

Central Administrative Tribunal
Principal Bench

O.A. No. 1974/2000

At the New Delhi, this the 20 day of December, 2000

Before HON'BLE SH. S.A.T. RIZVI, MEMBER, (A)

20/12/2000

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20/12/2000

1. Shri Dhunni Lal
Sanad No. 9844
S/o Ghaddi Lal
R/o A-1/6, Rajapuri,
Gali No. 1,
Uttam Nagar
New Delhi-59
2. Shri Lokinder Singh
Sanad No. 9885
S/o Vikram Singh
R/o A-17, Camp Jail,
Tihar New Delhi
3. Shri Krishan
Sanad No. 3695
S/o Prem Chand
R/o H.No 46,
Bindapur Gaon,
Uttam Nagar,
New Delhi -59
4. Shri Ashok Kumar
Sanad No. 9949
S/o Ram Dhari
R/o W-70/401-A, T-Huts
Indira Camp No. 2,
J-Block, Vikaspuri,
New Delhi-18
5. Shri Jagdish Singh
Sanad No. 9933
S/o Ayodhya Singh
R/o 9933/W70/217,
T- Huts Indira Camp No. 2
J- Block, Vikaspuri,
New Delhi- 18
6. Shri Samay Singh
Sanad No. 9985
S/o Suraj Bhan
R/o RZ-107, Indira Park

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7. Shri P.C. Mahadev
Sanad No. 10036
S/o Kutia
R/o H.No. 46,
Bindapur Gaon,
Uttam Nagar
New Delhi-59
8. Shri Mukesh Kumar
Sanad No. 3753
S/o Phool Kumar
B-93, Subash Park
Uttam Nagar
New Delhi
9. Shri Sahedev
Sanad No. 9930
S/o Ram Niwaz
R/o A1/71, Gali No. 3
Rajapuri, Delhi
10. Shri Lalman Singh
Sanad No. 9937
S/o Jhamun Singh
R/o Rz-A/30, B-Block
Gali No. 1, Bhagwati Vihar
Uttam Nagar
New Delhi-110059
11. Shri Vinod Kumar
Sanad No. 10037PH
S/o Bahar Singh
R/o RZ-B-23, Pratap Garden
New Delhi
12. Shri Sanjeev Kumar
Sanad No. 4457
S/o Om Vir Singh
R/o 1/5303A Gali No. 11
Balbir Nagar
Delhi-32
13. Shri Ramesh Chand
Sanad No. 9912
S/o Dalip Singh
R/o
14. Shri Subash Pawar
Sanad No. CA 417
S/o Ishwar Singh
R/o D/3, Mahavir Enclave
Part III Dahri New Delhi

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S/o Jagdish Parshad
R/o 100, Gali No. 4
Som Bazar Road
Rajapuri, New Delhi

16. Shri Yogesh Kumar
Sanad No. 9814
S/o Vritpal
R/o A/19, Maharani Enclave
Hastaal Village
Uttam Nagar
New Delhi
17. Shri Shiv Pal
Sanad No. 9913
S/o Puran
R/o W/58, 100,
Chander Nagar,
Janakpuri
New Delhi-58
18. Shri Suresh Chandra
Sanad No. 8704
S/o Ram Gopal
R/o Plot No. 43B, Gali No, 8
Yadav Enclave, Vikas Nagar
Hastaal Gaon, Uttam Nagar
New Delhi
19. Shri Ravinder Kumar Rajput
Sanad No. 9972
S/o Rampal Singh
R/o 130, Block-B
Sainik Enclave, Hastaal Gaon,
Uttam Nagar
New Delhi-59
20. Shri Rishi Pal
Sanad No. 7606
S/o Mangal Singh
R/o A-236, Data Market,
Madhu Vihar, Uttam Nagar
New Delhi-59
21. Mohd. Murtaza
Sanad No. 10004
S/o Mohd. Gohar Ali
R/o B-29, Hastaal Vihar
Uttam Nagar
New Delhi-59
22. Shri Jalaluddin
Sanad No. 9782

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23. Shri EsHamul Haq
Sanad No 10026
S/o Haweeb
R/o Esha Tailors
Ganna Mandi
Tilak Nagar New Delhi

24. Shri Umar Din, EX Coy Cdr
Sanad No. 762
S/o Abdul Hamid
R/o B-387, DDA Colony,
Khayala, New Delhi

25. Shri Gosain Singh
Sanad No. 10026
S/o Diwan Singh
R/o Y-1954, Mangol Puri
New Delhi-83

26. Shri Nand Kishore
Sanad No. 9960
S/o Om Parkash
R/o H.No. B/14, Double storey
Central Jail, New Delhi

27. Shri Jagmender Singh
Sanad No. 9919
S/o Hoshiyar Singh
R/o RZ-R/95, Chankya Enclave
Uttam Nagar
New Delhi

28. Shri Radhey Shyam
Sanad No. 9733
S/o Chander Bhan
R/o RZ-D-87, Pratap Garden,
Bindapur Village,
Uttam Nagar
New Delhi-59

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29. Shri Shiv Kumar Sharma
Sanad No. 8530
S/o Ram Chander
R/o RZ-B-51, Jeewan Park,
New Delhi-59

30. Shri Harnam Singh
Sanad No. 9920
S/o Sudhama Lal

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31. Shri Ram Prakash
Sanad No. 9968
S/o Maldan Singh
R/o 1395, Gali No. 9
Vikas Enclave,
Near Vikas Nagar,
Hastaal, Uttam Nagar,
New Delhi-59

32. Shri Rajinder Singh
Sanad No. 9902
S/o Chob Singh
R/o RZ-C-32/1,
Jeewan Park,
New Delhi-59

33. Shri Govind Dass
Sanad No. 9909
S/o Pancha Dass
R/o Jhuggi Camp
W56/239/A5A, Janta Qr.,
Near Possangipur,
Janak Puri
New Delhi-58

34. Shri Ramlal
Sanad No. 9921
S/o Shri Ram
R/o C/246, J.J. Colony
Hastaal Road, Uttam Nagar,
New Delhi-59

35. Shri Chetram
Sanad No. 9989
S/o Babu Ram
R/o W70/402, T Huts
Indira Camp No 2, J Block
Vikaspuri New Delhi -18

36. Shri Radharaman
Sanad No. 9905
S/o Yamuna Singh
R/o RZ-41A, Vikas Nagar,
Uttam Nagar,
New Delhi-59

37. Shri Shital Prashad
Sanad No. 8533
S/o Shri Lalta Prashad
R/o E 321 Bharat Vihar,
Kakrala Gaon,
New Delhi

And

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38. Mohd. Akhtar
Sanad No.9775
S/o Mohd. Habib
R/o W/143/88, Indira Colony
Tilak Nagar, New Delhi
(By Advocate: Sh. S.C. Bhasin)

Applicants

Versus

1. The Chief Secretary
Govt of N C T DELHI
5 Marg New Delhi
2. The Lt Governor of Delhi
Raj Bhawan New Delhi
3. The Commandant General
Home Guards & Civil Defence
Raja Garden, New Delhi-27
4. The Commandant
Delhi Home Guards, CTI Building
Raja Garden New Delhi -27
5. Commissioner of Police
Police HQ, ITO, New Delhi
6. Ministry of Home Affairs
North Block, New Delhi

Respondents

(By Advocate: Sh. Rajinder Pandita)

O R D E R

The grievance of the applicants in this OA is that notwithstanding the fact that they have served as Home Guard for more than 10 years on an average, they have been discharged without issuing notices as required under Rule 8 (a) of Home Guards Rules, and almost simultaneously the respondents have issued a notice in Hindustan Times dated 20.8.2000 for recruitment of Home

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Guards in their place. The applicants contend that Home Guards have been discharged en-mass and while in some cases discharge certificates have been issued in a mechanical manner, in others the services have been terminated on verbal instructions. A policy of pick and choose is being followed by the respondents in making recruitments in the Home Guards Organisation. The applicants further contend that the arbitrary and capricious discharge of the Home Guards in large numbers resulting in periodical recruitment to fill the vacancies is the outcome of large scale corruption going on in the respondents' set up. They have given names of certain officers of the Home Guards Organisation who have been formally charged with corruption in this context. In the Union Territory of Delhi about 17,000 Home Guards are working and of these about 850 Home Guards were discharged in February, 2000 with malafide intention. The work in the Home Guards' set-up is of a permanent nature and, therefore, posts have to be kept filled-up in the interest of work. The modus operandi of the respondents' set up, according to the applicants, is that they discharge Home Guards in good numbers every now and then on some pretext or the other and make recruitments to fill vacancies and in the process, collect huge amounts as bribe. By way of relief, the applicants have, inter alia, sought orders staying the recruitment of Home Guards by the respondents on the basis of the Hindustan Times notice dated 20.8.2000. They also want directions to be given to the respondents to absorb the applicants first and to give priority to their recruitment. They also want directions to be given to the respondents to

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makes rules for 50% reservation for Home Guards in Police, Jails and other Govt. Departments as per the policy of the Central Govt. on the lines of similar Scheme made by the M.P. and the Bihar Governments. They also seek reinstatement and regularisation with all the consequential benefits.

2. The learned counsel for the respondents has raised the basic issue of jurisdiction by claiming that the applicant Home Guards are volunteers and not Govt. servants and are not covered by Section 14 of the Administrative Tribunals Act, 1985. They have also challenged the OA under Sections 19, 20 and 21 of the said Act.

3. To explain the role of the Home Guards, the learned counsel appearing for the respondents has placed before me a book on Home Guards known as Compendium of Instructions 1993 brought out by the Govt. of India in the Ministry of Home Affairs, New Delhi. I have gone through this book and find that the force known as Home Guards is voluntary both in concept and in character. The role of Home Guards has been described in the book as follows:-

1.2 Role

The following revised roles are assigned to the Home Guards. These instructions have been reiterated from time to time:

- (a) Service as an auxiliary to the police and assist in maintaining internal security.
- (b) Assist the community in any kind of emergency—an air raid, a fire, a flood, an epidemic and so on.

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- (c) Organise functional units to provide essential services as motor transport, pioneer and engineer groups, fire brigades, nursing and first aid, operation of water and power supply in installations etc.
- (d) Promote communal harmony and give assistance to the administration in protecting weaker sections of the Society.
- (e) Participate in socio-economic and welfare activities such as adult education, health and hygiene, development schemes and such other tasks as are deemed useful."

4. The book also goes on to describe "Broad-based recruitment", "home Guards-Enrolment Policy", "Age Group", "Incentive to Central Govt. servants to join Home Guards Organisation", "Compulsory Home Guard training for Class IV Central Govt. Employees" and "Appointment of Home Guards to Paid Posts" in paragraphs 1.9, 1.10, 1.12, 1.15, 1.16 and 1.18 of the same book. Further in chapter 9 of the said book, the allowances and the honoraria payable to Home Guards have been brought out. The relevant paragraphs are reproduced below:-

50 "9.1 Entitlement

Home Guards are volunteers who offer their services in their spare time. But whenever a Home Guard is called for duty or training, he is entitled to certain allowances and honoraria as per rules. Both rural and urban Home Guards are eligible for the various allowances at the undermentioned rates.

9.2 Duty Allowance

Present Duty Allowance of Home Guards is Rs.22 per day per Home Guard w.e.f. 1st January 1988. The expenditure involved is to be borne by the agency calling up Home Guards for duty.

9.3 Transportation Allowance

Whenever an urban or rural Home Guard is required to perform duty/training at

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a place beyond 8 K.M. from the place of his residence, he will be paid transportation allowance of Rupee one or the actual expenditure if in excess of Rupee one by public conveyance for both ways journey.

9.4 Training Allowance

- i) Parade allowance of Urban Home Guards has been revised at Rs.10.00 per parade or Rs. 20.00 per two parades or more per day of 1 1/2 hrs. to 2 1/2 hours duration each.
- ii) Out of pocket allowance for Rural and Urban Home Guards has been revised from Rs. 5.00 to Rs. 8.00 each per day while undergoing training in training Centres.

(iii) Messing Charges

Free boarding and lodging for Camp training of Rural and Urban Home Guards has been fixed at Rs. 12.00 per head per day (Not to be paid in cash) while undergoing training in Camps/training centres."

5. From the aforesaid paragraphs extracted from the aforesaid book on Home Guards, it would appear that applicant-Home Guards are volunteers, pure and simple, and cannot be regarded as civil servants in any sense of the term. What they are paid is not salary but duty allowances on per day basis. For whatever service they render, the expenditure involved in paying duty allowances is to be borne by the agency calling up Home Guards for duty, that is to say that on each occasion they get paid from the Govt. even if what is paid is duty allowances and not salary. Even the Govt. servants are allowed to be enrolled as Home Guards. The guide-lines reproduced above provide that as far as possible unemployed persons enrolled as Home Guard should not be retained as such over a long period so as to

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preserve the voluntary character of the organisation. The employees of the PSUs have also been enabled to join the Home Guards Organisation. Furthermore, it has been provided that direct recruitment of Peons in the Ministries/Departments/Offices of the Govt. of India will henceforth be made subject to the conditions that such recruits shall be required to undergo Home Guard training. Of course, there are paid posts in the Home Guard Organisation for command and control purposes and in respect of these, the guide-lines provide that such of the Home Guards volunteers as have creditably equipped themselves in the training courses conducted at the Central Training Institutes of the States, could be considered for appointment to the paid posts subject to the rules governing such appointment which can have nothing to do with the enrolment of Home Guards.

6. I find that the Home Guards Organisation is governed by the Bombay Home Guards Act, 1947 as extended to the Union Territory of Delhi and the rules framed by the Delhi Administration in exercise of the powers conferred by Section 28 of the aforesaid Act. A careful look at the said Rule of 1959 reveals that all persons including Govt. servants and the employees of the PSUs etc. are eligible to be appointed as Home Guard volunteer within the age range of 20 to 60 years with minimum educational qualification of 4th primary examination pass. The term of office of a volunteer member of the Home Guard shall be three years provided that the appointment of any such member can be terminated by the competent authority before expiry of the said term.

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of office by giving one months' notice or even without any such notice if the member is found to be medically unfit to continue as a member. The competent authority has been empowered to relax the age even beyond 60 years in appropriate cases. It is also noticed that at the time of making an application for enrolment as home Guard, the following pledge has to be signed by the applicant:-

"I shall be required to serve for a period of three years in the Home Guards unless I am allowed to resign in pursuance of the Home Guards Rules, 1959."

7. It would thus appear that the Home Guards, even if some of them might be unemployed people, are not governed by any rules concerning seniority, promotion and confirmation. They are also not governed by conduct, rules like any other civil servant. There have no proper Recruitment Rules either, and the enrolment of Home Guards is resorted to by publishing notices in news papers as has been done by the Delhi Administration on 20.8.2000.

8. The learned counsel for the applicant has produced before me the following judgements of the Hon'ble Supreme Court and has contended that in view of these judgements, the termination of the enrolment of the applicants is illegal and they should be taken back in service.

1. Olga Tellis & Ors. Vs. Bombay Municipal Corp. & Ors. - AIR 1986 SC 180.

2. State of Haryana & Ors. Vs. Piar Singh & Ors. AIR 1992 SC 2130

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3. State of U.P. & Anr. Vs. Kaushal Kishore Shukla
(1991) 1 SCC 691

4. Man Sukh Lal rawal & Ors. Vs. U.O.I. & Ors.
1999 IV AD (Delhi) 269, CWP-4286/97.

5. OAS 408/2000, 193/2000, 410/2000 & 433/2000
decided on 12.7.2000 by this Tribunal.

9. The aforesaid judgements, I find, relate to Govt. servants/employees and, therefore, the decisions rendered by the Supreme Court in these cases cannot find application in the present OA. The fact and the circumstances obtaining in the cases considered by the Supreme Court are also quite different from the facts and circumstance obtaining in the present OA. The learned counsel has also relied on Supreme Court's judgement in Balwinder Singh & Ors. Vs. State of Punjab and Others reported as 1999 SC (II) L.L.J. I find that in this case, the appellants before the Supreme Court had worked on volunteer basis as Home Guards from 1985 to 1990 and thereafter in 1990 certain appellants were appointed on adhoc basis as Corporal Instructors while the remaining appellants were appointed as Despatch Riders. The appellants continued to work upto July, 1994 and their appointments initially made for 89 days was periodically extended by an equal numbers of days until July, 94. The Court ended up by extending to the appellants the benefit of relaxation in age for the period for which they were already in service as Corporal Instructors/Despatch Riders, laying down further that if the respondents in that case at all intended to make appointments on the aforesaid posts, the appellants shall be given first preference. It is not difficult to see that the Supreme Court's order herein related to paid posts in the Home

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Guards Organisation and not to Home Guard volunteers. This judgement will, therefore, not apply in the circumstances of the present case. Moreover, the Supreme Court has the power to issue directions even in respect of volunteer Home Guards not possessed by this Tribunal. The learned counsel for the applicant has next proceeded to place reliance on this Tribunal's judgement in OA-408/2000 (with other connected cases), decided on 12.7.2000. The facts of these cases are similar to the facts of the present case inasmuch as the applicants in those cases were discharged under Rule 20 of the Delhi Home Guards Rules, 1959 (hereinafter referred to as "the 1959 Rules"). The applicants in these cases were recruited as members of the Home Guard under Rule 3 of the 1959 Rules and had completed the initial period of three years. Their term had been extended but the respondents in those cases had discharged the applicants before the extended tenure of three years which was to expire on 5.11.2000. (emphasis supplied) It was held in those cases that the action of the respondents in terminating the services of the applicants whose tenure on re-engagement had not expired, without any justifiable ground, cannot be upheld. The respondents were directed accordingly to take back the applicants in service immediately as Home Guards for the remaining part of the unexpired tenure for which they had been reengaged as Home Guards. On a careful perusal of this aforesaid order, I find that the main concern in the case was termination of the applicants' services before the extending period. The status of the Home Guards as volunteers has not been discussed so as to bring out the

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aspect of jurisdiction of the Tribunal which is limited to the Govt. servants etc. in terms of section 14 of the Administrative Tribunals Act, 1985. I find that the same question has not been discussed nor any decision has been taken in that regard. What was impugned in that case was the jurisdiction of the Tribunal under sections 19, 20 and 21 of the A.T. Act, 1985 and the issue of jurisdiction based on the provisions of the aforesaid sections was the sole consideration before the Tribunal in that case. Accordingly, the Tribunal had held that it had jurisdiction in the matter. Moreover, the relief given by the Tribunal in the aforesaid case was in line with the decision of the High Court in Man Sukh Lal Rawal & Ors. (supra). The High Court, after considering the case of the volunteer Home Guards, in that case has held as follows:-

"...we have no doubt in our minds that the petitioners are not entitled to be regularised as members of the Home Guards. In fact, such a concept does not exist except in the case of personnel involved in training, command or control."

10. In holding as above, the High Court had obviously referred to the paid posts in the Home Guards organisation and not to Home Guards working as volunteers. The High Court had in the same case noted that the policy of pick and choose was being followed in regard to the appointment of Home Guards as volunteers and had observed that "...some policy is being framed to ensure that there is no pick and choose with regard to the persons who have to be enrolled or re-enrolled and those whose tenures are not to be extended. Given the

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fact that many of the duties performed by the members of the Home Guards are of a permanent nature and the fact that there is such severe unemployment in the country, we do expect the Respondents to be alive to this situation and to frame a transparent and workable policy in this regard. We hope that the Respondents will frame the policy within a period of six months".

11. The High Court had, at the same time, further observed as follows:-

"The saving grace, however, is that the Government does give weightage to a member of the Home Guards for appointment to a Group 'C' or a Group 'D' post with the Government. Moreover, para 1.23 on page 15 of the booklet says that Respondent No.1 has requested State Governments "to provide assistance to unemployed Home Guards in seeking gainful employment on the completion of their term of employment". We hope the Respondents are aware of both these responsibilities..."

12. Earlier in the said judgement, the High Court had elaborated the role of the Home Guards as volunteers on the lines brought out in the aforesaid book. Thus, the High Court was not in doubt about the precise status of Home Guards as volunteers as distinct from Govt. servants etc. covered by Section 14 of the A.T. Act, 85. It will be seen from the above discussion that none of the cases cited by the learned counsel for the applicant will give any assistance to him in the present case.

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13. The learned counsel for the respondents has on the other hand relied on several judgements rendered by this Tribunal in the case of Home Guards in which it has clearly been held that in the circumstances obtaining as in the present OA, no relief can be granted to the applicant. Some of the decisions relied upon by the learned counsel for the respondents are :-

1. Balam Singh vs. Lt. Governor & Ors. (OA 1368/98), decided on 13.9.2000
2. Upendra Tripathi & Ors. vs. Govt. of NCT & Ors. (OA-493/2000), decided on 20.10.2000
3. Shri Daya Nidhi & Ors. vs. Govt. of NCT & Ors. (OAS-2323 & 2486/98), decided on 18.12.99

14. The decisions taken by the Chandigarh Bench of this Tribunal in OA-1013/CH/88 together with connected OAs on 31.1.95 has also been relied upon by the learned counsel for the respondents. I find that the facts and circumstances in those cases were similar to the facts and circumstances in the present case. However, that OA was dismissed as devoid of merit. Accordingly, the applicant's claim for regularisation etc. in that case was turned down. The aforesaid judgement was upheld by the Hon'ble Supreme Court in its order dated 28.2.95 when the petition for Special Leave was dismissed (only plucked on record).

15. From the above discussion, it will be clear that the Home Guard volunteer cannot be equated to Govt. servants etc. covered by Section 14 of the A.T. Act, 1985. As a class, therefore, the Home Guards cannot approach this Tribunal for relief in the circumstances in

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which the applicants have done so in the present case. I would like to note, however, that while a number of Home Guards Volunteer would be drawn from the class of working Govt. servants, there would be others who are unemployed and, therefore, gain from whatever they get in terms of duty allowance etc. while working as volunteer. Since, they are allowed to work for three years at a time and a number of them have been working for a long enough time due to renewals given to them by the respondents, they start looking upon the Home Guards set up as a source of regular employment in these days of hardship. I am prepared to believe that as contended by the learned counsel for the applicants, these unemployed youth have to encounter considerable corruption in securing enrolment as volunteer. The complaints of pick and choose have been made time and again. The need to formulate a transparent policy in regard to enrolment of Home Guards volunteers has been emphasised by the High Court and I am given to understand that a policy has since been framed. The said policy will not doubt take care of the aspect of corruption in the enrolment of Home Guards. However, what is more important is that experienced Home Guard personnel (volunteers) otherwise unemployed should be able to seek absorption in regular Govt. jobs where the invaluable experience acquired by them would be found useful. The Govt. of N.C.T. of Delhi has already issued a policy circular for giving employment to Home Guard volunteers as security personnel/Guard in Govt. Departments, Govt. aided Institutions /Autonomous Bodies etc. The aforesaid circular issued by the Govt. of N.C.T. of Delhi is

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dated 10.9.99. I find that in the aforesaid circular, the Govt. of N.C.T. of Delhi has conveyed a decision that if so required, the existing recruitment rules may be suitably amended by the various Departments of Delhi Govt. to provide for reservation of 50% vacancies in Groups "C" & "D" employment in favour of Home Guard Volunteers. The aforesaid circular has been sent not only to the various Departments to the State Govt. but also to all the Institutions. The State Govts. of Madhya Pradesh and Bihar have already issued similar policies. The learned counsel for the applicant has submitted that despite the aforesaid policy circular, no effort has been made by the Govt. of N.C.T. of Delhi to secure its compliance so that the hardship caused to the unemployed Home Guard volunteer is minimized. I can only express the hope that having regard to the valuable experience which the Home Guard volunteers acquire while working as volunteer for three years or more, the Govt. of N.C.T of Delhi will re-emphasise the provisions of the aforesaid policy circular and issue a fresh mandate for careful and speedy compliance by the various Departments of the Govt., the local bodies, the autonomous bodies, aided Institutions etc.

16. Having discussed the various issues arising from the present OA in the preceding paragraphs, and after noting that the Home Guard Volunteers cannot be treated at par with Govt. servants etc., I am left with only one option which is to dismiss the OA. I do so without any order as to costs.

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17. The interim order passed in this case on
25.9.2000 is hereby vacated.



(S.A.T. Rizvi)
Member (A)

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