

Central Administrative Tribunal
Principal Bench

O.A.300/97

9

This the 20th day of November, 1997.

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN (J)

HON'BLE SHRI N. SAHU, MEMBER (A).

Ved Pal
S/o Sh. Ram Singh
R/o Vill. & P.O. Nahri
Distt. Sonapat,
Haryana-131103.

..... Applicant.

(By Advocate Shri U. Srivastava)

Versus

1. National Capital Territory of Delhi
through the Secretary
5, Sham Nath Marg, Delhi

2. The Director General
Home Guards & Civil Defence
Nishkam Shawan, Raja Garden
New Delhi.

3. The Commandant
Home Guard & Civil Defence
CTI Complex, Raja Garden
New Delhi

..... Respondents.

(By Advocate Shri Surat Singh)

ORDER (Oral)

By Hon'ble Dr. Jose P. Vergheese, VC (J).

The applicant was a Home Guard employed under the respondents. It is stated that an order was passed against him on 1.2.94 by which he was removed from service on an allegation that one civilian namely Shri Naresh Kumar was assaulted for not paying Rs. 2000/- demanded from him forcibly. Accordingly he was found unfit for retention in the organisation.

- (10)
2. The counsel for the applicant submits that the applicant was discharged from the rolls of Delhi Home Guards under Rule 8 of Delhi Home Guard Rules, 1959. It was contended that the applicant was removed from office by this discharge order after holding only a preliminary enquiry. It was also contended that two other police personals who were involved in the incident alongwith the applicant, were reinstated on 25.11.94 and the applicant has been discriminated. It is stated that the applicant made several representations to consider his case as similar to the other two police personal.
3. We have heard the arguments on both sides. It was submitted by the learned counsel for the respondents that a Home Guard will not have any right to his engagement or employment under the Act, and as such the respondents are not obliged to hold any enquiry even on the basis of the allegation made in the impugned order itself. We are unable to agree with this contention, for the reasons that admittedly the applicant was under employment of the respondents and the employer and employee relationship referred to judgement in the case of Central Inland Water Transport Corporation Vs. B.N. Ganguly. (1986(3) SCC 156) is applicable to this case. If a termination order is passed on the basis of serious allegation, the matter should have been enquired, into before passing any adverse order. At the time when the applicant was removed from service by the discharge order, there existed a relationship of employer and the employee. The impugned order is not an order of discharge simplicitor, rather it is an order passed on the basis of a serious allegation

which is also available on the face of the record. The impugned order is a stigmatic one and attracts the protection of Article 311 of the Constitution.

4. Without going into the merits on the question of delay, we consider that this case can be disposed of by granting appropriate relief. The following directions are issued:-

- (i) The respondents shall reinstate the applicant forthwith without any benefit of past service including arrears of payment.
- (ii) Respondents are at liberty to enquire into allegation against the applicant after giving an opportunity to the applicant in accordance with law and thereafter on the basis of enquiry report, appropriate orders may be passed by the respondents.

It is made clear that the period between the date of discharge and date of reinstatement need not be considered to be as period spent on duty even if the applicant is exonerated in the departmental enquiry. With this view, the O.A. is disposed of. No order as to costs.

RB.

(N. SAHU)
MEMBER (A)

(DR. JOSE P. VERGHESE)
VICE CHAIRMAN (J)