

-7-

Central Administrative Tribunal, Principal Bench

Original Application No. 493 of 2000

New Delhi, this the 20th day of October, 2000

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

1. Sh.Upendra Tripathi, S/o Sh. Maheshwari Prasad, AB 438 Amar Puri, Ram Nagar, Paharganj, New Delhi.
 2. Pawan Kumar, S/o Hari Singh, 16/50/1 Tank Road, Karol Bagh, New Delhi.~
 3. Mahendra Kumar S/o Asha Ram, 16/86/1 Bapa Nagar, Hardhyan Singh Road, Karol Bagh, New Delhi.
 4. Rajeshwar Singh S/o Ram Pal Singh, 166/225 Tank Raod, Bapa Nagar, Karol Bagh, New Delhi.
 5. Kamal Kishore, S/o Ramesh Chandra, 487 Gali No. 1, Nai Basti, Kishan Ganj, New Delhi.
 6. Tota Ram S/o Ram Chandra 7274 Gali Ravi Das Navi Karim, Pahar Ganj, New Delhi.
 7. Jyoti Prakash Joshi S/o Sh.Shankar Lal S.K.No. 36,Sindhara Kalan, Chowki No.2, Shakti Nagar Delhi.
 8. Brahma Nand, S/o Tota Ram, 512 Kuchapati Ram Sita Ram Bazar, Delhi -6.
 9. Navratan Lal S/o Ram Chandra 285, Bankar Narela, Delhi 40.
 10. Mohan Lal S/o Roop Ram,Q.No.2, Prem Road, Old Secretariate, Delhi.
 11. Surendra Pal S/o Vijay Pal Singh R-Z 94/18, Gali No.7, Madanpuri, W-Sagarpur,New Delhi.
 12. Sashi Kumar Thankur S/o Jai Narain Thakur D-650, EPD Baljeet Nagar, New Delhi.
 13. Devindra Pandey S/o Nageshwar Pandey 8344, J.J.Colony, Pandav Nagar, Delhi.
 14. Chandra Bhushan,S/o S.Rai H.No.269,A.R.I. Pusa, New Delhi.
 15. Mohan Lal S/o Sh. Babu Lal 16/3977 Bapa Nagar New Delhi-5
 16. Raj Kumar, S/o Sh.Gaya Ram, 16/422, Bapa Nagar, Delhi -5
 17. Girdhar Gopal Onaga Ram F-16/699 Bapa Nagar,Delhi-5
 18. Subhash Chand S/o R.L.Yadav A-121, Amarpuri, Pahar Ganj, Delhi.
 19. Ramshankar,S/o Sadanand 108,Anaj Mandi, Filmistan, Delhi.
 20. Dalveer Singh, Uday Raj Singh, M-120, Kalibari Temple, Birla Mandir New Delhi.
 - 21 Krishna Sharma, Bankelal Sharma, 13/2 Multani Dhand, Pahar Ganj, New Delhi
- b

22. Ashok Kumar, Ram Mohan Saini H.No.83, Rampura, Lawrence Road, Delhi.
23. Rohtas Kumar, Gyan Chand H.No. 7897 Ram Nagar, Pahar Ganj, New Delhi.
24. Kavi Raj, Om Nath Updhaya C-5/36 Lawrance Road, Keshopuram, Delhi.
25. Bhagat Ram, Garib Ram, 166-Gali No.7, Gautam Colony, Narela Delhi.
26. Mohd Asgar Khan, Ismaili Khan, 1384, Hawali Kai Khwas Chittli Kabar, Jama Masjid Delhi.
27. Sanjay Kumar, Om Parkash, 1266, Pahari Imli, Moti Mahal, Jama Masjid Delhi.
28. Badri Narain, Ram Dev 16/341-H Bapa Nagar, Karol Bagh, New Delhi-5
29. Vinay Shanker, Shiv Shanker, H.No.16/441, Bapa Nagar, Anand Parbat, Karol Bagh, Delhi.
30. Sri Narain Mishra, Ram Pati Missra, B93 Shalimar Bagh, Delhi.
31. Jamna Prasad, Ram Adhya Yadav B-35, Sarup Nagar, Delhi.
32. Santosh Kumar, Kishori Lal H.No.I-102, Chidiya Colony, IARI Pusa, Delhi.
33. Nand Kishore, Shiv Lal DII/12, IARI, Pusa, New Delhi.
34. Shiv Dayal, Prabhu Dayal 7/8 Cet Ram Durga Mandir Maujpur, Delhi.
35. Ramesh Kumar, Duli Chand, B-6, N-15, Swatantra Nagar, Narela, Delhi.
36. Banwari Lal, Kishan Lal, H.No.366, Village Munirka New Delhi.
37. Brij Basi Pd., Budh Sain, Shop No.1, Old Lajpat Rai Mkt. Delhi.
38. Satya Veer, Ram Singh, 36/458, Trilok Puri, Delhi.
39. Ram Partap, Jagdish Prasad, 4A/9 Hanuman Mandir Wali Gali, Karawal Nagar, Delhi.
40. Bachu Singh, Gulab Singh, FI/385, Nand Nagri, Delhi.
41. Sri Bhagwan, H.No.183, Vill.P.O Holambi Kalan, Delhi-82.

42. Shyam Lal, Chandrika Prasad, 2/27, Harijan Basti New Rotak Road, New Delhi.
43. Puran Chand, Chuttan Nath, Jhuggi No.C-5, B-541, Lakkar Mandi Motia Khan, Pahar Ganj, New Delhi.
44. Kishori Lal, Ram Chander, A-704, Prem Nagar, Nabi Karim, Pahar Ganj, New Delhi.
45. Chote Lal, CSC/351, Jhuggi Motia Khan, Pahar Ganj, New Delhi.
46. Bharat Ram, Ram Lal Verma BND Baba Farid Puri, H.No.717, Patel Nagar, New Delhi.
47. Prem Chand, Kanhiya Lal, A-210 Amar Puri, Aram Nagar, Pahar, Ganj, New Delhi.
48. Kishori Lal, Ram Sumer, 5797, Gali No.7, New Chandrawal, Delhi-7.
49. Ram Achal, Ram Das, Jhuggi No.4, Sabzi mandi, Roshanara Raod, Delhi.
50. Nand Kishore, Ganga Patel, I-287, Chiddiya Colony, New Delhi.
51. Karan Singh, Ram Prashad, Vill & P.O. Hiwani, Samepur Delhi. - Applicants

(By Advocate - Shri Vinay Sabharwal)

Versus

1. Government of NCT of Delhi. Through Its Chief Secretary, 5 Sham Nath Marg, New Delhi.
 2. The Commandant, Home Guards, Delhi Directorate General of Home Guards & Civil Defence, Nishkam Sewa Bhawan, Raja Garden, New Delhi- 110027.
 3. The Commissioner of Police. Delhi Police Head Quarters, I.P.Estate, New Delhi. - Respondents
- (By Advocate Shri Rajinder Pandita)

O R D E R

Here are 51 applicants who are/were Home Guards under the respondents. Some of them have been discharged from service having completed tenure of three years under Rule 8 of Delhi Home Guards Rules, 1959 (hereinafter referred to as 'the Rules of 1959') while the others were threatened that their orders of discharge from service are about to be issued.

2. According to the applicants they have been serving as Home Guards for the last 12 to 30 years as detailed in Annexure-1. They are civil servants and are

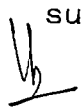
11

entitled to regularisation with effect from the date of their enrolment. The applicants have sought setting aside of the impugned orders of discharge and want reinstatement in service with all arrears of wages. The applicants have also sought that the respondents should be directed to follow the directives given by this Tribunal in OA 1753/97 vide its judgment dated 12.12.1997.

3. The respondents in their reply have contended that the Tribunal has no jurisdiction to adjudicate in the matter as there is no relationship of master and servant between the respondents and the applicants, the latter being purely volunteers called upon during emergency to assist the enforcement agency and are paid subsistence allowance and parade allowance out of contingent funds for the period they perform the parade and training duties. According to the respondents the Home Guard is a voluntary organisation with motto of 'Niskam Sewa' having no statutory rights and obligations either on the respondents or on the applicants regarding their service conditions. It is also stated that the application is barred under Sections 19, 20 and 21 of the Administrative Tribunals Act, 1985. The OA has also been challenged on merits.

4. I have heard applicants' counsel Shri Vinay Sabharwal and respondents' counsel Shri Rajinder Pandita and perused the material available on record.

5. The learned counsel of the applicants stated that the voluntary nature of the organisation of the Home Guards and its alleged motto are merely an eye-wash. Factually, the State is using the Home Guards Organization as recruitment and labour supply agency for supplementing its regular work force. The State is



acting as the biggest exploiter in the case of Home Guards. The applicant's counsel relied on order dated 12.12.1997 in OA 1753/1997 in support of his contentions.

6. Shri Pandita appearing on behalf of the respondents contended that the applicants are merely volunteers under the Home Guards Scheme and are not civil servants and do not have master-servant relationship with the respondents. Such volunteers can certainly be discharged from service under the law on expiry of their term and even prior to the expiry of the term by following certain requirements such as giving one month's notice or even without such notice if such member is found to be medically unfit to continue as a member of the Home Guards as per the provisions of Rule 8 of the Rules of 1959.

7. As regards the order dated 12.12.1997 in OA 1753/1997 Shri Pandita drew my attention to order dated 22.12.1998 in CP No.226/98 in OA 1753/97 in which it was held that "there is no executable or operative order of the D.B. that heard OA No.1753/97 and other connected matters. Under these circumstances, no question of contempt or compliance with those directions given by only one of the Members constituting the Bench arise. We are, therefore, of the view that the present CP is misconceived and accordingly, it deserves to be dismissed. Accordingly, it is hereby dismissed. Rule nisi shall stand discharged". According to him whereas no executable or operative orders were made by the Division Bench, orders passed by various Benches of the Tribunal, High Court and even the Supreme Court have rejected similar matters as the instant case being devoid of merit and not accorded any benefits to the

W

petitioners. He particularly relied on the following decisions in the cases of (i) Shri Chandeshwar & another Vs. Govt. of NCT of Delhi & others, O.A.No.2006 of 1998 decided on 11.1.1998 by CAT Principal Bench, along with connected case; (ii) Raj Kamal and others Vs. Union of India & others, OA 1013-CH of 1988 decided on 31.1.1995 by CAT Chandigarh Bench along with connected cases; (iii) Raj Kamal Belt No.62 and others Vs. Union of India & others, SLP (C) No.4550 of 1995 decided on 28.2.1995 by the Hon'ble Supreme court; (iv) Shri Daya Nidhi Vs. Govt.of NCT of Delhi & another, OA No.2323/98 decided on 18.12.1998 by CAT Principal Bench along with connected case; (v) Rameshwar Dass Sharma & others Vs. State of Punjab & others, SLP (C) No.12465/1990 decided on 30.7.1991 by the Hon'ble Supreme Court; (vi) Man Sukh Lal Rawal & others Vs. Union of India & others, Civil Writ Petition No.4286/1997 decided on 26.5.1999 by High Court of Delhi; and (vii) Raj Kumar Vs. Govt. of NCT of Delhi, Civil Writ Petition No.44/99 decided on 6.1.1999 by High Court of Delhi.

8. In the afore-stated cases cited by the learned counsel of the respondents, it was held that the petitioner-Home Guards could not be given any relief and the Home-Guards being volunteers were not entitled to regularisation. In the case of Raj Kamal (supra) the Hon'ble Supreme Court dismissing the SLP held that the representation must be made to the Government and not to the Court. The mere fact that after the expiry of the term of three years some Home Guards personnel were allowed to continue in the service could not by itself entitle them to additional benefits than what they would have been otherwise entitled to had they been discharged



on the expiry of the initial period of three years. In the case of Rameshwar Dass Sharma (supra) their Lordships have held as follows :-

"the Home Guards who are ordinarily demobed Army personnel are employed on the basis of temporary need from time to time and in case they are called back to do work with arms in hands, they are paid at the rate of Rs.30/- per day on the basis of eight hours' working during the day, or otherwise they are paid at the rate of Rs.25/- per day. Petitioner, according to the respondent, being an employee under this system cannot ask for regularisation. In such circumstances, we do not think that the petitioner is entitled to any relief. We have impressed upon learned counsel, however, to find out from the Home Guard Organisation if in any manner, the petitioner can be accommodated in a limited way.

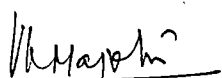
The special leave petition and the interlocutory application are disposed of accordingly".

In the case of Man Sukh Lal Rawal(supra), the Hon'ble High Court while dismissing the writ petition expected of the respondents to be alive to this situation and to frame a transparent and workable policy within a period of six months. In the case of Raj Kumar (supra) the Hon'ble High Court did not find any reason to interfere with the decision of this Tribunal and dismissed the petition.

9. On the basis of catena of judgments cited by the respondents against the claims of the applicants as against only one judgment which too was considered by a Division Bench in the case of Indel Singh Tomer & others Vs. A.K.Singh & another, CP No.226/1998 in OA 1753/1997 to be non-executable and non-operative order, I am unable to go along with the learned counsel of the applicants.

10. In the result, the OA is dismissed, however, without any order as to costs.

rkv.


(V.K.Majotra)
Member (A)