IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

(9)

O.A. No. 408/2000 with OA 193/2000 199
T.A.No. OA 410/2000 and OA 433/2000

DATE OF DECISION 12-7-2000

OA 408/2000-Sh.Arvind Kumar & Ors ....Petitioner
OA 193/2000-Brish Bhan Ram & Ors
OA 410/2000-Bhudayal Singh & Ors
OA 433/2000-Tilak Raj & Ors.

Shri U.Srivastava ....Advocate for the Petitioner(s)

VERSUS

Govt.of NCT of Delhi through Chief Secretary & Ors. ....Respondent

Sh.Rajinder Pandita ....Advocate for the Respondents.

CORAM:

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

The Hon'ble

1. To be referred to the Reporter or not Yes

2. Whether it needs to be circulated to other Benches of the Tribunal? No

(Smt.Lakshmi Swaminathan)
Member(J)

Central Administrative Tribunal
Principal Bench

O.A. 408/2000
with
O.A.193/2000,
O.A. 410/2000
and
O.A. 433/2000

(10)

New Delhi this the 12th day of July, 2000

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

O.A.408/2000

1. Arvind Kumar,
S/o Shri Kishan Pal Singh,
R/o 226, Sultanpur, Mehrauli,
New Delhi-30.

2. Rajinder Singh,
S/o Shri Laxman Singh,
D-183, Kusumpur Pahari,
Basant Vihar, New Delhi-57.

3. Jairam Sharma,
S/o Shri Ram Bilas Sharma,
R/o 124/9, Kishan Garh,
Basant Kunj, New Delhi-70.

4. Roshan Ali,
S/o Shri Wati Mohd.
R/o 18A/30, Ward No. 1,
Mehrauli, New Delhi-30. ... Applicants.

(By Advocate Shri U. Srivastava)

Versus

Govt. of NCT, Delhi, through

1. The Chief Secretary,
Govt. of NCT, Delhi,
5, Sham Nath Marg,
New Delhi.

2. The Commandant General,
Home Guards & Civil Defence,
CTI Building, Raja Garden,
New Delhi.

3. The Commandant,
Delhi Home Guards, CTI Buildings,
Raja Garden, New Delhi. ... Respondents.

(By Advocate Shri Rajinder Pandita)

O.A.193/2000

1. Brish Bhan Ram,
S/o Shri Sukhnandan Ram,
(Sanad No.5413),
R/o 0/46, Mangolpuri,
Delhi.

2. Jagbir Singh,
S/o Shri Bhagwan Singh,
(Sanad No. 5438),
R/o 337, Mangolpuri Kalan,
New Delhi.

3. Bal Kishan,
S/o Shri Chandra Bhan,
(Sanand No. 5465),
R/o Vill & PO - Mundaka,
New Delhi.

4. Ram Kishan,
Sanad No. 5381,
R/o 1167, Mangolpuri. ... Respondents.

(By Advocate Shri U. Srivastava)

Versus

Govt. of NCT, Delhi, through

1. The Chief Secretary,
5, Sham Nath Marg,
New Delhi.

2. The Commandant General,
Home Guards & Civil Defence,
CTI Building, Raja Garden,
New Delhi.

3. The Commandant,
Delhi Home Guards, CTI Buildings,
Raja Garden, New Delhi. ... Respondents.

(By Advocate Shri Rajinder Pandita)

O.A.410/2000

1. Bhudayal Singh,
S/o Shri Jodh Raj Singh,
(Sanad No. 6870),
R/o H.No. 147, B/S Kishangarh,
Mehrauli, Delhi-30.

2. Rajpal Singh,
S/o Shri Puran Singh,
R/o H.No. 147 C/9, Kishangarh,
Mehrauli, Delhi-30.

3. Babu Singh,
S/o Shri Jodh Raj,
R/o H.No. 147, B/5 Kishan Garh,
Mehrauli, Delhi-30.

4. Kishan Prasad Bhatia,
S/o Shri Tejumal Bhatia,
R/o C-22, Type-I,
Safdarjung Staff Quarters,
West Kidwai Nagar, New Delhi-23.

5. Smt. Sheela Virk,
W/o Shri Rajinder Singh,
R/o A-04/129, Sultanpuri,
Delhi.

6. Digambar Singh,
S/o Shri Raghubir Singh,
R/o H.No. 68/4, Mehrauli,
New Delhi-30.

7. Kamla Prasad,
S/o Shri Ram Sureman,
R/o Quarter No. 33, Kishan Garh
Goshal A,
Mehrauli, Delhi-30.

8. Nand Lal,
S/o Shri Bulaki Ram,
R/o H.No. 108/E, Kishan Garh,
Ward No. 9,
New Delhi-30.

9. Ram Bahadur,
S/o Shri Ram Sumer,
R/o Kishan Garh Gavshala,
Qtr No. 53, Meharauli,
New Delhi-30.

10. Sundar Singh,
S/o Shri Cheta Ram,
R/o H.No. 114/5, Bis Sulriya Harijan
Colony, Vill - Neb Sarai,
New Delhi-68.

11. Ram Gulam,
S/o Shri Nakched Ram,
R/o Qr. No. 8/4, Krishan Vihar,
Sultanpuri,
Delhi-83.

12. Udaybir Singh,
S/o Shri Bhikam Singh,
R/o T/9, Ward No.6,
Mehrauli,
New Delhi-30. ... Applicants.

(By Advocate Shri U. Srivastava)

Versus

Govt. of NCT, Delhi, through

1. The Chief Secretary,
5, Sham Nath Marg,
New Delhi.

2. The Commandant General,
Home Guards & Civil Defence,
CTI Building, Raja Garden,
New Delhi.

3. The Commandant,
Delhi Home Guards, CTI Buildings,
Raja Garden, New Delhi. ... Respondents.

(By Advocate Shri Rajinder Pandita)

(13)

O.A.433/2000

1. Tilak Raj,
S/o Shri Kharte Lal,
R/o A-5A/68, Janakpuri,
New Delhi.

2. Suresh Kumar,
S/o Shri Tek Chand,
R/o A/179, Hastal Road,
Uttam Nagar,
New Delhi.

3. Sanjay Kumar,
S/o Shri Kartar Singh,
R/o 178C Ward No. 2,
Mehrauli, New Delhi.

4. Ved Parkash,
S/o Shri Parkash Chand,
R/o B/250, Sultanpuri,
Delhi. ... Applicants.

(By Advocate Shri U. Srivastava)

Versus

Govt. of NCT, Delhi, through

1. The Chief Secretary,
5, Sham Nath Marg,
New Delhi.

2. The Commandant General,
Home Guards & Civil Defence,
CTI Building, Raja Garden,
New Delhi.

3. The Commandant,
Delhi Home Guards, CTI Buildings,
Raja Garden, New Delhi. ... Respondents.

(By Advocate Shri Rajinder Pandita)

O R D E R

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

Learned counsel for the parties have submitted that the relevant facts and issues raised in the aforesaid four applications are the same and, therefore, they may be dealt

with together. At the request of learned counsel for the applicants, the facts in O.A.408/2000 were referred to during the course of arguments in the aforesaid cases.

2. The applicants in O.A.408/2000 are aggrieved by the orders issued by the respondents dated 25.2.2000 discharging them from their services with effect from the next date, that is 26.2.2000 under Rule 8 of the Delhi Home Guards Rules, 1959 (hereinafter referred to as 'the 1959 Rules'). He has submitted that all the applicants in this case as well as the other three cases had been recruited as members of the Home Guards under Rule 3 of the 1959 Rules and had completed the initial period of three years. They were working as Home Guards thereafter for subsequent periods beyond 3 years, as extended by the respondents. One of the main contentions taken by Shri U. Srivastava, learned counsel was that the applicants were discharged within the extended tenure period of three years which was upto 5.11.2001 and beyond. His contention is that the respondents could not, therefore, have discharged the applicants in the manner they have done without issuing a month's notice and complying with the provisions of Rule 8 of the 1959 Rules. He has relied on the Tribunal's order dated 1.6.1995 in **Krishan Kumar & Ors. Vs. Govt. of NCT Delhi & Ors.** (OA 188/95). Learned counsel has also submitted that the respondents had given an undertaking in similar matters which came before the Delhi High Court that they would prepare a Scheme for enrolment and discharge of the members of the Home Guards in Delhi, which they have not done before the impugned orders have been passed.

According to him, the termination of the applicants could only be done by the respondents in terms of the Scheme which they had to prepare and not in an arbitrary manner, as they have done without any proper reason.

3. I have seen the reply filed by the respondents and heard Shri Rajinder Pandita, learned counsel. He has submitted that the issues raised in this case have been considered in a number of earlier judgements of the Tribunal. He has relied on the judgement of the Delhi High Court in **Man Sukh Lal Rawal & Ors. Vs. Union of India & Ors.** (CWP No.4286/97) dated 26.5.1999 and the Full Bench order of the Tribunal in **I.S. Tomar & Ors. Vs. Govt. of NCT & Ors.** (O.A.1753/97 with connected cases), decided on 25.11.1999 (Annexures 'A-7 and A-8'). He has submitted that the applicants have no right for regularisation, as they belong to a Voluntary Organisation i.e. the Home Guards. According to him, the competent authority has exercised its powers under the Home Guards Act, 1965, as extended to the UT of Delhi and the relevant 1959 Rules and there is nothing wrong with the termination orders which have been impugned in these cases. He has also submitted that the applications are barred under Sections 19,20 and 21 of the Administrative Tribunals Act, 1985. Besides, he has submitted that as the Home Guards is a Voluntary Organisation, the respondents can put off the volunteers at any time if their assistance is not required. He has, therefore, prayed that the aforesaid applications may be dismissed. He has submitted a copy of the Scheme dated 18.4.2000, copy placed on record.

4. I have seen the rejoinder filed by the applicants. The main grievance of Shri U. Srivastava, learned counsel, is that the respondents ought to follow their undertaking given before the Delhi High Court at the time of disposal of CWP No. 4286/97, decided on 26.5.1999 to frame a Scheme to ensure that there was no pick and choose method with regard to the discharge of the persons who have been enrolled or re-enrolled as Home Guards. He has submitted that in the case of the applicants, they still have balance period after their latest enrolment of three years as Home Guards and the respondents could not, therefore, terminate their services without proper reasons in an arbitrary manner and thereafter engage other persons in their place. He has also submitted that many of the applicants have been working as Home Guards for several years and are not otherwise gainfully employed.

16

5. I have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

6. In **Mansukh Lal Rawal's** case (supra), the Delhi High Court has voiced its concern for the applicants taking into account the facts of those cases. They have noted as follows:

> "...many of the petitioners have been rendering services as Home Guards for several years, in some cases for almost about twenty years. It does appear a little unfair to them to be suddenly told that when their existing tenure comes to an end, they will not be re-enrolled. In such a situation, it will be extremely difficult for them to look for a job in the open market".

The High Court has further observed 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 them and to provide some assistance to unemployed Home Guards in seeking gainful employment on the completion of their term of employment. They had noted that some policy is to be framed to ensure that there is no pick and choose with regard to the persons who have to be enrolled and re-enrolled and those whose tenures are not to be extended. It was further stated by the High Court that they do expect the respondents to be alive to this situation and to "frame a transparent and workable policy" in this regard, within a period of six months. It is this policy that the learned counsel for the applicant has submitted the respondents have not framed before passing the impugned termination orders dated 25.2.2000 in O.A. 408/2000.

(17)

7. At the time of hearing Shri Rajinder Pandita, learned counsel had given a copy of the policy guidelines framed by the respondents dealing with the enrolment/re-enrolment and discharge of Home Guards in Delhi which he states has been framed in pursuance of the directions of the Delhi High Court which is dated 18.4.2000. It is not the case of the respondents that after discharging the applicants in the present cases, the respondents have not enrolled or re-enrolled, as the case may be, other persons as Home Guards. The Delhi High Court in **Mansukh Lal Rawal's** case (supra) has itself noted 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 should also be kept in view by the respondents.

(18)

8. As noted by the Full Bench of the Tribunal in I.S. Tomar's case (supra), the judgement of the Delhi High Court in Man Sukh Lal Rawal's case (supra) is clear and specific. The issue of jurisdiction which has again been raised by the learned counsel for the respondents under Sections 19,20 and 21 of the Administrative Tribunals Act, 1985, is rejected in the light of this decision. In the Full Bench order dated 25.11.1999, it has been noted that the Scheme submitted by the respondents vide O.M. dated 10.9.1999 cannot be construed to be the Scheme contemplated in the Delhi High Court's judgement dated 26.5.1999. The Tribunal further stated in the conclusions that the O.As are disposed of in terms of the Delhi High Court's judgement in Man Sukh Lal Rawal's case (supra).

9. The applicants in O.A. 408/2000 have submitted that they have rendered service as members of the Home Guards for a number of years from 1989. They have submitted that against certain earlier discharge orders they had filed O.As before the Tribunal which had resulted in their being reinstated as members of the Home Guards. Shri U. Srivastava, learned counsel has contended that the impugned orders have been issued by the respondents against the applicants while they still had balance period of the tenure which was upto 14.6.2001 in the case of applicant Nos.1 and 3, upto 5.11.2001 in the case of applicant No. 2 and 2.2.20001 in the case of applicant No. 4. No reasons

19

have been given by the respondents as to why the applicants have been picked up and discharged as members of the Home Guards with immediate effect. It is also relevant to note that it is not the case of the respondents that they do not need any more Home Guards, but as contended by the learned counsel for the respondents that after discharging the applicants in the aforesaid cases, others are being enrolled as Home Guards, as it is a Voluntary Organisation. While that may be so, the respondents cannot also act as an arbitrary manner especially after taking action to extend the tenure of the applicants. From the facts mentioned above, it is clear that there are no discernible reasons as to why the respondents have discharged the applicants during the extended period of tenure of three years which are to expire by efflux of time in the years 2001-2002. In the facts and circumstances of the case, the action of the respondents cannot be held to be reasonable or that they have followed a transparent or workable policy with regard to the discharge of the applicants, or enrolment or re-enrolment of the concerned persons as Home Guards.

10. In the policy guidelines laid down by the respondents dated 18.4.2000, they have stated, inter alia, that in the case of volunteers who have served the Organisation for more than three years and upto a period of fifteen years and more, it has been decided to give one last opportunity to the discharged Home Guard Volunteers to seek appointment as Home Guard Volunteers for another term of three years. One of the main contentions of the applicants in the present O.As is that their services as

Home Guards have been terminated before completion of the extended term of three years tenure and that too without any reason in an arbitrary manner. The policy guidelines do not appear to lay down any transparent and workable policy in the matter of discharge of Home Guards like the applicants in the aforesaid cases. In this view of the matter, the action of the respondents in terminating the services of the applicants whose tenure on re-engagement has not expired and that too not on any grounds of misbehaviour or indiscipline cannot, therefore, be upheld. The termination orders have also been issued without complying with the principles of natural justice or giving a show cause notice to the applicants as to why their services are being terminated suddenly and immediately.

11. In the result, for the reasons given above, the aforesaid four applications succeed and are allowed. The impugned termination orders passed by the respondents are quashed and set aside. The respondents shall take the applicants back in service immediately as Home Guards for the remaining part of the unexpired tenure for which they had been re-engaged as Home Guards. Thereafter, further action may be taken by the respondents in accordance with the relevant rules, decisions of courts, policy guidelines and instructions. No order as to costs.

12. Let a copy of this order be placed in O.A. 193/2000, O.A. 410/2000 and O.A.433/2000.

(Smt. Lakshmi Swaminathan)
Member (J)

'SRD'

12-7-2002