before expiry of the term of his office only after giving one month's notice or on the ground that he is medically unfit to continue as a Member. He seeks to derive support from the judgement in Shri Krishan & Ors. (supra) in which the bench of this Tribunal had held that the services of a Member of the Home Guards could not be terminated all of a sudden under Rule 8 of the Delhi Home Guards Rules after he had completed the initial term of three years of service. In I.S. Tomar & Ors., another Bench of this Tribunal held that providing security of service by regularising casual employment within a reasonable time has been accepted as a constitutional power and that denial of the same to the petitioners in that case was discriminatory and arbitrary exercise of powers. Allowing the bunch of OAs, it was held in the aforesaid judgement that termination of services of Home Guards was illegal and discriminatory and the respondents were directed to lay down appropriate policy guidelines for implementing the directions of the Tribunal contained in the judgement. However, we find that there was some difference of opinion between the two Members constituting the Bench though it was eventually held by one of the Members constituting the Bench that there was really no disagreement between the two Members and he accordingly issued some directions.

Learned counsel for the respondents has urged before us the that/ aforesaid judgement cannot serve as a precedent as there was really/difference of opinion between the Members constituting the Bench and the operative part of the judgement was apparently signed only by one of the two Members constituting the Bench. we do find some substance in this contention as we find that Hon'ble Shri K.Muthukumar, Member (A) had disagreed with some of the conclusions that were drawn by the other Member (Hon'ble Dr. Jose P. Verghese, the then Vice-Chairman). The learned Vice-Chairman who had written the leading judgement, after going through the separate judgement (opinion) of the other Member stated in the operative order that there was no disagreement of any kind. He accordingly issued modified directions. The operative portion of the order does not bear the signatures of Hon'ble Shri K. Muthukumar, Member (A). we have, therefore, our own doubts about the judgement's binding force, or even persuasive value. In this regard, we may also refer to the judgement in Sombir vs. Govt. of N.C.T. of Delhi (supra) in which another Bench of the Tribunal has held that the judgement in I.S.Tomar (supra) is not conclusive, particularly in view of the fact that the Hon'ble Supreme Court had already pronounced on this issue and laid the principles contrary to those laid down in I.S.Tomar.

In both Ranbir Singh and Sombir Singh (supra) two separate Benches of this Tribunal held the OAs to be barred by limitation. They also held that the Members of the Home Guards had no right to continue after the initial term of their appointment expired.

We further notice that the Chandigarh Bench of the Tribunal had in its judgement dated 7.8.1998 in OA No. 833/97 held that the Home guards being employed on a temporary basis from time to time they cannot claim regularisation. The aforesaid judgement of the Chandigarh Bench was upheld by the

Apex Court. Again, in Tarsem Singh's case (OA No. 418-CH/94) the Chandigarh Bench held that the homeguards are employees on the basis of temporary need and in case they are called back to do work with arms in hand they are paid at the rate of Rs. 30/- per day on the basis of 8 hours working during the day and that they cannot claim regularisation.

OAs in Sombir

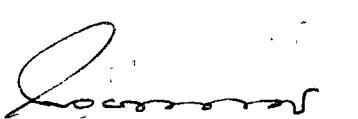
As already mentioned, the bunch of the/ were disposed of not only on the ground of limitation but also on merits. The other case relied upon by the respondents, namely, Ranbir Singh vs. Directorate General of Home Guards was also dismissed on the ground of limitation as the O.A. had been filed after a great delay. The applicant in that O.A. had been discharged on 24.2.1994 while he approached the Tribunal in 1997. We find that in the instant O.A. as well there has been great delay. As already stated, two of the applicants were terminated in the years 1992 and 1994 and they have come to the Tribunal only in the year 1997. No explanation has been forthcoming from the applicants for this delay. As regards the reliance of the applicants on Union of India & Ors. vs. Subir Mukherjee, it would suffice to say that the principles enunciated in the aforesaid judgement are not at all attracted to the facts and circumstances of the instant case. In the aforesaid judgement the Apex Court was dealing with members of a Cooperative Society working in the Eastern Railways which work was held to be of perinnial nature. The Tribunal had given directions to the Eastern Railways to consider and absorb the workers of the Co-operative Society as regular group 'D' employees, if found fit. The Apex Court upheld this judgement of the Tribunal. The facts of the instant case are entirely different. The instant case relates to voluntary services rendered by the home guards and cannot, therefore, attract the application of the

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aforesaid principle.

We have, therefore, no doubt in our minds that this O.A. is also liable to be dismissed on the ground of limitation apart from being found to be devoid of any merit on facts.

Inview of what has been held and discussed above this O.A. is dismissed both on merits as well as on the ground of limitation. There shall be no order as to costs.



(S.P. BISWAS)
Member (A)



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(T.N. BHAT)
Member (J)

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